

KÖNIG METALL

General Terms and Conditions of Purchase

As of: February 2019

§1 Scope of Application, Form

(1) These General Terms and Conditions of Purchase („GPC“) apply to all our business relations with our suppliers ("Supplier"). The GPC shall only apply if the supplier is an entrepreneur (§14 BGB), a legal entity under public law or a special fund under public law.

(2) The GPC apply in particular to contracts for the sale and/or delivery of movable goods ("goods"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GPC in the version valid at the time of our order or in any case in the version last notified to him in text form shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.

(3) Our GPC apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Supplier shall only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the supplier without reservation in full knowledge of the supplier's general terms and conditions.

(4) Individual agreements made in individual cases with the supplier (including collateral agreements, supplements and amendments) shall in any case take precedence over these GPC. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or our written confirmation.

(5) Legally relevant declarations and notifications of the supplier with regard to the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and further evidence, in particular in the event of doubt as to the legitimacy of the declarant, shall remain unaffected.

(6) References to the validity of statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GPC.

§ 2 Formation of Contract

(1) Our order shall be deemed binding at the earliest upon written submission or confirmation. Delivery call-offs as well as changes and additions thereto may also be made by electronic data interchange (EDI). The supplier shall notify us of obvious errors (e.g. spelling and calculation errors) and incompleteness of the order including the order documents

for the purpose of correction or completion prior to acceptance; otherwise the contract shall be deemed not to have been concluded.

(2) The supplier is obliged to confirm our order in writing within a period of two (2) weeks or in particular to execute it unconditionally by dispatching the goods (acceptance). Delivery call-offs by EDI must be confirmed within 24 hours.

Late acceptance shall be deemed a new offer and shall require acceptance by us.

(3) The preparation of offers, preliminary studies, samples etc. is free of charge for us and does not oblige us to place an order.

§ 3 Delivery Time and Delay in delivery

(1) The delivery time stated by us in the order is binding. If the delivery time is not stated in the order and has not been otherwise agreed, it shall be three (3) weeks from the conclusion of the contract. The supplier is obliged to inform us immediately in writing if he will probably not be able to meet the agreed delivery times - for whatever reason.

(2) If the supplier does not provide his service or does not do so within the agreed delivery period or if he is in default, our rights - in particular to rescission and damages - shall be determined in accordance with the statutory provisions. The provisions in paragraph 3 shall remain unaffected.

(3) If the supplier is in default, we may - in addition to further legal claims - demand lump-sum compensation for our damage caused by default amounting to 1% of the net price per completed calendar week, but not more than a total of 5% of the net price of the goods delivered late. We reserve the right to prove that a higher damage has occurred.

§ 4 Delivery, Passing of Risk, Acceptance, Default of Acceptance

(1) Without our prior written consent, the Supplier shall not be entitled to have the performance owed by him performed by third parties (e.g. subcontractors). The supplier shall bear the procurement risk for his services unless otherwise agreed in individual cases (e.g. limitation to stock).

(2) Deliveries shall be made "**Delivered Duty Paid**" (**In-terms 2010**) to the place specified in the order. If the place of destination is not specified and nothing to the contrary has been agreed, delivery shall be made to our place of business in Gaggenau. The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (obligation to deliver).

(3) The delivery shall be accompanied by a delivery note stating the date (issue and dispatch), contents of the delivery (article number and quantity) and our order identification (date and number). If the delivery note is missing or incomplete, we shall not be responsible for any resulting de-

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lays in processing and payment. Separately from the delivery note, a corresponding dispatch note with the same content shall be sent to us.

(4) The risk of accidental loss and accidental deterioration of the goods shall pass to us upon delivery at the place of performance. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply mutatis mutandis in the event of acceptance. If we are in default of acceptance, this shall be deemed to be equivalent to handover or acceptance.

(5) The statutory provisions shall apply to the occurrence of our default of acceptance. However, the supplier must also expressly offer his services to us if a specific or determinable calendar period has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the supplier may demand reimbursement of his additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract relates to an unrepresentable item to be manufactured by the supplier (one-off production), the supplier shall only be entitled to further rights if we have undertaken to cooperate and are responsible for the failure to cooperate.

