



General Conditions of Purchase

Kohlbach Group: Kohlbach Holding GmbH, FN 231114z
HKI Heizkessel und Industrieanlagenbau GmbH, FN 231311p
SMS Service Montage und Systemtechnik GmbH, FN 231312s
KCO Cogeneration und Bioenergie GmbH, FN 231310m
All registered with the Commercial Court in Klagenfurt, Austria

I. Allgemeine Bestimmungen I. General

All current and future purchases or orders of goods and services (hereinafter referred to as goods) by companies of the Kohlbach Group (hereinafter referred to as consignor) are made exclusively on the basis of and subject to the validity of these terms and conditions of purchase unless otherwise provided in writing or stipulated in our orders or agreements. Should individual provisions be deemed or construed as invalid, the validity of the remainder shall not be affected.

Upon accepting the order, the supplier/contracting party (hereinafter referred to as the consignee) acknowledges these conditions.

If our order is confirmed by the consignee deviantly from these conditions, our conditions are nevertheless deemed as agreed upon and accepted by the consignee. Deviations from the consignor's purchase order, in particular resulting from sending different terms and conditions of sale, require the consignor's express written acknowledgement in order to be valid, this also holds true for excluding general terms and conditions.

These conditions by the consignor are valid for all current and future purchases and for the term of professional relationship with the consignee, even if not expressly referred to.

Every document concerning individual orders has to state the correct purchase order number and project number to be deemed as duly received by the consignor.

II. Bestellung II. Purchase Orders

Purchase orders are only valid if they are in writing, transmitted by e-mail or by facsimile. Orders exceeding the amount of Euro 10.000, - require an authorised signature by the consignor to be valid and legally binding. Up to the amount of 1000, - Euro the consignor may place orders orally or over the telephone. These orders shall only be binding on the consignor if subsequently confirmed in writing by the consignee and will only be accepted in conjunction with the correct purchase order number, precise information on contact person or any further necessary details. Amendments to agreements require written confirmation by the consignor to be legally binding.

Acceptance of the order shall be confirmed to the consignor within eight days of the purchase order being placed by signing the copy of the consignor's order and transmitting the said. In order to avoid difficulties as to administration and placement of orders, the consignor does not accept individual purchase order confirmations designed by the consignee. If an order acknowledgement is not received within this period, the consignor assumes that the consignee accepted the order and agrees with the terms and conditions.

II. Lieferfristen

II. Delivery periods

Delivery periods and dates pursuant to our purchase orders, agreements are fixed dates and binding; they run from the date of the order. The goods/services must arrive/be delivered at the receiving point specified by the consignor within the delivery period or on the delivery date. In cases of default in delivery the consignor is entitled to rescind from the contract or claim damages for non - performance without respecting a grace period.

The consignor is entitled to but not obliged to accept part deliveries or premature/untimely deliveries. These part or untimely deliveries do not entitle the consignee to demand a payment or down payment for part delivery or premature delivery before the delivery has been made in entirety nor to demand a payment before the due date.

Should the delivery periods or delivery date be exceeded, the consignor is entitled to accept the delayed goods but is not obliged to. Unless otherwise provided in the agreement in cases of deliveries behind schedule, the consignee owes the consignor a contractual penalty of 3% of the net order value per each week or part thereof up to a maximum of 18% of the net value of the order.

In cases of changes in schedule on behalf of the consignor's customer (hereinafter referred to as customer) the consignee is not entitled to seek reimbursement for storing fees or other charges incurred etc. if informed in time by the consignor of the change in the delivery schedule.

The delivery commitment has not been met until the goods or services have been provided in their entirety, even in the case of a divisible performance. Furthermore all required or requested documents, plans, etc. have to be handed over. Terms of payment correspond to terms of delivery in its entirety.

IV. Lieferung und Transport

IV. Delivery and Transport

Delivery shall be made free of charge and at the consignee's risk and account including loading and unloading, unless otherwise provided. Consignee shall also bear any additional expenses such as costs incurred by transport insurances, traffic regulating measures, custom duties etc.

Where packaging material is returned, the invoiced value shall be reimbursed in full; packaging shall be returned on a freight collect basis. Waste disposal charges for the packaging shall be paid by the consignee. The following documents and any other documents required by statutes shall be attached to all shipments of goods: the bill of lading and delivery note, declaration of origin, copy of CE- registration/label, customs tariff number etc.

The consignee shall carry out sufficient quality and quantity inspections before the goods to be delivered are shipped, calling in an expert or providing a certificate of inspection by an authorised body should this be necessary and provide proof hereof to the consignor at his request.

An assumption of risk takes only place upon regular operation of the set under ordinary conditions and duly discharging/ technical approval by the customer, as defined in paragraph VII.

