

## **Terms of Service for Kocher + Beck GmbH + Co. Rotationsstanztechnik KG**

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### **Terms of Service**

#### **I. Bases of contract**

(1) The following sequence forms the basis of all orders placed with the contractor:

- the contents of a contract concluded between the parties
- the quotation
- the confirmation of order
- these general terms and conditions of business
- the legal provisions of the Civil Code of the Federal Republic of Germany, in particular the regulations pursuant to the law of contract for services

(2) Deviations from these terms and conditions of business shall require a written agreement.

(3) The following conditions shall be decisive for all deliveries and services. They shall also apply to all future legal relationships between the contractor and the customer. Contract conditions of the customer shall only then be an integral part of the contract if they are acknowledged in writing by the contractor.

(4) The contractor shall be entitled to commission third parties in whole or in part with the provision of the contractual services.

(5) Acceptance of the services of the contractor shall be regarded as acknowledgement of these general terms and conditions of business.

#### **II. Quotation, quotation documents**

(1) Insofar as nothing else arises from the quotation, this shall be without engagement.

(2) In the event that quotations are prepared according to the details and the documents provided by the customer, the contractor shall not accept any liability for the correctness of the details and

documents received, unless faultiness and ineptness is not identified intentionally or in a grossly negligent fashion.

(3) Details describing the product and service as well as technical data and dimensions or illustrations or other information and advertising materials that are surrendered to the contractor before or with the quotation, will be compiled with care, but do not, however, constitute any assurance of properties or guarantee of quality.

### **III. Conclusion of contract**

(1) The contract shall come into existence following the written confirmation of order of the contractor. However, placed orders shall also be regarded as accepted if they are not rejected within one month after receipt.

(2) The same shall also apply to online orders. In this respect it is also indicated at this point that rights of rescission and return according to the Distance Selling Act (Article 312 d German Civil Code) shall not exist if the objects of service/delivery are produced or amended according to the specifications of the customer or are clearly tailored to his requirements.

### **IV. Provison to make unilateral changes**

(1) The contractor shall be entitled to make construction alterations and design amendments to the objects of service/delivery at any time, insofar as the alterations serve technical progress or are appropriate and reasonable for the customer.

(2) The contractor shall not be obligated to also carry out amendments of this kind to objects of service/delivery that have already been supplied.

### **V. Duties to cooperate/advance and additional services of the customer**

(1) If materials, documents and the notification of dimensions and weights etc. are necessary for provision of the contractual services by the contractor, the customer undertakes to provide these immediately upon request by the contractor.

(2) Movable plants, machines, test materials, motor vehicles or other parts belonging to the customer that are to be used during the manufacture of the objects of service/delivery or during their assembly at the factory of the contractor, must be delivered or handed over on the agreed date free factory/works or installation site of the contractor.

(3) If the objects of service/delivery are to be assembled, installed or erected at the customer's premises, the customer shall be obligated to provide the contractor in due time with the equipment necessary for assembly/installation/erection, such as feed lines for electricity, compressed air, cooling water, appropriate computer connections, etc. The same shall apply to the necessary hoisting devices for unloading and subsequent assembly. Furthermore, the customer shall ensure that the places designated for provision of the contractual services are freely accessible without interruption and comply with the necessary structural and static pre-conditions and have reasonable recreation rooms including sanitary facilities for the contractor's employees as well as an adequate number of large, lockable rooms for the storage of material and auxiliary materials. Furthermore, the customer shall ensure that the objects of service/delivery can be assembled or erected in view of the condition of floors and walls. This shall apply in particular to necessary alterations to existing buildings or facilities, e.g. construction of foundations, execution of necessary masonry work and chiselling work, creation of suitable floors etc.

(4) The contractor shall not be obligated to examine the suitability or professional provision of the advance services of the customer, unless faultiness and ineptness is not identified intentionally or in a grossly negligent fashion.

## **VI. Prices**

(1) The quotation prices shall only be valid in the case of an undivided order for the offered objects of service/delivery.

(2) Insofar as nothing different is stated, all prices shall be understood as strictly net, i.e. plus VAT, ex manufacturing factory or forwarding warehouse and do not include packaging, freight, postage, insurance etc.

