

General Terms and Conditions 11/2020

1. General terms

1.1 The following terms and conditions shall apply to all sales by us and all contracts with the customer, including electronic business. General terms and conditions of the customer shall only apply if expressly confirmed by us in writing. If a customer's order, sales confirmation or other written material contains terms or conditions inconsistent with those expressed herein, such other terms and conditions shall be deemed rejected and not apply unless specifically accepted by KOCH in writing. If a master agreement has been entered into between the customer and us (e.g. Global Agreement), provisions of these General Terms and Conditions that deviate from the provisions contained in such master agreement shall not apply.

1.2 Montville, New Jersey shall be the place of performance for both parties and all contractual claims. Customary trade clauses shall be construed in accordance with the definitions set by the laws of the State of New Jersey, and in particular the New Jersey Uniform Commercial Code.

1.3 For contents of the contract, and in particular, prices, scope and quality of delivery, lead time, other time limits and commercial terms, our order confirmation shall be the primary agreement and binding upon the parties. All other arrangements shall be deemed and to the extent inconsistent with the KOCH order confirmation ineffective and of no force or effect. In accepting goods and services or parts thereof, the customer acknowledges that the contents of the contract are subject to our order confirmation. Subsequent alterations of the contract shall only be valid if confirmed by us in writing.

1.4 Illustrations, rough drafts and other descriptions of our machines, accessories or spare parts shall only serve for illustration or demonstration purposes. They are not binding in respect of design and technical quality; this applies in particular to dimensions and weight. Design and technical quality shall be left up to us. Together with the order confirmation we shall provide dimensioned drawings. We retain ownership and title to the copyright on drawings, documentation and other written materials. They may not be made available to third parties without our prior written consent.

1.5 All deliveries to the customer shall be subject to and with the reservation of correct and timely receipt of delivery by us of all items needed to build any products, goods or provide services, including but not limited to required raw materials and primary products for the products to be delivered to the buyer. If delivery to us is not timely or is being delayed, we shall notify the customer thereof and shall be entitled to rescind the contract within a reasonable time thereafter.

2. Prices and terms of payment

2.1 Our prices are to be understood without any payment discounts or other price reductions unless agreed to in writing. All sales, use, manufacturing or any other taxes, packing, freight and insurance are not included in any price quote.

2.2 Should custom orders require the use of new technologies and procedures, resulting in additional costs, we shall be entitled to adjust the agreed prices to include the additional costs; new delivery dates and terms of payment shall be adjusted accordingly. However, this shall only apply if such possibility is expressly provided for in the order confirmation. In this case, the state of technology that the initial prices are based on, shall be specified in the order confirmation.

2.3 Should the customer fail to act according to its obligations, or should the customer fail to effect due payment or otherwise be in default, we shall be entitled to fix an appropriate time limit for performance and to terminate the contract in case of customers unsuccessful compliance by expiration of such time limit and to dispose of the delivery item. In case of such termination, we shall be entitled to charge the full purchase price. Payments already made as well as the value of such parts that can be reused without further modifications shall be deductible therefrom. Any action taken by KOCH to mitigate its damages shall not prejudice any additional statutory rights or claims or constitute a waiver of any claims it may have against the customer.

2.4 If, following the execution of the contract, we have cause to doubt the customers' ability to pay the purchase price or perform under the contract, we shall be entitled to postpone discharge of our contractual obligations until payment of additional advances or adequate security has been effected by the customer. Should the customer fail to provide additional advance payments or to provide adequate security within an appropriately fixed time, we shall be entitled to withdraw from and cancel the contract.

2.5 Set-off and retention of payments based on the customer's claims (e.g. warranty claims) shall be and specifically prohibited and barred.

2.6 Shipments and deliveries shall be subject to the prior approval of KOCH's credit department. KOCH reserves the right to require payment in full or adequate security prior to shipment notwithstanding anything to the contrary contained within this quotation. Otherwise, terms of payment shall be effective from the date of invoice and/or as detailed on the face of this quotation. Prices quoted are in US currency and all invoices are made out in US currency unless otherwise agreed to in advance.

2.7 In the event Customer does not promptly and fully pay to KOCH all sums called for and detailed on the invoice, Customer and KOCH agree that such unpaid balance shall bear interest in the amount of 1½% per month of the unpaid sums for each month or part thereof that payment is not made.

2.8 KOCH reserves the right to suspend or cancel, at its option, further orders and or deliveries in case an invoice remains unpaid after the due date.

3. Retention of title

3.1 Title to Product is transferred to customer upon full and complete payment of all sums due KOCH by customer. It is up to the customer to provide complete insurance for delivery of any item.

3.2 Should the delivery item subject to a retention of title be seized by a third party, a copy of the levy, writ of execution or any other pleading shall be submitted to us without delay.