§ 5 Prices and Terms of Payment

(1) The price stated in the order is binding. All prices are inclusive of statutory value added tax, unless this is shown separately.

(2) Unless otherwise agreed in individual cases, the price shall include all services and ancillary services of the Supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).

(3) The agreed price is due for payment within 30 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make payment within 14 calendar days, the supplier shall grant us a discount of 3% on the net amount of the invoice. In the case of bank transfers, payment shall be deemed to have been made in due time if our transfer order is received by our bank before expiry of the payment deadline; we shall not be responsible for delays caused by the banks involved in the payment process.

(4) We do not owe any due interest. The statutory provisions shall apply to default in payment.

(5) We shall be entitled to set-off and retention rights as well as the plea of non-performance of the contract to the extent permitted by law. In particular, we are entitled to withhold due payments as long as we are still entitled to claims from incomplete or defective services against the supplier.

(6) The supplier shall only have a right of set-off or retention if counterclaims have been legally established or are undisputed.

§ 6 Confidentiality and Retention of Title

(1) We reserve ownership rights and copyrights to illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. The documents must be kept secret from third parties, even after termination of the contract. The obligation to maintain secrecy shall not expire until and to the extent that the knowledge contained in the documents provided has become generally known.

(2) Paragraph 1 shall apply mutatis mutandis to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Supplier for manufacture. Such objects - as long as they are not processed - are to be kept separately at the supplier's expense and insured to an appropriate extent against destruction and loss.

(3) Any processing, mixing or combination (further processing) of items provided by the supplier shall be carried out on our behalf. The same applies to further processing of the delivered goods by us, so that we are deemed to be the manufacturer and acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.

(4) The transfer of ownership of the goods to us must take place unconditionally and regardless of the payment of the price. If, however, in individual cases, we accept an offer by the supplier to transfer the purchase price conditional on the payment of the purchase price, the retention of title of the supplier shall expire at the latest upon payment of the purchase price for the delivered goods. In the ordinary course of business, we shall remain authorised to resell the goods, even before payment of the purchase price, with advance assignment of the claim arising therefrom (alternatively validity of the simple reservation of title extended to the resale). This excludes all other forms of retention of title, in particular extended retention of title, forwarded retention of title and retention of title extended to further processing.

§ 7 Quality Assurance

(1) The supplier shall maintain a quality management system which at least meets the requirements of ISO 9001 and IATF 16949. The supplier shall provide the corresponding proof within the framework of a certification procedure with an accredited certification company in accordance with ISO 9001 and by submitting the certificate. We also expect a certified environmental management system according to ISO 14001 or EMAS from the supplier.

(2) Suppliers who are unable to implement IATF 16949 due to their corporate and supplier structure should at least demonstrably implement the relevant requirements from the MAQMSR (Minimum Automotive Quality Management System Requirements for sub suppliers) for IATF 16949.

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(3) The supplier shall manufacture and test the products ordered by us from him in accordance with the rules of the quality management system.

(4) If the supplier procures material, production or testing equipment, services or other services from sub-suppliers for the manufacture or quality assurance of his products, he shall contractually include these in his quality management system or himself ensure the quality of these sub-supplies. In any case, the supplier shall remain responsible for the quality of the products and services of the supplier.

(5) The supplier shall notify us in good time before any changes to products and production processes, relocations of production sites, changes to procedures or equipment for testing the products or other quality assurance measures so that we can evaluate them. In particular, changes by the supplier may not be introduced without our approval in order to avoid risks for the product quality or the supply to our end customer.

(6) For products requiring documentation for which special archiving requirements exist (e.g. D/TLD parts), the supplier shall maintain a system which ensures the secure storage of documents, records and samples. The type of storage must be suitable for permanently protecting the documents, records and samples from being impaired by dirt, heat and water. The archiving period shall depend on the specific supplier requirements, but shall be not less than ten (10) years.

