

# General Terms and Conditions of Sale of KOA Europe GmbH

## Status October 2024

These General Terms and Conditions of Sale (hereinafter referred to as "**GTC**") apply to contractual relationships of KOA Europe GmbH (hereinafter referred to as "**KOA**") with merchants within the scope of their business operations and with legal entities under public law, including special funds under public law (hereinafter referred to as "**Customers**").

### 1. Scope

- 1.1. These GTC apply to contracts for the sale of our products. Our offers and deliveries are made exclusively on the basis of these GTC. Deviating, conflicting or supplementary terms and conditions shall only become part of the contract if and to the extent that we have expressly agreed to their application. This requirement of consent shall also apply if the Customer refers to his terms and conditions of in his order and we do not expressly object.
- 1.2. Unless otherwise agreed, these GTC shall apply in the version valid at the time of the Customer's order or in any case in the version last communicated to him as a framework agreement also for similar future contracts, without us having to refer to these GTC again in each individual case.
- 1.3. Individual agreements made with the Customer in individual cases shall in any case take precedence over these GTC. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.
- 1.4. Legally relevant declarations and notifications by the Customer must be made in writing or text form.

### 2. Offers and conclusion of contract

- 2.1. Our offers are subject to change and non-binding.
- 2.2. The order placed by the Customer shall be deemed to be a binding contractual offer. We shall be entitled to accept this contractual offer within 14 (fourteen) days after its receipt by KOA.
- 2.3. Acceptance may be declared in text form (hereinafter "**Order Confirmation**") or by delivery of the products to the Customer. The content of our Order Confirmation shall be deemed to determine the content of the contract.

### 3. Prices and shipping

- 3.1. The prices apply in accordance with our current price list EXW Dägeling, Federal Republic of Germany (EXW according to ICC Incoterms 2020) plus statutory VAT.
- 3.2. At the Customer's request and expense, we will ship the products to another destination (hereinafter referred to as "**Sales Shipment**"). In the case of a Sales Shipment, KOA is entitled to determine the type of shipment (in particular the transport company, the shipping route and the packaging).

### 4. Terms of payment, right of retention and offsetting

- 4.1. The purchase price is due and payable within 30 (thirty) days of the invoice date and delivery without deduction. We are entitled at any time, even in the context of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the Order Confirmation.
- 4.2. Upon expiry of the above payment deadline, the Customer shall be in default. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to claim further damages caused by default. With respect to merchants, our claim to commercial interest rate (Section 353 German Commercial Code - HGB) remains unaffected.
- 4.3. We may refuse to make deliveries to the Customer in accordance with the statutory provisions if it becomes apparent that our claim to payment is at risk or the Customer is in default of payment and are entitled to withdraw from the contract - if required by law after setting a deadline. This also applies to non-connected claims, i.e. if our payment claims are not closely related in terms of time or subject matter.
- 4.4. KOA is a company of the KOA Group. We are entitled to set off all claims that we or the companies of the KOA Group are entitled against the Customer against all claims that the Customer has against the KOA Group. On request, KOA will send the Customer a list of the companies belonging to the KOA Group.
- 4.5. The Customer may only set off claims of KOA against claims that are undisputed or have been finally determined by a court.

