

## **1. Area of application**

- 1.1 The General Terms and Conditions of Purchase of Kögel Trailer GmbH (hereinafter referred to as Kögel) are applicable exclusively in business transactions with companies in the sense of § 14 BGB (the German Civil Code), judicial persons in public law or public law special funds.
- 1.2 These purchase conditions apply to all services, all orders issued by Kögel and to contracts taken out with Kögel. In the framework of on-going 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.

## **2. Defence clause**

- 2.1 Unless a different contractual agreement has been specifically made, the Kögel purchasing conditions are exclusively applicable. Other regulations, in particular general terms of business, sales conditions and conditions of supply of the supplier do not form a constituent part of the contract, even if they have not been expressly contradicted by Kögel. The purchase conditions apply also to service contracts or work contract orders with respect to the contractor.
- 2.2 All orders are to be issued in writing; issuing by fax is permissible, and also the issuing by email by authorized persons on behalf of Kögel. Verbal or telephone orders or agreements always require specific subsequent confirmation in writing by Kögel; the same applies to all changes and supplements to the orders.
- 2.3 In the event of multi-lingual declarations, the type and scope of the delivery is, in case of doubt, specified by the German text.
- 2.4 If a framework purchasing contract exists between the partners to the contract, the supplier is obliged to accept and execute orders/commissions by Kögel with application of the individual framework agreement. Order confirmations should, under no circumstances, contain modified purchase prices and / or modified purchase conditions. Also, acceptance of the delivery or service without any reservation does not change this.

## **3. Contract conclusion, constituents of the contract**

- 3.1 Provided that the order from Kögel does not already create the contract, the purchase orders are non-binding. In this case, the contract only comes into force with the written order confirmation by the supplier, which must be received within 7 days of the receipt of the order. Otherwise, Kögel is no longer bound by the order.
- 3.2 If the order confirmation from the supplier deviates from the order, the supplier must point this out to Kögel specifically in a separate letter. If this instruction is not complied with, silence on the part of Kögel does not signify acceptance of the deviations from the order, if the delivered goods are accepted.
- 3.3 Only written orders which bear the order number are binding on the supplier.
- 3.4 If the deliveries or individual parts of the deliveries are covered by state export regulations, then it is the responsibility of the supplier to obtain the required approvals at his own cost.
- 3.6 Documents and details provided by the supplier (e.g. drawings, descriptions, weight details) are binding and are constituents of the contract.
- 3.7 Any property and copyright rights to use of the supplier regarding samples, drawings, documentation and similar information are provided to Kögel, without limitation in space and time, and may be used by Kögel in the framework of proper business sales and made available to third parties.
- 3.8 All drafts, drawings, calculations, and other documents will be made available only under the specific reservation of title and copyright for the purposes of quotation preparation or for the execution of the order. It is prohibited to make available to third parties without prior specific written approval. After processing they must be returned to Kögel without being requested and in complete form.
- 3.9 All documents must be kept secret from third parties. This applies both to the duration of the quotation up to execution and to the development of any prospective contractual relationship and later up to the point where any manufacturing knowledge or business secrets become common knowledge.
- 3.10 If the supplier transgresses against the obligations referred to above, he must pay Kögel a contractual penalty of 10% of the end price stipulated in the order, but being at least 5,000.– EUR. In addition, he must pay Kögel any damages arising in full, whereby the contractual penalty will be added to this request for damages reimbursement.
- 3.11 The supplier must hand over, at latest on delivery, all the verifications and test certificates required for the delivery and for the use defined in the contract. Details in the test certificates, certificates of origin and similar certification and confirmations requested by Kögel apply as an agreement on quality. The supplier is responsible for compliance with all legal regulations. Any

necessary reports and analyses which are used for the specification or validation must be provided by the supplier at his own cost if requested so to do. For quality testing, the Kögel guidelines for quality assurance are in accordance with DIN EN ISO 9001:2000, which states that responsibility for the product rests entirely with the supplier. Quality control is to be implemented on the basis of this DIN regulation. The supplier is obliged on his part to proceed in accordance with this regulation. Kögel is entitled, at any time, to carry out the necessary DIN audits - such as system audits, process audits or part audits - in the supplier's factory. Tests of the quality control by Kögel which take place in the supplier's works do not represent confirmation of the contractual compliance of the status of the goods to be supplied. Kögel reserves the right to complain about faulty goods.

