

# KOENIG & BAUER

## General Production and Delivery Conditions of Koenig & Bauer Industrial AG & Co. KG

(hereinafter "the Supplier")

These General Production and Delivery Conditions (hereinafter "production conditions") are applicable to:

1. Individuals who conduct trade in a commercial or freelance capacity at the time of entering into the contract (entrepreneurs);
2. Legal entities or special funds under public law; (hereinafter "Customer").

Should there exist individual contractual agreements between the Supplier and customer concerning the points regulated in these production conditions, then they will prevail. The General Production Conditions of Koenig & Bauer Industrial AG & Co. KG are in this respect only of a supplementary nature.

### I. Scope

1. These general production conditions are applicable between Supplier and the customer ordering unit production (hereinafter "Customer"), unless otherwise expressly agreed in writing by the contract parties, and apply to production of machines, including planning if necessary, and assembly of machines, parts or other general assemblies as well as to all other work carried out by the staff of the supplier. The use of the term "production" within these conditions always includes potential planning and assembly services and/or components from the supplier, depending on context.

2. Any differing general terms & conditions specified by the Customer shall not become part of the contract, even if an order is accepted.

3. If production occurs on the customer's premises in conjunction with machine deliveries from an affiliated company of the Supplier according to Sections 15 et. seqq. of the German Stock Corporation Act, then that company's General Delivery Conditions will also apply.

4. The Supplier reserves all property rights and copyrights for samples, cost estimates, designs, attachments, illustrations, plans, descriptions and similar information in physical or immaterial form (including in electronic form); these may not be made accessible to third parties.

5. Collateral agreements and changes require written confirmation from the supplier.

6. Should individual provisions of these conditions be or become ineffective, void, incomplete, contestable or impracticable, then the applicability of the other provisions shall remain unaffected. The contract parties undertake to replace any ineffective, contestable, impracticable or void provisions with others that fulfil the intended commercial purpose of those provisions or fill any created gaps in a similar spirit.

### II. Price

1. Production shall be billed according to time

and/or material weight in accordance with the supplier's applicable current cost rates, unless differing terms have been expressly agreed.

2. The cost of taxes and charges that the supplier is to pay to authorities, communal administration or government locations in the country where production takes place, shall be borne by the customer and included in the invoice.

3. In addition, value-added tax at the respective rate set by law is to be paid to the supplier.

### III. Payment terms; reservation of title

1. Invoices are to be paid in full immediately upon receipt. Retention of sums owed without compensation is not allowed.

2. a. If the Customer is in arrears with payments, including those for a delivery transaction, then the Supplier can postpone the fulfilment of his/her own obligations until the delayed payments are made, unless the amount in arrears is the result of an act or omission on the Supplier's behalf.

b. If the Supplier acts simultaneously as the deliverer of machines or components to be assembled, then the payment due date of the delivery contract is extended to however long the payment default lasts.

c. Title / ownership shall transfer from the Supplier to the Customer upon complete payment of the Price.

### IV. Production, assembly and delivery times

1. All details regarding production and delivery times are only approximate values.

2. If, as an exception, a production or delivery deadline is designated as binding, then it will count as being met when the product is ready for delivery or collection (where agreed) before the deadline's expiry.

3. The time of production and/or delivery is however essentially dependent on the arrangements of the customer, in particular on quantity and quality of the provided materials, plans, drafts etc. Exceeding the stated production or delivery time will not permit the customer to demand compensation beyond the value stipulated by point 5.

4. If production or delivery is delayed by action related to labour disputes, including strikes and lock-outs, or circumstances arising from beyond the Supplier's reasonable control, then an appropriate extension of the production or delivery deadline will take effect. This also applies when such circumstances take place after the Supplier has fallen in delay. The Customer will bear costs arising from a delay.

5. If the customer suffers damages as a result of the Supplier's delay, for which the Supplier is also at fault, then the Customer is permitted to demand compensation (in the form of a lump compensation

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amount (*pauschalisierter Schadensersatz*). This sum amounts to 0.5% for every further completed week after a grace period of 2 consecutive weeks, however the total sum may not exceed 5% of the respective price for the part of the contracted project being assembled by the Supplier, the part which cannot be used in time as a result of the delay. Subject to the exceptions under Section VIII. ("Limitation of Liability") Customer shall not be entitled to any further damages due to delay of the Supplier. The Supplier shall be entitled to evidence lower damage at the Customer's.

## V. Risk assumption, delivery

1. The Customer assumes the risk associated with the product, i.e. of damage or deterioration of the product at the manufacturing location.

