



General Terms and Conditions for Supply and Delivery

AL-KO KOBER Group Division Air Technology

I. General

1. Any and all our supplies and deliveries with regard to transactions with business enterprises or entrepreneurs (hereinafter referred to as “Contract Partners”) shall exclusively be governed by the following General Terms and Conditions for Supplies and Deliveries (hereinafter referred to as “these General Terms”) as amended at the time of delivery of supplies or services. Deviating general terms and conditions, in particular purchase conditions shall only be applicable if explicitly accepted in writing. The same shall apply where we execute our delivery without any reservation and unconditionally despite Contract Partner having rejected our General Terms.

2. These General Terms shall be supplemented by Special Conditions as prepared for each individual Group Division.

3.

By order placement Contract Partner shall agree to the applicability of our General Terms to the entire mutual business relationship including future transactions.

4.

Any and all agreements and other legally relevant statements of the parties hereto and their respective representatives/persons employed for performance contractual obligations shall only be valid when made in writing including any textform or use of e-mail.

II. Offer, Contract Conclusion, Modification

1.

Unless otherwise agreed in writing our offers shall always be subject to confirmation.

2.

We expressly reserve the right after prior written notification to Contract Partner to modify the engineering or design of our products as well as to deviate from statements in our handouts or catalogs even after forwarding of our order confirmation, provided however, that price and/or essential features or delivery schedules shall not be affected and such modifications/deviations shall be reasonable to the Contract Partner.

3.

Order acceptance, scope of deliveries and delivery schedule shall exclusively be governed by our written order confirmation and shall always be subject to correct and timely receipt of subcontracted material or services.

4.

Unless expressly designated in our order confirmation as being binding any pictures, weight or measurement specifications, technical data etc. related to our products shall be deemed just approximated values as customary in the relevant industry sector irrespective of their respective data storage medium.

5.

Any objections made by our Contract Partner against our order confirmation shall promptly be made in writing and received not later than eight days after date of issue of our order confirmation.

III. Prices

1.

Our prices shall be net excluding packing, freight, insurance and duties plus Value Added Tax as applicable at the date of delivery of Goods or services.

2.

In the event of considerable increase in wages, material or energy costs either party hereto shall be entitled to require that prices shall be adjusted adequately taking into regard such parameters.

IV. Delivery of Goods and Services

1.

Unless otherwise agreed our deliveries shall be made ex works Incoterms 2000. Unless otherwise agreed we shall be free to determine the mode of transportation. Small orders shall be delivered cash on delivery and without any discount deductions.

2.

Where delivery shall be made free site or free warehouse such delivery shall exclude unloading and shall always require availability of roads designed for use by heavy truck-trailers. Should Contract Partner direct the delivery truck leave such road, Contract Partner shall be liable for all resulting damages. Contract Partner shall unload the Goods without undue delay. Any waiting hours shall be charged to Contract Partner.

3.

Delivery dates for contractual Goods and Services which are designated by us as being "circa dates" shall not be binding. Fixed delivery dates shall require our written confirmation as such. Delivery dates shall be deemed to be met if and when the contractual Goods shall have left our warehouse prior to the expiry of such date or at the time Contract Partner shall have been notified that Goods are ready for shipping.

4.

Partial deliveries of Goods and Services shall be admissible as customary in the trade except where unreasonable for the Contract Partner and may be invoiced separately.

5.

Should any non-binding delivery date be exceeded by more than 6 weeks Contract Partner shall be entitled to require in writing delivery within a reasonable period of time. In the event of failure to deliver the contractual Goods or Services within such reasonable period set Contract Partner may cancel the contract. Contract Partner shall be entitled to claim damages for delay or for non-performance only insofar as such damages are due to an intentional or grossly negligent breach of contract from our part.

6.

