

## A. General stipulations

### 1. Area of application

1. The general sales and supply conditions (referred to below as "conditions") of Kögel Trailer GmbH (referred to below as "Kögel") apply exclusively in business trade with individual traders, incorporated partnerships and with companies as per § 14 BGB (German Civil Code), legal persons under public law, and special funds under public law.
2. These conditions apply to all services and all orders issued by Kögel and contracts drawn up with Kögel, including the fields of After Sales/Replacement Parts. In the framework of ongoing business relationships, these conditions also apply to future services, even if not explicitly agreed, provided that no specific and written deviations from the contract are agreed.
3. The conditions apply to all contract relationships. In addition, the following apply:
  1. For sales and supply, the conditions stated under B.
  2. For maintenance and repair contracts, the conditions listed under C.
  3. For the Telematics System, the conditions listed under D.
4. The incorporation of the general sales and supply conditions and the conditions quoted under 1.3.1 and 1.3.2 depends exclusively on German Law.

### 2. Defence clause

1. Unless a different contractual agreement has been specifically made, the Kögel conditions are exclusively applicable. Other regulations, in particular general terms of business, purchasing conditions and conditions of supply of the customer, do not form a constituent part of the contract, even if they have not been expressly contradicted by Kögel.
2. The Kögel conditions also apply in particular if the customer accepts the delivery without reservation, with knowledge of these conditions.

### 3. Right of retention, right of set-off, assignment

1. The customer is not entitled to right of retention or set-off unless the counter-claim, on which the rights are based, has been legally established, or has been recognised by Kögel.
2. The assignment of a claim against Kögel to a third party, irrespective of the type, is only permitted with the written agreement of Kögel.

### 4. Ownership and intellectual property rights and copyright

1. Kögel reserves all rights to title for cost estimates, drawings, illustrations, samples, documentation and similar information of a tangible or intangible nature – including in electronic form ("materials"). Materials must not be made available to third parties without the prior written approval by Kögel. At the conclusion of the contract, or if a contract should not be signed, the materials must, according to the wishes of Kögel, either be returned to Kögel without delay or be destroyed or deleted completely. Proof of deletion or destruction must be given to Kögel. A right of retention exists only in the case of uncontested or legally established counter-claims.
2. If Kögel hands over materials to the customer, no commercial intellectual property rights or copyrights that are due to Kögel are thereby transferred to the customer. This also does not constitute the issuing of a licence or other rights to the materials.
3. No commercial intellectual property rights or copyrights or copyrighted rights of usage that are due to Kögel are transferred to the customer through delivery of goods to the customer. Also, the delivery of goods does not constitute the issue of a licence to commercial intellectual property rights, copyrights or copyrighted rights of usage with reference to the goods delivered.

### 5. Applicable law, place of jurisdiction, severability clause for all provisions, other

1. Personal data will be stored by Kögel only with due regard to the legal requirements. The separate data privacy policy also applies.
2. If certain stipulations of these conditions or parts thereof are ineffective or become ineffective, the remaining conditions remain unaffected.
3. The exclusive legal domicile for all disputes arising on the basis of this contractual relationship is Augsburg, Germany. Kögel reserves the right to take action at the legal domicile of the customer.
4. German substantive law is applicable with the exclusion of UN purchasing law (CISG).
5. The German language, as a recognised official language of the EU, is applicable both as the language of the contract and in the preparation of the text of the contract.
6. If any provision of these conditions should be or become invalid, this shall not affect the validity of the remaining provisions. The ineffective provision shall be replaced by an effective provision that comes closest to the intended economic purpose. The same applies in the event of an omission.

## B. Conditions for sales and supply

### 1. Quotation, conclusion of contract

1. Quotations from Kögel are non-binding.
2. If the order from the customer is to be qualified as a quotation, then Kögel can accept this within a period of three weeks – unless otherwise agreed.
3. The scope of supply by Kögel is finally determined by the written acceptance of the quotation / order confirmation and the enclosures exclusively. An updated order confirmation is produced upon each change initiated by Kögel or by the customer. All agreements made between Kögel and the customer for the execution of this contract are finally determined in the contract and in these conditions.  
Ancillary verbal agreements and modifications to the contract or to the conditions require written confirmation from Kögel.
4. The transfer of rights and obligations of the customer to third parties requires prior written agreement from Kögel.

### 2. Prices, terms of payment

1. Unless otherwise stipulated below or in the written agreement between the parties, prices are quoted ex Kögel manufacturer's works in Burtenbach.
  - a) **Direct export by Kögel to third countries**  
In the case of export to countries outside the EU, Kögel shall act as the exporter under customs and foreign trade law in as far as Kögel has not been commissioned as a subcontractor by the customer.
  - b) **Export to third countries by Kögel as a subcontractor**  
Where the parties have agreed that the goods will be exported by Kögel as a subcontractor, Kögel will draw up the export declaration per procuracionem and will be listed on the export documents as the customer's representative (so-called direct representation). In such cases, however, the exporter under foreign trade law is the customer, who is responsible for applying for an export licence and ensuring compliance with all provisions of foreign trade law.
1. Unless agreed otherwise, prices are understood to be in euros. In the case of contacts in foreign currencies, the exchange rates quoted in the contract are applicable.
2. In the case of subsequent modifications to the trailer or agreed delivery time initiated by the customer, Kögel reserves the right to impose a subsequent processing fee currently to the value of €190.00 net per modification case and per trailer. This does not apply if the customer informs Kögel in writing of the desired modification within 14 calendar days of the date of the original order confirmation. Additional material expenses relating to each modification request will be calculated separately.
3. In the case of the subsequent delayed placement of a marking order where data is not on hand, Kögel reserves the right to impose a processing surcharge, currently to the value of €190.00 net per trailer. Furthermore, Kögel reserves the right to impose a processing surcharge, currently to the value of €190.00 net per trailer, in the case of a delayed tarpaulin approval or marking approval. The order placement or approval is considered to be delayed if the customer does not inform Kögel in writing of the placement of the order or of the approval within 14 calendar days of the date of the order confirmation or the original communication of the proposal. Additional material expenses relating to each modification request will be calculated separately.
4. The prices are net and subject to the legally applicable rate of value added tax.
5. Before sending of the order confirmation, an advance payment of 15 percent of the total purchasing price as specified in our offer is payable within 5 calendar days. Only after receipt of this advance payment will the order confirmation be dispatched and the contract thereby concluded.
6. If payments are made by invoice, to the extent legally permissible we are entitled to carry out a credit check for the purpose of pre-contractual measures or for contract processing. We use credit agencies for this purpose. Address data is also used to determine probability values about future payment behaviour. Data processing is carried out based on Art. 6 (1) b) of the GDPR. You will find the data protection notices designed to inform you of the associated data processing activities below. If you object to such data processing activities or do not want the credit check to be carried out, it is not possible to make payment by invoice/conclude a contract with us.