### 5. Delivery, delivery times, non-availability and delay in delivery

- 5.1. The products are made available for collection in our sales packaging.
- 5.2. Partial deliveries are allowed insofar as they are reasonable for the Customer.
- 5.3. The commencement of and compliance with agreed delivery periods shall be subject to the fulfillment of the obligations to cooperate, in particular the timely receipt of all documents, approvals, inspections, releases to be provided by the Customer and compliance with the agreed terms of payment. The documents to be provided shall expressly include a specification agreed by both parties. If these requirements are not properly fulfilled in good time, the delivery periods shall be extended accordingly.
- 5.4. If non-compliance with an agreed delivery period is due to force majeure, the delivery period shall be extended appropriately, i.e. by the duration of the delay plus a reasonable start-up period. Force majeure is any unforeseeable, unavoidable event beyond KOA's control which prevents KOA from making delivery in whole or in part. This includes, in particular, labor disputes, civil unrest, war, terrorist attacks, riots, strikes, lockouts, epidemics and pandemics, earthquakes, disruption of energy supplies, fire damage, floods, operational disruptions for which KOA is not responsible. Supply difficulties and other service disruptions on the part of KOA's suppliers shall also be deemed to be force majeure if the supplier is prevented from performing the service by an event pursuant to this clause. KOA shall endeavor to limit the effects of force majeure as far as possible. Each contracting party shall be entitled to withdraw from the affected purchase contracts if the force majeure lasts for more than 12 (twelve) weeks from the agreed delivery date.
- 5.5. If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (hereinafter referred to as "**non-availability of performance**"), we shall inform the Customer immediately and notify him of the expected new delivery deadline. If the products are also not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will immediately reimburse any consideration already paid by the Customer. A case of non-availability of performance in this sense is in particular the failure of our supplier to deliver to us on time if we have concluded a congruent transaction or if neither we nor our supplier are at fault.
- 5.6. The occurrence of a delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the Customer is required.
- 5.7. If we are in default of delivery, the Customer may demand compensation for the damage caused by the delay. The Customer's claim for compensation for damage caused by delay is limited to a maximum of 10% of the net price of the products in default.

- 5.8. The Customer's rights in accordance with Clause 11 and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

## **6. Default of acceptance by the Customer**

- 6.1. If the Customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Customer is responsible, KOA shall be entitled to demand compensation for the resulting damage, including additional expenses. For this we charge a lump-sum compensation amounting to 5% of the delivery value, but not more than a total of 10% of the delivery value.
- 6.2. Proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; the lump sum shall be offset against further claims. The Customer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum.

## **7. Delivery and transfer of risk**

- 7.1. Our deliveries are EXW from our warehouse in Dägeling (ICC Incoterms 2020), which is also the place of performance for the delivery and for any subsequent performance.
- 7.2. The risk of accidental loss or accidental deterioration (hereinafter referred to as "**transfer of risk**") of the products shall pass to the Customer at the latest upon handover. In the case of sale by delivery to a place other than the place of performance, the transfer of risk and the transfer of the risk of delay shall take place when the products are handed over to the forwarding agent, the carrier or the person otherwise designated to carry out the shipment.
- 7.3. The same shall apply if the Customer is in default of acceptance.

## **8. Incoming good inspection**

- 8.1. With regard to the Customer's obligations to inspect and give notice of defects, the provisions of Section 377 HGB (German Commercial Code) shall always apply to our deliveries. An inspection of the products must be carried out in any case before processing.
- 8.2. If the Customer fails to properly inspect the goods and/or report defects, our liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions.
- 8.3. If a notice of defects is unjustified, we are entitled to demand compensation from the Customer for the expenses incurred by us

## **9. Warranty for defects**

- 9.1. The statutory provisions shall apply to the Customer's rights in the event of material defects, unless otherwise stated in this GTC.
- 9.2. The basis of any liability for defects shall be the agreement reached on the quality of the products, in particular the product specification issued by KOA.
- 9.3. KOA shall not be liable for defects which the Customer is aware of or is grossly negligent in not being aware of when the contract is concluded (Section 442 German Civil Code - *BGB*).
- 9.4. If the delivered products are defective, we may, at our discretion, remedy the defect or provide a defect-free item (replacement delivery) as subsequent performance. Our right to refuse subsequent performance under the statutory conditions remains unaffected.
- 9.5. If the supplementary performance fails or if a reasonable deadline to be set by the Customer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Customer has the right - without prejudice to any claims for damages - to reduce the purchase price or withdraw from the contract in accordance with the statutory provisions. In the case of an insignificant defect, however, there shall be no right of withdrawal.
- 9.6. Within the scope of supplementary performance, KOA shall bear neither the removal costs of defective products already installed nor the installation costs of products delivered for subsequent performance if KOA was not originally obliged to process them.
- 9.7. If the expenses required for the purpose of subsequent performance are disproportionate, we may limit the reimbursement of expenses to a reasonable amount. When calculating this amount, the value of the Products in a defect-free condition and the significance of the defect shall be taken into account.
- 9.8. We are entitled to make the subsequent performance owed dependent on the Customer paying the purchase price due. The Customer is entitled to retain a reasonable part of the purchase price in proportion to the defect.
- 9.9. KOA's obligation to pay damages and compensation for wasted expenditure due to material defects is otherwise governed by Section 11 (Limitation of Liability). Further claims by the Customer due to defects are excluded.