(3) The quotation prices shall be valid for 4 months as from conclusion of contract. In the event that the service provision of the contractor commences after expiry of this 4 month period for reasons for which the contractor is not responsible or as agreed, the contractor shall be entitled to pass on the price increases of the manufacturers or suppliers or wage increases to the customer. The customer can withdraw from the contract if the price is more than 5% over the price at the time of conclusion of contract. In this case the contractor shall have a claim to payment of the services provided up to

that time; services provided also include claims by third parties commissioned by the contractor relying upon execution of the contract. Further claims on both sides shall be excluded.

(4) In the event that the commencement, progress or completion of work is delayed for reasons for which the contractor is not responsible, he shall be entitled to charge separately for the additional expenses incurred because of this. The valid calculation rates for working hours (including journey times and loading times), equipment and material prices and other prices of the contractor on the date of execution shall be decisive.

(5) Services that are not estimated in the quotation and in the confirmation of order and that are carried out at the request of the customer, also including assembly services outside of the customary working hours, or alternatively additional expenditure due to incorrect details or documents of the customer, not-at-fault delays in transport, inadequate hall and floor conditions, cooperation by the customer that is neither on schedule nor competent, shall be invoiced additionally to the customer. Aforesaid paragraph 4 of these conditions shall apply as the basis of calculation.

## **VII. Delivery, delivery time and assembly**

(1) Partial deliveries are admissible insofar as they are in the interest of the customer and are reasonable for him. Interest and reasonability are assumed if partial quantities of the same object of service/delivery are concerned. In other cases the customer can only demand compensation for damages instead of performance of the entire service or altogether withdraw from the contract if the contractor does not perform the remaining service after partial deliveries in spite of a request by the customer setting a reasonable time-limit and the customer is not interested in the partial delivery.

(2) In the event that an express deadline is not agreed for commencement of execution or completion, any named completion/delivery deadline shall only apply as an approximation.

(3) If the objects of service/delivery are to be assembled or installed at the premises of the contractor, the customer shall, unless agreed otherwise, arrange for inbound/outbound transport of the object of service at his own expense and risk or bear the travel and transport costs incurred by the contractor for this respectively.

(4) Firmly agreed execution/delivery deadlines shall also not be binding following alterations or conversions in design put forward by the customer after conclusion of the contract. The same shall apply to obstacles for which the contractor is not responsible, in particular to cooperation by the customer that is not provided or not provided in due time.

(5) In the event that disruptions in business operations occur for which the contractor or his upstream suppliers or sub-contractors are not responsible, in particular cases of force majeure, strike and lockout due to an unforeseen not-at-fault event and that lead to grave business disruptions, the delivery/completion deadline shall extend accordingly. The contractor shall immediately inform the customer of these circumstances. If the aforesaid disruptions continue for longer than 4 months or if execution of the contract becomes impossible on account of the aforesaid disruptions, the contractor shall be entitled to withdraw from the contract. If the customer is a businessman, the contractor shall, in this case, have a claim to payment of the services provided up to that time; services provided also include claims by third parties commissioned by the contractor relying upon execution of the contract. Further claims on both sides shall be excluded. The customer shall only then be entitled to withdraw if the aforesaid circumstances did not occur when he was not in default of provision of his own services (cooperation, payments and the like). In the event of default he shall owe the agreed price.

### **VIII. Freight and packaging / transfer of risk**

(1) Insofar as consumer goods as defined by Article 476 BGB (German Civil Code) are not concerned, the objects of service/delivery of the contractor always travel at the expense and risk of the customer unless agreed otherwise. Packaging desired and regarded as necessary by the customer will be invoiced separately. The same shall apply if the objects of service/delivery belong to the customer.

(2) Unless agreed otherwise and providing that consumer goods are not involved (Article 476 BGB), every risk shall transfer to the customer when the objects of service/delivery leave the contractor's factory. This shall also apply to cases where carriage-free delivery has been agreed. The risk shall also then transfer to the customer if collection is agreed and the customer has been informed that the goods are ready for collection.

(3) If desired by the customer and at his expense, the objects of service/delivery and the forwarding of same by the contractor will be insured against insurable risks to be named by the customer.