We shall not be liable for delays in delivery of Goods or Services due to Force Majeure or other events essentially impairing or precluding delivery, in particular such as but not limited to labor disputes, disruptions of operations, difficulties in the supply of energy, riots, official measures of the authorities, delay or non-delivery by our suppliers, failure in transportation, epidemics, acts of God, wars etc. The same applies to binding delivery dates and schedules. In such events of Force Majeure we shall undertake to inform Contract Partner without undue delay of occurrence and estimated duration of Force Majeure event. Delivery dates shall be extended by the period of restriction plus reasonable restart time. Such Force Majeure events shall further entitle us to cancel the contract in whole or in part. Claims for damages shall be excluded unless incurred by intentional or grossly negligent breach of contract on our part.

7.

Performance of our duty to deliver Goods or Services shall be subject to timely and correct performance of Contract Partner's contractual obligations and in particular his duty to effect payment of our invoices.

8.

Where a delay in delivery should be due to circumstances within Contract Partner's area of responsibility he shall bear from the date of notification of our readiness to deliver the extra costs incurred by such delay as well as the risk of accidental destruction or accidental deterioration of the contractual Goods. Contract Partner shall without undue delay collect any Goods notified to be ready for delivery. In case of failure to timely collect the Goods we shall undertake to grant Contract Partner a reasonable period of time (reminder) and at our option either to deliver such Goods at Contract Partner's costs and risk or to store and invoice immediately such Goods at our own discretion.

9.

Any obligations of Contract Partner to examine the Goods and to notify any visible defects shall also apply analogously to such of our deliveries of Goods and Services which are not subject to sales law.

V. Payment

1.

As a principle payments shall be effected into our named bank account in the currency valid at our factory's place of business when they become due and payable as agreed otherwise within 8 days after date of invoice without deductions.

2.

The time of payment allowed in our invoice shall be considered the contractually agreed due payment date. If payment is not made by the due date such shall automatically constitute a default without requiring a legal reminder. In case of such default we shall be entitled to claim interest for delay in the amount of normal bank credit rates no less however, than the mandatory rate of interest for default applicable for inter-business transactions. Further damages for delay shall not be affected.

3.

We accept bills of exchange only as separately agreed in writing. Contract Partner shall bear any banking, discounting and collection costs and expenses.

4.

In the event that after contract conclusion we should become aware of circumstances which may reduce Contract Partner's creditworthiness we shall be entitled to refuse contract performance and to allow a reasonable period of time for Contract Partner to either pay in return for delivery (concurrent performance) or to provide further securities. Should Contract Partner not accept such demands or after expiry of such period of time set without having received payment or provision of further securities we shall be entitled to cancel the contract and to claim damages for non-performance.

5.

Contract Partner shall not retain the purchase price due to any counterclaims which do not arise out of the current contract relationship. The right to set-off shall be subject to such counterclaims as are undisputed or established by legally binding final court judgment.

VI. Retention of Title

1.

Any Goods delivered subject to retention of title shall remain our property until each and every claim has been duly satisfied including future claims to which we are entitled under the business relationship irrespective of the legal grounds they are based upon and irrespective of whether payment has been effected on specifically identified claims. In case of revolving accounts Goods delivered under retention of title shall constitute security for outstanding balances. Retention of title shall also apply in case of reselling or processing of such Goods under retention.

2.

Resale of the Goods under retention shall only be permissible to Contract Partner in the ordinary course of business and unless he is already in default and only on condition that his customers can not set-off counterclaims against claims arising from the resale of the Goods under retention. Further dispositions of the Goods under retention shall be excluded, in particular assignment and pledge by way of security shall not be permissible to Contract Partner.

3.

Any claims arising from resale of Goods under retention shall hereby be assigned to us in advance and we hereby accept such assignment, by way of security until full settlement of each and every outstanding claim (para VI.1. above).

Should Contract Partner have disposed in advance of his future claims arising from the resale of his Goods in a way which might be in conflict with such security assignment (such as advance assignments within the scope of a factoring agreement) our claim arising from the resale of our Goods under retention shall be considered to be replaced by Contract Partner's right to consideration against the beneficiary (e.g. factoring bank) of such advance assignment.

Contract Partner shall notify us immediately if and when he makes advance dispositions related to future claims arising within the course of his business or if and when contractual agreements are or become existent which might affect our security rights.

4.

