SFC KOENIG

General Terms and Conditions of Sale and Delivery of SFC KOENIG GmbH

Version 12/2020

I. Scope of Application
Sales and deliveries shall be made exclusively in accordance with the following General Terms and Conditions of Sale and Delivery ("Terms of Sale"). They shall apply to all contracts entered into with our Customers regarding supplies or services offered by us. The then current version of the Terms of Sale shall also apply to all future supplies and services, even if we do not separately incorporate them by reference. The Customer agrees to the application of these Terms of Sale by placing an order or accepting our supplies or services.

II. Offer and Conclusion of Contract
(1) All of our offers shall be non-binding unless otherwise stated in the offer. Furthermore, all technical descriptions and other details provided in offers, catalogues and other information shall initially be non-binding. The Customer's orders shall be binding and may be accepted by us within (3) three weeks after we have received the Customer's order by issuing a written order confirmation or by the immediate delivery of goods. A contract shall be concluded only if we issue a written order confirmation or immediately deliver the goods and shall be governed exclusively by the contents of the order confirmation (if any) and these Terms of Sale. Submitting the order confirmation by email or fax shall be sufficient to comply with the written form requirements.
(2) Changes or amendments or additions to orders already accepted, as well as ancillary agreements and guarantees made by our sales staff, shall require our written confirmation in order to be effective.
(3) If there are any deviations between the order confirmation and these Terms of Sale, the provisions of the order confirmation shall prevail.
(4) The information which we provide with respect to the deliverables (e.g. weights, dimensions, performance values, load bearing capacity, tolerances and technical data) as well as our presentation thereof (e.g. drawings and illustrations) shall be approximate only, unless the usability for the intended purpose requires exact conformity. This information shall not constitute guaranteed characteristics, but shall only be a description or specification of the deliverables. Any customary deviations, deviations due to legal requirements or which constitute technical improvements, as well as the replacement of components by equivalent parts, are permissible to the extent as they do not impair the usability for the contractually intended purpose.
(5) We reserve title and/or copyright to all of our offers and cost estimates as well as to drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and means provided to the Customer. The Customer shall not make these objects available to third parties, use them for other purposes than purchasing goods from us or reproduce them without our express consent. Upon our request, he shall return to us or destroy all of these objects and any copies made. This shall also apply if these objects are no longer required by him in the proper course of business or if negotiations do not lead to entering into a contract.

III. Prices, Terms of Payment, Set-Off and Right of Retention
(1) The prices shall be valid for the scope of supplies and services specified in the order confirmation. Additional or special services shall be charged separately. The prices are in EURO *Free Carrier* ("FCA German Warehouse SFC KOENIG, Illerrieden" in accordance with Incoterms 2020) and exclusive of packaging, statutory VAT, fees and other public charges; export shipments are subject to customs duties.
(2) If the supplies or services are made more than four (4) months after the conclusion of the contract and if, we subsequently suffer unforeseeable cost increases with respect to such supplies and services for which we are not responsible, we shall be entitled, at our own reasonable discretion, to pass on such higher costs by increasing the agreed price on a pro rata basis. The higher costs are to be passed on without an increase of our profits. We shall pass on to the Customer only the additional costs actually incurred. If, according to this calculation, the net price to be paid by Customer to us for our supplies and services exceeds 100% of the initially agreed net price, Customer shall be entitled to rescind the contract, and in the event of rescission of the contract, the Customer shall pay to us liquidated damages of 15% of the gross purchase price. The Customer shall remain entitled to prove that we have suffered no damages or lower damages due to the rescission.
(3) Invoices shall be paid without any deductions within thirty (30) days, unless otherwise agreed in writing. If the Customer fails to pay on the due date, the Customer shall be in default even if we do not issue a reminder. In this case we shall be entitled to claim statutory default interest. The right to claim further damages caused by the default shall remain unaffected.
(4) The Customer shall only be entitled to a set-off if his counterclaim is uncontested, ready for decision or has been finally adjudicated. The Customer shall only be entitled to assert a right of retention to the extent that his counterclaim is based on the same contract and is uncontested, ready for decision or has been finally adjudicated. In case of defects the Customer's counterclaims shall remain unaffected.

