

Terms and Conditions of Purchase of KBA-Metronic AG in the Koenig & Bauer Group (KBA)

1. General

All purchase orders and transactions are subject to these terms and conditions of purchase only. Modifications or conditions of sale of the contracting party ("the contractor") which may deviate from these purchase conditions shall only be valid if expressly agreed to by KBA in writing. The acceptance or payment of delivery or performance shall not imply consent to the contractor's terms and conditions of sale. Only written and signed transactions or orders are valid. Oral agreements are not binding on KBA unless they are confirmed in writing. These terms and conditions of purchase are valid for all future transactions with the contractor.

2. Order and confirmation of order

2.1 Orders, transactions and release orders as well as any modifications and amendments hereto must be made in writing. Orders, release orders and any modifications and amendments may also be made by data transmission or by data processing media.

2.2 Koenig & Bauer AG ("the customer") may cancel an order within 2 weeks even if the contractor has already confirmed it.

2.3 If the confirmation of order differs from the original order, the customer is bound only if he has agreed to the deviation in writing. The customer can dispense with a written confirmation of order if the parties have agreed otherwise in writing. This only applies if the contractor has made no alterations to price, quantity to be delivered or delivery date. The specifications in the modified confirmation of order are deemed to have been accepted by the customer, if he has not contradicted them within five working days.

2.4 Unless otherwise agreed in the wording of the order, the contractor shall deliver a complete article, piece of equipment or machine, containing all the parts that are necessary for satisfactory operation while maintaining the warranted characteristics, even if the necessary components are not individually listed in the order.

2.5 All specifications made by the customer in the order, technical drawings and parts lists as well as those made by the contractor in his offers, brochures, product descriptions and catalogues are to be classified as warranted. In particular adherence to delivery dates are to be considered as warranted.

2.6 The customer can demand from the contractor alterations to the design and specifications of the subject of the contract up to a reasonable extent.

3. Time of delivery

3.1 When determining the time of delivery, the relevant time is that of arrival at the receiving location indicated by the customer or, in the event of deliveries involving installation or assembly and in the event of the supply of services, that of acceptance.

3.2 The customer shall be advised immediately and asked for a decision if a delay in delivery or performance is foreseeable

3.3 If the agreed dates are not met due to circumstances for which the contractor is responsible, the customer is entitled at its option either to withdraw from the contract, to procure replacement from a third party and to claim damages for non-performance, without prejudice to any further statutory rights. The contractor shall reimburse any additional costs arising from delay in delivery or performance. Acceptance of delayed delivery or performance does not imply the waiver of claims.

3.4 In the event of repeated failure to meet delivery dates, the customer is entitled to withdraw from the contract even after setting a deadline even if the contractor is not responsible for the delay. The same applies in the event of industrial action, operational breakdown, suspension of payments or composition and insolvency proceedings of the contractor.

3.5 The customer is entitled to return consignments which arrive before the agreed date of delivery, incomplete consignments or unauthorised partial consignments or to demand from the contractor reimbursement of any additional costs incurred.

3.6 Delays in delivery will be accepted in the following cases of force majeure:

In the event of natural disasters like earthquakes, floods and tornados as well as fire at the contractor's place of production, provided that no alternative facility is available. In such cases of force majeure delivery will take place after the cause of force majeure had come to an end and within the delivery period provided for in the order.

4. Contractual penalty

If the agreed dates are not adhered to due to circumstances for which the contractor is responsible, the contractor shall pay a penalty of 0.5 % of the purchase price for each week of delay or part thereof, subject to a maximum of 10 %. If the agreed dates are not adhered to for reasons which are verifiably the responsibility of the customer, the date from which the contractual penalty begins shall, if unavoidable, be postponed accordingly, on the terms of an agreement to be reached between the parties. In the event that delay in delivery caused by the contractor exceeds 10 weeks, interest shall be paid at the rate of 1 % above the base rate valid at the time, subject to a minimum of 5 % on the advance payments already made.

5. Embargo list / Intrastat

5.1 The contractor shall indicate in his confirmation of order and invoice whether at the relevant time the goods to be supplied are included in the respective export list in Annex AL to the German Foreign Trade Regulations.

5.2 The contractor shall indicate in his invoice the customs tariff number for the German Federal Statistical Office.

6. CE sign / safety regulations

The contractor shall observe the regulations applicable at the place where the goods are to be used, in particular those for the prevention of accidents, environmental protection, engineering safety, etc. The contractor shall indicate whether the goods to be supplied require a manufacturer's declaration or a declaration of conformity according to EU Machinery Directives and if they are required, the contractor shall submit them together with the consignments. In addition, the contractor shall, as a rule, provide free of charge with the goods instructions for storage, assembly, maintenance and operation, including a copy for use at the ultimate customer's premises.

7. Passing of risk and dispatch

7.1 Risk passes upon arrival of the consignment at the receiving location as designated by the customer. In the event of deliveries involving installation or assembly or in the event of supply of services risk shall pass upon actual acceptance.