Contract Partner shall be entitled to collect claims arising from the resale of our Goods under retention until our due revocation which may be declared at any time. Any proceeds from the resale of our Goods under retention or such surrogates as replace such proceeds (e.g. factoring) shall directly become our property up to the amount of our outstanding invoices. Our right to collect the claims assigned to us in case of non-observance of our payment conditions shall not be affected. Upon our request Contract Partner shall inform his customers of the security assignments and provide us the information required to assert our claims. In the event that a third party institutes compulsory enforcement measures in relation of our security rights Contract Partner shall indicate our security rights and inform us immediately.

5.

In case of delay in payment on the part of our Contract Partner and after expiry of a reasonable grace period without having received due payments we shall be entitled to require that our Goods under retention be returned to us without the need to cancel the contract and at Contract Partner's costs.

6.

Contract Partner's right to resale and collect claims based on the resale of our Goods under retention shall terminate automatically without requiring the granting of a grace period as soon as the requirements for the filing of insolvency proceedings by our Contract Partner are being met. The same shall apply in the event that the grace period set for advance payment or the provision of securities due to deterioration of Contract Partner's creditworthiness expires (see para V.5.). Upon termination of Contract Partner's right to resale our Goods under retention we shall be entitled to



require that such Goods be returned to us at Contract Partner's costs. Contract Partner shall reimburse any additional freight charges, shipping and other expenditures as well as any reduction in the value of the Goods.

7.

Processing or intermixing of our Goods under retention shall always be executed on our behalf as manufacturer without placing any duty upon us. Where our Goods under retention should be combined with third party items or being processed we shall obtain co-ownership to the new item in proportion of the invoice value of our Goods calculated against the invoice value of such other items used in the processing. Processed Goods or our proportional ownership rights to such Goods shall be considered our Goods under retention of title in accordance with the provisions hereinabove.

8.

If the value of all security rights available to us should permanently exceed our claims by more than 20% we shall release securities of our own choice in the corresponding amount upon Contract Partner's request.

9.

With regard to cross-border transactions Contract Partner shall take all obligatorily required measures to protect our retention of title such as:

- Switzerland: cooperation in filing our retention of title in the official registry
- Austria: entry in his books of the extended or expanded retention of title and naming the claim to the purchase price
- Spain: cooperation in preparation of an official document by a notary public.

Where the law applicable in Contract Partner's country should not recognize a comparable provision of the retention of title as admissible under the laws applicable at the business place of our supplying factory (in particular in case of absence of a system of extended or expanded retention of title) we may require at any time a banker's bond, a bank guarantee or equivalent valuable security in the amount of the respective contract value of our delivery of supplies.

VII. Supplier's Liability for Lack of Conformity (Liability for Defects)

1.

Our Contract Partner is entitled to our delivery of supplies and services being in conformity with the contract. Unless otherwise agreed we shall be liable for lack of conformity and in particular for defects in accordance with the applicable law.

2. We shall neither be liable for lack of conformity which is due to unsuitable or improper use, faulty assembly or commissioning by Contract Partner or any third party, normal wear and tear, faulty or negligent handling nor for the consequences of improper modifications or repair works made by Contract Partner or third parties and executed without our consent. The same shall apply to defects or deficiencies which do not significantly impair the value or usefulness of the Goods or due to which the contract price of the Goods has already been reduced.

3.

Prior to exercising his rights Contract Partner shall grant an additional period of reasonable length for performance of our contractual obligations and provide an opportunity for us to verify the grounds for claims made against us.

4.

Contract Partner shall be obliged to examine the Goods within a short period of time, however not later than 5 working days after the Goods have arrived at their destination. Contract Partner shall give notice in writing and specify the nature of any visible defects or deficiencies within reasonable period of time, however not later than 14 days after the Goods have arrived at their destination. Hidden defects or deficiencies shall be notified in writing specifying the nature within reasonable time, however not later than 14 days after discovery of the defect or deficiency.

5.