## **10. Industrial property rights and copyrights**

- 10.1. We shall only be liable for third-party rights (industrial property rights, patents, copyrights, trademarks, etc.) if the property right exists under the law of the country in which the Customer has its billing address.
- 10.2. We shall not be liable if Products are made according to drawings, drafts, models or other equivalent descriptions or information provided by the Customer or if the Customer is responsible for the infringement of property rights for other reasons. In this case, the Customer shall indemnify us against all third-party claims arising from an alleged or actual infringement.
- 10.3. The Customer is obliged to inform us immediately in writing of any claims alleged or asserted by a third party and, at our request, to allow us to conduct any legal disputes (including out of court) to the extent legally possible.
- 10.4. Without our consent, the Customer shall not be entitled to acknowledge an infringement and shall reserve all defensive measures and settlement negotiations for us. If the Customer ceases to use the Products, he is obliged to point out to the third party that the cessation of use does not constitute an acknowledgement of an infringement of property rights.
- 10.5. At our discretion, we shall be entitled either to obtain a right of use for the Products or to modify the Products in such a way that the third party's property right is no longer infringed or to replace the Products. If this is not possible for us under reasonable conditions or within a reasonable period of time, the Customer shall be entitled to the statutory rights of withdrawal or reduction.
- 10.6. In all other respects, the provisions of Clause 9 shall apply accordingly to defects of title.
- 10.7. Our obligation to pay damages is otherwise governed by Clause 11.
- 10.8. We reserve our ownership of all cost estimates, design drawings, specifications and other documents and our copyright exploitation rights without restriction.

## **11. Limitation of liability**

- 11.1. Unless otherwise provided for in these GTC, KOA shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.
- 11.2. KOA shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in cases of intent and gross negligence.
- 11.3. In the event of simple negligence, KOA shall only be liable  
(i) for damages resulting from injury to life, body or health,

- (ii) for damages arising from the breach of a material contractual obligation (a material contractual obligation is an obligation whose fulfillment is essential for the proper execution of the contract and on whose fulfillment the contractual partner regularly relies and may rely); in this case, however, KOA's liability is limited to compensation for foreseeable, typically occurring damages.
- 11.4. The above limitations of liability shall also apply to breaches of duty by or for the benefit of persons for whose fault KOA is responsible under the statutory provisions. They shall not apply if KOA has fraudulently concealed a defect or has assumed a guarantee for the quality of the products and for claims under the German Product Liability Act (*Produkthaftungsgesetz*).
- 11.5. The Customer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if KOA is responsible for the breach of duty. Otherwise, the statutory requirements and legal consequences shall apply.

## **12. Statute of limitations (*Verjährung*)**

- 12.1. The limitation period for claims arising from defects is one year from delivery.
- 12.2. The aforementioned limitation periods of sales law also apply to contractual and non-contractual claims for damages of the Customer based on a defect of the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases.
- 12.3. Claims for damages by the Customer for damages in the context of fault-based liability in the event of intent and injury to life, limb or health as well as under the German Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