#### **4. Prices, payment and invoicing**

- 4.1 The prices stated in the order are fixed prices which are binding.
- 4.2 Unless agreed otherwise, prices are understood to be in Euros. In the case of contacts in foreign currencies, the exchange rates quoted in the order are applicable.
- 4.3 Unless otherwise agreed in writing, the prices are always quoted inclusive of packing, loading, insurance, customs clearance (DDP in accordance with INCOTERMS© 2020) and sales tax at the statutory rate. Return of the packaging will require special agreement.
- 4.4 Invoices must not be enclosed with the goods, but should rather be submitted separately for each order after delivery, in duplicate – if necessary with statement of the VAT and with details of the order number. The invoices must comply with the requirements of § 14 UStG (the German Value Added Tax Code).
- 4.5 Unless agreed otherwise, payment must be made at the end of the month following the issue of the invoice and the receipt of the delivered goods with 3% discount, or net two months from the end of the month quoted above, by transfer. Even in the case of early delivery or provision of the service, the due period only starts from the originally agreed delivery date.
- 4.6 Payments do not represent recognition of the delivery or the service provision as being in accordance with contract.
- 4.7 If the performance is defective, Kögel is entitled to retain the payment until proper fulfilment, without the loss of any ensured rebates, discounts or other favourable payment terms.
- 4.8 Allowances / payments for quotations, quotation provision or cost estimates are not agreed and must not be taken.

#### **5. Delivery dates**

- 5.1 The delivery periods and delivery dates quoted in the order are binding on the supplier.
- 5.2 If the supplier exceeds the agreed delivery periods and dates, Kögel is entitled to demand fulfilment of the contract or to withdraw from the contract and to demand damage reimbursement on the grounds of non-compliance. The application of additional demands remains unaffected by this. Kögel is, in the event of a delay in delivery in particular, entitled to demand damage reimbursement because of non-compliance, to obtain a replacement from a third party and to invoice the defaulting supplier with any differences in price. All extra costs incurred by delayed delivery for freight, charges and subsistence allowance must be paid by the supplier.
- 5.3 In the event of a delay, Kögel is also entitled to a lump sum delay penalty of 0.15% of the value of the delivery (net) per day, but not exceeding 5 % of the total value of the delivery (gross). Any further legal claims remain unaffected by this. The supplier has the right to prove to Kögel that, as a result of the delay, there have been no, or very few significant damages. The lump-sum payment will reduce accordingly.
- 5.4 Circumstances which endanger the compliance with the agreed delivery dates must be reported to Kögel in writing without delay. The right of Kögel to apply legal .
- 5.5 Causes or events which lead to shutdown or limitation of operation, operational interference of any kind, declaration of war or official decrees by laws, ordinances and similar, events of force majeure, strikes and lockouts will entitle Kögel to postpone the fulfilment of accepted acceptance responsibilities or to withdraw completely or in part from the contract. This cannot be used as the basis for damage reimbursement claims.

#### **6. Delivery, transfer of risk, place of fulfilment, acceptance**

- 6.1 All deliveries require coordination with Kögel in good time.
- 6.2 The supplier is obliged to notify every delivery using the agreed means of communication in each case (e.g. on-line with barcode). The delivery advices must be dispatched 10 calendar days from the receipt so that they reach Kögel before the delivery of the goods. The scope of the delivery must be adequately clear from the dispatch advice; in pursuance of this, exact designations of the

delivered goods, the quantities (number, dimensions, weights etc.) and the details of the dispatch data and order numbers are required.