In the event of justified and timely notice of defect we shall repair the defective Goods or replace such Goods at our option by goods which are free from defects. Contract Partner shall bear any expenses incurred by subsequent fulfillment by way of repair or replacement insofar as such expenses are increased because Contract Partner has moved the Goods to a place other than Contract Partners branch office unless such moving the Goods is in conformity with the contractually agreed manner of use.

6.

Our liability for damages for breach of contract shall be limited to intent and gross negligence.

7.

Items which are supplied and installed as replacements as well as repaired items shall be under warranty for a period of 1 year after delivery/installation.

VIII. Product Liability, Limitation of Liability

1.

We shall be liable for damages due to product defects in accordance with the legal provisions concerning product liability.

2.

Any liability for damages not accrued in the supplied Goods themselves shall be excluded. The same shall apply to consequential damages of whatever nature unless due to an intentional or grossly negligent failure to perform our contractual obligations or in the event that representations of specific characteristics have been expressly meant to also cover the risk of consequential damages caused by defects. Liability for breach of fundamental contractual obligations shall be limited to such damages as are typical for the contract and foreseeable.

3.

To the same extent as our liability shall be excluded such exclusion shall also apply to the persons used by us to perform our contractual obligations and to our vicarious agents.

4.

Aforementioned limitation of liability shall not apply to events where we are liable in accordance with Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products and DIRECTIVE 1999/34/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 10 May 1999 amending Council Directive 85/374/EEC with regard to defective supplies and deliveries for personal injuries and damages to privately used items. The limitation of liability shall also not apply with regard to damages which relate to injuries to life, body or health inflicted by our legal representatives or a person used by us to perform our contractual obligations by violating intentionally or grossly negligently their duties.

5.

With regard to third party manufacturers further claims for damages shall expressly be excluded in particular claims for product defects for which manufacturer is liable. To such extent we shall herewith assign to Contract Partner each and every claim available to us against the respective third party manufacturer and/or supplier.

IX. Secrecy

1.

Contract Partner undertakes to treat as business secrets any and all commercial and technical information not publicly known of which he becomes aware in the course of our business relation.

2.

Contract Partner undertakes not to disclose or otherwise make available to any unauthorized third parties any drawings, samples, models, moulding tools and similar items. Any reproduction of such items shall only be allowed for the usual business requirements and within the limitations set by applicable copy right regulations.

3.

In the event that Contract Partner rejects any offer made by us he undertakes to return completely and immediately any documents received together with such offer.

X. Miscellaneous

1.

Unless otherwise agreed in writing the place of performance and place of jurisdiction for either party shall be the seat of business of our factory being party to this contract. Irrespective of such

determination we may also institute legal proceedings against Contract Partner at his place of general jurisdiction.

2.

The contractual relationship shall exclusively be governed by the material laws applicable at the respective place of jurisdiction (lex fori) with the exception of conflict of laws provisions. With regard to international cross border transactions the United Nations Convention of contract for the International Sale of Goods (CISG) of 11 April 1980 shall apply. Unless otherwise stipulated by CISG the legal relationship between the parties to this contract shall be governed by the material laws with the exception of conflict of laws provisions applicable at the respective place of jurisdiction.

3.

Contract Partner agrees that we may store and process Contract Partner's personal data received in the course of or in connection with the business relationship to the extent allowed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

4.

Where any individual provision of these General Terms and Conditions for Supply and Delivery or of any provision applying to any other further contractual agreements be or become invalid the remaining provisions of these Terms and Conditions or the remains of the agreement shall not be affected. In this event the parties to this contract shall be obliged to replace the invalid provision by a provision that reflects the intended commercial results as closely as possible.

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Special Conditions Air Conditions Technology

For transactions within the Group Division Air Technology the following Special Conditions shall apply as a supplement to the General Terms and Conditions of AL-KO KOBER:

I. Orders

In the event that Contract Partner shall fail to perform the purchase contract we shall be entitled either to claim the actually accrued damages as evidenced or to claim 25% of the agreed purchase price as liquidated damages without being required to provide evidence of such damage, unless and until however, that Contract Partner can provide evidence that we have suffered less damages.

