

Köver GmbH & Co. KG - Terms & Conditions of Purchase (Updated 08.07.2015)

I. Validity

1. These conditions of purchase shall only apply to companies (hereinafter referred to as "Supplier"). Companies in the sense of these conditions are natural or legal entities or legal partnerships, which enter into a business relationship and who act in pursuit of their commercial or independent professional occupation.
2. The purchase conditions apply exclusively and for all future business with the Supplier; opposing or deviating conditions of the Supplier which conflict with our Terms and Conditions of Purchase will not be recognized by us, unless we have otherwise expressly agreed in writing. Our Terms and Conditions of Purchase shall also apply if we accept without reservation, in knowledge of contradictory or deviating conditions of the Supplier to our Terms and Conditions of Purchase, delivery or other services of the Supplier or unconditionally provide payments.
3. Our Terms and Conditions of Purchase shall also apply to all future transactions with the Supplier.

II. Conclusion of contract, written form and correspondence

1. The Supplier must accept our order in writing within 24 hours.
2. Contract and changes or additions to the contract as well as any additional agreements must be in written form. The same applies to changes or additions to the Conditions of Purchase and the amendment of this written form.
3. In correspondence, our order numbers, product names, part numbers etc. are to be indicated.

III. Delivery

1. The delivery time specified in the order is binding, unless a non-binding delivery time is specified in the order.
2. The Supplier is required to notify us immediately in writing if circumstances occur, or become apparent, that would make compliance with the required delivery time impossible.
3. In case of a delay in delivery, we subtract 10% of the contract value from the first day of delay, plus an additional 2% for each successive day of delay. After 2 pm CET of the confirmed delivery day, goods are considered late. Friday at 12 pm. We reserve the right to further claims for damages arising from the delay in delivery. If we claim damages, the Supplier shall be entitled to prove to us that he is not responsible for the breach of contract.
4. In the absence of any other agreement in writing, deliveries shall be free of charge.
5. The Supplier is required to correctly specify our order number, amounts, product description, part numbers etc. on all dispatch documents and delivery notes. Furthermore, the usual required and/or from us requested test certificates shall accompany the order. If the Supplier fails to do so, processing delays will become unavoidable and we shall not be accountable for such delays.
6. Any possible accompanying shipping instructions separately agreed upon or added by us must be strictly observed. Additional costs arising from non-compliance with these shipping instructions or lack of a detailed delivery note shall be borne by the supplier.
7. Before execution of the delivery, the Supplier will produce all documents (e.g. certificates of origin, Suppliers long-term declaration etc.) which are necessary for obtaining customs or other benefits and customs clearance as well as associated procedures and operations etc. If one of these obligations is violated, the Supplier will reimburse all resulting damages to us and / or our customers and assume all further consequences.
8. When an order is picked up on our behalf by our representative, the carrier must identify himself through his identity card or passport and a written power of attorney as "on-demand" or a "retail order".
9. Workers on our premises employed by the Supplier or third party companies which have been entrusted with our consent by the Supplier with the execution of assignments shall abide by our rules on procedures and security in operation and our environmental and occupational safety standards. For damages arising from any accident caused these workers, we assume no liability. The accounting of hours worked by those workers is recognized only on the basis of a work list countersigned by a representative of our company.

IV. Prices

1. The price specified in the order is legally binding. Unless some other written agreement has been made, the price shall cover delivery free of charge, including packaging.
2. All public fees, such as taxes, customs, etc., are borne by the supplier.
3. Subsequent price increases of any kind, even if they result from a change we desired in the commissioned work, are only possible with our prior written consent.

V. Invoices

1. Invoices shall be submitted in a single copy. Invoices shall contain the date of delivery as well as our order numbers, product names, part numbers etc. The Supplier is responsible for all consequences arising due to non-compliance with this obligation, unless he can prove that he is not at fault.
2. All invoices have to comply with the sales tax requirements on invoices. In particular the VAT must be itemized, insofar as the process is controllable and taxable.

VI. Payment

1. Unless the order provides otherwise, the payment of the full amount to be paid shall be made within 14 days after receipt of invoice minus three per cent or within 30 days after receipt of invoice net, at our discretion. A prerequisite is that the ordered goods are at the predetermined receiving location and there are no grounds for complaints.
2. If the invoice is received before the delivery of goods, the period begins pursuant to paragraph 1 only after the goods have arrived.
3. In case of delayed or incomplete invoicing, payment is postponed accordingly. The right to a discount is maintained.
4. All payments are made conditional to claims relating to defects which are detected later.
5. We are entitled to offset and retention rights according to the scope of the law.

VII. Inspection for defects, liability for defects

1. We undertake to inspect goods for quality and quantity deviations within a reasonable period.; the complaint is considered timely if we receive it within a period of 5 working days from receipt of goods or in case of hidden defects, from their discovery.
2. We are entitled to statutory warranty claims in full; in any case we have the choice to demand the Supplier either remedy the defect or deliver a new item. The right to compensation, in particular, is expressly reserved to compensation instead of performance.
3. We are entitled, at the expense of the Supplier to remedy the defect ourselves or by third parties, in cases of imminent danger or particular urgency.
4. The necessary expenditures necessary for rectification, in particular transport, travel, labor and material costs, is borne by the Supplier. Further claims against the Supplier shall be governed by the statutory provisions.
5. The statute of limitations is 36 months, beginning with the transfer of risk.
6. For each individual part delivered within the context of remedial measures, the statute of limitations begins anew, unless the Supplier is only operating out of a gesture of goodwill or for the amicable settlement of a dispute.