3.3 Should the laws of the country where the delivery items is located not permit a retention of title but provide for other seller's rights to the delivery item, we shall be entitled to exercise any such rights. The customer agrees to and shall co-operate in all measures we may take in order to protect our right of ownership or in its place any other right to the delivery item.

3.4 Unless otherwise specified on the face of this quotation all Product is delivered "Freight on Board" (FOB), KOCH's facility.

3.5 A storage fee will be charged to Customer if Customer does not take delivery within 15 days from notification by KOCH that the Product is ready for delivery.

4. Term of delivery and default in delivery

4.1 KOCH shall use commercially reasonable efforts to meet any schedule or date shown on the face of this quotation. KOCH, however, will only confirm the date of delivery upon receipt of Customer's purchase order and the down payment and receipt of a signed order acknowledgment. KOCH shall not be liable for any delay or failure in the estimated delivery or shipment or for any damages that may result to Customer from such delay. Unless an acceptance test has been agreed for the delivery item, a term of delivery described as binding shall be deemed to have been complied with if the delivery item has left our plant or if the customer has been notified of its readiness for shipment by the deadline. If not expressly described as binding, terms or dates of delivery shall be deemed non-committal. If no term or date of delivery has been indicated, and if there should be any doubt, the term of delivery shall be six weeks after the order confirmation was made out.

4.2 The customer shall not be entitled to reject partial deliveries that can be used independently.

4.3 Compliance with the term of delivery specified in the order confirmation shall depend on the customer's active cooperation regarding the clarification of all technical and commercial details. Our compliance with the term of delivery shall particularly require that the customer shall:

- return a signed copy of our order confirmation, whereby the date of receipt by us shall be decisive;
- not request any technical or commercial modifications;
- have provided sufficient amounts of testing materials according to our specifications in good time (see also Paragraph 5.1 hereof);
- have complied with or obtained information about all formalities required for smooth handling of transport, import and payments in good time and shall have procured import permits and letters of credit;
- effect the agreed payments on schedule, whereby the credit entry on our account shall be decisive;
- conduct the acceptance tests on schedule (Paragraph 5.3 hereof).

Should the customer fail to co-operate actively, we reserve the right to extend the term of delivery in a reasonable manner.

4.4 Apart from the cases set forth in Section 4.3, we shall be entitled to a reasonable extension of the term of delivery if difficulties which are beyond our control or, as applicable, beyond our sub-contractors' control (e.g. strikes, lockouts or force majeure) occur, to the extent that such events have a bearing on our adherence to the term of delivery.

4.5 In the event that we default on delivery by the time set forth in the agreement, KOCH shall be granted an extension of time to deliver the product to customer as hereinafter set forth. The additional period shall be one half of the original term, yet no less than 5 months. This shall not apply to delivery items that have been custom made for the customer; in this case, the additional period granted shall be 3/4 of the original term and shall be no less than nine months. If KOCH does not deliver the product on or before the extended term, the customer shall be entitled to cancel the contract. Any payments received shall be returned to customer.

4.6 If the customer has suffered any damages due to our default with regard to delivery of the Product, it shall also be entitled to demand damages in an amount equal to 0.5 % for each full week of delay but not exceeding 5 % of the value of the delivery items that could not be used in time or in accordance with the agreement. CUSTOMER SPECIFICALLY WAIVES ANY AND ALL OTHER CLAIMS FOR DELAY DAMAGES. CUSTOMER AGREES AND ACKNOWLEDGES THAT THE CAP ON LIABILITY FOR DELAY DAMAGES IS A NEGOTIATED TERM AND WAS A MAJOR DECISION AND TERM IN CALCULATING THE SALE PRICE OF THE PRODUCT.

5. Scope of function and functional tests

5.1 Each product shall be tested by us before being delivered to the customer. Unless agreed otherwise with the customer, only products suitable for the processing of packing materials that are usual in the market and have the dimensions and qualities set forth in the specification shall be delivered or owed to customer.

5.2 If an acceptance test for the delivery item at our plant has been agreed upon and the customer fails to appear at the agreed time, the acceptance test will not be conducted. If the acceptance test is postponed at the customer's request, it shall bear the corresponding additional costs.

5.3 Following the arrival of the delivery item at the customer's plant, the customer shall immediately check to make sure that it is intact and complete. Any defects shall be reported to us without delay. Should the customer fail to promptly and correctly comply with these formalities, it shall forfeit any claims against us. Any notice of defects to us shall be evidenced by photographs. A claims agent may be called in upon our request.

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Beneficiary: KOCH Packaging Systems, Inc.