**DATA PROTECTION NOTICE:** Before entering into transactions with a financial default risk, we shall conduct a credit check. We are informing you of the associated data processing activities in accordance with Arts. 13 and 14 of the GDPR: The data controller is Kögel Trailer GmbH, [datenschutz@koegel.com](mailto:datenschutz@koegel.com). We transfer your personal data (name, address, contract data (e.g.

acceptance and contractual execution of a transaction, information about undisputed, due and repeatedly reminded or titled receivables and settlement of the same, non-contractual or fraudulent conduct) to Verband der Vereine Creditreform e.V., Hellersbergstrasse 12, 41460 Neuss, Germany, or Euler Hermes Deutschland Niederlassung der Euler Hermes SA, Friedensallee 254, 22763 Hamburg, Germany, for the purpose of a credit check. The purpose of this is to check your creditworthiness (identity check to determine whether negative entries exist, determination of probability values based on mathematical/statistical procedures relating to solvency and willingness to pay) and to transfer the result (information/score values to assess creditworthiness/solvency and willingness to pay) to us. This data helps with our decision-making process in assessing your creditworthiness or rating your future payment behaviour. Please click on the following links to find out more about the credit agency's data processing activities: <https://en.creditreform.de/navigations/content-footer/data-privacy-declaration.html>, and <https://www.eulerhermes.co.uk/privacy-notice.html>. Our data processing activities are based on Art. 6 (1) b) of the GDPR, insofar as this is necessary in the context of the implementation of pre-contractual measures or the execution of the contract, as well as on our legitimate interest according to Art. 6 (1) f) of the GDPR. We have a legitimate interest in fulfilling our obligations under our insurance policy against bad debts, avoiding payment default and thus protecting our company from financial losses. We only carry out such data processing activities if we are on the verge of concluding a contract that incorporates a financial default risk (e.g. credit or instalment payment contracts, purchase order/delivery on account, other advance services provided by us) and the conclusion of which only depends on the issue of your creditworthiness. If unchanged contracts already exist, we shall again have a legitimate interest in the event of the contract being breached. In addition to your data being transferred to the credit agency, only our Financial Accounting staff and our service providers who have to deal with this data for the above-mentioned purposes in the context of their tasks have access to your data. Data is not transferred to third countries. We shall store the data that is transferred to us by the credit agency until it has been used for its intended purpose (e.g. conclusion of the contract with you). Exceptions to this rule shall apply insofar as there are contradictory statutory or contractual retention periods or we still require the data to establish, exercise or defend legal claims (e.g. if we have to prove that the credit check was carried out properly in the context of our insurance policy against bad debts). Naturally, you can object to these data processing activities – which are exclusively based on our legitimate interest – at any time in the future (as per Art. 21 (1) of the GDPR), provided that your particular personal situation gives rise to interests that warrant protection in the exclusion of data processing and that we no longer have any compelling legitimate grounds for further data processing. In addition to your right to object, you also have a right of access to, rectification of or erasure of personal data concerning you and a right to restriction of data processing by us if certain conditions pursuant to Arts. 15 to 18 of the GDPR are met. Furthermore, you have the right to lodge a complaint with a supervisory authority if you believe that the processing of your personal data violates the data protection provisions (as per Art. 77 of the GDPR).

7. Transport, despatch, loading, packaging and freight charges are not included in the prices and will be invoiced separately unless the written contract between the parties contains deviating information.
8. For deliveries within the European Union, the customer must communicate their sales tax identification number in good time before the delivery date agreed in the contract, as evidence of exemption from sales tax. In the event of non-receipt of prompt and complete notification, Kögel reserves the right to charge the sales tax applicable in each individual case.
9. For deliveries outside the EU, Kögel is entitled to subsequently charge the legal sales tax if the customer does not provide an export certificate within a month of the date of shipment.
10. Kögel reserves the right to change its prices correspondingly following the conclusion of the contract if, between the conclusion of the contract and the delivery, cost reductions or cost increases arise for which Kögel is not responsible, especially if these are due to tariff agreements or the modification of material and raw material prices such as for aluminium, steel, rubber, PVC, or wood, or in the case of a change in energy prices such as for electricity or gas, or changes in business taxes. Kögel will provide the ordering party with proof of these price reductions or increases upon request.
11. Unless agreed otherwise, the purchase price (net) is due for payment without discount when Kögel advises of readiness for shipment of the delivery goods. If the price is not finalised at this point, or if the customer cannot be advised of this for other reasons, the purchase becomes due for payment upon receipt of the invoice.
12. In the case of special manufactures, or large delivery volumes, Kögel is entitled to issue the customer a partial invoice for an advance payment before starting execution. This partial invoice becomes due for payment by the customer upon receipt of the invoice. Kögel is entitled

to make the execution of the order dependent upon the receipt of the advance payment. The paid partial invoice will be taken into account when preparing the final invoice.

