

### Article I – Application and Contract

1. All deliveries and services of KOLLER Maschinen-und Anlagenbau GmbH - referred to hereinafter as *Supplier* - shall be subject to the present terms and conditions and any supplementary contractual agreements. Any other terms of purchase of the Buyer are explicitly deemed disregarded and shall not apply. They do not constitute the substance of a contract, even after an order has been accepted. Unless otherwise agreed, a contract shall be deemed formed upon the written order confirmation of the Supplier.
2. The Supplier shall retain the copyright to samples, cost estimates, drawings and similar information in both physical and non-physical form – including in electronic form. Third parties shall not have access thereto unless the Supplier consents. Information and documents provided by the Buyer for the proper fulfilment of contract shall be treated similarly and are deemed to be confidential.

### Article II – Price, Price Amendments and Payment

1. Unless otherwise arranged in written form, prices are in EUR ex-Celle works, excluding packaging and subject to the addition of the value added tax applicable at the time the contract was formed. For sales in other currencies, the Buyer shall bear the risk of exchange as from formation of contract.
2. If more than six months lie between the formation of contract and the agreed and/or actual date of delivery, the prices of the Supplier shall apply that apply at the time of delivery. In cases of price increases with other suppliers, wage rises and transport costs or other unexpected increases, the Supplier shall be entitled to call for negotiations to re-set prices.
3. Unless otherwise agreed, payment shall be made inside 30 days after the date of invoice without deduction onto the account of the Supplier. Repair invoices shall be due for payment upon receipt without any deduction. We retain the right to bill orders that are less than EUR 50.00 gross, as net price and to handle orders for customers that are unknown to us by prepayment or cash on delivery.
4. Default of payment shall be deemed to prevail after a payment reminder has been compiled as defined in Section 286 par. 3 BGB [German Civil Code]. The Supplier shall be entitled to charge default interest of 9% in excess of the baseline interest. The right shall be retained to assert greater damages.
5. Payments shall first be offset against older claims to payment. If costs and interest have been incurred, the Supplier shall be entitled to first offset payment against the costs, then against interest and last of all, against the main claim to payment
6. The Buyer shall only be entitled to withhold payments or to offset against counterclaims, if said counterclaims are undisputed or have been legally established.

### Article III – Delivery Period, Impediment to Delivery

1. The delivery period is always non-binding, unless the Supplier has agreed in written form to a binding delivery period. The compliance with the delivery period requires that all order-related issues have been clarified between the Parties and the Buyer has attended to all commitments for which it is responsible, such as, for example, the procurement of the necessary official certificates or permits or the rendering of a down-payment. If this is not the case, the delivery period shall be appropriately lengthened.
2. Compliance with the delivery period is subject to correct and timely delivery by the Supplier. The Supplier shall inform the Buyer as soon as possible of any impending delays.
3. The delivery period shall be deemed met if the item to be delivered has left the works of the Supplier by the time the delivery period has lapsed or readiness for despatch has been notified. If the delivered item is to be inspected and accepted – except in instances where it is justified to refuse acceptance - the date of acceptance shall be determinant or alternatively, the date of notification of the readiness for acceptance.
4. If the despatch or acceptance of the delivered item is delayed for reasons for which the Buyer is responsible, the Buyer shall be billed for the costs incurred through the delay, starting one month after

- notification of readiness for despatch or acceptance.
5. If non-compliance with the delivery period is due to force majeure, labor disputes or other events beyond the Supplier's control, the delivery time shall be extended accordingly. The Supplier shall notify the Buyer of the beginning and end of such circumstances as soon as possible.
  6. The Buyer shall be able to cancel the contract without any period of notice if the entire performance prior to the passage of risk is ultimately rendered impossible for the Supplier. Furthermore, the Buyer shall be able to cancel the contract if just one part of the consignment ordered cannot be provided and it is justified to refuse the instalment. If this is not the case, the Buyer shall pay the contracted price attributable to the instalment. The same shall apply for the inability of the Supplier to perform. In other respects, Article VI 2 shall apply. If the impossibility or inability prevails during a delay in acceptance, or if the Buyer is responsible for these circumstances, either exclusively or to a great extent, the Buyer shall remain committed to consideration.
  7. If the Supplier is in default resulting in damages to the Buyer, the Buyer shall be entitled to call for compensation for the delay. For each full week of the delay, this compensation shall be 0.5%, but at most 5% of the value of that part of the entire consignment that cannot be used on time or as contracted owing to the delay. If the Buyer allows the Supplier an appropriate period of time to provide its services, with due consideration of the statutory exceptions, and said period of time lapses without the service being provided, the Buyer shall be entitled to cancel the contract subject to statutory provisions. Other claims derived from the delay in delivery shall be exclusively governed by Article VII 2 of the present Terms and Conditions..

