



# General Purchasing Terms and Conditions for Deliveries to Companies of the Körber Group

(October 2018)

## 1. Sphere of Validity

1.1. Deliveries from the Contractor (CR) to companies of the Körber Group as the Customer (CS) shall be undertaken exclusively in accordance with these Purchasing Terms and Conditions as well as any other written agreements. The General Business Terms and Conditions of the CR shall not, as a whole, become contractual content even if the CS has not expressly objected to them. This shall also be valid if the CR specifically emphasizes that he wishes to supply only in accordance with his General Business Terms and Conditions or the CS, in the individual case, does not expressly object to the CR's General Business Terms and Conditions or accepts the deliveries unconditionally.

1.2. Deliveries in accordance with these Purchasing Terms and Conditions shall be the deliveries of goods.

1.3. These Purchasing Terms and Conditions shall be valid until their revocation by the CS – including for all future deliveries by the CR – even if they have not once again been expressly agreed. Any agreed deviations shall be valid only for the delivery for which they have been confirmed in writing.

## 2. Orders

2.1. Deliveries shall be made only based upon the orders issued by the CS. Orders issued by the CS shall be considered to be binding only if they have been issued by the CS in writing or electronically or, after issuance of the order has been made orally or by telephone, they are confirmed in writing or electronically by the CS subject to the stating of the order number. The same shall be valid for any oral ancillary agreements or belated changes to the order. The acceptance of the order by the CR must be undertaken on the prescribed printed form for the order, unless agreed otherwise.

2.2. The acceptance of the order must be received by the CS promptly, but nonetheless by no later than 5 working days (working days shall be considered to be the weekdays from Monday to Friday) after the order is received by the CR; otherwise, the CS shall be entitled to cancel the order upon a free-of-charge basis.

2.3. No rights against the CS may be derived from commitments made, information, consulting, etc. that have been provided orally or by telephone – except in the event of gross negligence upon the part of the CS. Such oral declarations shall be binding for the CS only if they have been confirmed in writing by the CS or if the CS has demonstrably waived the written form requirement.

2.4. The CS's order number must be stated on all written correspondence, on the invoices and on the shipping documents.

2.5. The CS may demand changes to the order – even after acceptance has been made by the CR, insofar as this is reasonable for the CR. In such a case, insofar as it is required, the prices and delivery timeframes must be appropriately adjusted.

2.6. Without the CS's prior written consent, the CR shall not be entitled to commission third parties with the implementation of the delivery as a whole or with essential portions thereof.

2.7. The CR shall ensure that both the delivery and also replacement parts can be supplied at appropriate conditions to the CS for 15 years after the delivery is made. If, after the passage of the timeframe, the CR intends to discontinue the delivery or replacement parts for it, then the CR shall be obliged to promptly notify the CS of this in writing and give him the opportunity to submit a last order.

## 3. Scope of Delivery

3.1. The scope of delivery shall be as stated in the order issued by the CS.

3.2. Insofar as they are necessary, any required protective devices, original documentation as well as storage, mounting and operational instructions as well as safety data sheets issued in the official EU languages must also be supplied upon a free-of-charge basis. The same shall be valid for documents which are required for maintenance and repairs for the delivery.

3.3. Insofar as this is economically and technically feasible, the CR shall be obliged to use environmentally-friendly products and processes. Upon the CS's request, the CR shall, upon a free-of-charge basis, issue a quality inspection certificate for the supplied goods.

## 4. Delivery, Transfer of Risk, Documents, Packaging

4.1. The delivery shall be made duty paid – including proper packaging – DDP (Incoterms 2010) to the designated delivery destination unless agreed otherwise in writing. If a delivery destination has not been designated, the delivery destination shall be the CS's commercial residence.

4.2. The transfer of risk shall be undertaken in accordance with the agreed Incoterms.

4.3. Each delivery must be announced to the CS by means of a notification of dispatch no later than the time when the goods are dispatched. Partial deliveries shall be permissible only subject to the CS's prior consent.

4.4. Proper delivery papers/delivery documents must be enclosed with each delivery. They must contain the object, the ordered items, the quantity, the weight, the packaging, the shipping method and labelling as well as the CS's order number and its tracking number. The directives regarding the transport of hazardous goods must be followed; in particular, hazardous goods must be labelled as such. The consequences of incorrect, incomplete or belatedly-received delivery papers/delivery documents shall be assumed by the CR.