- 6.3 Part-deliveries and part-services are not permitted unless agreed otherwise.
- 6.4 The place of fulfilment is the registered office of Kögel in Burtenbach.
- 6.5 On each delivery, the order number must be marked on freight papers, packing sections, stickers or similar. On dispatch notes, delivery notes and invoices the order number and date of the order must be quoted.
- 6.6 The risk of loss and deterioration of the goods only transfers to Kögel if Kögel has actually taken possession of the goods. If an acceptance is to take place, then this will be decisive for the transfer of risk. If the delivery is to be made to a receiver stipulated by Kögel, then the risk transfers with the physical transfer of the goods.
- 6.7 Deviations in quantity require specific approval by Kögel.
- 6.8 Kögel is not obliged to accept extra deliveries or services which were not ordered, reduced deliveries or services, defective or other than the agreed goods or non-agreed part deliveries or part services. In the case of agreed reduced deliveries as per Item 6.6 in terms of § 377 HGB (the German Commercial Code) , there will be an appropriate reduction in the price in the ratio of the ordered goods to the reduced quantity.

## **7. Defects, Inspection and Warranty**

- 7.1 § 377 HGB is waived insofar as the defect is not apparent.
- 7.2 In all other respects, Kögel is obliged to perform an immediate inspection of the goods and to make an immediate fault report only in respect of the following regulations.
- 7.3 Kögel will check the goods using a meaningful random sampling process (testing at least 10% of the delivered goods) for quality and quantity deviations. Any complaint is considered to be in good time if it is received by the supplier within a period of 14 working days after Kögel has actually received the goods.
- 7.4 If the goods are delivered directly to a third party, as agreed, then the complaint is in good time if it is received by the supplier within a period of 21 days
- 7.5 The supplier will provide a warranty to Kögel in the framework of the contractual and legal regulations.
- 7.6 Goods with justifiable complaints by Kögel will be sent back with backcharge of the freight costs at the supplier's risk. Replacement deliveries must therefore be made with re-invoicing, but without additional freight costs, with the marking "Replacement Delivery" with a statement of the previous order which was the subject of the complaint.
- 7.7 The supplier guarantees that the delivered goods are free from the rights of third parties and that he has unrestricted access to them. If Kögel is made liable by third parties because of infringement of commercial IP rights (trademarks, copyright or patent rights) or title rights or other rights because of the goods delivered by the supplier, then the supplier must absolve Kögel of the resulting liability claim, including the costs of the defence.
- 7.8 The supplier is obliged to reimburse all expenditure to Kögel, which is created from, or in association with, all recall actions carried out by Kögel, unless the recall was not caused by the delivery from the supplier. In the event of joint responsibility, the supplier must contribute in accordance with his proportion of the liability for the expenditure. The expenditure to be reimbursed also covers the verified company-internal expenditure by Kögel. Kögel will advise the supplier of the content and scope of the recall measures – as far as possible and reasonable - and will provide him an opportunity of making a statement.

## **8. Reservation of proprietary rights**

- 8.1 Kögel does not recognise prolonged or extended retention of proprietary rights. A simple retention of proprietary rights is recognised insofar as Kögel remains entitled to sell, to mix and to process the delivered goods in the framework of proper business operations
- 8.2 Kögel reserves the proprietary right to all goods delivered by Kögel and the parts already provided. Processing or mixing at the supplier is carried out on behalf of Kögel. If the proprietary goods delivered by Kögel are processed with items not in the proprietary ownership of Kögel, then Kögel will acquire joint property rights to the new unit in the ratio of the value of the proprietary goods to the other processed items. The time of processing will determine the calculation of the value.

## **9. Copyright, Secrecy**

- 9.1 Models, sample tools, drawings, slides and similar items that Kögel has passed to the supplier for execution of the contract, or which have been acquired by the supplier, must not be made available to third parties without prior written agreement and must only be used for the contractual pro-

ject. The same applies to the items manufactured using this manufacturing equipment. It also applies to objects that have been developed or further developed in accordance with the details provided by Kögel or with the collaboration of Kögel.