### Article IV – Despatch, Passage of Risk, Acceptance

1. Despatch shall always be on behalf and for the account of the Buyer. The Supplier shall select the means and route of transport, unless otherwise arranged. Special wishes of the Buyer relating to the means of despatch, packaging or the carrier shall be satisfied as far as possible and any extra costs thereby incurred billed to the Buyer.
2. Goods said to be ready for despatch shall be immediately retrieved. Failure to do so shall permit us to store them at the risk and for the account of the Buyer at our discretion and to bill them as delivered ex works.
3. The risk shall pass to the Buyer after the consignment left the works; this shall also apply if delivery is in instalments or the Supplier has taken on other factors, such as the expense of despatch or delivery and installation. This shall also apply for FOB or CIF transactions subject to Incoterms 2020. Where acceptance is to be arranged, this shall determine the passage of risk. Inspection and acceptance shall take place immediately on the date arranged or alternatively after the readiness for acceptance has been notified. The Buyer shall not be allowed to refuse acceptance on the grounds of an insignificant flaw.
4. If despatch or the acceptance test is delayed or is not carried out because of circumstances for which the Supplier is not responsible, the risk shall pass to the Buyer from the day readiness for despatch or readiness for acceptance was notified. The Supplier undertakes to take out insurance policies at the expense of the Buyer if the Buyer so requires.
5. Instalments shall be admissible, providing the Buyer can be reasonably expected to consent thereto.

### Article V – Retention of Title

1. All delivered goods shall remain the property of the Supplier (goods subject to the retention of title) until all claims to payment have been satisfied, particularly the respective balances to which the Supplier is entitled during the course of business relations as well as the receivables unilaterally established by the liquidator in the choice of fulfilment. This shall also apply if payments are made on specifically designated claims. The balance shall finally be extinguished after all outstanding claims and those covered by the balance are satisfied at the time of payment.
2. The handling and processing of the goods that are subject to the retention of title shall be carried out for the Supplier as defined in Section 950 BGB without committing the Supplier. The handled and

processed goods shall be deemed to be goods subject to the retention of title as described in par. 1. If the Buyer processes, compounds and mixes these goods with other goods, the Supplier shall be entitled to co-ownership of the new items to the extent of the invoiced value of the goods subject to the retention of title in proportion to the invoiced value of the other goods used. If the Supplier's ownership is extinguished by the compounding or mixing, the Buyer shall already now hereby transfer the rights of ownership, to which the Supplier is entitled in respect of the new condition or item, to the extent of the invoiced value of the goods that are subject to the retention of title; the Buyer shall also keep these goods free of charge for the Supplier. The Supplier's rights of co-ownership shall be deemed to be goods subject to the retention of title in the sense of para. 1.