13. Payment is deemed to have been made only when the amount has been credited to the bank account of Kögel. The legal consequences of a delay in payment by the customer are determined in accordance with the legal regulations of the BGB (German Civil Law), provided that these conditions do not contain any deviating regulations.
14. If the customer defaults on payment, Kögel is entitled, after the unsuccessful conclusion of an extension of one week, to make all claims against the customer due for payment and / or to withdraw from the contract.
15. For every reminder or grace period notification, Kögel is entitled to charge an administration fee of €5.00 for the first reminder, €10.00 for the second reminder and €20.00 for the third reminder. In addition, the provision as per § 288 Para. IV of the German Civil Code applies.
16. If, after completion of the contract, it becomes evident that the payment claim is jeopardised by the customer's inability to perform, Kögel is entitled to the rights arising from § 321 BGB (German Civil Code) (defence of uncertainty). Kögel is then also entitled to make due for payment all claims that are not subject to a statute of limitations from the current business relationship with the customer.  
This defence of uncertainty covers all future outstanding deliveries and services from the business relationship with the customer.
17. Deducing a discount is not permissible unless the parties agree otherwise in writing.

### 3. Deadlines for deliveries and service times

1. All delivery periods and deadlines quoted by Kögel are understood as only approximate unless the deadlines are indicated in the contract as being specifically binding.
2. These delivery periods and deadlines start only after complete clarification of all execution details and technical questions referring to the delivery goods.  
In addition, the customer must fulfil all obligations incumbent on him in a proper manner and in good time. If these prerequisites are not fulfilled, the deadlines shall be extended accordingly, unless Kögel is responsible for the delay of the delivery. The defence of non-fulfilment of the contract remains reserved.
3. "Force Majeure" means the occurrence of an event or circumstance ("force majeure event") that prevents Kögel Trailer GmbH from fulfilling one or more of its contractual obligations under the Contact, if and insofar as Kögel Trailer GmbH proves that:

- a) this obstacle is beyond its reasonable control; and
- b) it could not reasonably have been foreseen at the time of the conclusion of the Contact; and
- c) the effects of the obstacle could not reasonably have been avoided or overcome by the party concerned.

If Kögel Trailer GmbH fails to fulfil one or more of its contractual obligations due to a failure of a third party whom it has commissioned to perform the entire Contact or part of the Contact, Kögel Trailer GmbH may only invoke force majeure to the extent that the requirements for the assumption of force majeure, as defined in paragraph 1 of this clause, apply not only to Kögel Trailer GmbH but also to the third party.

Until proven otherwise, the following events concerning Kögel Trailer GmbH are presumed to meet the requirements for the assumption of force majeure under paragraph 1 lit. (a) and lit. (b). In this case, Kögel Trailer GmbH only has to prove that the prerequisite under paragraph 1 lit. (c) is actually met:

- a) War (declared or not declared), hostilities, attack, acts of foreign enemies, extensive military mobilisation;
- b) Civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy;
- c) Currency and trade restrictions, embargoes, sanctions;
- d) Lawful or unlawful official acts, compliance with laws or government orders, expropriation, seizure of works, requisition, nationalisation;
- e) Plague, epidemic, pandemic, natural disaster or extreme natural event;
- f) Explosion, fire, destruction of equipment, prolonged failure of means of transport, telecommunications, information systems or energy;
- g) General industrial unrest such as boycott, strikes and lockouts, slowdown strikes, occupation of factories and buildings.

Kögel Trailer GmbH will inform you of this immediately as a customer.

In the event that "force majeure" within the meaning of the previous paragraphs exists, Kögel Trailer GmbH is released from the obligation to fulfil its contractual obligations as well as from any compensation obligations or other consequences of a possible breach of contractual

obligations, but only if the information is provided immediately. If the information is not provided immediately, the exemption will only take effect from the moment the notification reaches you as a customer.

If the effect of the asserted "force majeure" is temporary, the consequences set out in the previous paragraph shall only apply as long as the asserted obstacle prevents Kögel Trailer GmbH from fulfilling its contractual obligations. Kögel Trailer GmbH must notify you as a customer as soon as the "force majeure" no longer impedes the fulfilment of its contractual obligations.

Kögel Trailer GmbH will take all reasonable measures to limit the effects of the "force majeure" on which it is based when fulfilling the contract.