7.2 Forwarding charges shall as a rule be borne by the contractor. If the price is ex works or ex warehouse of the contractor, delivery shall be carried out at the lowest possible cost unless the customer has prescribed a specific mode of dispatch. Additional costs incurred by not observing forwarding instructions shall be borne by the contractor. If the price is fixed as free at destination, the customer is also entitled to prescribe the mode of dispatch. Additional costs for accelerated transport of the consignment which may be necessary for adhering to a delivery date are to be borne by the contractor.

7.3 Each consignment shall be accompanied by a packing list or a delivery note specifying contents and complete order identification (order number and item). Different items shall be packed and identified separately. Notification of dispatch shall occur immediately using the same details.

7.4 Consignments by way of international trade shall be delivered duty unpaid to the customer (as a licensed consignee in the European Union transit procedure). The customer shall be notified of such consignments in due time in order to ensure proper customs treatment. In particular, all relevant dispatch data shall be advised in due time before arrival of the goods, and all documents required for customs clearance such as consignment notes, commercial invoices, packing lists, original bills of lading, etc. shall be provided in due time. Any costs which may arise due to alterations in the order processing as originally intended shall be borne by the contractor.

7.5 If goods are forwarded from the contractor directly to customers of KBA, KBA shall be advised before dispatch. At the latest on the day of dispatch, all relevant transport data such as mode of dispatch, type of packaging, markings, number of packages, gross and net weight, etc. shall be advised by fax and the customs invoices, packing lists, etc. enclosed with the consignment shall also be transmitted by fax.

7.6 The German Packaging Regulations are applicable.

7.7 When dangerous goods are to be forwarded, the contractor is responsible for observing the appropriate legal provisions until the goods are completely unloaded.

8. Invoices

Invoices shall include the above mentioned order identification. If this identification is missing the invoices shall be deemed non-payable. Copies of invoices shall be identified as duplicates. Invoices shall always be sent in duplicate.

9. Payments

9.1 Subject to verification of the invoice and unless otherwise agreed, payments shall be made within 30 days less 3 % discount or net within 90 days.

9.2 The period for the deduction of discounts starts as soon as delivery or performance has been effected completely and in due time and the properly issued invoice has been received. The deduction of a discount shall also be allowed if the customer makes set-offs or withholds payments in reasonable amounts due to defects. The term of payment starts after complete removal of all defects.

9.3 Accounts receivable (including not yet payable and future claims) of the customer and of KBA group companies may at any time be set off against counterclaims. KBA group companies are companies in which the customer has a shareholding of at least 50 %. The exact amount of shareholding will be advised on request.

10. Liability

10.1 The warranty period of 24 months begins on the passing of risk. When delivery is effected at places where the customer executes orders outside its premises or works, the warranty period begins on acceptance by KBA's customer. It ends at the latest 36 months after passing of risk. Due to the particular nature of the delivery transaction the existence of defects may possibly only be discovered during the course of the warranty period; for this reason the contractor shall bear the burden of proof.

10.2 If defects are discovered before or at the time of passing of risk or during the warranty period, the contractor shall at his own expense and at the option of the customer either remove the defects or effect a replacement delivery and/or performance which is free of defects at the location designated by the customer. This also applies to deliveries where only random samples have been tested. The customer shall make his choice at his own reasonable discretion.

10.3 If the contractor fails to remove defects or to effect delivery or performance free of defects within a reasonable period of time set by the customer, the customer is entitled to:

- withdraw from the contract completely or partially without compensation, or
- demand a reduction of the price or
- carry out at the contractor's expense, and
- claim damages for non-performance.

This also applies if the contractor declares himself unable to effect the removal of defects or the replacement delivery or performance within a reasonable time.

10.4 For any parts of the delivery which may be repaired or remedied within the period of limitation for claims for defects, the limitation period shall begin to run upon complete fulfillment by the contractor of the claims for remedy work or subsequent delivery.

10.5 In the event that costs may be incurred for the customer as a result of the defective delivery of the contractual item, in particular costs for forwarding, labour and materials as well as costs for inspecting incoming consignments which may exceed the level of normal inspections, then these are to be borne by the contractor. Acceptance is subject to an inspection for accuracy and conformity. Such inspections shall take place within a period in keeping with the normal course of business. For the duration of the warranty period the contractor is liable for defects in goods or services, irrespective of whether the defects are discovered immediately or at a later date.

10.6 If the contractor repeatedly delivers defective goods or repeatedly provides defective services, the customer is entitled to withdraw from the contract or, where contracts foresee delivery by instalments, to terminate the contract immediately. If it becomes necessary as a result of defective deliveries to carry out a complete inspection of the incoming goods which exceeds the level of the normal inspection, the contractor shall bear the cost thereof.

10.7 Deliveries shall be inspected for defects in compliance with the customer's standard practices within 3 weeks. Any complaints shall be made without delay.