Managing director:
Thomas Winkler (COO)
Dr. Tim Wolf (CBDO)

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5.4 We shall make the services of our technically qualified staff available upon request and for payment – subject to the terms and conditions printed on the reverse side which shall apply in addition hereto. Staff will be deployed within the scope of our possibilities. The staff may only be commissioned with the work agreed and the services of our staff shall only be made available when the customer has effected all preparations. Assistant helpers, power and equipment shall be made available to our staff as requested and free of charge.

The customer shall arrange for accommodation for our staff which meets West European standards with regard to amenities, catering and personal safety. The same standards shall apply to the transportation of our staff to the work site and back. Travelling and waiting times of our staff shall be deemed working time.

6. Defects

6.1 Customer shall inspect the Product immediately upon delivery and will report in writing to KOCH within seven (7) days of delivery any shortage, damage or loss. Our delivery items are deemed free from defects if their actual quality is not materially different from the contracted description and specifications. It is expressly agreed that inspection approvals and or payments shall constitute final acceptance and that the products conform to the contract description and specifications.

6.2 Conformance-To-Order Warranty. Seller represents and warrants that the materials will conform to the description and applicable specifications, drawings, manufacturing data, data sheets, standards (collectively, Data), shall be good merchantable quality and fit for the known purpose for which sold, that the materials are free and clear of all liens and encumbrances, and that Seller has good and merchantable title. In the case of equipment purchases, if at any time within one year from date of operation or eighteen months from the date of delivery, whichever occurs first, it appears that the materials or any part thereof does not conform to the warranties herein, and if Buyer notifies Seller within a reasonable time, Seller shall promptly correct such nonconformity, at Seller's sole expense including material, labor, and freight costs. If Seller fails to correct defects in or replace nonconforming materials promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such materials and charge Seller for the cost incurred.

6.3 The warranty period shall be 12 months as of the date of acceptance (see below) – or in case that acceptance is not required – as of receipt of the contractual object by the customer. Infringement Warranty. Seller represents and warrants that no articles furnished hereunder, or the use thereof, infringe any patent, trademark or other intellectual property rights; that it will defend any suit that may arise in respect thereof; and that it will indemnify and hold harmless the Buyer, and any subsidiary or affiliated company thereof, from and against any and all losses, damages, claims, liabilities, costs, fees and expenses, including without limitation attorney's fees, court costs and penalties (whether levied by a foreign or domestic governmental body), that may be incurred by the assertion of any patent, trademark or other intellectual property rights by other persons. This clause shall be considered inapplicable to agreements covering basic raw materials and basic structural material that are unpatented and unpatentable. Buyer assumes and will hold Seller harmless against any design patent infringement liability for any article or articles furnished hereunder which are manufactured in accordance with Buyer's design specifications.

6.4 Warranty shall only apply if the customer has notified us of the defect immediately upon its discovery. Section 2.6 shall apply with reference to retention of payments and set-offs.

6.5 The customer shall not be entitled to remedy any defects on its own or to have them remedied by a third party without our written approval. This shall not apply in urgent cases where industrial safety is at risk, where proportionately large damages need to be averted or if we default in subsequent performance. We must also be notified immediately in the foregoing cases. The customer can claim reimbursement of adequate costs for the remedying of the defects to the extent that it is entitled to remedy the defects itself or to have them remedied by a third party.

6.6 No warranty shall apply if

- the customer's packing materials and products to be packed are not in compliance with our requirements;
- the customer modifies the delivery item (Section 6.5 sent. 2 remains unaffected thereby);
- the delivery item was not installed or put in operation by our staff or was installed or put in operation contrary to our staff instructions;
- our operating and maintenance instructions were not observed or the delivery item was otherwise used improperly;
- we were not given reasonable time for subsequent performance;
- the defect was due to normal wear and tear.

6.7 We can only be held liable for delivered parts that have not been manufactured by us, e.g. electrical and electronic parts, to the extent that we are entitled to assert warranty claims against the supplier.

6.8 The customer shall notify us in time if the delivered item is subjected to uncommon circumstances (due to climate, location or operation, etc.) or is used in multiple shift operation. Should the customer fail to notify us accordingly, it shall bear the associated risks.

6.9 Upon our request, the customer shall be obligated to notify us within an adequate period of time fixed by us in writing whether it intends to insist on performance and/or which claims and rights it is willing to assert. Should the customer fail to act according to this obligation, it may only exercise its rights or claims after unsuccessful expiration of an adequate additional time limit for subsequent performance granted to us by the customer in writing unless we had definitely refused subsequent performance before. This shall not affect any of our statutory claims for compensation for damages.

6.10 The customer's statutory right to withdraw from the contract due to defects of the contractual object is not subject to any fault on our part. In all other cases of breach of duty, the customer shall only be entitled to withdraw from the contract if we can be held liable for such breach of duty.