IV. Shipment, Delivery Periods, Force Majeure und Partial Delivery
(1) Deliveries shall be made *Free Carrier* ("FCA German Warehouse SFC KOENIG, Illerrieden" in accordance with Incoterms 2020). All delivery and performance obligations shall be subject to correct and timely performance of our suppliers, unless we are responsible for the incorrect or delayed performance of our suppliers.
(2) Any delivery and performance dates or periods indicated by us shall be approximate only, unless otherwise agreed. If shipping has been agreed, delivery periods and delivery dates refer to the time of delivery to the freight forwarder, carrier or other third party designated to carry out the shipment. Delivery and performance dates or periods indicated by us shall not commence prior to the final clarification of all performance details.
(3) Notwithstanding any other rights, we may require the Customer to postpone delivery and performance dates or to extend delivery and performance periods for the period during which Customer does not meet his contractual obligations towards us.
(4) We shall not be liable for the impossibility of or delay in delivery, to the extent this has been caused by force majeure or other events which were unforeseeable at the time of conclusion of contract (e.g. all kinds of disruptions of our operations, difficulties to procure material or energy, delay in transit, strikes, lawful lockouts, lack of manpower, energy or raw materials, difficulties in procuring necessary government permits, or government actions) and for which we are not responsible. To the extent these events make delivery or performance significantly more difficult or impossible and the disturbance is not only of a temporary nature, we shall be entitled to rescind the contract. In the event of temporary disturbances the delivery or performance dates shall be postponed and the delivery or performance periods shall be extended by the duration of the disturbance plus a reasonable lead-time. If due to the delay it would be unreasonable for the Customer to accept delivery or performance, he can rescind the contract by submitting a written declaration to us without undue delay.
(5) We shall be entitled to partial deliveries to the extent such deliveries are reasonable for the Customer.

V. Retention of Title

(1) Title to the goods delivered shall remain with us until any and all existing current and future claims against the Customer arising from the business relationship between the Customer and us have been paid ("Goods subject to Retention of Title"). In the case of several or current accounts, the retained title shall secure the respective balances due to us.

(2) The Customer shall store the Goods subject to Retention of Title for us free of charge. For the duration of the existing Retention of Title, the Customer shall be obliged to treat the Goods subject to Retention of Title with care. He is obliged to insure the Goods subject to Retention of Title in a reasonable manner at the original value, provide proof of insurance and assign his claims arising from the insurance contract to us.

(3) If the Customer processes Goods subject to Retention of Title, it shall be deemed to be agreed that the processing shall be undertaken on our behalf and for our account as a manufacturer and we shall directly acquire the property or – if processing occurs with materials of several owners or if the value of the processed goods is higher than the value of the Goods subject to Retention of Title – acquire the co-ownership (fractional ownership) of the newly created goods in the ratio of the value of the Goods subject to Retention of Title to the value of the newly created goods. If no such acquisition of title occurs, the Customer hereby transfers to us its future title or – in the ratio mentioned above – co-ownership of the newly created goods by way of security. Should the Goods subject to Retention of Title be combined with other goods and thus become part of a unified good, or be mixed inseparably with other goods, we shall acquire co-ownership of the new goods in the ratio of the value of the Goods subject to Retention of Title to the other goods at the date of combination or mixing. Should the combination or mixing take place in such manner that the Customer's goods are to be considered the main goods, it shall be deemed to be agreed that the Customer assigns proportionate co-ownership to us. The Customer shall hold the co-ownership created in such a manner in custody for us free of charge.

(4) The Customer is entitled to process and sell the Goods subject to Retention of Title within his ordinary course of business unless we commence enforcement of the retention of title (Clause V par. 8). Pledging, transfer of title by way of security or any other kind of encumbrancing shall not be permitted. In case of reselling the Goods subject to Retention of Title, the Customer hereby assigns to us by way of security the receivables resulting therefrom against the purchaser. We hereby accept such assignment. The same shall apply to any other claims replacing the Goods subject to Retention of Title or which incur with respect to the Goods subject to Retention of Title, e.g. insurance claims or tort claims regarding loss or destruction. Should the Customer sell the Goods subject to Retention of Title after joining, mixing or blending them with other goods or together with other goods, this assignment of receivables shall only be agreed to for an amount equivalent to the price agreed to between the Customer and us plus a safety margin of 10 % of this price. The Customer is granted the revocable authorization to collect in trust the claims assigned to us in his own name. In the event of enforcement of the retention of title (Clause V par. 8), we may revoke such authorization and the right to resell the goods.