2. Irrespective of point 1 in this paragraph, delivery shall occur *ex works* at the business address of the Supplier's respective manufacturing location according to Incoterms® 2010, which will be given to the Customer two weeks after ordering at the latest.

## VI. Acceptance of the assembled machine, assembly or components

1. The Customer is obliged to accept to the product as soon as he/she has been notified of its completion and any contractually obliged testing of the assembled product has taken place.

2. If the product proves not to be in accordance with the contract, then the Supplier is obliged to repair any defects at his/her own costs. This does not apply if the defect is irrelevant to the interests of the Customer or arises from a circumstance attributable to the Customer. If an insignificant defect is present, the customer cannot refuse acceptance if the Supplier expressly recognises his/her obligation to repair the defect.

3. The Customer is to confirm the orderly operation of the product with the Supplier or his/her representative in writing, using a form intended for this as appropriate.

4. If the acceptance is delayed due to no fault of the Supplier, then acceptance will be considered as successful after the expiry of two weeks after the Supplier providing notice about the completion of the product.

5. Through acceptance the service will be considered as accepted and fulfilled according to contract.

## VII. Warranty

1. To the exclusion of all other claims of the Customer and Subject to Section VIII. ("Limitation of Liability"), the Supplier warrants to rectify any defects in the product. The way of rectification (repair or replacement) remains the choice of the Supplier.

2. The Customer must notify the Supplier immediately of any defect uncovered by him and determine an appropriate deadline for repairing said defect.

3. If the repair of the defect fails definitely, the Customer can demand a reduction of the contract price. The Customer is only entitled to withdraw from the Contract if the product remains demonstrably of no

interest to the customer and the defect is not insignificant.

4. The Supplier's warranty obligation does not exist if the defect is insignificant for the interests of the Customer and a rectification would only be possible using unreasonable efforts on Supplier's side or if the defect derives from circumstances attributable to the Customer.

5. The warranty does not cover damages incurred for the following reasons:

Natural wear, erroneous or insufficient maintenance, use of inappropriate consumables, non-adherence the operating manual as well as any other reasons which the Supplier is not responsible for.

6. If a production component supplied by the Supplier is damaged during production work and the Supplier due to the fault of the Supplier, then he/she must return it to operating condition at his/her own costs.

## VIII. Limitation of liability

1. The Supplier shall not be liable for defects arising from circumstances for which the Customer or his/her agents are responsible.

2. The Supplier's liability is excluded if the Customer's staff or third parties on behalf of the Customer modify the product or perform repairs without permission from the Supplier.

3. The Supplier shall be liable for damages that did not occur to the delivery item itself - regardless of what legal grounds there may be - only

- a. in the case of intent,
- b. in the case of gross negligence,
- c. in the case of culpable injury to life, limb, or health,
- d. in the case of defects that the Supplier fraudulently failed to disclose,
- e. within the framework of a promise of a guarantee,
- f. in the case of defects of the delivery item, insofar as the Supplier is liable for personal injury or property damage for privately used items according to the Product Liability Act.

If there is a proven culpable violation of material contractual obligations (i.e. obligations characterizing the contract and upon which the Customer can reasonably rely) then the Supplier shall also be liable in the case of the gross negligence and in the case of slight negligence, but in the latter case to an extent limited to the damages typically and reasonably foreseeable for this type of contract.

Further claims are excluded.

A liability exclusion or liability limitations to the benefit of the Supplier also apply to the employees, representatives, and auxiliary agents of the Supplier.

## IX. Limitation period

All claims from the Customer, irrespective of their legal grounds, expire after 12 months at the latest. For warranty claims, the time of the declaration of readiness for acceptance is the determining date. For claims according to Section VIII. ("Limitation of Liability"), Sub-Section 33 lit. a) through to e), the statutory limitation periods under applicable law shall apply.

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## X. Production outside of the Supplier's premises, non-contractual work, enticement

1. Works which are not carried out in one of the production premises of the Supplier (excluding correctional work in the case of defects) require a separate agreement; in this respect these conditions apply for such cases only as an extension or an alternative.
2. The Customer is not permitted to enlist, hire or headhunt the Supplier's staff for services which do not fall under the contract.
3. The Customer may only employ production staff for work which is duly billed with the Supplier.
4. The Customer is obliged to refrain from enticing production staff to work for him/her.
5. In case of actions to the contrary, the Customer is obliged to pay compensation.

## XI. Place of jurisdiction, applicable law

1. The laws of the Federal Republic of Germany shall apply exclusively for all legal relations between the Supplier and the Customer, excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws principles.

2. The court of jurisdiction is exclusively the court responsible for the headquarters of the Supplier. Nevertheless, the Supplier also has the right to legally assert its claims in the court responsible for the headquarters of the customer.