4.5. The delivery shall be properly packaged. Any packaging which is superfluous as well as not environmentally-friendly must be avoided. The CS shall be entitled, as it so chooses, either to return the packaging to the CR at the CR's expense, to use it or to dispose of it. For any packaging which is separately invoiced, the CR shall reimburse the CS, upon its return, at 2/3 of the invoiced value insofar as it is in good condition.

## **5. Delivery Timeframe, Contractual Penalty, Substitute Performance**

5.1. Delivery timeframes and delivery deadlines are binding. The following shall be definitive for their fulfillment: The receipt of the flawless and complete delivery, insofar as this is agreed, and the acceptance of the delivery or service by the CS at the designated delivery destination.

Deliveries must be made during customary business hours. The CS must be asked when its customary business hours are.

5.2. An early delivery may only then be made subject to the CS's written consent and shall not affect the agreed payment timeframe.

5.3. The CR must promptly notify the CS in writing of any foreseeable delays in meeting the delivery deadlines and delivery timeframes subject to the stating of the reasons for this delay and the anticipated duration of the delay.

5.4. In the event of delays in meeting the delivery deadlines and delivery timeframes for which the CR is at fault, the CS shall have a claim to the payment of a contractual penalty. The contractual penalty shall amount to 0.2% of the order value per working day begun of the delay, but however overall at most 5% of the order value. The CS may reserve the right to assert the contractual penalty until the final payment is made.

5.5. Furthermore, after the fruitless lapsing of a notice period that has been appropriately set by the CS, the CS shall be entitled to have the delivery rendered by a third party at the CR's expense. In this case, the CR shall be obliged to promptly hand out the required documents to the CS. Insofar as proprietary rights hinder the delivery being made by third parties, the CR shall be obliged to promptly obtain a corresponding exemption from these rights.

5.6. Otherwise, in the event of delays in meeting the delivery deadlines and delivery timeframes, the CS's rights shall be determined in accordance with the statutory directives.

The acceptance of a late delivery by the CS shall constitute no waiver of the right to assert damage compensation claims.

## **6. Delivery Disruption and Rescission**

6.1. If sets of circumstances, for which the CS is not responsible, result in a disruption or restriction of the operations of the CS or of a customer of the CS for whom the delivery is intended, the CS's delivery acceptance obligation shall cease to be valid for the duration of the disruption or restriction of the operations.

In this regard, damage compensation claims upon the part of the CR against the CS shall be excluded.

6.2. The CS shall be entitled to withdraw in whole or in part from the contractual agreement insofar as the delivery is no longer considered to be usable from an economic perspective owing to sets of circumstances for which the CS is not responsible.

6.3. The CS shall be entitled, in whole or in part, to withdraw from the contractual agreement insofar as an important reason exists to do so. An important reason shall be considered to exist in the case of natural catastrophes, importing and exporting restrictions, strikes, lockouts or other operational disruptions – both affecting the CS as well as also the CR; furthermore, in the event of the discontinuation of payments by the CR and / or the filing of a petition to commence bankruptcy proceedings with regards to the CR's assets.

6.4. Moreover, the CS shall be entitled to exercise the statutory rights of rescission.

6.5. If the CS, in whole or in part, withdraws from the contractual agreement, the CR's payment claims shall be forfeited. Any advance payments must be promptly reimbursed to the CS and without any deductions. No right of retention upon the part of the CR shall exist.

6.6. If, in the event of the discontinuation of payments and/or the filing of a petition to commence bankruptcy proceedings with regards to the CR's assets, the CS withdraws from the contractual agreement, the CS shall be entitled to utilize the equipment required for the continuation of the work or the deliveries previously made by the CR for an appropriate fee.

## **7. Place of Performance**

Unless agreed to the contrary in writing, the place of performance for all supply obligations shall be the delivery destination designated by the CS. If no such delivery destination has been designated, the place of performance shall be the CS's commercial residence.

## **8. Prices**

8.1. The agreed prices shall be fixed prices and shall exclude any subsequent payment claims of any kind. The prices shall be understood to be DDP (Incoterms 2010) "delivery duty paid" to the delivery destination designated in the order without the statutory VAT, including packaging, unless agreed to the contrary in writing. The price components must be separately indicated by the CR.