(5) The Customer shall provide us at all times with all information requested concerning the Goods subject to Retention of Title or receivables assigned to us under this contract.

(6) Should third parties seize the Goods subject to Retention of Title, in particular, by way of attachment, the Customer shall advise them of our title without undue delay and notify us thereof in order to make it possible for us to enforce our title. If the third party is incapable of reimbursing us for the judicial and extrajudicial costs incurred in this regard, this costs shall be borne by Customer to the extent enforcing our title was successful and we have unsuccessfully attempted to claim the costs from the third party by way of execution proceedings.

(7) If the realizable value of the Goods subject to Retention of Title and the claims replacing them exceeds all of our claims that are to be secured by more than 10%, the Customer shall be entitled to demand a release to such extent. We shall have the right to select the objects to be released thereafter.

(8) Should we rescind the contract due to the Customer‘s breach of contract – in particular, in the event of default in payment, if execution proceedings are initiated against Customer, if insolvency proceedings are opened with regard to his assets or if the commencement such proceedings against his assets have been rejected due to lack of assets –we may request surrender of the Goods subject to Retention of Title or collect the secured claims ourselves (realisation of the collateral).

VI. Place of Performance, Shipping, Packaging, Passage of Risk and Acceptance

(1) Place of performance for all obligations arising out of the contractual relationship shall be the place of our registered office in 89189 Illerieden unless otherwise stated herein.

(2) If we handle the shipment of the goods at the Customer’s request, shipment shall be made at the Customer’s expense and risk. If the Customer does not provide any instructions regarding the shipping method and the packaging, shipment and packaging shall be determined by us at our reasonable discretion.

(3) The risk of accidental loss or deterioration shall pass to the Customer upon delivery the goods (at the beginning of the loading process) to the forwarding agent, carrier or to other third party designated to carry out the shipment. This shall also apply if partial deliveries are made or if we have to provide additional services (e.g. shipping).

(4) If shipping or handing over is delayed on grounds for which we are not responsible, or if the Customer declares prior to the delivery that he will refuse acceptance of the goods delivered, risk shall pass to the Customer on the day upon notifying the Customer about the readiness of the goods for shipment.

(5) If acceptance is agreed, risk shall pass to the Customer upon acceptance. An agreed acceptance shall in all other respects be governed by the statutory provisions governing contracts for works.

(6) The Customer shall bear the costs of storing the goods after passing of risk. If we store the goods we shall be entitled to charge 0.25% of the invoice amount of the goods to be stored for each completed week. The right to claim and prove higher or lower costs of storage shall remain unaffected.

(7) We shall insure shipment only upon the Customer’s explicit request and expense against theft, breakage, transport, fire, and water damages or other insurable risks.

VII. Warranty

(1) The goods delivered shall be inspected carefully without undue delay upon receipt by the Customer or the third party specified by him. With respect to apparent defects or other defects, which would have been detected upon a careful inspection, the goods shall be deemed accepted by the Customer if we do not receive from the Customer a notification of defects in writing without undue delay upon delivery and once the defect becomes apparent. With respect to other defects, the goods shall be deemed accepted by the Customer if we do not receive from the Customer a notification of defects in writing without undue delay once the defect becomes apparent.

(2) We warrant that the goods delivered will be of the agreed quality. The agreed quality shall exclusively be determined by the specific written agreements concluded between the Customer and us or by our confirmations concerning specifications, features and performance characteristics of the goods. We shall not be liable for any public statements made by third parties that have not been authorized by us. The statutory provisions on the burden of presentation and proof in the case of defects shall remain