3. The Buyer shall only be able to sell the goods, subject to the retention of title, in normal business transactions subject to its ordinary terms of business and only as long as it is not in default. This shall require that the proceeds from the resale pursuant to para. 4 to 6 pass to the Supplier. The Buyer shall not be entitled to dispose otherwise of the goods subject to the retention of title.
4. The proceeds from the resale of the goods that are subject to the retention of title are now hereby assigned to the Supplier together with all securities acquired by the Buyer for the claims to payment. They shall serve to provide security to the same scope as the goods that are subject to the retention of title. If the goods to which title is retained are sold by the Buyer with other goods not sold by the Supplier, the Supplier shall be assigned the proceeds from the resale to the extent of the invoiced value of the goods, subject to the retention of title, in proportion to the invoiced value of the other goods sold. Upon the sale of the goods that are partially owned by the Supplier as defined in para. 2, the Supplier shall be assigned a part that corresponds to its share in ownership. If the goods to which title is retained are used by the Buyer to satisfy a work contract, the claim to payment derived from said contract shall be assigned in advance to the same scope to the Supplier.
5. The Buyer is entitled to receive proceeds from the resale. This authorization to collect monies shall expire if revoked by the Supplier, at the latest, however, if the Buyer is in default or application is filed for insolvency proceedings. The Supplier shall only make use of its right of revocation if, after the formation of the contract, it is obvious that the Supplier's claim to payment as derived from the current or other contract with the Buyer is endangered owing to the Buyer's inability to render payment. At the request of the Supplier, the Buyer undertakes to inform its customers immediately of the assignment to the Supplier and to furnish the Supplier with the documents needed to collect payments.
6. It shall not be permissible to assign claims from the resale unless the assignment is through genuine factoring that is indicated to the Supplier and in which the factoring proceeds exceeds the value of the Supplier's secured claim to payment. With the credit of the factoring proceeds, the Supplier's claim to receivables becomes due for payment immediately.
7. The Buyer shall immediately inform the Seller of any attachment or other third-party detriment. The Buyer shall bear all the expense necessary to clear the attachment or for the return transport of the goods subject to the retention of title, unless these costs are reimbursed by third parties.
8. If the Buyer defaults on payment, the Supplier shall be entitled to take back the goods to which title is retained and, as required, access the premises of the Buyer. The same shall apply if, upon formation of the contract, it is obvious that the Supplier's claim to receivables derived from the present or other contract with the Buyer is endangered owing to the Buyer's inability to render payment. The return of the goods does not mean the contract is cancelled. Regulations of the Insolvency Code shall not be affected hereby. The application for the opening of insolvency proceedings shall entitle the Supplier to cancel the contract and to call for the immediate return of the delivered consignment.
9. If the invoice value of the existing securities is in excess of the secured claims to payment, including ancillary claims (interests, costs etc.) by more than 50% in all, the Supplier undertakes at the request of the Buyer to select securities that it will release.

### Article VI – Warranty

For material defects and defects of title in the consignment delivered by the Supplier, the Supplier is liable as follows - subject to Article VII - to the exclusion of other claims:

#### Material defects:

If and to the degree the Parties have agreed upon a quality of the object of purchase, objective requirements for the object of purchase shall not apply in this respect.

1. Those parts that transpire to be defective owing to circumstances prior to the passage of risk shall be repaired or delivered free of defects free of charge by the Supplier. The Supplier shall be informed immediately in writing of such defects. Replaced parts shall be the property of the Supplier.
2. The Buyer and Supplier agree that enough time shall be granted and the opportunity provided for the necessary remedies to be carried out and replacements delivered by the Supplier. Otherwise, the Supplier shall be discharged from liability for the consequences of a defect. Only in urgent cases when industrial safety is endangered or in order to avert unreasonably serious damages, shall the Buyer be entitled to have the flaw eliminated itself or eliminated by third parties, duly informing the Supplier immediately and requiring the Supplier to reimburse the expenses thereby incurred.
3. The Supplier shall bear - insofar as the complaint proves to be justified - the expenses necessary for the purpose of subsequent performance, insofar as this does not result in a disproportionate burden on the Supplier. Insofar as the expenses are increased by the fact that the Buyer has taken the purchased item to a place other than the place of performance after delivery, any additional costs incurred as a result shall be borne by the Buyer. In the event of the sale of a newly manufactured item, the Supplier shall also reimburse, to the extent of its statutory obligation, the expenses incurred by the Buyer in the context of regress claims in the supply chain.
4. To the extent allowed by law, the Buyer shall be entitled to cancel the contract if the Supplier allows a period of time set for the remedy or replacement of defective material to lapse in vain. If the flaw is only insignificant, the Buyer shall only be entitled to a reduction of the contracted price. The right to reduce the contracted price shall otherwise be ruled out.
5. No guarantee shall be given in the following cases:  
Unsuitable or improper use, faulty assembly or start-up by the Buyer or third parties, natural deterioration, faulty or negligent treatment, inadequate maintenance, unsuitable operating resources, faulty construction work, chemical, electrochemical or electrical impacts where these are not the responsibility of the Supplier. Used items that are delivered shall be carefully checked before they are sold; nevertheless any liability for material defects shall be ruled out. Certain construction parts (parts that wear out) are subject to deterioration from operations. It shall not be possible to claim guarantee for parts that are worn out from operational use.
6. The Supplier shall not be liable for corrective or repair work carried out inadequately or inappropriately by the Buyer or third parties. The same shall apply for modifications to the delivered item carried out without the Supplier's prior consent.

#### Defects of title:

7. If the use of the delivered item results in the breach of industrial property rights or copyrights within the country, the Supplier shall, at its own expense, procure the Buyer the right to continue using the item or shall modify the item in such manner that is reasonably acceptable for the Buyer and ensures that industrial property rights are no longer breached. Should this not be possible either economically or over a suitable period of time, the Buyer shall be entitled to cancel the contract. Under those

circumstances, the Supplier shall also be entitled to cancel the contract. Furthermore, the Supplier shall hold the Buyer harmless from undisputed or legally established claims of the holder of industrial property rights in question.

