

# General Terms and Conditions (GTC) of Sale and Delivery for KOMEГ Industrielle Messtechnik GmbH

## 1. General; offer

These General Terms and Conditions of Sale and Delivery shall be applicable to:

- A person who at the point of signing this Agreement is acting in a corporate capacity or in that of a self-employed professional (entrepreneur);
- Legal persons governed by public law or a special fund governed by public law.

These General Terms and Conditions shall form the basis of our supply of goods and services even in cases where we do not expressly contradict any standing purchasing terms and conditions. Terms and conditions of purchase on the part of the Purchaser shall only apply to us if we have provided express written confirmation of our acceptance thereof.

Our offers are subject to amendment without prior notice. Orders once placed may only be cancelled with our consent. Our current catalogue pertaining to the product group of wares forming the subject of this Agreement shall form part of our offer. The offer shall remain valid for 60 days. We reserve the right to make changes to prices and technical specifications in the interests of quality improvement and without any requirement to give individual notice thereof. In cases of immediate delivery the invoice shall take the place of the order confirmation.

## 2. Prices; surcharge for low quantities

Unless otherwise agreed the prices shall be quoted in Euros ex works, excluding packaging and Value Added Tax at the statutory rate in force at the time of placing the order. Orders amounting to less than 100.00 € shall be subject to a low quantity surcharge of 40.00 €.

## 3. Delivery period; delays in delivery

### 3.1

The delivery period shall begin after the clarification between the contract parties of any outstanding commercial and technical questions concerning the order and after the order has been confirmed in writing by us. Part deliveries shall be permissible provided that it can reasonably be expected of the Purchaser to accept them.

### 3.2

Unforeseen delivery difficulties that do not lie within our sphere of influence as suppliers, with particular reference, among others, to force majeure, operational breakdown, delays on the part of our suppliers and strikes, shall entitle us to an appropriate extension of the delivery time, even if such difficulties should only arise once the agreed delivery time has elapsed.

We shall inform the Purchaser as soon as possible of any impending delays.

Provided that we have fulfilled the obligation to inform laid out in point 3.2, clause 2 and have not assumed the procurement risk, we shall be entitled to postpone the delivery for the duration of the impediment or to withdraw in full or in part from the contract on the grounds of that part of the contract that remains unfulfilled.

Should the abovementioned circumstances render the delivery or performance impossible we shall be released from the obligation to deliver. If the customer should, after submitting the order, require a change to be made, a new delivery period shall commence upon confirmation by us of the change.

## 4. Dispatch; transfer of risk

All consignments, including carriage-free shipments or deliveries, shall be shipped at the Purchaser's risk. The risk shall be transferred to the Purchaser from the day the delivery is made available. Should the Purchaser fail to provide specific instructions for dispatch we shall undertake the same according to our best judgment, without however assuming any responsibility for selecting the cheapest shipping option. We shall be liable only in cases of proper dispatch procedures carried out by our staff.

## 5. Payment

### 5.1

As long as no other payment modalities have been stated in the offer our invoices shall be due for payment within 30 days net of the date of issue. Bill charges shall be borne by the drawer and are to be paid net immediately. Any delays in payment shall entitle us to charge default interest at the standard bank rate of debit interest. The consequence of delays in payment or uncertainty concerning the liquidity of the Purchaser shall be the liability for payment with immediate effect of all outstanding accounts receivable due to us from the Purchaser.

### 5.2

Should the Purchaser without justification fail to observe payment terms and conditions, or should circumstances come to light that would

according to properly-considered commercial opinion give rise to doubt as to the creditworthiness of the Purchaser, we shall in such cases be entitled to suspend all further processing of open orders or to demand advance payments or objectively appropriate securities for outstanding deliveries and, after the fruitless expiry of an appropriate extension to the period allowed for the provision of such securities, to withdraw from the contract.

The same shall apply to situations where such facts come to light as already obtained at the point of conclusion of the Agreement but were not known to us or should have been made known to us.

The Purchaser shall undertake to compensate us for any damages arising from the non-fulfilment of the contract.

The preceding regulations shall also apply to any further unaffected legal rights on our part.

### 5.3

The Purchaser shall have the right to reserve payments or to offset them with counter-claims only if such counter-claims are uncontested or established as legally valid, unless the counter-claim is based on the infraction of essential obligations under the terms of the contract. A right of retention can only be exercised by the Purchaser to the extent that his counter-claim is based on the same contractual relationship.