unaffected. Descriptive and explanatory information regarding the goods and their intended purpose as well as public statements shall not constitute a guarantee of a specific quality of the goods. The content of such quality guarantees shall exclusively be determined by the content of written agreements or our written confirmations.
(3) If the goods delivered are defective, we shall be obliged, within a reasonable period and at our discretion, to either repair the defect or to provide a replacement (hereinafter "remedial action"). Remedial action shall neither include the removal of the defective goods nor the reinstallation if we were not initially obligated to install them. The Customer shall return the defective goods, which are covered by the warranty to us and shall grant us the required time and opportunity for the remedial action. If the warranty claim is justified, we shall to the extent provided by the statutory provisions bear the costs of material, shipment, labor and removal and reinstallation, if any, incurred for the purpose of performing the remedial action. If the Customer's notification of the defect turns out to be unjustified and provided that the Customer has realized this prior to the notification of the defect or negligently failed to realize this, the Customer shall be obliged to reimburse us for all expenses incurred in this respect. Should the remedial action fail, i.e. in case of impossibility, unreasonableness, refusal, or in the event of an unreasonable delay of the remedial action, the Customer may at his option, with respect to the defective part of a delivery, rescind the contract or may request that the purchase price be reasonably reduced. Claims of the Customer for damages or the reimbursement of futile expenses shall in the case of defects also be subject to Clause VIII; any additional claims shall be excluded.
(4) The Customer shall have the right to remedy defects himself or through a third party and to claim the reimbursement of futile expenses only in order to avert disproportionally large damages, in case of emergency, or if we are in default with remedying the defect, always provided that the Customer has previously given us notice thereof without undue delay. The Customer shall inform us with undue delay of any such substitute performance in advance whenever possible. The right of substitute performance shall not exist if we are entitled to refuse the remedial action according to statutory provisions. We shall not be liable for damages resulting from inappropriate or improper use, incorrect handling or by normal wear and tear, provided that we are not responsible for the damage.
(5) The Customer's rights regarding defects shall be excluded if the Customer modifies the goods delivered without our permission has them modified by third parties, provided that the modification render remedying the defect impossible or unreasonably difficult. In any event, the Customer shall bear any additional costs of remedying defects caused by the modification.
(6) The limitation period for warranty claims shall be one (1) year from the passage of risk. The statutory limitation periods shall apply to the extent that mandatory provisions provide for a longer limitation period (Sec. 445b German Civil Code [BGB]), for claims resulting from personal injury or death, and with respect to the Customer's rights in the event of fraudulently concealed defects or defects caused intentionally or by gross negligence.

VIII. Liability and Damages
(1) Our liability for damages to the extent such liability requires fault, in particular liability for impossibility, default, defective or incorrect delivery, breach of contract, culpa in contrahendo and tort, shall regardless of its legal grounds be limited as provided for in this Clause VIII.
(2) We shall not be liable for damages caused by slight negligence of our corporate bodies, legal representatives, employees, or other vicarious agents, unless they breach material contractual obligations. Material contractual obligations shall be the obligations to deliver and install the goods on time, deliver goods that are free from defects which affect their functionality or usability more than insignificantly, and advisory, protective and duty of care obligations which are intended to facilitate the Customer's contractual use of the goods, to protect the life or limb of the Customer's employees, or to protect the Customer's property from significant damages.
(3) To the extent we are held liable for damages on the merits pursuant to Clause VIII par. 2 we shall only be liable up to the amount of the foreseeable damages which are typical for contracts of this kind, i.e. damages which we have foreseen as possible consequences of a breach of contract at the time of entering into the contract or which we should have foreseen by exercising reasonable diligence and which are typically to be expected when the goods are used for their intended purpose.
(4) The aforementioned exclusions and limitation of liability shall apply to the same extent in favour of our corporate bodies, legal representatives, employees and other vicarious agents.
(5) To the extent that we provide technical information or advice and providing such information or advice is not within the scope of the contract, this shall be made free of charge and to the exclusion of any liability.
(6) The Customer shall take all reasonable measures necessary to avert and reduce damages.

IX. Prevailing Language
The German language version of these Terms of Sale shall be controlling. The English translation shall not be binding to the extent it deviates from the original German text.

X. Miscellaneous
(1) Without prejudice to any other exclusive venues, the courts of Illerrieden, Germany shall have exclusive jurisdiction to decide any and all disputes arising out of or in connection with the business relationship. We shall, however, be entitled to bring legal action against the Customer at any other legal venue.
(2) The legal relationship between Customer and us shall exclusively be governed by German law; the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall not apply.
(3) If one or more of these terms turns out to be invalid, in whole or in part, the validity of the remaining terms shall remain unaffected. The invalid terms, whether in whole or in part, shall be replaced by such valid terms, which match the economic purpose of the invalid terms as closely as possible. The same shall apply to an omission.
(4) The Customer shall not be entitled to assign any rights arising from agreements with us to any third party. Sec. 354a German Commercial Code (HGB) shall remain unaffected.