4. Force majeure or other hindrances which are outside the sphere of influence of Kögel, e.g. war, strikes, lockouts or similar, will extend time limits and postpone deadlines in accordance with their effect.
  5. The fulfilment of the delivery deadline is subject to correct and in-time availability of supplies and raw materials, unless the correct or delayed availability of supplies and raw materials is the responsibility of Kögel.
  6. Kögel will advise the customer of delivery readiness after completion of the delivery goods. The customer is obligated to collect the delivery goods within three working days of receipt of the readiness advice.
  7. Kögel is entitled to reasonable part-deliveries and partial invoices.
  8. If the customer defaults on acceptance or if he contravenes any other duty to collaborate, Kögel is entitled to claim damages incurred accordingly, including any extra expenditure. Any other claims remain reserved.
  9. If Kögel should be in default on the fulfilment of the contract for other reasons, the default damages to be evidenced are limited to 0.5 % of the contract value of the delayed delivery for each full week of the default, and a maximum of 5 % of the contract price.
  10. The customer is obliged, on request by Kögel, to declare, within a reasonable period of two weeks, whether he will withdraw from the contract because of delivery delays that are the responsibility of Kögel or insist on delivery.
  11. Storage fees / delayed delivery
    1. If the despatch or provision of a semi-trailer is delayed for reasons for which the customer is responsible, in the case of a delay of more than 20 days after the receipt of the readiness advice, Kögel can demand storage fees of €15 net for each day from the 21st day to the 30th day after the receipt of the readiness advice; €30 net for each day from the 31st day to the 60th day after the receipt of the readiness advice; and €45 net for each further day from the 61st day after the receipt of the readiness advice.  
This applies exclusively to a customer with his business headquarters in Germany.  
Both partners to the contract reserve the right to provide evidence of higher or lower storage costs.
    2. If the despatch or provision of a semi-trailer is delayed for reasons for which the customer is responsible and the customer's business is domiciled abroad, in the case of a delay of more than 30 days after the receipt of the readiness advice, Kögel can demand storage fees of €15 net for each day from the 31st day to the 60th day after the receipt of the readiness advice; €30 net for each day from the 61st day to the 90th day after the receipt of the readiness advice; and €45 net for each further day from the 91st day after the receipt of the readiness advice.  
This applies exclusively to a customer with his business headquarters outside of Germany.  
Both partners to the contract reserve the right to provide evidence of higher or lower storage costs.
  12. If the delivery contract is reversed and if the customer is obliged to pay damages to Kögel, then Kögel is entitled to demand lump-sum damages amounting to 15% of the net order value provided that the customer does not prove that the contractual infringement for which the customer is responsible has not led to damages or to a reduction in value or provided that such losses incurred by Kögel are considerably less than the lump sum figure.
  13. Kögel reserves the right – as an alternative to Paragraph 3.12 – to optionally calculate the actual value of the damage and demand compensation. The quantified letter of claim constitutes the exercising of this option.
- 4. Place of fulfilment and transfer of risk**
1. The risk of accidental loss or deterioration is transferred to the customer on the day of advice of shipment or readiness for acceptance ("advice of readiness").
  2. If the customer so desires, Kögel shall take out transport insurance for the delivery. The customer shall bear the costs incurred thereby.

3. The place of fulfilment for all deliveries and services and for the execution of any defect rectification is the Kögel manufacturing works in Burtenbach.

## 5. Defects

1. Kögel is liable for defects in newly manufactured goods as follows for a period of 12 months from the transfer of risk:
  1. Warranty claims by the customer presuppose that the customer has properly fulfilled his obligation to inspect and give notice of defects as per § 377 HGB (German Commercial Code).
  2. Insofar as there is a defect in the delivery that can be proven to have arisen before the transfer of risk, Kögel is entitled, at its discretion, to provide supplementary performance by rectifying the defects (up to three times for an identical defect) or by delivering new goods. In the event of a defect rectification, Kögel is obliged to bear the costs of the rework or of the replacement delivery in itself including the usual shipping costs provided that these costs are not increased due to the goods supplied being taken to a location other than the place of fulfilment. For delivery locations outside the Federal Republic of Germany, the total costs to be borne are limited to the value of the order. The assumption of further costs incurred by the customer such as the costs involved in taking goods to the place of rework, due to downtime, or resulting from the provision of a replacement trailer is expressly excluded.
  3. Warranty claims are not valid for merely negligible deviations from the agreed condition or in the event of negligible impairment of the usability.
  4. Warranty claims by the customer are also excluded for natural wear or damage occurring after the transfer of risk as a result of defective or negligent handling, excessive loading, or unsuitable operational materials or for damage that occurs as a result of special external influences or weather factors that are not assumed in the contract.
  5. If modifications or repair work are carried out by the customer or by third parties, there is no warranty liability for the resulting consequences.
  6. As well as the warranty for a period of 12 months in accordance with the provisions outlined in B.5.1. to 5., Kögel also provides a guarantee against rust penetration damage to the vehicle frame for a period of 10 years, calculated from the transfer of risk. The vehicle frame must be coated with a cathodic dip-paint coating (KTL). Rust penetration damage includes both corrosion from the inside out and pitting corrosion. The guarantee against rust penetration damage is only valid under the condition that the original cathodic dip-paint coating is undamaged. The guarantee is invalid for the area of the vehicle frame that has been coated with the cathodic dip-paint coating, on which damage has been repaired. However, the guarantee is not invalid if these repairs have been carried out by Kögel within a period of 12 months of the transfer of risk, within the scope of the warranty in accordance with B.5.1. Within the scope of the guarantee, Kögel will repair the rust penetration damage in accordance with the state of the art.
  7. If there is a negligible defect, the customer has the right to a reduction in the contract price only. The right to reduction is otherwise excluded.
  8. If the defect was also caused by the customer, in particular by non-observance of his obligation to damage prevention and damage reduction, Kögel has the right, after rectification, to make a claim for damages against the customer which is commensurate with their contributory negligence.
  9. Data protection: The data protection controller is Kögel Trailer GmbH, datenschutz@koegel.com. The legal bases for processing the Customer's personal data can be found in Art. 6 (1) b), c) and f) of the GDPR. The purpose of data processing is to implement the business relationship existing with the Customer. Kögel's legitimate interest lies in the fast, efficient and affordable delivery of the ordered goods as well as the handling of the service contracts and the fulfilment of the Customer's warranty claims. Kögel employees who need to access the data to complete their tasks and, to the extent necessary, the suppliers that Kögel engages to deliver the ordered goods directly to the Customer or to provide services such as repairs or similar work have access to the data. This data may be transferred to public authorities (e.g. investigative authorities) on account of legal regulations. Any data transfers to third countries related to engagement of the suppliers are protected by an EU Commission adequacy decision pursuant to Art. 45 of the GDPR or by appropriate safeguards pursuant to Art. 46 of the GDPR. Kögel shall retain the Customer data for the term of the contract and shall then erase it if there are no legal retention obligations to prevent erasure or if the data is no longer required to establish, exercise or defend