VIII. Product liability, indemnity, liability insurance

1. Where the Supplier is responsible for product damage, it is required to release us from third party compensation claims at first request, insofar as the cause lies within its domain and organizational area, and the Supplier itself is liable with respect to outside parties.
2. As part of his liability for damages within the meaning of paragraph 1, the Supplier is also obliged to reimburse any expenses pursuant to §§ 683, 670 German Civil Code or in accordance with §§ 830, 840, 426 BGB, arising out of or in connection with a recall campaign conducted by us. We will inform the Supplier about the content and scope of the recall measures - insofar as possible and reasonable - and give him an opportunity to make a statement. This does not affect other legal claims.
3. The Supplier shall maintain product liability insurance with coverage of € 5 million per personal injury / property damage - flat rate -; in cases where we have further damages claims, these will remain unaffected.

IX. Confidentiality, production resources

1. The supplier is obliged to strictly preserve third party confidentiality in relation to production resources supplied by us; such as tooling, molds, dies, tutorials, samples, templates, illustrations, designs, sketches, models and calculations, as well as any other documents obtained from us. They can only be shared with third parties with our express permission. This obligation of confidentiality also applies after completion of the contract.
2. Production resources and other documents as defined in paragraph 1 which are supplied by us shall remain our property; they must be labeled as such and be stored and maintained separately. The Supplier is obliged in particular to carry out in a timely manner all necessary maintenance, inspection and repair work on our manufacturing resources at their own expense. The Supplier must immediately notify us of any malfunctions; if the Supplier culpably fails to do so, claims for damages remain unaffected.
3. The Supplier is obliged to insure tooling belonging to us at replacement value and at his own expense against fire, water and theft. At the same time, the supplier relieves us of all compensation claims resulting from this insurance; we accept the cession.
4. Unless otherwise specified in the order, all production resources and other documents which are delivered by us as defined in paragraph 1, may only be used for our purposes and shall not be changed in any way. They must be returned with the delivery by the Supplier after the execution of the order.
5. If the production resources within the context of paragraph 1 are fabricated by the Supplier and we contribute to the fabrication costs thereof, we shall acquire co-ownership in accordance with the amount of our contribution. The supplier is obliged to meet our current demand for parts to be manufactured with these production resources, should this be desired by us. If the Supplier, for reasons which we are not responsible, no longer manufactures these parts or no longer manufactures these parts to the extent required by us, the production resources will become at no additional cost, our sole property and are to be delivered to us. Use of these production resources for third parties is not allowed.

X. Provision

1. Where we supply the Supplier with parts, we shall retain ownership of such parts. Any processing or reconstruction by the Supplier will be carried out for us. If items to which we retain title are processed with other items that do not belong to us, we shall acquire co-ownership of the new item, with relative ownership shares being determined by the value of our purchased item (purchase price plus VAT) and that of the other processed items at the time of processing.
2. Should the item supplied by us be mixed inseparably with other items that do not belong to us, we shall acquire co-ownership of the new item, with relative ownership shares being determined by the value of our purchased item (purchase price plus VAT) and that of the other mixed items at the time of mixing. If the nature of the mixing is such that the Supplier's item may be regarded as the main item, it shall be agreed that the Supplier shall transfer proportional co-ownership to us. The Supplier shall take care of this solely owned or co-owned item for us.
3. If the collateral rights to which we are entitled under sub clauses 1 and/or 2 exceed the purchase price plus VAT of all our hitherto unpaid purchased items by more than 10%, then we shall - upon the Supplier's request - be obliged to release the collateral rights that exceed this value, at our discretion.

XI. Infringement of third-party rights

1. The supplier is liable to us to ensure that his delivery, unless exclusively based on our drawings or models, does not violate directly or indirectly any third party rights, especially trademarks.
2. If we are held liable by a third party for an infringement referred to in paragraph 1, the supplier is obliged to indemnify us upon the first written demand against such claims; we are not entitled to make any agreements with the third party - without the supplier's consent - in particular to enter into a settlement.
3. The indemnification obligation of the Supplier refers to all expenses incurred by us from or in connection with a claim by a third party.
4. The statute of limitations is a period of ten years from conclusion of the contract.
5. If the Supplier is not liable pursuant to paragraph 1, he is obliged to inform us immediately if there is, to his knowledge, a possibility that the goods that he has to deliver according to our drawings and models, violates third party rights and especially trademarks.

XII. Applicable law, jurisdiction, place of fulfillment and general provisions

1. These terms and conditions, as well as the entire legal relationship between the Supplier and us are governed by the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods shall not apply.
2. The contract language is **German**. The **German** version of these Terms and Conditions of Purchase and the respective delivery contract apply. If the parties use an additional language, the **German** wording shall have precedence.
3. If the Supplier is a merchant, legal entity under public law or a public estate, our registered office has exclusive jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same applies if the Supplier has no general jurisdiction or domicile in Germany or his habitual residence at the time of action is not known. We also have the right to take legal action at the court responsible for the Supplier or any other court which may have jurisdiction under national or international law.
4. Place of fulfillment for all deliveries is Buxtehude
5. We reserve ownership and copyright on all catalogs, illustrations, drawings, sketches and other documents. They may not be made available to others without our permission and must be returned to us immediately upon request.
6. The assignment of claims that are due to the Supplier through the business relationship with us is excluded.
7. If individual regulations of this contract, either in whole or in part, are or will be inefficacious, or should a gap in the present contract be found, the validity of the remaining regulations is not affected. In place of the inefficacious regulation, or to fill in the gap for an appropriate regulation, what comes into effect, as far as legally possible, is what the contracting parties would have wanted, should they have considered the point.