## 6. Reservation of title

The supplied merchandise shall remain our property until such time as complete payment has been made of all accounts receivable from the commercial relationship with us, including any future claims arising from subsequently concluded contracts, or until the point of redemption of the relevant bill of exchange and cheque. The settling of individual claims in a current account and the striking of a balance and the acknowledgement thereof shall not affect the reservation of title.

It shall be incumbent on the Purchaser to adequately insure the merchandise subject to reservation of title, with particular reference to fire and theft. Claims on insurance in respect of damage affecting the merchandise subject to reservation of title shall herewith be assigned to us in the amount of the value of the merchandise subject to reservation of title.

The Purchaser may not transfer his contractual rights to third parties without our consent.

## 7. Warranty, claims for defects

### 7.1

Should the object of a delivery prove to be defective we shall have the choice between the delivery of a replacement free of charge and the repair of the original object. Any replaced parts shall pass into our possession.

### 7.2

The establishment of any such defects must be made known to us without delay, in any case of apparent defects no later than 10 days after receipt of the merchandise; we are to be informed in writing of any non-apparent defects as soon as they come to light.

### 7.3

The statutory regulations give the Purchaser the right of withdrawal from the contract if an appropriate period set us by him for repair or replacement arising from a material defect - taking into account the statutory exceptions - elapses without result. If the defect that has occurred is not significant the Purchaser shall have the right solely to reduce the price stated in the contract. The right to reduce the price stated in the contract shall otherwise be excluded.

Further claims shall be determined exclusively in accordance with section 8.2 of these General Terms and Conditions.

### 7.4

In particular we shall assume no liability in the following cases:

Unsuitable or inappropriate use, incorrect fitting or commissioning on the part of the Purchaser or a third party, normal wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable operating materials, faulty construction work, an unsuitable foundation, chemical, electrochemical or electrical effects - insofar as they are not our responsibility.

If the Purchaser or a third party remedies a defect incorrectly, we shall not be liable for the consequences thereof. The same shall apply to changes made to the delivery item without our prior consent.

## 8. Liability, exclusion of liability

### 8.1

Should the Purchaser be unable to use the delivery item in the way intended by the contract as a result of failure on our part to implement, or the incorrect implementation of, proposals and advice submitted before or after conclusion of the contract or from a breach of other secondary contractual duties - with particular reference to instructions for the operation and servicing of the delivery item - the provisions of Sections 7 and 8.2 shall apply to the exclusion of all and any other claims on the part of the Purchaser.

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## 8.2

We shall – on whatever legal grounds – not be liable for damages that have not arisen from the delivery item itself, with the exception of the following:

- a) Premeditation,
- b) Gross negligence on the part of the owner/the organisation or the chief executive,
- c) Culpable injury to life, limb and health,
- d) Defects which have been concealed by us with malice aforethought
- e) Promise of guarantee
- f) Defects to the delivery item which are subject to the Product Liability

Act for personal injuries or damage to privately used property.

In the event of a culpable breach of material contractual obligations (i.e. such contractual obligations in whose fulfilment by us the Purchaser must by the very nature of the legal transaction be able to place complete trust), we shall also be liable in the event of gross negligence of non-managerial employees and of slight negligence, whereby in the latter case the liability shall be limited to reasonably foreseeable damage typical of this type of contract.

Further claims shall be excluded.

## 9. Prescription

All claims on the part of the Purchaser on any legal grounds whatever shall be time-limited to 12 months. For claims for compensation pursuant to sections 8.2 a – d and f the statutory periods of limitation shall apply. These shall also apply to defects in a construction or to delivery items that have been used for a construction in line with their usual manner of use and have brought about the defects in the former.

## 10. One-off products

One-off productions require binding data on design, amount etc. to be submitted in writing at the time of ordering. For technical production reasons we reserve the right to under- or oversupply the quantity ordered by up to 10%. Changes or cancellations shall remain possible for up to a week after confirmation of the order. Changes or cancellations submitted thereafter shall only be permissible in return for payment of any additional costs thus incurred. One-off products are excluded from the right of return.

## 11. Samples / returns

Samples shall be invoiced. For test and sample deliveries we shall refund the surcharge upon receipt of an order in the amount of at least 150.00€. We shall only accept returned goods after prior arrangement. For returns for which we are not responsible (e.g. incorrect orders) we shall levy an additional administrative surcharge of 10%, which shall in any case not be less than 10.00€.

## 12. Commercial property rights and copyrights, software

### 12.1

Changes to the external appearance of the merchandise or software by which the Purchaser or third parties might pass off the product as their own, the removal of our brand name or the attachment to the merchandise of the Purchaser's brand name are prohibited.

### 12.2

We reserve the express proprietary rights and copyrights to samples, quotations, drawings and the like, and to material and immaterial information – including that in electronic form; no access to them may be granted to third parties.