legal claims (as per Art. 17 (3), b) and e) of the GDPR). The Customer also has a right of access to, rectification of or erasure of personal data concerning them and a right to restriction of data processing by Kögel if certain conditions pursuant to Arts. 15 to 18 of the GDPR are met. The Customer also has the right to object to the further processing of their personal data if interests that warrant protection in the exclusion of data processing arise from grounds relating to their particular personal situation, and if we no longer have any compelling legitimate grounds for further data processing (as per Art. 21 (1) of the GDPR). Furthermore, the Customer has the right to lodge a complaint with a supervisory authority if they believe that the processing of their personal data violates the data protection provisions (as per Art. 77 of the GDPR).

2. Liability for used delivered goods, used trailers or used parts excludes the defect warranty.
3. Colour deviations in the paintwork and the colours of parts of any kind, tarpaulin colours or digital prints within the technically permitted scope do not constitute defects. In connection with the introduction and repositioning of REACH-compliant paints and manufacturing processes, no warranty can be offered for the colour fidelity of paintwork or colours of parts of any kind, tarpaulin colours or digital prints compared with trailers that have already been delivered.

#### **6. Defects of title**

1. Unless otherwise agreed, Kögel is only obliged to deliver the goods free from commercial intellectual property rights (e.g. brand, patent and registered designs), copyrights and other rights of third parties, within Germany.
2. Insofar as third parties have valid claims against the customer due to infringement of intellectual property rights, Kögel will be liable for a period of 12 (twelve) months, calculated from the date of delivery, in accordance with the following regulations:
  1. Kögel will, at its discretion and expense, either obtain a right of use for the delivery in question or modify or replace the delivered goods in such a way that the applicable intellectual property rights are not infringed ("supplementary performance"). Insofar as the supplementary performance fails, the customer is entitled to the legal rights of withdrawal and reduction of price.
  2. The obligations detailed in subparagraph 6.2.1 exist only insofar as the customer advises Kögel immediately and in writing of the claims made by third parties, does not recognise an infringement and reserves all rights to take preventative action and initiate settlement negotiations. If the customer ceases to use the delivered goods for reasons of damage limitation or other significant reasons, he is obliged to advise the third party that the cessation of use does not constitute acceptance of an infringement of intellectual property rights.
3. Customer claims against Kögel are excluded if the customer is responsible for the infringement of intellectual property rights:
  1. The liability of Kögel towards the customer is particularly excluded if the customer carries out modifications to the delivered goods, fits ancillary devices or combines the delivered goods with other goods or devices and the infringement of intellectual property rights is based thereon.
  2. Insofar as Kögel is claimed against by third parties as a result of an infringement of intellectual property rights based on the causes detailed in subparagraph 6.3.1, the customer must indemnify Kögel.
  3. In addition, Kögel is not liable for infringement of third party intellectual property rights through delivered goods that have been manufactured in accordance with drawings, developments, stipulations or other details provided by the customer. Kögel is also not liable for unforeseeable application of the delivered goods.
  4. Insofar as Kögel is claimed against by third parties as a result of an infringement of intellectual property rights based on the causes detailed in subparagraph 6.3.3, the customer must indemnify Kögel.
  5. In other respects, in addition to the liability of Kögel in accordance with subparagraphs 6.2. and 6.3, the regulations in accordance with subparagraph 7 apply correspondingly.
4. Other defects of title
  1. Insofar as other defects of title exist, the regulations in accordance with subparagraphs 6.2 to 6.3 apply correspondingly.
  2. In other respects, the liability of Kögel for other defects of title is assessed in accordance with the regulations in subparagraph 7.
5. Further claims or claims other than those regulated in this subparagraph and in subparagraph 7 by the customer against Kögel and its vicarious agents due to a defect of title are excluded.