V. Preise

V. Prices

The prices indicated in the order or agreement are fixed prices, unless it has been agreed to the contrary in writing. Packaging shall be included in the price. In all cases the consignee shall select an appropriate packaging ensuring that it protects the goods from damage, loss and theft during transportation or for storage outside. Obvious mistakes, typing or calculating errors do not entitle the consignee to any claims on our part.

VI. Zahlung
VI. Invoices

Invoices are to be sent in single form to the consignor only after receipt of the entire, proper delivery/service in accordance with the European Union provisions on sales taxes (VAT).

Unless agreed to the contrary, the consignor shall pay within 30 days deducting a 3% discount for cash payment or 90 days net once the goods have been received in full in a faultless condition and after a correct invoice has been submitted in accordance with the agreed terms. Time delays resulting from incorrect and incomplete invoices shall not limit the period allowed for cash discounts.

If the consignor has counterclaims he is entitled to withhold or set off or charge up with appropriate payments. This does not hold true for any counterclaims by the consignee irrespective of the title and the context.

VII. Übernahme/Abnahme
VII. Discharging/Technical approval

A legally binding/effective acceptance of the delivery takes only place after inspecting the entire delivery albeit the receipt thereof has been already confirmed or the invoice has been already paid. Accordingly the consignor reserves his right to register subsequent claims. A valid acceptance of delivery takes only place in conjunction with the required documents such as consignment note, delivery note and by authorised signature by the consignor or hereto explicitly authorised person.

A technical approval in terms of our correspondence is the technical approval of the entire plant by operation by the customer.

The consignee guarantees that the scope of supply as stipulated covers all parts, documents and services necessary for a faultless operation of the entire set/plan without any blank spaces between the defined interfaces.

Where discrepancies or questions arise as to the defined interfaces or blank spaces the consignee has to define them in detail and indicate them in writing expressly to the consignor. Damages resulting from neglecting this duty are at the consignee's expense.

The consignee shall be responsible for clarifying all details relating to the order and the work envisaged. The abovementioned is responsible for procuring at the relevant premises all documentation required to undertake the work. Any errors resulting from neglecting these duties shall be charged to the consignee.

IX. Gewährleistung und Garantie
IX. Warranty and Guarantee

The consignee guarantees and warrants a faultless performance of the goods or services as agreed and as required by law. He is also liable for defects in goods not manufactured but delivered by him.

The consignee is obliged to replace defect goods -for which a defect was not obvious or whose defect could not be detected at delivery due to its individual use - free of charge, at consignor's request at any time. In these cases the consignor reserves his right for claims until thorough processing of the goods. The consignee waives his right to plea delayed notification of defect.

If defects are identified, the consignor may choose to assert his claim through cancellation of the order, reduction in the price, elimination of the defect free of charge irrespective of any other possibilities provided by legal provisions.

The warranty/guarantee period for corrected or exchanged goods or parts thereof starts anew on the date of a successful repair or successful exchange. For those items that were not in service during the repair or replacement of defective items the warranty period shall be extended for the relevant period.

If a grace period is required by law a three weeks notice is deemed as sufficient.

Unless expressly agreed to the contrary, the warranty period shall be 36 months from receipt of the goods. This time limit shall be extended by the relevant period if there is still warranty obligation to the customer. The date of acceptance shall be considered to be the date the last part delivery is made; in the case of goods installed by the consignor, the date shall be the date of technical approval by the consignor's customer. The technical approval takes place upon operating the site and a faultless test run and approval journal protocol with authorised signature of the company. The period of guarantee is deemed as stipulated in the agreement and runs from the date of the technical approval as defined above. An exclusion of guarantee has to be accepted in writing.

The period for the right of recourse to be asserted by litigation is one year. Exclusion of our claims for damages in the event of a slight degree of negligence shall be inadmissible in all cases and invalid against us.

In cases of direct sales activities with the customer in terms of after sales care operation the consignee shall pay an adequate commission of 5 % of the consideration. As to commercial or legal matters or price information the consignee shall contact the respectively responsible department within the consignor for that purpose.

The consignor shall be notified in writing of any service rendered by the consignee to the customer during the term of warranty or guarantee.

The consignee shall provide the consignor with all storing or operating instructions in German and English and the respectively stipulated language without request. Damages resulting from neglecting that duty are at the consignee's.

Where systems, machines, equipment and the parts thereof are supplied, the supplier shall ensure that the consignor has sufficient information and sufficient on site instruction on connecting it up and operating these, in particular the supply of the relevant documentation and labelling of parts with regard to use, permissible electrical connected load, temperature and pressure loading, etc.