II. Orders on Call

Orders on Call shall be called up by Contract Partner not later than 6 months after date of order confirmation. Where Contract Partner fails to call up such orders within a reasonable additional length of time set by us we shall be entitled at our discretion to either deliver without specific call up at the price applicable at the date of delivery, claim damages for non-performance or to cancel that part of the contract which is not yet performed.

III. Packing

Packing material shall be charged at net cost price and shall not be taken back. Contract Partner shall be obliged to dispose of such packing material at his own costs and in compliance with applicable legal requirements.

IV. Delivery Dates

1.

Delivery periods shall commence to run upon forwarding of our order confirmation, however not prior to complete clarification of all order details and provision of any documents, licenses or releases to be obtained by Contract Partner and receipt of any agreed down payments or opening of a letter of credit.

2.

Delivery periods shall be extended notwithstanding our rights due to delay on the part of Contract Partner, by the length of time by which Contract Partner is in delay with the performance of his contractual obligations under this or any other transaction. The same shall apply analogously with regard to delivery dates.

3.

In any case we shall only be in delay to perform our contractual obligations if we fail to perform due to reasons attributable to us within a reasonable grace period after expiry of a written reminder by Contract Partner.

V. Assembly Works

Unless otherwise agreed in writing the scope of delivery does not include assembly works at the place of destination.

VI. Shipping

Goods notified to be ready for shipment shall be called up or collected without undue delay, however not later than within 5 working days. Failure to call up or collect shall entitle us at our option to either ship the Goods at Contract Partner's risk and costs or to store the Goods at our discretion and issue respective invoices.

VII. Defects

1.

Our warranty obligation is subject to the provision that our delivered Goods have been properly assembled by a recognized specialist in accordance with the applicable standards and accepted state-of-the-art technology and that our Goods are always used exactly in the way as directed by us. Our warranty obligation shall be void where the defect occurred in causal connection to an improper modification, processing or other handling. We shall not be liable for damages resulting from normal wear and tear of items subject to such, from excessive use, defective maintenance, violent damaging,



non-observance of our operating instructions, incorrect use or faulty operation or from circumstances beyond normal operation conditions.

2.

Our warranty obligation is further subject to Contract Partner naming in writing and adequately precisely any defect occurred setting a reasonable length of time for us to remedy the defect or to replace the defective item. We shall further be granted the opportunity to examine on site or have examined by our representative any reported defect. We shall consult with Contract Partner who shall grant us the time and opportunity required according to our equitable discretion for the execution of repairs or replacements and who shall provide upon request auxiliary personnel.

3.

Only where the operating safety is endangered in urgent cases of which Contract Partner shall inform us promptly or in the event that we are overdue in remedying the defect Contract Partner shall be entitled to remedy or have the defect remedied by a third party and to claim adequate reimbursement of his costs incurred.

4.

Notwithstanding other mandatory legal periods warranty claims for defects in our Goods or any parts thereof which should be installed in building structures by Contract Partner shall be legally barred after two years. Notwithstanding aforementioned first sentence of this para 4 warranty claims for defects in parts of heating systems which are in contact with fire shall be legally barred after only one year. The same shall apply with regard to mechanical and electrical systems and facilities or parts thereof in which maintenance may affect their safety and operability and warranty claims shall be legally barred after one year if Contract Partner has refrained from concluding a maintenance contract with us.

VIII. Retention of Title

1.

Where the Goods or supplementary systems or equipment delivered by us are connected with a plot of land or installed in a building or heating system such shall take place for temporary purposes only with the intention of subsequent disconnection as soon as we assert any claim based on our retention of title. Where Contract Partner is not the owner of the plot of land he shall point out to the actual owner that such connection or installation of our Goods is for temporary purposes only.

2.

Should our Goods under retention be connected or installed in a plot of land or a building Contract Partner shall herewith assign in advance his compensation claims against the third party including his right to obtain a mortgage as security, in the amount of the invoice value of our Goods.



IX. Return of Goods

We shall generally not accept return of Goods which have been correctly ordered and delivered. Where in exceptional cases we still decide to accept such return we shall reimburse 90% of the invoice value of unused and unobjectionable Goods minus any expenses incurred for freight, transport damage etc.

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