#### **7. Liability**

1. Kögel is liable, even in the event of damages resulting from breaching obligations during the contract negotiations, irrespective of the legal reason – in particular also for damage that has not been caused to the delivered goods themselves – only in the case of wilful intent, culpable breaching of significant contractual obligations, gross negligence by the corporate bodies or executive employees, culpable injury to life, body, health, fraudulent withholding of defects, guarantees of the absence of defects, and defects insofar as liability is required according to the German Product Liability Act (ProdHaftG).
  2. In the event of a breach of significant contractual obligations, Kögel is also liable for gross negligence of non-executive employees and for minor negligence. In the event of minor negligence, liability is limited to contract-typical damages that were reasonably predictable. Significant contractual obligations are present if the exclusion of liability relates to an obligation, the performance of which is necessary to enable the due implementation of the contract at all, and which the purchaser can regularly rely on compliance with.
  3. Further liability – for any legal reason whatever – especially for damages which have not arisen on the delivered goods, is excluded.
  4. Kögel is not liable for the consequences of defects that are excluded with respect to the warranty.
  5. Irrespective of the basis of the claim, Kögel is only liable for material and property losses and for personal injuries within the framework of any existing business liability insurance. The insured sum amounts to overall 5 million euros for personal injury and property damage. In as far as the insurer is not liable for payment (e.g. deductible, serial damage, annual maximisation, risk exclusion), Kögel shall bear this indemnification limited by the amount of the deductible in the business liability insurance policy.
  6. In the case of servicing or recall initiated for legal reasons or voluntarily by Kögel, Kögel is entitled to inform the customer and to request that the customer allow the trailer to undergo an inspection in a service workshop named by Kögel within a specified period. Paragraphs 7.1 to 7.5 above also apply.
- 8. Statute of limitations**
1. Unless otherwise agreed, claims by the customer against Kögel as a result of and in connection with the delivery – for whatever legal reason – shall lapse one year after the handover of the delivery or transfer of risk.
- 9. Calculation of part exchange value of trailers**
1. If used trailers are traded in as part exchange, the value to be determined on the date of takeover is binding if a reduction in value or damage has occurred between the conclusion of the contract and the takeover of the used trailer.
  2. If agreement cannot be reached concerning the amount of reduction in value through negotiation, Kögel is entitled to carry out a DAT (German automobile trust) estimate. The result of the estimate will be used as the basis for settlement of the used trailer. The cost of the estimate will be taken into account as a deduction.
  3. Insofar as contractually agreed that the used trailer to be accepted in part exchange by Kögel must be tested by the TÜV (German Technical Inspection Association) before handover, testing by any other official or officially approved testing association is excluded. At the same time, the test should not date back more than 14 days. All faults detected by the TÜV which make it necessary, in accordance with the test report, to present the trailer again must be rectified by the customer at his own cost without this having any effect on the amount agreed on for the part exchange. The test report must be presented before the trailer is handed over. If the customer does not fulfil these obligations by the agreed handover date, Kögel is entitled to carry out the repair of the faults and to charge for these repairs, or to refuse the part exchange of the used trailer and to make the amount agreed on as the part exchange immediately due for payment.
- 10. Reservation of proprietary rights**
1. Kögel retains the proprietary rights to the delivery until all payments due under the delivery contract have been received, including all current account balance claims to which Kögel is entitled vis-à-vis the customer, now or in future.
  2. If the customer behaves in a manner contrary to the terms of the contract, particularly by being in default of payment, Kögel is entitled to assert reservation of proprietary rights and to withdraw from the contract.
  3. During the period of reservation of proprietary rights, Kögel is entitled to be in possession of the trailer registration document (Registration Certificate Part II).
  4. The taking back of the delivery does not constitute withdrawal from the contract unless Kögel declares this specifically and in writing. The garnishment of the delivery does not constitute withdrawal from the contract unless Kögel declares this specifically and in writing. Any proceeds of sale are to be added to the obligations of the customer – less reasonable costs of sale.
  5. The customer is obligated to handle the delivery with care; he is particularly obligated to insure the goods fully comprehensively and at the new value.

6. In the event of garnishment or other interventions by a third party, the customer must inform Kögel immediately in writing so that Kögel can take legal action in accordance with § 771 ZPO. If the third party is unable to reimburse Kögel for judicial and extra-judicial costs in accordance with § 771 ZPO, the customer will be liable for the expenditure and losses arising.
7. The customer is entitled to resell the delivered goods in the ordinary course of business. However, the customer must at this point assign to Kögel all receivables to the value of the final invoice amount (including VAT) of Kögel's claim that are created by the onward sale to his customer or a third party, irrespective of whether the delivered goods have been sold with or without further processing.
8. The customer remains entitled to collect this claim, even after assignment. Kögel's right to collect the claim itself remains unaffected. Kögel undertakes not to collect the claim as long as the customer meets his payment obligations from the acquired proceeds, even towards third parties, does not default on payments and in particular does not file an application for the opening of bankruptcy, composition or insolvency proceedings and there is no suspension of payments.
9. Kögel can demand that the purchaser discloses the assigned demands and their debtors, communicates all necessary information for collection, hands over all associated documents and advises the debtors (third parties) of the assignment.
10. Processing or modification of the delivered goods by the customer is always carried out for Kögel. If the delivered goods are processed using objects that do not belong to Kögel, then Kögel acquires joint property rights to the new article based on the value of the delivered goods (final invoice value, including VAT) in proportion to the other processed items at the time of processing.
11. For the article created as a result of the processing, Kögel reserves the right of ownership according to the above regulations. In this respect, Paragraph 10 applies accordingly.
12. Kögel undertakes to release the securities due to Kögel upon request by the customer insofar as the realisable value of the security exceeds the claim to be secured by more than 10%; the choice of securities to be released is incumbent on Kögel.

#### 11. Leasing and hire purchase

1. If and to the extent that Kögel Trailer has consented currently or subsequently to a new purchase agreement with a leasing company in accordance with their conditions in the context of a lease, or with a financing company in the context of a hire purchase by the customer, in conjunction with an existing purchase agreement of the customer and at the request of the customer, the following applies:
  2. This consent is given to the customer with regard to the existing purchase agreement expressly subject to the condition precedent that the new purchase agreement with the lessor / financing company is fully effective under their conditions. Otherwise, the previous purchase agreement between the customer and Kögel Trailer is retained with unchanged conditions. Cancellation of this original purchase agreement with the customer takes place only once the new purchase agreement with the lessor / financing company has been fully processed and paid.
  3. If and to the extent that the lessor / financing company demands a down payment from the customer as a first instalment, or the payment of the VAT on the purchase price in advance to Kögel Trailer or to the lessor/financing company as a precondition of maturity / payment of the purchase price, the customer promises Kögel Trailer to make this payment immediately or within the specified periods.
  4. If and insofar as the lessor / financing company demands an acceptance declaration / handover report signed by the customer as a precondition of maturity / payment of the purchase price, the customer promises Kögel Trailer to sign this declaration / report immediately, at the latest 3 days after completion of the trailer and after the customer has received the handover report / acceptance declaration, and to return it to the lessor in accordance with the other demands of the leasing company and to send a copy to Kögel Trailer, provided that the item being purchased is free from defects.  
The customer will be provided with the opportunity of examining the trailer for defects.
5. If the customer fails to meet his obligation as per Para. 1.3 or 1.4 or does not meet this obligation promptly, or if the lessor / financing company withdraws for reasons that are not the responsibility of Kögel Trailer, the following applies:
  1. If the lessor withdraws from the leasing contract or the financing company withdraws from the hire purchase contract for reasons that are the responsibility of the customer, particularly if the customer has infringed upon his obligation as per Para. 1.3 or Para. 1.4, the original contract between the customer and Kögel Trailer shall become effective again due to the invalidity of the condition precedent.
  2. If the customer is in default of his obligation as per Para. 1.3 by more than seven days, the customer shall be jointly and severally liable, together with the lessor, for the purchase price claim.