All necessary documents as thorough information on the material items of set, operating instructions and manuals and spare parts lists have to be handed over to the consignor as well as to the customer in English and German and any other stipulated language the latest at the date of receipt.

Place of performance for any claims arising out of guarantee or warranty is the customer's address notwithstanding the specified place of delivery.

For claims arising out of the title of warranty Austrian commercial provisions shall be applied.

X. Schadensersatz und Produkthaftung
X. Compensation and Product Liability

The consignee shall be liable for damage independent of negligence. Notwithstanding if the consignee can hold himself indemnified and harmless against his subcontractors. The burden of proof is not on the consignor who shall only prove the occurrence of the damage. This shall be applied analogously in warranty cases. The consignee is also liable for vicarious liability.

The consignee guarantees in his own name and on behalf of his legal successors that the product will be free from defects in respect of its design, production and instructions, as defined by the provisions in the current Austrian law or international provisions on product liability. The consignee is, in particular, responsible that no product fault has been identified in accordance with scientific and technical knowledge at the time the goods are marketed. The consignee undertakes on its own behalf and on behalf of its legal successors to monitor the product and inform the consignor immediately if the product is found at a later date to have dangerous product

attributes and bears all responsibilities for recall cases. Should a claim be made against the consignor, the consignee undertakes to indemnify the consignor against claims and proceedings. The consignee undertakes to name the manufacturer or importer, at the latest at the time when the product is delivered, concerning a demand at any time of the consignor and in turn commits his prior vendors to assume liability as defined by legal provisions.

The consignee shall insure himself sufficiently against losses, harm and risks of damage for which he may be held liable for by taking out an insurance policy with sufficient coverage (5times the total sum of the order and at least one million Euro) and provide the consignor with proof hereof at the consignor's request by giving details on the insurance company and insurance policy as well as the location of the insurance company.

XI. Zession

XI. Assignment

Payments are only processed to the consignee. The consignee is not entitled to assign payments due by the consignor to a third party.

XII. Haftrücklass

XII. Deposit of liability

The consignor is entitled to retain a deposit of 10% of the net order value for a faultless and conventional performance. A replacement of the deposit by an abstract bank guarantee requires the written consent by the consignor. The consignor is entitled to reimburse himself for guarantee claims out of the deposit or to retain the deposit for the term of a possible legal proceedings arising from guarantee claims.

XIII. Verwahrung

XIII. Safekeeping/Ownership

The consignor retains the ownership of any material provided. These are to be stored separately and may only be used for the consignor's order and have to be marked as such. The supplier shall be liable for any reduction in value or loss regardless of fault.

XIV. Schutzrechte

XIV. Intellectual Property

The parties to the contract undertake to maintain strict confidentiality in respect of all information pertaining to co-operation in relation to this contract, in as far as such information is not generally known, has not been acquired legally by a third party or worked out independently by a third party, and this information shall be used exclusively for the purpose of this contract. Information protected in this way includes, in particular, technical data, purchase quantities, prices and information on products and product developments, current and future research and development projects, and all business data on the other party to the contract. The consignee shall also undertake to keep all diagrams, drawings, calculations and other documentation received strictly confidential and only to disclose these to third parties with the consignor's express approval, as far as the information they contain is not generally known.

The consignee shall be liable that no patents or other property rights of third parties shall be infringed as a result of the delivery and the utilization of them by the consignor. The consignee shall indemnify and hold harmless the consignor and his customers against all claims resulting from the use of such property rights.

An infringement of these provisions by the consignee also in cases of slight degree of negligence entitle the consignor to claim compensation for the entire damage caused by passing on the consignor's intellectual property.

Drawings and other documentation provided shall remain the consignor's intellectual property only and may exclusively be used for the agreed purpose and have to be marked as such: they may not be passed on to third parties. Unless it is agreed to the contrary, they shall be returned to the consignor free of charge after the order has been completed.

The consignee is obliged to place the consignor's trademark on the product. The consignee's trademark or any other references may only be attached as instructed upon express consent by the consignor at the consignee's expenses subordinate to the consignor's trademark.

XV. Erfüllungsort und Gerichtsstand

XV. Place of Performance/Delivery and Jurisdiction

Place of performance/delivery is the address specified in our purchase orders. Delivery takes place at the consignee's expenses and risk. For all disputes arising out of or in connection with the contract it is agreed that the place of jurisdiction shall be the court at Wolfsberg, (Austria) that has jurisdiction over the relevant subject matter. The contract shall be subject to Austrian law, the UN Convention on Contracts for the International Sale of Goods and Austrian provisions on conflict of laws.

Disputes arising from the contract do not entitle the consignee to retain due goods or services.

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