(7) Before commencing series deliveries, the supplier shall present his products within the framework of an initial sampling for production process and product release. The basis for this initial sampling is the complete product specification. Deliveries may only be made from tools and processes approved by us. The release procedure for purchased parts or services on components is based on VDA Volume 2 "Quality Assurance of Deliveries" (PPF) or the AIAG document on the Production Parts Acceptance Procedure (PPAP). The granting of the first sample release also means the series release.

(8) The supplier shall mark all delivered products in such a way that their identity is also clearly and permanently recognisable outside the packaging unit. In addition to the markings specified in the specification, the products must be marked at least with regard to the following criteria:

- Identification of the supplier
- Date on which the product was manufactured by the vendor
- Tool/nest number (if applicable).

§ 8 Remedies for Defects

(1) The statutory provisions shall apply to our rights in the event of material defects and defects of title of the goods (including incorrect and short delivery as well as improper assembly, defective assembly, operating or operating instructions) and in the event of other breaches of duty on the part of the supplier, unless otherwise specified below.

(2) In accordance with the statutory provisions, the supplier shall be liable in particular for ensuring that the goods have the agreed quality when the risk passes to us. Any product descriptions which - in particular by designation or reference in our order - are subject matter of the respective contract or which were included in the contract in the same way as these GPC shall be deemed to be agreements on the quality. It makes no difference whether the product description originates from us, the supplier or the manufacturer.

(3) Contrary to § 442 para. 1 sentence 2 BGB (German Civil Code), we are also entitled to unrestricted claims for defects if the defect remained unknown to us as a result of gross negligence when the contract was concluded.

(4) The statutory provisions (§§377, 381 HGB) shall apply to the commercial obligation to inspect and give notice of defects with the following proviso: Our obligation to inspect shall be limited to defects which become apparent during our incoming goods inspection under external inspection including the delivery documents (e.g. transport damage, wrong and short delivery) or which can be identified during our quality inspection by random sampling. If acceptance has been agreed, there shall be no obligation to inspect. Otherwise it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later shall remain unaffected. Notwithstanding our obligation to inspect, our complaint (notice of defects) shall be deemed to be immediate and timely if it is sent within ten (10) working days of discovery or, in the case of obvious defects, of delivery.

(5) Subsequent performance shall also include the removal of the defective goods and their reinstallation if the goods have been installed in another item or attached to another item in accordance with their type and intended use; our statutory claim to reimbursement of corresponding expenses shall remain unaffected. The Supplier shall bear the expenses necessary for the purpose of inspection and subsequent performance even if it turns out that no defect actually existed. Our liability for damages in the event of an unjustified demand for remedy of defects shall remain unaffected; in this respect, however, we shall only be liable if we have recognised or grossly negligently failed to recognise that no defect existed.

(6) Irrespective of our statutory rights and the provisions in para. 5, the following shall apply: If the supplier does not fulfil his obligation to subsequent performance - at our option by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery) - within a reasonable period set by us, we shall be entitled to remedy the defect ourselves and demand from the supplier reimbursement of the expenses required for this or a corresponding advance payment. If subsequent performance by the Supplier has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no

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deadline shall be set; we shall inform the Supplier of such circumstances immediately, if possible in advance.

(7) In addition, we shall be entitled to reduce the purchase price or withdraw from the contract in the event of a material defect or legal defect in accordance with the statutory provisions. In addition, we shall be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

§ 9 Supplier Recourse

(1) Our legally determined recourse claims within a supply chain (supplier recourse in accordance with §§ 445a, 445b, 478 BGB) are entitled to us without restriction in addition to the defect claims. In particular, we are entitled to demand from the supplier exactly the type of subsequent performance (rectification of defects or replacement delivery) which we owe to our customer in individual cases. Our statutory right of choice (§ 439 para. 1 BGB) is not restricted by this.

(2) Before we acknowledge or fulfil a claim for defects asserted by our customer (including the rate of expenditure pursuant to §§ 445a para. 1, 439 para. 2 and 3 BGB), we shall notify the supplier and request a written statement, briefly stating the facts of the case. If a substantiated statement is not made within a reasonable period of time and no amicable solution is reached, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the supplier shall be responsible for providing proof to the contrary.

(3) Our claims arising from supplier recourse shall also apply if the defective goods have been further processed by us or another entrepreneur, e.g. by installation in another product.