10.8 If there is a delay in delivery, the customer is entitled to procure a replacement in order to avoid a delay or other emergency on its part.

10.9 The aforementioned claims become statute-barred one year after the notification of defects.

The customer's limitation period is suspended as long as the contractor has not finally rejected the customer's duly made claim.

10.10 Further legal claims, in particular for the repayment of lost expenditure, e.g. unnecessarily incurred processing fees and expenses, remain unaffected.

10.11 The provisions above shall also apply to steps required to remove defects.

10.12 The contractor shall bear the cost and the risk of the return of defective goods.

10.13 The contractor guarantees that the goods are free from intellectual property rights of third parties and, in the event of infringement, shall indemnify the customer against any liability.

10.14 If the final customer asserts claims based on the Product Liability Act due to defective goods of the contractor, the contractor shall indemnify the customer against liability in this respect.

11. Availability of spare parts

The contractor guarantees spare parts availability for mechanical parts for a period of 20 years, for electrical parts 10 years and for electronic parts 5 years, whereby similar and/or compatible solutions are permitted. Price increases are subject solely to the price increase rates determined by the Federal Statistical Office.

12. Subcontracting to third parties

Subcontracting to third parties without the written consent of the customer is not permitted and entitles the customer to withdraw from the contract completely or partially and to claim damages.

13. Provision of materials

13.1 Materials provided remain the property of the customer and shall be stored separately, identified and administered free of charge. Such materials shall only be used for orders placed by the customer. In the event of depreciation or loss the contractor shall provide a replacement. This also applies to the provision of materials which are charged for and are connected to a particular purchase order.

13.2 Processing or restructuring of the material shall be carried out on behalf of the customer. The latter shall immediately acquire ownership of the new or restructured goods. If this is not possible due to legal reasons, the customer and the contractor agree that the customer acquires ownership of the new goods at each moment of the processing or restructuring. The contractor shall store the new goods free of charge on behalf of the customer and with the care of a diligent businessman.

14. Tools, moulds, samples, models, confidentiality, etc.

All tools, moulds, samples, models, profiles, drawings, information concerning standards, any printed matter, educational material and software provided by KBA or manufactured by the contractor for the purpose of order execution for the account of KBA, as well as goods manufactured by using these items, shall remain the property of KBA and shall not be passed on to third parties or used for purposes other than the performance of the contract without prior written consent from KBA. Such items shall be secured against unauthorized access or use. Without prejudice to any further rights, KBA may demand the surrender of these items if the contractor fails to comply with these obligations. The contractor undertakes to treat any information obtained from KBA with strict confidentiality and shall not make it available to third parties unless this information was already general knowledge or otherwise lawfully known to the contractor.

15. Assignment of claims

The assignment of a claim is permitted only with the written consent of the customer.

16. Observance of laws, regulations, etc.

The contractor warrants that the delivered goods are free of defects as to quality and title and comply with the contractual specifications. The contractor also warrants that in case of producing the goods, this will happen after the generally accepted rules of technology and in using impeccable resources. Furthermore, the delivered contract products have to be conform with following regulations:

- regulation 2002/95/EG to limit the use of certain dangerous goods in electrical and electronic equipment (RoHS) in its respectively relevant version
- regulation 2002/96/EG for old electrical and electronic equipment (WEEE) in its respectively relevant version
- electronic law in its respectively relevant version
- regulation no. 1907/2006 to register, evaluate, authorize and restrict chemical substances (REACH) in its respectively relevant version

The contractor is particularly responsible for the pre-registration respectively after expiration of the transitional period the registration of the substances contained in the delivered goods if required by the REACH regulation. The contractor is also responsible that appropriate security data sheets as stated in the REACH regulations respectively required information as stated in article 32 in the REACH regulations are provided to the purchaser.

17. Supplementary provisions

If any provision of the contract or these terms and conditions is or becomes ineffective, the validity of the contract or the terms and conditions shall be otherwise unaffected. In that event the parties are obliged to replace the ineffective provision by a provision which is similar in its economic outcome, as far as this is legally possible.

18. Performance of works / insurance cover

When performing works under the contract on the premises of KBA or third parties, the corresponding company regulations as well as the applicable rules for entering and leaving the production plants shall be observed. Liability for accidents on the premises shall be excluded unless intention or gross negligence is proved. The contractor shall provide sufficient insurance cover for the works to be carried out.

19. Acceptance

Industrial disputes and interruption of operations as well as cases of force majeure shall release the customer from his obligation to accept incoming consignments to the extent that the customer's needs are reduced due to the aforementioned events.

20. Place of delivery / performance, place of jurisdiction and applicable law

20.1 Place of delivery or performance is the receiving location designated by the customer; place of payment is the respective KBA group company.

20.2 Place of jurisdiction is Wuerzburg.

20.3 These terms and conditions are subject to the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for International Trade.