3. The right of Kögel Trailer to additionally demand damages from the customer due to an infringement of Para. 1.3 remains unaffected.

## **C. Conditions for service and repair contracts**

### **1. Area of application**

If Kögel carries out servicing or repair work as a result of a service or repair contract, the conditions specified in C. shall apply in addition to the regulations in A. and B. provided that the written service or repair contract does not contain any deviating regulations.

### **2. Acceptance**

1. After completion of the work and after a completion advice is issued by Kögel, acceptance must take place without delay. Acceptance shall take place at the site of installation.
2. A record must be made of the acceptance which must be signed by both parties.
3. If the customer is absent on the agreed acceptance date, performance shall be deemed to have been accepted.

### **3. Personal attribution**

Kögel does not accept any responsibility or liability for culpable behaviour of persons provided by the customer. Such persons are vicarious agents of the customer.

### **4. Assembly defects**

If any assembly defects arise that are the responsibility of Kögel, the customer is entitled to free-of-charge rectification.

### **5. Liability**

With regard to liability and liability standard, Section B. Para. 7 applies analogously.

### **6. Dates and deadlines**

1. If dates for assembly work have been specified bindingly, these only start to run when the customer has fulfilled all his obligations to cooperate.
2. If Kögel culpably fails to meet the deadlines, the customer is obliged to set a reasonable new deadline in writing.
3. After expiry of this deadline, the customer can withdraw from the contract. Claims for damages caused by the delay are excluded, provided that the delay is not based on intent or gross negligence.
4. Subsequent requests for modification from the customer shall be carried out at his own cost, in as far as is possible and reasonable. These will extend the time limits correspondingly.

### **7. Extra expenditure**

Extra expenditure over and above the commissioned task, in particular for modified assembly and services as well as for other non-foreseeable encumbrances which are the responsibility of the purchaser, shall be remunerated separately in accordance with the expenditure.

### **8. Terms of payment**

1. Following acceptance (see C. 2.1), the invoice for maintenance, repair, or assembly work shall become due for payment.
2. Kögel has a right of retention on the relevant trailer until the invoiced amount is paid in full.

## **D. The Kögel Telematics System**

### **1. General**

1. The Telematics System collects and processes data concerning the relevant Kögel trailer, such as location, trip time, progress, geofencing, cooling, trailer and trailer EBS data ("trailer data"). GPS satellite systems made by independent third party providers are used to determine location.
2. The Telematics System consists of a Telematics module ("Telematics Hardware") that is connected to the electronic brake system (EBS) in the trailer or to a device fitted in the trailer, such a cooler, and also software developed specifically for the Telematics System ("Telematics Software") which is used to operate the Telematics Hardware.
3. After collecting the trailer data, the trailer data is temporarily stored on the Telematics Hardware and sent to Kögel's Telematics Web Portal ("Kögel Web Portal"). Mobile networks of independent third party providers are used to send the trailer data.
4. The customer can then use the Kögel Web Portal to retrieve the trailer data collected. To do this, the collected and transmitted trailer data is collated on a server where it is stored, processed and used. In particular, the trailer data is presented in graphical form. Servers of independent third party providers are used to store the trailer data.
5. In addition to the regulations in A., B., and C., the conditions in D. apply.

### **2. Telematics System**

1. Kögel sells, supplies and leases both trailers with the Telematics System as well as the Telematics System as a separate unit, to then be used by the customer or a user ("customer"). The Telematics System consists of the Telematics Hardware and the pre-installed Telematics Software.
2. The General Terms and Conditions of Sale and Supply of Kögel also apply to the manufacture, supply and leasing of the Telematics System.
3. Kögel intends that the Telematics System can establish a connection to the Kögel Web Portal via third party mobile networks in order to send trailer data to the Kögel Web Portal.
4. All rights to the Telematics Hardware and the Telematics Software, such as copyrights, patents, designs, and other industrial property rights, remain with Kögel.

### 3. **Web Portal**

1. Kögel provides the Kögel Web Portal for the trailer data to be collated, stored and processed.
2. Kögel will create a user profile for the customer after conclusion of the contract. The user profile includes a username and password. The customer shall notify Kögel of an administrative Point of Contact ("Point of Contact"). This person shall receive a user name and password from Kögel, including administrator rights.  
For reasons of security, the Point of Contact must immediately change the password after receiving it.
3. The Point of Contact can allow other persons to use the Web Portal. To do this, they create additional login credentials.
4. The customer must ensure that all authorised persons use the login credentials securely and carefully and that unauthorised persons cannot acquire knowledge of these login credentials.
5. All rights to the Kögel Web Portal, such as copyrights and other industrial property rights, remain with Kögel.
6. Kögel shall continue to develop the Web Portal at their own discretion, for example by enhancing existing features, adding new features or modernising the Kögel Web Portal. There shall be no legal entitlement to further development or modernisation of the Kögel Web Portal.
7. The trailer data is stored for 24 months and is available on the Web Portal for this period to be retrieved.