8.2. The CS shall pay no fees for visits, samples, models, or the drafting of offers, project design work, etc.

## **9. Payment Terms and Conditions**

9.1. The payment shall be made in the payment methods chosen by the CS.

9.2. The payment timeframe shall begin to run upon the receipt of a proper invoice in duplicate, after delivery has been rendered in full or, insofar as this is agreed, after acceptance of the delivery has been made by the CS. Any early delivery or partial delivery shall not affect the payment timeframe.



9.3. A proper invoice must fulfil the statutory requirements as well as correspond to the information in the order. The latter shall contain as a minimum the indication of the order number and other classification characteristics. Any improper invoices shall be considered to have been received by the CS only after they have been corrected and resubmitted. Insofar as nothing to the contrary has been agreed, invoices must be issued in EUR. Online invoices shall be permissible only subject to the CS's prior written consent.

9.4. Unless agreed otherwise in writing, payments shall be made 30 days after the receipt of the invoice with a 3% discount, or 60 days net. Discount deduction shall also be permissible if the CS makes an offsetting or withholds payments owing to defects; the discount timeframe shall begin to run after the complete elimination of the defect has been done.

9.5. Without a warning letter having been issued in this regard, the CS shall not enter into payment default.

9.6. The CS shall be entitled to assert offsetting and retention rights in the statutory scope.

9.7. Insofar as the CS must render payments before delivery is made (advance payments), the CR must issue corresponding bank guarantees from a German financial institution to the CS's benefit before the CS effects the payment.

9.8. Payments made shall constitute no acknowledgment of the delivery as being contractual. Payments shall be rendered subject to the proviso of belated claims.

#### **10. Assignment, Seizure, Retention of title**

10.1. The CR shall, without the CS's consent, not be entitled to assign his payment claims against the CS or have them collected by third parties. However, if the CR nonetheless assigns his payment claims to third parties or he has them collected by third parties, the CS may, as it so chooses, make payment with a debt-discharging effect both to the CR as well as also to the third party.

With regards to the extended retention of title by the CR's own supplier, the CS's consent to assignment in advance is hereby issued.

10.2. The CR must promptly notify the CS of any seizures, attachments or other disposals by third parties with regards to the deliveries owed by the CR.

10.3. A retention of title upon the part of the CR shall be binding only if it was agreed in writing outside of the parameters of the CR's General Business Terms and Conditions.

The exercising of a retention of title by the CR shall be possible only in the event of the prior rescission of the contractual agreement.

#### **11. Warranty**

11.1. The CR shall guarantee that all deliveries are free from defects, correspond to the order and its specifications, are suitable for the contractual usage and exploitation and fulfil the currently accepted rules of technology as well as the applicable national and international legal directives including the directives and guidelines issued by government agencies, trade associations and professional associations. If the CR has doubts about the implementation method requested by the CS, he must promptly make notification of this in writing to the CS.

11.2. Unless agreed otherwise in writing, the warranty period shall amount to 24 months.

The warrant period shall begin to run upon the commissioning or the final acceptance of the delivery by the CS. If a commissioning or a final acceptance is not prescribed, the warranty period shall begin to run upon the delivery to the CS.

With regards to deliveries which the CS resells, the warranty period shall begin to run upon the commissioning or the final acceptance by the CS's end customer. If a commissioning or a final acceptance is not prescribed by the CS's end customer, the warranty period shall begin to run upon the delivery to the CS's end customer.

The warranty period shall end by no later than 36 months after the delivery is made to the designated delivery destination.

11.3. The CS shall examine the delivery within an appropriate timeframe for externally-recognizable quality and quantity deviations. Any defects that are discovered shall be promptly reported to the CR.

Any quality and quantity deviations which are not externally-recognizable shall be reported to the CR as soon as they have been discovered during ordinary business operations. The notification shall be considered to have been made promptly if it is submitted within a timeframe of 10 working days after the discovery of the defect.

11.4. In the event that bulk deliveries are made, the CS shall be obliged only to do random sampling. If it is discovered that significant portions of the random sampling do not fulfil the contractual or statutory requirements, the CS shall be released from any obligation to conduct a follow-up inspection and shall be entitled to reject the entire delivery. The rejection of the delivery shall not constitute a declaration of the rescission of the contractual agreement.

11.5. In the event that defects are discovered within the warranty period, the CS shall be entitled to assert the statutory warranty claims of its choice and moreover to demand the dismantling and installation in natura as well as the reimbursement of expenditures and damage compensation from the CR.