### 12.3

If software is included in the scope of delivery the Purchaser shall be granted a non-exclusive right to use the supplied software and associate documentation. If the software forms part of a delivery item it shall be made over for use with the delivery item for which it is intended. Use of the software on more than one system is prohibited. The Purchaser may duplicate, revise, translate the software, or convert it from object code into source code only to the legally permissible extent (§§ 69 a ff. UrhG German Copyright Act). All other rights to the software and documentation, including copies, shall remain with us or with the supplier of the software. The granting of sub-licences is not permitted.

## 13. Export controls

The merchandise supplied is fundamentally intended for use in the primary country of delivery agreed with the Purchaser. This does not expressly exclude a subsequent sale by the Purchaser.

The sale, further sale and disposition of the goods supplied, including any technology that may possibly be associated with it, may, for example due to its type or intended purpose or, as the case may be, final destination, be subject to national and/or international export control regulations or obligations to obtain a permit.

The latter applies in particular to the sale of goods for an intended military or nuclear technology application and to sales to countries subject to embargo or to "listed" persons.

By submitting his order the Purchaser declares that, should he undertake to export the goods himself or sell them on, he will observe any relevant export control regulations.

He furthermore declares that he shall not deliver, either directly or indirectly, goods to countries subject to embargo and shall thereby interdict or restrict the import of the goods supplied.

The Purchaser shall absolve us from any damage that may result for the Supplier out of the culpable infringement of the obligations mentioned above.

## 14. Return of used electrical appliances, environmental protection

### 14.1

Electrical and electronic appliances with the "Mitutoyo" or "KOMEK" brand designations and additional symbols for the identification of electrical and electronic appliances pursuant to § 7 Electrical and Electronic Equipment Act (ElektroG) (symbol of a wheeled bin with a line through it and a solid bar underneath) must in cases of disposal be returned for further treatment, recycling or, where applicable, disposal to a German recycling centre authorised for the purpose by Mitutoyo Europe GmbH.

The return of such appliances to other collection points in Germany, with particular reference to public collection points for used electrical appliances from private household, is not permitted. For deliveries to purchasers whose place of residence or business is outside the territory of the Federal Republic of Germany, section 15.4 shall apply *mutatis mutandis*.

### 14.2

The Purchaser shall undertake to inform himself without delay about the individual details and conditions relating to the German "Mitutoyo Returns System" and possible recycling locations when delivering used electrical appliances pursuant to section 15.1 and in particular to conditions relating to the end of the useful life of those products by referring to <http://www.mitutoyo-weee.de>, or by directly consulting German representatives of Mitutoyo Europe GmbH or the supplier's authorised dealers in Germany.

### 14.3

The Purchaser shall when passing on within Germany used electrical appliances pursuant to section 14.1 undertake in turn to make the respective recipients mindful of their obligations and to inform them in particular of the obligation to use the "Mitutoyo Returns System".

### 14.4

Should used electrical appliances pursuant to section 14.1 requiring disposal be located outside the Federal Republic of Germany, they shall be exempted from the requirements stated above: instead they shall be submitted for recycling or disposal in accordance with the applicable laws of the state concerned and may not be returned in the context of the German "Mitutoyo Returns System".

## 15. Place of fulfilment, applicable law, place of jurisdiction

The place of fulfilment and of jurisdiction shall be Völklingen.

For all legal relations between us and the Purchaser the authoritative law of the Federal Republic of Germany on legal relations between domestic parties shall apply exclusively. The application of the UN Convention on Contracts for the Sale of International Goods shall be expressly excluded.

## 16. Final provisions, data protection

Should one of the present or future provisions of this Agreement be or become fully or partially invalid/null and void or unenforceable for other reasons than those stated in §§ 305-310 of the German Civil Code, the validity of the remaining provisions shall not be affected thereby.

The same shall apply if a loophole requiring amendment should come to light after the Agreement has been concluded. The parties shall replace the invalid/null-and-void/unenforceable provision or loophole in need of amendment by an effective provision whose legal and economic content takes into account that of the invalid/null-and-void/unenforceable provision and the overall content of the contract. The provision contained in § 139 of the German Civil Code (partial nullity) shall be expressly excluded.

We draw your attention to the fact that we collect, store, process personal data and use the same in the context of this contractual relationship or, as the case may be, commission the collection, storage and processing of personal data in the context of outsourced data processing.

We are entitled to transmit the abovementioned data to associate companies and to use them to send information about our offers. The statutory rights of the Purchaser to data deletion, barring, information and correction remain unaffected.