(4) Damages in transit must also be reported immediately to the contractor. In the case of despatch via a forwarding company (also air freight and maritime freight) damages must be noted on the bill of lading immediately; in the case of rail transport official confirmation from the railway must be asked for and forwarded to the contractor.

(5) If the objects of service/delivery that are ready for despatch cannot be despatched for reasons for which the customer is responsible, the risk shall transfer to the customer on the date of receipt of notice that the goods are ready for despatch. The services of the contractor shall then be regarded as fulfilled.

(6) If the delivery date is delayed at the request of the customer or if the customer is in default of collection, he shall reimburse the customary storage costs of forwarding companies for the term of the delay or of default respectively.

(7) In the case of default of acceptance and insofar as the objects of service/delivery are the property of the contractor, he shall be entitled after the fruitless expiry of a reasonable deadline given to the customer to dispose otherwise of the objects of service/delivery and to only supply the customer following a reasonable, new deadline. However, the customer shall, at his own choice, also be entitled to withdraw from the contract and demand compensation for damages or compensation for damages instead of performance.

### **IX. Acceptance/handover**

(1) The following shall apply if the objects of service/delivery are to be assembled, installed or erected at the customer's premises:

a) The customer shall be obligated to formally accept these objects after assembly/installation/erection has been carried out. The customer shall undertake to be present on the date of acceptance or arrange to be represented by an authorised representative, whose participation shall imply the corresponding authorisation.

b) Possible partial services that are still outstanding or defects that have been notified shall be made up for or remedied as soon as possible. Provided they do not significantly impair the function of the objects of service/delivery, they shall not constitute an entitlement to refuse acceptance.

c) If the customer makes use of the service or a part of the service without official acceptance prior to this, acceptance shall be regarded as having taken place upon use.

(2) If handover/collection of the objects of service/delivery is agreed, acceptance/handover shall take place at the contractor's factory unless agreed otherwise. The customer shall arrange for immediate collection of the goods after receipt of the notification of completion. If the customer does not comply with this in spite of a reasonable deadline, the objects of service/delivery shall be regarded as handed over.

## **X. Liability for defects**

(1) Provided that deviations are not ruled in the following, the liability for defects shall comply with the regulations of the German Civil Code.

(2) If the customer is a businessman or if the objects of service/delivery are manufactured according to special details or requirements of the customer or installed into objects belonging to the customer, basically only supplementary performance in the form of rectification of defects can be demanded. The customer must give the necessary time and opportunity for this. The manner of proper rectification of defects shall be left to the discretion of the contractor. The contractor shall have the opportunity to provide a replacement delivery at any time. The customer is only then able to assert further claims, in particular claims to abatement or withdrawal from contract, if two attempts at rectification of defects have failed on account of the same defect.

(3) The liability for defects shall not extend to those defects that come into existence at the customer's premises due to natural wear, humidity, high rises in temperature, improper handling or storage, use of unsuitable operating resources or non-compliance with operating and maintenance instructions.

(4) The liability for defects shall also be excluded if the objects of service/delivery are stressed excessively, for instance upon use in racing.

(5) The liability for defects shall also not encompass customary and reasonable deviations in the form, dimensions, colour and properties and condition of the material.

(6) The customer shall be obligated to immediately notify the contractor of defects. Insofar as the customer is a businessman, the liability for defects shall expire entirely if the notification of defects is belated or if reservations on account of established defects were not made upon acceptance.

(7) The liability for defects shall also expire if, without the approval of the contractor, the customer undertakes alterations or makes repair attempts or makes it difficult or impossible for the contractor to determine and rectify the defects.

(8) In the event that the objects of service/delivery have been used as agreed in whole or in part, the contractor shall only be in debt in respect of the used objects for their functional capability at the point in time of delivery/handover/acceptance. Without an express agreement the contractor shall not be obligated to carry out further examinations or maintenance on used items.

(9) If the objects of service/delivery are movable objects the rectification of defects must take place at the contractor's factory/works. The customer must then, at his own expense, provide the objects of service/delivery to the contractor.