§ 10 Products Liability

(1) If the supplier is responsible for a product damage, he shall indemnify us against claims by third parties to the extent that the cause lies within his sphere of control and organisation and he himself is liable in the external relationship.

(2) Within the scope of his obligation to indemnify, the supplier shall reimburse expenses pursuant to §§ 683, 670 BGB (German Civil Code) which result from or in connection with the use of third parties, including recall actions carried out by us. As far as possible and reasonable, we shall inform the supplier of the content and scope of recall measures and give him the opportunity to comment. Further legal claims remain unaffected.

(3) The supplier shall take out and maintain product liability insurance with a lump sum cover of at least five (5) million EUR per personal injury/property damage as well as recall cost insurance with a sum cover of at least 2 million EUR. The cover must also cover damage abroad. Exclusions for cover USA/Canada must be notified to us immediately.

§ 11 Statute of Limitations

(1) The mutual claims of the contracting parties shall become time-barred in accordance with the statutory provisions, unless otherwise stipulated below.

(2) Notwithstanding § 438 para. 1 no. 3 BGB, the general limitation period for warranty claims shall be five (5) years from the passing of risk. If acceptance is agreed, the limitation period shall commence upon acceptance. The 5-year limitation period shall also apply mutatis mutandis to claims arising from defects in title, whereby the statutory limitation period for claims for surrender in rem by third parties (§ 438 Para. 1 No. 1 BGB) shall remain unaffected; furthermore, claims arising from defects in title shall not become statute-barred under any circumstances as long as the third party can still assert the right against us, in particular in the absence of a limitation period.

(3) The limitation periods of the sales law including the above extension shall apply - to the extent permitted by law - to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB) shall apply here, unless the application of the limitation periods of the sales law in individual cases leads to a longer limitation period.

§ 12 Privacy Notice

(1) The data controller pursuant to § 3 para. 7 of the Federal Data Protection Act is KÖNIG METALL GmbH & Co. KG, represented by KÖNIG METALL Verwaltungs-GmbH, Management: Nina Zwiebelhofer, Stefan Hoos, Hans-Jörg Leuze, Thomas Stöhr, Josef-König-Straße 1, 76571 Gaggenau, Phone: + 49 (0) 7225 / 6803-0, Fax: + 49 , (0) 7225 / 6803-780, E-Mail: daten-schutz@koenigmetall.com.

(2) Personal data is collected, stored, changed, transmitted or used by us to the extent necessary to process the contracts with the supplier (legal basis is Art. 6 Para. 1 S. 1 lit. f DS-GVO). The data arising in this context will be deleted after storage is no longer required, or processing will be restricted if there are legal storage obligations. Within the framework of the fulfilment and processing of the contractual relationship, the service providers used (e.g. shipping companies, carriers, logisticians, credit institutes, payment service providers) receive the data insofar as this is necessary for the fulfilment and processing of the contractual relationship as well as for the processing of payments. The data passed on may only be used by the service providers for the performance of their respective tasks.

(5) With regard to the processing of personal data, the data subjects have the following rights:

- Right to information,
- Right to rectification or deletion,
- Right to limit the processing,

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- Right to object to the processing,
- Right to data transferability.

In addition, there is the right to complain to a data protection supervisory authority about the processing of personal data.

Data Protection Officer of KÖNIG METALL GmbH & Co. KG:
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postal address: Postfach 13 60, D-76553 Gaggenau, telephone: +49 (0) 7225 6803 147, e-mail: daten-schutz@koenigmetall.com.

§ 13 Choice of Law and Place of Jurisdiction

(1) The law of the Federal Republic of Germany shall apply to these General Purchase Conditions and the contractual relationship between us and the supplier.

(2) If the merchant is a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Gaggenau. The same applies if the supplier is an entrepreneur within the meaning of §14 BGB (German Civil Code). In all cases, however, we shall also be entitled to institute legal proceedings at the place of performance of the delivery obligation in accordance with these GPC or a prior individual agreement or at the supplier's general place of jurisdiction. Prior statutory provisions, in particular regarding exclusive responsibilities, shall remain unaffected.

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