

TERMS AND CONDITIONS OF SALE

VERSION 10/2017

1. Scope

The General Conditions of Sale in their current or future edition shall apply to each and any transaction whatsoever between SFC KOENIG AG and its customers. SFC KOENIG accepts no further commitments and obligations with the exception of those covered by its prior express written consent. Such a consent shall not go beyond the particular transaction for which it was given. Any of SFC KOENIG customers' terms different from or additional to SFC KOENIG General Conditions of Sale shall not apply without SFC KOENIG express written consent.

2. Formation and Modification of Contract

All offers are made by SFC KOENIG without any commitment or engagement whatsoever. Orders which have neither been confirmed in writing nor invoiced by SFC KOENIG shall not be deemed accepted by SFC KOENIG. Any modification of or addition to an accepted order shall not apply unless confirmed by SFC KOENIG in writing.

3. Price

All prices invoiced or confirmed by SFC KOENIG shall not bind SFC KOENIG with regard to eventual excess deliveries, short deliveries or supplementary orders. SFC KOENIG reserves the right to charge increased prices in case of excess deliveries, short deliveries or supplementary orders.

All prices confirmed by SFC KOENIG are based on the market conditions, terms of trade and currency exchange conditions known to SFC KOENIG on the day of confirmation. In case that deteriorated terms of trade, currency exchange conditions or market conditions affect the prices before shipment, SFC KOENIG reserves the right to increase such prices accordingly.

All prices invoiced or confirmed by SFC KOENIG are net prices FCA SFC KOENIG factory Dietikon. The Swiss Value Added Tax, costs, duties of carriage, freight, packaging, wrapping and insurance are not included but charged separately. Wrappings will not be taken back.

SFC KOENIG reserves the right to apply minimal invoice amounts, to charge handling costs and to cancel rebates in case of small orders. All invoices of SFC KOENIG are payable within thirty days net from the date of invoice. If SFC KOENIG does not receive the full payment within the above payment term, customer will, without being reminded thereof by SFC KOENIG, automatically fall in default upon expiration of such term. If so, SFC KOENIG is entitled to charge 7% interests on arrears plus costs.

4. Delivery Terms

SFC KOENIG tries to meet the delivery term proposals of its customers whenever possible. However, SFC KOENIG is not able to guarantee any terms of delivery and its respective indications or confirmations are made without commitment. Therefore, delayed deliveries do not trigger any default on the part of SFC KOENIG and its customers are not entitled to rescind the contract or claim damages based on delayed deliveries.

5. Excess, Short, Part Delivery / Benefit and Risk / Force Majeure

If Force Majeure affecting SFC KOENIG and/or its suppliers and/or occurring in transit prevents SFC KOENIG partly or wholly from performing its obligations, SFC KOENIG is entitled to cancel the respective orders to that extent without any indemnity. Force Majeure is deemed to be any event or occurrence beyond SFC KOENIG reasonable control, which affects the performance of the contract.

SFC KOENIG reserves the right to make technically caused short and excess deliveries of up to 10%. Art. 3, above, applies. SFC KOENIG is in any case whatsoever entitled to discharge its delivery obligation by partial shipments.

Benefit and risk shall pass to the customer upon dispatch, that is as soon as the shipment leaves the premises of SFC KOENIG. It is up to the customer to insure the shipment against damages and losses in transit.

6. Warranties and Liability

Provided that its products are used in conformity with their intended use, SFC KOENIG exclusively and solely warrants their technical specification as contained in the latest data sheets submitted to the customer. Additional data and product specifications are of information value only. Technical specifications and dimensions are subject to changes and are not being updated in the technical data sheets until the next edition. Liability due to incorrect information cannot be accepted. SFC KOENIG recommends the user to make his own tests, also as to long time behavior in order to assess whether or not a certain product is fit for a specific purpose.

Customer shall notify SFC KOENIG in writing of any apparent defects of the products within 14 days from receipt of the respective shipment. Customer shall notify SFC KOENIG in writing of hidden defects within 7 days from their discovery. SFC KOENIG does not answer for any defect notified later. Any warranty against defects, in particular against hidden defects, including those not yet discovered, expires after 12 months from receipt of the respective shipment.

In case of timely notified defects, SFC KOENIG shall have the right to inspect and examine such defects or damages through its own staff and/or through experts of its choice.

If SFC KOENIG recognizes a timely notified defect which is covered by the warranty as defined in para. 1 of this article, SFC KOENIG undertakes to remedy such defect and any damages eventually resulting therefrom exclusively and solely by replacement, repair or credit, in each case up to the invoiced amount as SFC KOENIG thinks appropriate in its sole discretion.

Any further liability of SFC KOENIG is fully and explicitly excluded.

7. Exclusion of Warranties and Liability

Any warranty or liability originating from the contract or from tort beyond Art. 6 is expressly excluded. In particular, SFC KOENIG does not answer for defects or damages attributable to overcharge or improper storage and/or any other improper or inadequate treatment or use of its products, for defective design (design defects) and/or failure to instruct or warn (warning defects), for any representations, statements, comments or remarks made by SFC KOENIG sales personnel, and for any injury to persons and/or tangible or intangible property attributable to the defects or the use of SFC KOENIG products.

In case of defects covered by SFC KOENIG warranty (Art. 6 para. 1), any remedy or claim other than replacement or repair or credit up to the invoiced amount is excluded. Such exclusion applies in particular to any claim for termination of the contract, for price reduction or for any consequential or incidental damages whatsoever. Any claim based on material error is excluded. The responsibility for eventual third party damages and measures to avoid such damages lies with the customer.

Defects covered by SFC KOENIG warranty must be discovered and notified within the notification periods set forth in Art. 6 para 2. Defects not so discovered and notified shall be considered to be accepted by the customer, and related rights lapse.

8. Work Contracts

SFC KOENIG General Conditions of Sale shall also apply to work contracts.

In case of work contracts, SFC KOENIG is entitled to delegate or assign performance in its sole discretion in whole or in part to any third party.

All tools, patterns and other devices produced in connection with a work contract remain the property of SFC KOENIG, regardless of whether SFC KOENIG charges its respective costs or not. All confirmations of orders for work and special executions are based on SFC KOENIG estimated production costs. In case of unforeseeable difficulties arising during the manufacturing process, SFC KOENIG is entitled to charge immediately any costs resulting from its reasonable efforts to surmount such difficulties. If SFC KOENIG is unable to surmount such difficulties other than with unreasonable efforts, it is entitled to invoice any work done and all its expenses and to withdraw from the contract without having to indemnify the customer.

9. Intellectual Property Rights

Trademarks, drawings, designs, know-how, projects and corresponding protection rights remain the property of SFC KOENIG. It is not allowed to use, copy or otherwise reproduce them, or to pass them on to or make them otherwise available to third parties without SFC KOENIG prior express written consent.

10. Retention of Property

Any product delivered by SFC KOENIG remains its property until full payment of the invoiced purchase price is effected and the title to any such product shall only pass to the customer upon full payment of the invoiced purchase price.

11. Safety Regulations / Use in accordance with regulations

It is the exclusive and sole responsibility of the customer to comply with any applicable safety regulations and to instruct its personnel accordingly.

12. Prevailing Text

SFC KOENIG General Conditions of Sale, originally established in German, have been translated into French and English. In case of discrepancies, the German text shall prevail.

13. Place of Performance, Forum and Governing law

Place of Performance and Jurisdiction shall be Dietikon, Switzerland. Swiss Law shall apply.

These General Conditions of Sale must be observed in any case