- 9.2 The knowledge acquired in the association between the supplier and Kögel – in particular technical properties, prices or information concerning product development - must not be disclosed to third parties and must be kept secret, insofar as it is not common knowledge and has not been acquired in legal ways by third parties. The supplier must conclude an appropriate confidentiality agreement with the subcontractor and must provide evidence of this if required so to do by Kögel. The same applies if the supplier has developed the equipment and items quoted in this paragraph at his own cost under an exclusive contract with Kögel.
- 9.3 After execution of the contract, the items referred to under Item 9.1 must be returned to Kögel and any simple utilisation rights transferred back.
- 9.4 If the supplier transgresses against the obligations referred to above, he must pay Kögel a contractual penalty of 10% of the end price stipulated in the order, but being at least 5,000.– EUR. The defence of continuation of violation is expressly excluded; each individual case is applicable. In addition, he must pay Kögel in full any damages arising, whereby the contractual penalty will be added to this claim for compensation.

## 10. Statute of limitations

- 10.1 The guarantee claims by Kögel – irrespective of the legal cause - will lapse within 30 months from delivery of the goods supplied. Item 6.5 Sentence 2 is applicable as appropriate.
- 10.2 For parts newly delivered or repaired under warranty within the period of limitation, the period of limitation in accordance with item 10.1 starts at the point at which the supplier has completely fulfilled the supplementary performance.

## 11. Cession and pledging

The transfer – in particular the cession or pledging – of rights and obligations of the supplier from this contract to third parties requires prior written agreement by Kögel to become effective.

## 12. Replacement parts

- 12.1 The supplier is obliged to supply replacement parts for the period of anticipated technical use, but for at least 10 years from delivery under reasonable conditions.
- 12.2 If the supplier ceases production of the replacement parts, then he is obliged to advise Kögel of this and to provide the opportunity of placing a final order.

## 13. Foreign trade legislation

- 13.1 The Supplier agrees to provide Kögel in writing with all information and data that Kögel requires to comply with foreign trade legislation for export, import and re-export, in particular:
- all necessary information to fulfil the obligations arising of EU Parliament Regulation 2023/956 and the implementation provisions related to the aforementioned regulation to create a Carbon Border Adjustment Mechanism (CBAM), in particular the indication of the CO<sub>2</sub> values of the processed Appendix I goods
  - all applicable export list numbers including the Export Control Classification Number in accordance with the U.S. Commerce Control List (ECCN);
  - the statistical goods number in accordance with the current classification of goods in the foreign trade statistics and
  - the country of origin (non-preferential origin) and, if requested by Kögel Trailer, supplier declarations of preferential origin (for European suppliers) or certificates of preference (for non-European suppliers)
  - all confirmations/certificates that the goods have been legally extracted or produced in accordance with EU regulations, in particular the EU Timber Regulation No. 995/2010 and in compliance with national regulations of the supplier's registered office.
- 13.2 The supplier is required to provide information as to whether the goods to be delivered originate from embargoed countries, in particular Russia, and if so, whether they were procured from the supplier in accordance with the embargo regulations. A negative declaration is permissible.

## 14. Sonstiges

- 14.1 Supplements or modifications to the contract are required to be in written form, unless the Kögel staff member is authorised to give agreement to the supplement or modification.
- 14.2 Personal data will be stored by Kögel with due regard to the legal requirements.

- 14.3 The supplier is not entitled to right of retention or set-off unless the counter-claim, used as the basis of the rights to retention and set-off has been legally established, or has been recognised by Kögel.
- 14.4 Should certain stipulations of our terms of business become ineffective, the other stipulations are unaffected by this.
- 14.5 The legal domicile exclusively and specifically agreed by the parties for all disputes arising from the contract is Augsburg.
- 14.6 The law of the Federal Republic of Germany applies, with the exclusion of UN purchase law.
- 14.7 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 in all documents.

**Status 07/02/2024, Kögel Trailer GmbH**