## **13. Retention of title**

- 13.1. The delivered products shall remain the property of KOA until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (hereinafter referred to as "**Goods under retention of title**"). If the value of all security rights to which KOA is entitled exceeds the amount of all secured claims by more than 10%, we shall release a corresponding part of the security rights at the Customer's request.
- 13.2. The Customer must store the Goods under retention of title with the care of a prudent businessman. He must insure them adequately at his own expense against fire, water and theft at replacement value.
- 13.3. Any processing and/or treatment of the Goods under retention of title shall be carried out for KOA. Any right of the Customer which has effectively arisen shall continue to exist in the processed or treated item. In the event of combination and/or mixing with other items not belonging to KOA, KOA and the Customer hereby agree that KOA shall acquire co-ownership of the new items and the mixed stocks (hereinafter referred to as "new goods") in the amount of the share resulting from the ratio of the value of the combined or mixed Goods under retention of title to the value of the other combined or mixed goods at the time of combination or mixing. The Customer shall store the new goods for KOA free of charge and with the care of a prudent businessman.
- 13.4. For the duration of the retention of title, the Customer is prohibited from pledging the goods under retention of title or transferring them by way of security. However, he may resell them in the ordinary course of business if he also agrees a reservation of title with his Customer. However, this authorization shall only apply as long as the Customer is not in default of payment to KOA.
- 13.5. If the Customer sells the Goods under retention of title, the Customer hereby assigns to KOA by way of security his claims against his buyer arising from the resale as well as those claims of the Customer in respect of the Goods under retention of title which arise against his buyers or third parties for any other legal reason (e.g. claims arising from tort and claims for insurance benefits) - including any balance or current account claims. KOA accepts the assignment. However, the assignment shall only apply to the amount corresponding to the price of the Goods under retention of title invoiced by KOA. The share of the claim assigned to KOA shall be satisfied with priority.
- 13.6. Until revoked, the Customer shall be authorized to collect the assigned claims. The assignment or pledging of such claims shall require the written consent of KOA. At KOA's request, the Customer shall be obliged to inform the third party of the assignment, unless KOA has no legitimate interest in doing so, and to provide KOA with the information and documents required to assert the claims. The Customer shall bear any collection costs incurred in this connection. He shall take all necessary measures at his own expense to prevent any impairment or loss of the rights to which KOA is entitled to the reserved goods or new goods.
- 13.7. In the event of seizure, confiscation or other dispositions or interventions by third parties over or in the Goods under retention of title, the Customer must inform KOA immediately in writing and support KOA in averting such measures.
- 13.8. The Customer is obliged, at KOA's request and where KOA has a legitimate interest, to grant KOA or a third party commissioned by KOA access to the Goods under retention of title in the Customer's possession, to send a precise list of the Goods under retention of title and/or - in the event of withdrawal by KOA - to surrender the Goods under retention of title to KOA.
- 13.9. The Customer shall bear the costs and expenses incurred as a result of the Customer's obligation to cooperate in the pursuit and enforcement of the rights to which KOA is entitled from the Goods under retention of title.

## **14. Export regulations**

- 14.1. Our deliveries are subject to the proviso that there are no obstacles due to national or international export control regulations, in particular embargoes or other sanctions.
- 14.2. The Customer is obliged to provide all information and documents required for the export or shipment.
- 14.3. Delays due to export inspections or approval procedures suspend deadlines and delivery times accordingly.
- 14.4. KOA is entitled to terminate the contract without notice if termination is necessary for KOA to comply with national or international legal provisions.
- 14.5. In the event of termination in accordance with Clause 14.4, the assertion of damages or the assertion of other rights by the Customer due to the termination is excluded.
- 14.6. The Customer shall comply with the applicable provisions of international and national (re-)export control law when passing on the Products supplied by KOA to third parties in Germany and abroad.

## **15. General provisions**

- 15.1. If the Customer is a merchant, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Itzehoe, Germany. However, KOA shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these GTC or an overriding individual agreement or at the Customer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, remain unaffected.
- 15.2. The legal relationships in connection with this contract shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 15.3. Should any provision of these terms and conditions or of the further agreements made be or become invalid, this shall not affect the validity of all other terms and conditions or agreements.

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