

General Terms and Conditions of Purchase

1.	General Provisions	
1.1	All orders are exclusively subject to our general terms and conditions of purchase. Any modifications and amendments as well as all general terms and conditions of the supplier that are deviating from our terms and conditions of purchase shall be deemed as accepted only if we have acknowledged them in written form as amendment or modification of our terms and conditions of purchase. The same shall apply if the confirmation of order deviates from the order. Non-reaction on our part regarding any opposing or different provision of the supplier or of so-called standard provisions shall not be deemed as acceptance. The acceptance of goods and services or the payment for such goods and services shall not be deemed as consent regarding the supplier's terms and conditions, either.	
2.	Conclusion of Contract	
2.1	Any orders, conclusions of contract and call-offs as well as their modifications and amendments thereof shall require the written form.	
2.2	Oral agreements of all kind – including subsequent modifications and amendments of our terms and conditions of purchase – shall require our written acknowledgement in order to be valid. The written form requirement is also fulfilled by means of long-distance data transmission or facsimile.	
2.3	If the supplier fails to accept the order in form of a confirmation of order within two weeks upon receipt, we shall be entitled to revoke the order.	
2.4	Call-offs in the framework of an order- and call-off the delivery schedule shall become binding, unless the supplier objects within two working days upon receipt.	
2.5	The execution of the goods or services shall be subject to the specifications, drawings, descriptions and further documents agreed upon by us and the supplier.	
3.	Delivery Dates, Delay in Delivery	
3.1	Agreed delivery times and delivery dates are binding. They commence as of the date of the order. Decisive for the observance of the delivery date shall be the receipt of the goods in our plant.	
3.2	In case the supplier realizes that he is not able to fully or partially effect delivery within the agreed period, he undertakes to immediately inform us accordingly by specifying the reasons and the expected duration of the delay.	
3.3	In case of a delay in delivery we are entitled to require 0.5% for each started week, however not more than 10% in total of the agreed total price of the delivery as contractual penalty. Such contractual penalty may be claimed until the final payment has been effected. Any other statutory provision shall remain unaffected. Upon ineffectual expiration of a period of grace we shall be entitled to withdraw from the contract and to claim compensation for damages. Possibly paid contractual penalties shall be taken into account.	
3.4	Force majeure or industrial action shall release the supplier and us from the obligation to perform. To the reasonable extent, we shall immediately provide the necessary information and adjust our obligations to the changed circumstances. The same obligation shall be incumbent on the supplier.	
4.	Delivery / Acceptance	
4.1	If the supplier takes over the assembly or erection and - unless otherwise agreed - subject to deviating regulations, the supplier shall be in charge of any and all necessary ancillary costs, such as travelling expenses, provisions of tools as well as allowances.	
4.2	Each delivery must contain delivery notes specifying our order number, our reference, the kind of packaging as well as the quantity and weight of the delivery. In case of the provision of services the working hours rendered as well as the materials made available by the supplier have to be confirmed by an authorized representative of our plant.	
4.3	Upon delivery a separate invoice for each order has to be sent to our address in duplicate.	
5.	Packing	
	The goods to be delivered shall be packed as customary in the trade, or – upon our request – shall be furnished with a special packaging in accordance with our instructions.	
6.	Passing of Risk, Acceptance	
6.1	The risk shall pass to us as soon as the goods were orderly handed over to us or accepted by us at the agreed destination. The same shall apply if a forwarder is appointed.	
6.2	In case of delivery of machines, a pre-inspection takes place in the manufacturer's premises. Said test shall be announced to us 10 working days in advance in writing or by means of long-distance data transmission or facsimile. The test criteria for the pre-inspection shall be jointly determined before acceptance. The test results are recorded and forwarded to us for approval. We have the right to attend to the pre-inspection.	
6.3	The final acceptance of machines shall take place upon failure-free operation on five consecutive days in three-shift operation. Thereby the same measurements have to be made as in the pre-inspection and the operation results of the machines – or, in case of mass production, random samples thereof – have to be examined in the course of the final acceptance. Records shall be prepared regarding the measuring and operation results during the final acceptance, in which the delivery and performance of the machine in accordance with the specifications must be acknowledged.	
7.	Payment and Terms of Payment	
7.1	The agreed prices are fixed prices including packing, free destination.	
7.2	Unless otherwise agreed, we shall effect payment in our own discretion either - within 14 days with 3% discount or - within 30 days net We reserve the right to freely choose the means of payment. The payment term commences with the receipt of the complete order in	
		accordance with the contract and the receipt of a corresponding examinable invoice in duplicate.
		7.3 All payments are effected under reservation of the rights in case of possible defects. If the delivered goods are defective, we are entitled to exercise a right of retention. Payments shall not be deemed as acknowledgement of performance or renouncement of warranties or damages. The same shall apply for our receipts of delivery.
8.	Notice of Defects and Warranties	
8.1	The acceptance of the delivery shall take place under the condition of correctness and fitness. KOENEN shall immediately notify of any defects of the delivery as soon as such defects can be detected in the ordinary course of business. The supplier insofar waives the objection of a belated notice of defects.	
8.2	The supplier guarantees that the contractual objects are free from defects, have the assured characteristics and comply with the acknowledged rules of technology and the safety-related provisions applicable at the time of delivery or rendering of services, and that they are free from third party's rights.	