Warranty claims shall become statute-barred after the passage of 12 months beginning with the notification of defects.



11.6. The CR shall assume all expenditures incurred in conjunction with the discovery and elimination of the defects – particularly inspection costs, dismantling and installation costs, transport costs, infrastructure costs, labor costs and material costs as well as travel costs. This shall also be valid insofar as the expenditures thus increase as the result of the fact that the delivery object was moved to a different location than the delivery destination.

11.7. If the CR does not fulfil the CS's demand to eliminate the defect within a notice period that has been set by the CS, the CS shall be entitled to undertake the required measures on its own, or have them undertaken by third parties, at the CR's expense. Insofar as the setting of a notice period is dispensable, the CS shall be entitled to this right – even without the setting of a notice period.

11.8. Without prior mutual agreement, measures may be undertaken by the CS or the CS's commissioned third party in order to eliminate small defects or in order to ward off disproportionately large damages or in order to avoid operational safety risks affecting the CS or third parties at the CR's expense. The CS shall promptly notify the CR of the reason, type and scope of these measures. The CR's warranty obligation shall not be affected by this.

11.9. For deliveries or portions thereof which cannot be used by the CS or the CS's end customer for the duration of the defect and / or the elimination of the defect, the warranty period shall be extended by the duration of the usage disruption. For any rectified or replaced deliveries or portions thereof, the warranty period shall begin to run anew at the point in time when the defect is eliminated.

## 12. Third-Party Rights

12.1. The CR shall guarantee that the delivery is not encumbered by third-party rights. The CR shall be obliged to indemnify the CS and its customer from all damages and costs which the CS and its customer incurs as the result of a non-fulfilment of this guarantee promise.

The CR and the CS shall promptly notify each other of any discovered risks of a legal violation or purported legal violations and ward off the corresponding claims by mutual agreement.

12.2. If third-party rights are violated by a contractual usage of the delivery, the CS shall be entitled, at the CR's expense, to acquire the required usage rights from the holder of the rights. The CR shall be obliged to support the CS in any out-of-court and court dispute with the holder of the rights.

Otherwise, in the event of defects of title, the CS's rights shall be determined in accordance with the statutory directives. The statute of limitations period for claims for defects of title shall amount to 10 years.

## 13. Software

13.1. The CS shall be entitled to use the software from the delivery – including the documentation – in the scope which is required for the contractual usage of the delivery.

13.2. Before its delivery and installation, the CR shall inspect the software for viruses, Trojans or other computer malware by utilizing current, virus protection programs that are customary for the market.

## 14. Statutory Requirements, Quality Assurance, Product Liability

14.1. The CR's attention is drawn to the fact that the CS sells its products worldwide.

14.2. The CR shall be obliged to follow the legal provisions which are valid for delivery to the delivery destination – particularly regarding accident prevention, workplace and machine safety, hazardous goods and environmental protection. The CR shall ensure that his deliveries fulfil the provisions of Regulation (EC) No. 1907/2006 for the registration, assessment, approval and restriction of chemical substances (REACH Regulations). The CR shall ensure particularly that the substances contained in his deliveries – insofar as this is required in accordance with the provisions of the REACH Regulations – have been registered and/or pre-registered and the CS has been provided with all information required in accordance with the provisions of the REACH Regulations such as, for example, safety data sheets and/or chemical safety reports.

14.3. The CR must implement a quality assurance process which, based upon the type and scope, is suitable and corresponds to the latest state of the technology and, upon request, document this to the CS.

Upon request, the CR shall conclude a corresponding Quality Assurance Agreement with the CS.

14.4. Through factory-side controls, the CR must ensure that the deliveries correspond to the CS's technical specifications as well as otherwise correspond to the provisions specified in Clause 14.1. The CR shall be obliged to keep records of the implemented inspections and archive all testing, measurement and controlling results for 10 years. The CS shall be entitled at any time to examine the documents and to make copies thereof.

14.5. Unless agreed otherwise in writing, the CR shall label the delivery goods in such a manner that they are permanently recognizable as being his products.