8. In the event industrial property rights or copyrights are breached, the commitments featured in Article VI 7 shall be conclusive, subject to Article VII 2.

They shall only exist if

- the Buyer informs the Supplier immediately of claims to copyright or industrial property rights;
- the Buyer gives the Supplier appropriate assistance in averting the claims asserted and enables the Supplier to carry out measures of modification pursuant to Article VI 7;
- the Supplier retains the right to undertake actions of defence including out-of-court settlements;
- the defect of title is not attributable to instructions of the Buyer and
- the breach was not caused by the Buyer altering the delivered item without any authority to do so or in a manner that diverges from contract.

### Article VII – Liability

1. If the item delivered cannot be used by the Buyer as contracted through the fault of the Supplier, due to a negligent or faulty implementation of suggestions and advice before or after the contract had been formed, or due to a breach of other secondary contractual duties - particularly the instructions for operation and maintenance of the delivered item - the rulings of Article VI and VII 2 shall apply appropriately to the exclusion of any other claims lodged by the Buyer.
2. For damages not incurred on the item itself, the Supplier shall always only ever be liable, for whatever the legal reason, in instances of
  - intent or gross negligence;
  - injury to life, limb or health for which the Supplier is to blame;
  - maliciously concealed defects or defects that the Supplier had guaranteed would not exist;
  - flaws on the item inasmuch as the Product Liability Act covers injury to persons or material damage in respect of privately used items.
3. When the Supplier is at fault for the breach of material contractual duties, the Supplier shall also be liable for slight negligence; this, however, limited to reasonably foreseeable damages that are typical for the contract.
4. Further claims to liability shall be ruled out.

### Article VIII – Limitation Period

All claims of the Buyer - on whatever legal grounds - shall become statute-barred after 12 months; this shall also apply to the limitation of claims under a regress rights in the supply chain pursuant to Sec. 445b par. 1 BGB. The suspension of the statute of limitations under Section 445b par. 2 BGB shall remain unaffected; it shall end no later than five years after the date on which the deliverer delivered the item to the seller. These provisions on the limitation of recourse claims and on suspension of expiry shall not apply if the last contract in this supply chain is a consumer goods purchase. The statutory periods shall apply to claims for damages pursuant to Section VII. 2. They shall also apply to defects in a building or to delivery items which have been used for a building in accordance with their customary use and have caused its defectiveness.

### Article IX – Use of Software

1. When the delivery includes software, the Buyer shall be allowed to use the delivered software including its documentation. This is provided exclusively for use of the item for which it is intended. Any use of the software on more than one system shall be prohibited.
2. The Buyer shall only be able to duplicate, revise, translate or convert from the object code to the source

## General Terms and Conditions of Business (AGB)



code to the legally admissible extent (Sections 60 a ff. UrhG - Copyright Law). The Buyer undertakes not to remove details of the manufacturer, particularly copyright notices, or to alter these without the prior explicit consent of the Supplier.

3. The Supplier i.e. the software Supplier shall retain all other rights to the software and the documentation, including copies thereof. It shall not be admissible to grant sub-licences.

### Article X – Applicable Law, Venue

1. For all legal relations between the Supplier and the Buyer, the law of the Federal Republic of Germany shall apply that governs legal relations between inland Parties.
2. Place of fulfilment for delivery and payment shall be the location of the registered office of the Supplier.
3. Place of jurisdiction shall be the court of law with jurisdiction for the registered office of the Supplier. However, the Supplier shall be entitled to take action at the location of the main office of the Buyer.

### Article XI – Severability Clause

Should any provision of the present Terms and Conditions be invalid or unable to be implemented, the validity of the remaining provisions shall not be affected hereby. In this case, the Parties shall agree to a ruling that comes closest to the sense and purpose of the present provisions or shall apply the legal regulation that reflects the economic interests of the Parties.

## **KOLLER Maschinen- und Anlagenbau GmbH**

BRUchkampweg 5 • 29227 Celle • Tel. +49 5141 9898-0 • Fax +49 5141 9898-98 • E-Mail: [info@koller-celle.de](mailto:info@koller-celle.de) • Web: [www.koller-celle.com](http://www.koller-celle.com)