### 4. **Telematics Hardware - Customer obligations**

1. The customer is not authorised to open or modify the Telematics Hardware. Should there be any reason to open the Telematics Hardware, in order to check hardware components for example, the customer must contact Kögel or a dealer authorised by Kögel. Unauthorised opening or modification of the hardware voids all guarantee and warranty claims.
2. The Telematics Hardware contains a SIM card used to establish the connection between the Telematics Hardware and the mobile networks of third parties.  
The SIM card remains the property of Kögel. The customer is prohibited from using the SIM card for purposes other than the proper operation of the Telematics System. In particular, the customer is prohibited from removing the SIM card and using it in devices other than the Telematics Hardware.
3. If Kögel's services are terminated by Kögel or by the customer, the SIM card will be deactivated by Kögel.
4. The customer must ensure the SIM card is used properly. In the case of loss or improper use of the SIM card, the customer indemnifies Kögel from all damages, costs, expenses or penalties which Kögel has incurred owing to the loss or improper use.

### 5. **Telematics Software including Web Portal - Customer obligations**

1. The customer is prohibited from making changes to the Telematics Software without the prior written consent of Kögel.
2. In particular, the customer is prohibited from using the Telematics Hardware with software other than the Telematics Software pre-installed or provided by Kögel without the prior written consent of Kögel.
3. Access to the Kögel Web Portal requires that the customer maintains an internet connection and uses a web browser compatible with the Kögel Web Portal.  
The costs for maintaining and using an internet connection, e.g. ISP fees, are borne by the customer.

### 6. **Blocking the Web Portal**

1. Kögel reserves the right to block access to the Kögel Web Portal, for instance if this is required to perform maintenance or updates.
2. Kögel also reserves the right to block access to the Kögel Web Portal in cases where the customer fails to fulfil their main contractual obligations. The following are considered main contractual obligations:
  - i. The customer's payment obligations;
  - ii. The obligation to only use the Telematics System, in particular the SIM card, for the intended purpose;

- iii. The obligation neither to open the Telematics Hardware nor to alter the Telematics Software;

## **7. Data protection**

1. For normal use of the Telematics System, it is imperative that Trailer Data is collected, captured, processed and sent to Kögel for processing and use. The Trailer Data collected may contain personal data as defined in article 4 No. 1 of the General Data Protection Regulation [GDPR]. The Customer is aware of this situation and he/she assures that he/she has a corresponding legal basis.
2. The Customer is responsible, before collection, capturing, processing, and use of the Trailer Data, to make all affected persons, e.g. driver, works council or HR or staff representative, aware of the legal consents and regulations and to obtain all necessary consent prior to deploying the Telematics System.
3. The Customer shall ensure that the collection, capturing, processing, and use of the Trailer Data is permitted in the country in which the Telematics System is to be used and that all legal requirements are met.
4. Kögel is entitled to use the assistance of third parties for the fulfilment of the contract.
5. The Customer agrees that Kögel shall only use the Trailer Data collected, captured, and processed in accordance with paragraph 1 in anonymised form for statistical purposes.
6. At the Customer's request, Kögel will provide a programme interface ("API") for use of the Trailer Data. Use of the Trailer Data outside of the Kögel Telematics System is at the Customer's own responsibility.

## **8. Kögel's liability**

1. Determining the trailer position data requires a constant, uninterrupted connection between the Telematics Hardware and the third party GPS satellite systems.  
In particular, structural surroundings, such as bridges or tunnels, terrestrial impediments and outages or overloading of the third party GPS satellite systems can affect a connection to the respective GPS satellite system. Kögel assumes no liability for the GPS connection between the Telematics Hardware and the third party GPS satellite systems being available at all times and in all places or in sufficient quality. Kögel also accepts no liability for the accuracy of the position data determined.
2. The transmission of trailer data to the Kögel Web Portal requires a constant, uninterrupted connection between the Telematics Hardware and the third party mobile networks. In particular, structural surroundings, such as bridges or tunnels, terrestrial impediments and outages or overloading of the mobile network operator can affect a connection to the mobile networks. Furthermore, it is not guaranteed that a mobile network covers all regions. Kögel assumes no liability that the mobile networks, via which the trailer data are sent to the Kögel Web Portal, are available at all times, in all places and in sufficient quality.
3. Depending on the availability and quality of the mobile networks, there may be a delay in the transmission of the trailer data to the Kögel Web Portal.  
Kögel assumes no liability for the delayed transmission of or ability to retrieve trailer data via the Kögel Web Portal.
4. Kögel will take every reasonable effort to ensure the availability of the Kögel Web Portal. However, Kögel assumes no liability for temporary disruptions to the Kögel Web Portal or the Telematics System which are required to improve or enhance the Web Portal or the Telematics System performance (e.g. repairs, maintenance, updates or enhancements) and in the case of technical faults.
5. Moreover, liability is excluded in particular for indirect and consequential losses as well as in the case of data loss or data corruption.
6. The aforementioned limitations to liability do not apply in cases (i) in which Kögel has made a written guarantee or promised a certain condition in writing, (ii) in which the German Product Liability Act applies, (iii) in which damages are intentionally caused by Kögel or caused through gross negligence of corporate bodies or executive employees and (iv) in cases of injury to life, body or health.
7. Liability for the Telematics Hardware is determined in accordance with Kögel's General Terms and Conditions of Sale and Supply.
8. Kögel is not liable for the accuracy and completeness of trailer data which are used to log trips for the financial authorities.

## **9. Prices and conditions of payment**

1. Unless agreed otherwise, prices are understood to be in euros. In the case of contacts in foreign currencies, the exchange rates quoted in the contract are applicable.
2. The prices are subject to the legally applicable rate of value added tax.
3. Deducting a discount is not permissible unless the parties agree otherwise in writing.

4. For every reminder or grace period notification, Kögel is entitled to charge an administration fee of €5.00 for the first reminder, €10.00 for the second reminder and €20.00 for the third reminder.

Status 26/08/2021, Kögel Trailer GmbH