14.6. If the CS has legal claims asserted against it owing to the violation of statutory provisions – particularly safety guidelines or owing to domestic or international product liability directives, the CR shall be obliged to indemnify the CS and its customer from all claims insofar as they have been created as the result of the delivery from the CR. This indemnification shall also encompass the costs of a precautionary recall campaign. Insofar as this is possible and reasonable, the CS shall notify the CR of the content and scope of the recall measures to be implemented and give the CR the opportunity to submit a position statement.



14.7. The CR shall insure himself against all risks arising from product liability – including the recall campaign risk – in an appropriate amount and, upon request, present the insurance policy to the CS for examination purposes.

14.8. The CR must notify the CS, without this having to be requested and promptly, of any changes in the composition of the processed materials or the constructive composition of his deliveries. The changes must be approved in writing by the CS. The CR and the CS shall promptly notify each other of any discovered violation risks or purported violation cases and ward off corresponding claims by mutual agreement.

### **15. Customs and Foreign Trade Law**

15.1. The CR shall be obliged to follow the applicable national and international customs and foreign trade law (collectively "Foreign Trade Law"). The CR must promptly report all information and data in writing to the CS by no later than two weeks after the order is made as well as of any changes which the CS requires for the fulfilment of foreign trade law during the exporting, importing and re-exporting – particularly:

- All applicable export list numbers including the Export Control Classification Number in accordance with the U.S. Commerce Control List (ECCN);
- The statistical item number in accordance with the current goods allocation in the foreign trade statistics and the HS (Harmonized System) Code and
- The country of origin (non-preferential origin) and, insofar as this is requested by the CS, the declarations from the suppliers regarding the preferential origin (for European suppliers) or certificates regarding preference (for non-European suppliers).

All the aforementioned information and data shall be agreed to be quality features of the delivery.

15.2. If the CR violates his obligations in accordance with Clause 15.1, the CS shall be entitled to rescind the contractual agreement as well as to assert claims for all damages created in this context. The CR shall indemnify the CS in this regard.

### **16. Models, Tools, Documents, Advertising and Confidentiality**

16.1. Any models, tools and devices, which are produced or procured by the CR at the CS's expense, shall become the CS's property after it makes payment for them. They must be carefully handled by the CR, labelled as being the CS's property and, insofar as this is possible, stored separately from the CR's other products as well as insured against loss and other damages at the CR's expense. The manufacture and delivery of products and parts thereof, which are produced via

these models and tools or with these devices, shall be permitted exclusively to the CS. Upon the CS's request, the CR must, without exception, return the models, tools and devices not encumbered by third-party rights to the CS.

16.2. All drawings, plans, sketches and other technical documents as well as supplied materials which are provided to the CR for the implementation of the orders shall, even in the case of processing, remain the CS's property. They must be promptly returned at any given time to the CS upon request as well as after the implementation of the order without any special request having to be made in this regard.

16.3. Documents and materials from the CS may be used exclusively for the CS's purposes and exclusively in the scope approved by the CS and, without the CS's prior written consent, may neither be reproduced nor passed on to third parties.

16.4. Orders issued by the CS and all related commercial and technical details must be treated by the CR as being business secrets.

16.5. The CR may make reference to the business relationship with the CS only subject to CS's written consent. The CR shall not be entitled to use business names, logos or trademarks of the CS.

16.6. The CR shall be forbidden from presenting the object of the delivery, which has been specifically produced or processed for the CS, at trade fairs and/or otherwise making it available to third parties.

### **17. Partial Invalidity**

If a provision of a contractual agreement is or becomes invalid, in whole or in part, this shall not affect the validity of the provisions as a whole. In such a case, the CR and the CS shall endeavor to reach agreement on a valid provision which most closely corresponds to the commercial intent of the invalid provision insofar as this is possible. If no agreement can be reached, the court shall issue a ruling in this regard.

### **18. Place of Jurisdiction and Applicable Law**

18.1. The place of jurisdiction shall be the CS's commercial residence. However, the CS shall also be entitled to assert its claims in the CR's general place of jurisdiction.

18.2. For the reciprocal legal relationships, the law of the Federal Republic of Germany shall be valid. The applicability of the conflict of laws provisions of International Private Law (IPL) as well as of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

### **Compliance Notice**

We wish to point out that our employees have been instructed to strictly follow all valid statutory directives as well as respect the values and principles of Körber AG. In particular, our employees may not request any inappropriate advantages and benefits, have them promised to them or accept them. You can find more details in this regard in our Code of Conduct at [www.koerber.de/compliance](http://www.koerber.de/compliance).