7. Special terms and conditions of electronic business

7.1 The customer has to make sure that only authorized employees place electronic orders with regard to the customer accounts set up for the customer's company.

7.2. The customer has to make sure and get its employees to refrain from disclosing passwords and user codes for the use of its customer accounts to third parties and to take care that such information is kept strictly secret and protected against access or discovery by unauthorized persons.

8. Liability

8.1 THE FOLLOWING WARRANTY IS GIVEN IN LIEU OF AND TO THE EXCLUSION OF ANY OTHER WARRANTY OR CONDITION EITHER EXPRESSED OR IMPLIED BY STATUTE OR OTHERWISE. NO TERM CONDITION OR WARRANTY IS INCLUDED AS TO THE QUALITY, MARKETABILITY OR FITNESS FOR ANY OTHER PURPOSE OF THE PRODUCT CONTEMPLATED BY THE CUSTOMER OR AS TO ANY OTHER MATTER IN RESPECT OF WHICH THE PRODUCT IS SUPPLIED. CUSTOMER ACKNOWLEDGES AS A TERM OF THE CONTRACT THAT THE EXCLUSION OF THE ABOVE IS FAIR AND REASONABLE.

8.2 KOCH WILL EITHER REPAIR OR REPLACE, AT ITS SOLE OPTION, ANY DEFECTIVE PRODUCT. EXCEPT AS STATED IN THE PRECEDING SENTENCE, KOCH SHALL HAVE NO OTHER LIABILITY INCLUDING ANY LIABILITY FOR LOST PROFITS, INCIDENTAL DAMAGES, PUNITIVE DAMAGES, OR CONSEQUENTIAL DAMAGES. THE MAXIMUM LIABILITY OF KOCH SHALL BE THE AMOUNT OF THE CONTRACT PURCHASE PRICE.

8.3 If liability for typical damages that are foreseeable for us upon conclusion of the contract applies pursuant to the above provisions, such liability shall be limited to the amounts covered by our company / professional liability insurance. The following insured sums no more than twice a year shall apply

EUR 5.000.000 for property damages
EUR 500.000 for pecuniary losses.

8.4 The customer's claims for damages shall become statute-barred – unless shorter periods are provided for by law –

- in case of a warranty for defects (Section 6) upon expiration of the time limit set forth in Section 6.3 sent. 1,
- in all other cases after one year commencing the end of the year in which the claims originated and the customer learned or, without gross negligence should have learned about the circumstances giving rise to such claim and about the debtor as such. Regardless of the customer's knowledge or grossly negligent lack of knowledge thereof, the claims shall become statute-barred five years after their emergence or, regardless of their emergence or of a knowledge thereof or grossly negligent lack of knowledge thereof, ten years after the occurrence of the respective act, breach of duty or other damaging event (maximum period).

8.5 The customer is responsible for all freight charges for shipment of defective product to KOCH for review.

9. Burden of proof, disputes, applicable law

9.1 Customer agrees that the jurisdiction and venue for any litigation arising in connection with this agreement or the performance of either party hereunder shall be in the appropriate court for the State of New Jersey, USA. Notwithstanding the foregoing, Customer agrees that KOCH may waive the benefit of the preceding sentence and, at its sole option, commence litigation against Customer in a court of appropriate jurisdiction in the county and/or country where Customer's principal place of business is located. In the event that litigation is instituted to interpret or enforce any terms or provision hereof, the prevailing party shall be entitled to reasonable attorney's fees to be awarded by the court in the same action or in a separate action brought for that purpose.

9.2 The exclusive place of jurisdiction for all disputes arising from contracts covered by these Terms and Conditions shall Morris County, New Jersey or United States District Court for the District of New Jersey (Newark Vicinage). This quotation and related matters shall be governed by the substantive laws of the State of New Jersey, USA, without regard to conflicts of law and with the exclusion of the United Nations convention on Contracts for the International Sale of Goods (CISG).

10. Separate Contract.

10.1 Each delivery shall constitute a separate contract. Any failure or defect in any one delivery shall not invalidate the contract as to the remaining deliveries.

11. Customer Responsibilities

11. Warranty claims, or alleged non-performance by KOCH shall not affect the Customer's duty to pay KOCH in accordance with the terms of this Agreement. Any additional costs to KOCH of completing performance reasonably related to Customer's failure to fulfill its obligations contained herein shall be an additional charge hereunder.

12. Cancellation and/or Change of Orders

12.1 If Customer requests additions, deletions or other revisions with respect to the specifications of the Product, KOCH shall advise buyer of changes in the pricing, time of delivery or other matters arising from the proposed change. KOCH shall not be obligated to implement a requested change in the Product, pricing or terms.

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