(10) If the customer is a businessman or if the objects of service/delivery have been used, the statute of limitation of the claims of liability for defects shall amount to one year as from handover/acceptance.

(11) The statute of limitation shall not start again from the beginning in the case of a replacement delivery or the installation of spare parts within the bounds of supplementary performance.

### **XI. Extended lien**

(1) Due to his claim arising from the order, the contractor shall be entitled to a contractual lien on the objects that have come into his possession on account of the order.

(2) The contractual lien can also be asserted on account of claims arising from work carried out previously, spare parts deliveries and other services, insofar as they are in connection with the objects of service/delivery.

### **XII. Credit basis**

The creditworthiness of the customer is the pre-condition for the obligations to perform of the contractor. In the event that the customer has provided incorrect or incomplete details regarding his person or regarding the facts determining his creditworthiness or ceased his payments or in the event that insolvency proceedings have been opened regarding his assets or if such opening has been applied for, the contractor shall not be obligated to the provision of service. In cases of this kind the contractor can demand payment in advance or otherwise suitable security of the claim to remuneration. In the event that the customer does not comply with this demand, the contractor shall be able to terminate the contract for an important reason according to number XVII of these conditions or withdraw from the contract and demand compensation for damages. The regulation in number XVIII paragraph (3) of these conditions shall apply in respect of the amount.

### **XIII. Liability**

(1) Claims for the compensation of defects and damages arising from the provision on behalf of the customer of deliveries and services by external companies shall be excluded, unless the contractor has breached his duty to take care in the choice of the external companies.

(2) The contractor shall not be liable for the commodity of the customer, unless safekeeping was agreed expressly in writing. In this case the contractor shall only be liable to the extent of the insurance benefits, insofar as he is not accused of intent or gross negligence.

(3) Claims to compensation for damages by the customer, irrespective of their cause in law, in particular the breach of contractual secondary obligations, claim to compensation for damages on account of a tortious act or reimbursement of expenses shall be excluded. This shall not apply in case a contractual obligation was breached, the fulfilment of which alone allowed for proper execution of the contract and upon compliance with which the customer may regularly rely (cardinal obligation) or for claims by a consumer according to Article 439 (2) of the German Civil Code. The exclusion of liability shall also not apply if the customer, his legal representatives or vicarious agents are to blame for fraudulent intent, intent or gross negligence or in the case of claims according to the Product Liability Act and in the same way not in the case of culpable injury of life, body or health as well as upon acceptance of a guarantee or assurance of features provided that precisely the object of the guarantee or the assurance triggers the liability. In the case of liability in the event of the breach of cardinal obligations, the compensation for damages shall be restricted to the foreseeable damage typical for the contract.

### **XIV. Reservation of title**

(1) The contractor shall retain title to the goods until all outstanding claims of the customer arising from the business relationship, including outstanding claims coming into existence in the future and also arising from contracts concluded at the same time or later, have been settled. This shall also apply if individual or all claims of the contractor were included in a running account and the balance has been struck and acknowledged.

(2) The customer shall only then be entitled to resell the goods subject to reservation of title during the orderly course of business if he hereby now assigns to the contractor all claims that he accrues from resale to buyers or third parties.

(3) If following processing or combination with objects that are in the possession of the customer, the goods subject to reservation of title are sold by the customer, the customer already now assigns the claims that come into existence due to resale in the amount of the value of the goods subject to reservation of title.

(4) The contractor accepts the assignment of claim.

(5) The customer shall also be authorised to collect this claim after assignment. The competence of the contractor to personally collect the claims shall not be affected by this, but the contractor undertakes not to collect the claims as long as the customer complies properly with his payment and other contractual obligations.

(6) The contractor can demand that the customer notifies him of the assigned accounts claims and the debtors, provides all necessary details for collection, hands over the associated documents and informs the debtors of the assignment.

(7) The customer shall carry out any conditioning or processing of the goods subject to reservation of title on behalf of the contractor without obligations arising from this for the latter.