8.3	The period of warranty is ruled by the respectively valid statutory warranty claims.	
8.4	If the supplier fails to start remedying the defect immediately upon our request, in urgent cases, we are entitled to remedy such defects by ourselves or have them remedied by a third party at the supplier's expense – particularly in order to defend against acute risks or to prevent major damages.	
8.5	In case of defects in title, the supplier shall indemnify us against possibly existing claims of third parties, unless he is not responsible for such defect in title.	
8.6	Claims concerning defects become statute-barred after 3 years – except in cases of fraudulent intent – unless the object has been used in accordance with its customary use for construction of a building and caused its defectiveness. The period of limitation commences with the handover of the contractual object.	
8.7	If the supplier fulfils his obligation to supplementary performance by means of replacement delivery, the period of limitation for the goods delivered as replacement shall commence anew as of their handover, unless for the supplementary performance the supplier explicitly and correctly reserved the right to effect such supplementary delivery only as a gesture of goodwill, in order to prevent disputes, or for the benefit of a continuation of the supply relationship.	
8.8	If, as a consequence of the defective delivery of the contractual objects, costs incur, particularly transportation costs, costs for shipping and handling, personnel costs, material costs, or costs for the reception inspection exceeding the usual extent, these costs shall be borne by the supplier.	
9.	Liability	
9.1	In order to cover the general risk of liability, the supplier is obliged to procure liability insurance with an appropriate coverage for the risks for personal and material damage and to prove the existence of such insurance. Deviations must be examined in each individual case.	
9.2	In case a claim is asserted against us because of product liability, the supplier shall be obliged to indemnify us against such claims, if and to the extent to which the damage was caused by a defect in the contractual object delivered by the supplier. In cases of liability with fault, however, this shall only apply, if there is fault on the part of the supplier. Insofar as the cause for the damage lies in the supplier's scope of responsibility, the supplier shall insofar bear the burden of proof.	
9.3	In the cases according to No. 9.2 the supplier shall bear all costs and expenses, including the costs of possible legal proceedings.	
9.4	In addition the legal provisions shall apply.	
9.5	We shall inform the supplier before a product recall, which is in total or in part the consequence of a defect in the contractual object delivered by the supplier, and give the supplier the possibility to participate and discuss with him an efficient procedure, unless the briefing or participation of the supplier is not possible because of special urgency. Insofar as a product recall is a consequence of the defect in the contractual object delivered by the supplier, the supplier shall bear the costs for such product recall.	
10.	Provided Materials	
10.1	The materials provided by us shall remain our property and are to be stored free of charge. The use of these materials is only allowed for our orders. All provided materials shall be clearly stored and marked as our property.	
10.2	Before starting the production, the supplier is obliged to examine the provided material for optically recognizable defects and to verify their identity. If the supplier detects quality defects in the materials provided by us, he shall immediately inform KOENEN accordingly in order to agree upon further measurements. Upon processing of the provided materials we acquire co-ownership in the produced object in accordance with the value ratio.	
11.	Tools, Forms, Confidentiality	
11.1	All business or technical information made accessible by us (including characteristics that can possibly be derived from the provided objects, documents or the software, and further knowledge or experiences), shall be kept confidential from third parties as long as they are probably not publicly known, and may in the supplier's own company only be made available to persons, for whom the information is necessary for the purpose of delivery to us, and who are also bound to confidentiality; they shall remain our exclusive property. Such information may not be copied or commercially used without our prior written consent – except for deliveries to us. Upon our request, any and all information provided by us (if applicable including all copies or recordings made) as well as objects provided on loan shall be immediately and completely handed back to us or destroyed. We reserve all rights in such information (including copyrights and the right to apply for the registration of industrial properties such as patents, utility models, etc.). If such information was provided to us by a third party, this reservation of rights shall also apply in favour of said third party.	

11.2 Products produced in accordance with documents drafted by us, such as drawings, models or the like, or by using our confidential instructions, or with our tools or replicated tools, may not be used by the supplier himself or offered or delivered to any third party. This shall correspondingly also apply for our print orders.

12. **Assignment of Claims**
An assignment or pledging of the rights accrued to the supplier from the contract may only take place upon our written consent.

13. **Supplementary Provisions**
If any provision of these terms and conditions and the further agreements may be or become invalid, the validity of the other provisions shall remain unchanged. The contractual parties undertake to covenant a new provision approaching best the economic success pursued with the ineffective one.

14. **Place of Performance**
The place of performance for the delivery and rendering the services shall be the place to which the goods must be delivered according to the contract.

15. **Legal Venue, Applicable Law**
Exclusively the law of the Federal Republic of Germany shall apply. However, the application of the uniform law on the international sale of movables, the uniform law on the conclusion of international contracts of sale of movable goods, and the uniform United Nations Convention on Contracts for the International Sale of Goods is excluded.
For any disputes arising of the contractual relationship, whereby the supplier is a general merchant, lawsuits have to be filed with the Court competent in the place of our registered office. We shall moreover be entitled to file suit in the place of the supplier's registered office.