(8) Upon processing, combining, blending or mixing the goods subject to reservation of title with other objects not belonging to the contractor, the contractor shall be entitled to the co-ownership share in the other object arising in the process in proportion to the value of the goods subject to reservation of title to the object at the point in time of processing, combining, blending or mixing. If the customer acquires or has sole ownership of the other object, the customer grants the contractor co-ownership of the other object in proportion to the value of the processed or combined, blended or mixed goods subject to reservation of title and keeps them safe or utilises them free of charge for the contractor.

(9) If the value of the existing securities exceeds the claims to be secured by more than 20 % the contractor shall be obligated to release upon demand by the customer.

## **XV. Industrial property rights and rights of exploitation**

(1) Planning, drafts, drawings, production, construction and assembly documents, descriptions of concepts etc. shall remain the property of the contractor together with all rights, namely even if they have been handed over to the customer. They are entrusted to the customer in this respect and must not be made accessible to third parties without the express consent of the contractor.

(2) Transfer of rights of exploitation over and above those necessary for the execution of the contract and irrespective of whether special industrial property rights (e.g. copyrights) exist or not, shall require an express written agreement. The customer undertakes to refrain from all forms of every other exploitation, in particular duplication and circulation, forwarding to third parties as well as direct or indirect reproduction.

(3) If materials or documents for the production of the subject matter of the contract are handed over by the customer, he shall accept responsibility that the industrial property rights of third parties are not infringed due to the manufacture and delivery of the services executed according to his documents.

### **XVI. Terms of payment**

(1) Unless agreed otherwise, invoiced amounts are basically due for immediate payment upon receipt of the invoice. Deductions of any kind shall be excluded; interest shall not be paid on advance payments.

(2) Insofar as deviations are not expressly agreed, payment shall be made as follows:

1/3 of the total contract amount for advance work performed upon placing of order or upon receipt of the confirmation of order;

1/3 of the total contract amount as intermediate invoice for work performed up to that time;

1/3 before despatch/upon handover

Handover/acceptance shall only be carried out concurrently against payment.

(3) It is agreed that payments of the customer shall always initially be offset against accrued costs and interest and then against outstanding claims according to age.

(4) In the event that the customer does not comply with his payment obligations or does not comply in a proper manner, he shall not be entitled to the use of the services of the contractor and must pay compensation for damages caused by default according to the legal regulations.

### **XVII. Set-off and assignment**

(1) Set-off against disputed and counterclaims that have not been acknowledged as legally binding shall be excluded for the customer. The same shall apply to the assertion of rights of retention.

(2) The rights of the customer arising from this contractual relationship are only assignable with the prior consent of the contractor.

### **XVIII. Termination / cancellation**

(1) Statutory notice of termination of the order/contract or cancellation shall be excluded after conclusion of contract.

(2) The right of termination for an important reason shall remain unaffected. It is, however, a precondition that a corresponding written request stating a reasonable deadline is made prior to this for the elimination of the important reason and that the deadline has elapsed fruitlessly. An important reason exists in particular if the customer does not comply with his payment obligations or infringes the obligations to desist according to these conditions.

(3) In the case of a legitimate termination by the contractor for an important reason or withdrawal for reasons for which the customer is responsible, the contractor shall have a claim to payment of the services performed up to that time; services provided also include claims by third parties commissioned by the contractor relying upon execution of the contract. In respect of services not yet performed, 40% of the payment agreed for this shall be agreed as saved expenditures. The contractor must agree to this rate being offset against his claim to payment, unless the customer is able to substantiate that only lower expenditures were actually saved. By the same token the contractor shall be at liberty to provide proof that he was only spared lower expenditures.

### **XIX. Data protection**

It is pointed out that personal details within the bounds of the business relationships or in connection with them are processed as defined by the Federal Data Protection Act, irrespective of whether they originate from the contractor personally or from third parties.

### **XX. Place of performance and place of jurisdiction**

(1) The place of performance and the place of jurisdiction for all disputes between the parties arising from the contractual relationship shall be the place of business of the contractor insofar as the customer is a merchant who has been entered as such in the commercial register, a corporate body

under public law or special assets under public law or does not have his (place of residence) registered office in Germany.

(2) German law shall be decisive for the contractual relationship excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

### **XXI. Final provisions**

In the event that individual provisions are invalid in whole or in part, this shall not affect the validity of the remaining provisions.

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