



Sales, Delivery and Payment Terms and Conditions KOSTYRKA GmbH

Version dated October 2012

1 Scope of Application

1.1 The following contractual terms and conditions apply to all current and future contractual relationships between KOSTYRKA and its customers.

1.2 KOSTYRKA herewith specifically repudiates all purchasing conditions to the contrary on the part of the customers.

The precedence of KOSTYRKA's General Business Terms and Conditions will be explicitly accepted by the contractual partners through the execution of the contract, unless the customer disputes this in writing within a period of 2 weeks from receipt of the contract confirmation. KOSTYRKA must draw attention to this deadline.

2 Conclusion of the Contract

2.1 Quotations submitted by KOSTYRKA and information relating to prices and delivery times are subject to confirmation. In the case of goods to be obtained by KOSTYRKA through a third party these are subject to acceptance of the order by the supplier.

2.2 Test series will be produced by KOSTYRKA exclusively in accordance to customer requirements. KOSTYRKA must receive written notification of the type and extent of said test series before offer submission.

2.3 The contract comes into force with the order confirmation from KOSTYRKA. The written order confirmation from KOSTYRKA governs exclusively the content of the contract.

2.4 The customer is bound to KOSTYRKA for his order until written confirmation of the contract by KOSTYRKA, at the longest for one month from receipt of the order by KOSTYRKA.

2.5 Alterations and/or additions to this contract require written confirmation from KOSTYRKA.

3 Reservation of Right to Make Alterations

KOSTYRKA reserves the right to make alterations and variations to KOSTYRKA's catalogues, prospectuses and price lists insofar as they are reasonable for the customer or necessary for technical or normal trade practice reasons.

4 Prices and Risk

4.1 The prices for deliveries and services provided by KOSTYRKA are calculated in accordance with the price list valid at the time the contract was concluded. In cases of doubt the date of the contract confirmation applies.

4.2 If more than 4 months elapse between awarding of the contract and delivery, KOSTYRKA is entitled to invoice according to the price list valid at the latter time.

4.3 The prices are calculated excluding VAT at the applicable legal rate and are understood to be ex KOSTYRKA's warehouse. If KOSTYRKA should place a forwarding order relating to the goods produced, this is done at the customer's expense and risk.

5 Delivery Deadlines

If delivery deadlines agreed by KOSTYRKA cannot be observed, the customer must grant KOSTYRKA an additional period of time of at least four weeks from receipt of an appropriate written request.

6 Force majeure and Procurement Risk

6.1 In the case of force majeure KOSTYRKA is not obliged to hand over the ordered goods and the customer will be similarly released from his liability to pay.

6.2 Apart from unforeseeable circumstances externally affecting KOSTYRKA's business, instances of force majeure include particularly shortages of raw materials, official actions of any kind, fire, strikes, lock-outs and restricted operational activities of all kinds.

6.3 The risk relating to the procurement of raw materials and energy for production of the ordered goods will not be accepted by KOSTYRKA in the following instances:

6.3.1 In the case of a strike at the supplier's premises or those of the forwarding agent/carrier involved in the transportation of the raw materials as the goods are being transported by land, air or water.

6.3.2 If the raw materials necessary for production cannot be supplied on account of force majeure, particularly in relation to problems associated with the weather.

6.3.3 If the purchase price for KOSTYRKA rises by more than 100% compared with that at the time the contract was concluded with the customer and the affected raw material forms a proportion of at least 50% in the product to be manufactured by KOSTYRKA.

7 Payment and Default

7.1 Unless otherwise agreed all invoices from KOSTYRKA are due for immediate payment on receipt of the invoice and are to be paid within 10 days from the date of the invoice at a 2% discount and within 30 days without discount. In the case of specially manufactured articles and/or large objects with a delivery time of 12 weeks or more following conclusion of the contract and/or for order totals from a net amount of " 23,000.00 KOSTYRKA apply the following conditions: 1/3 of the contract sum on awarding of the order, 1/3 of the contract sum on notification of readiness for despatch and 1/3 of the contract sum in accordance with the regulation in the first sentence.

7.2 Bills of exchange and cheques are accepted only with specific agreement and only for settlement of a debt. Costs associated with these are always charged to the customer. Bank charges and other costs associated with processing foreign remittances are similarly always charged to the customer.

7.3 The customer will also be in default of his payment obligation without warning if the payment has not reached KOSTYRKA within 30 days from receipt of the invoice.

7.4 In a case of default the customer has to pay interest on the outstanding payment at 8% above the base interest rate applicable at the time, in accordance with the German Bank Rate Transition Law. The customer retains the right to prove that KOSTYRKA has suffered a lesser loss of interest. KOSTYRKA expressly reserves the right to claim further damages caused by default.

8 Set-Off and Right of Retention

8.1 A set-off against KOSTYRKA's claims is possible only insofar as the claim to be offset is recognised by KOSTYRKA or has been legally determined.

8.2 The customer can exercise a right of retention against KOSTYRKA's claims only insofar as this is based on the same contractual relationship.

9 Premature Maturity

Claims on the part of KOSTYRKA against its customers become due immediately, with annulment of all agreements made concerning the granting of discounts, if

- a) an application is made for the opening of insolvency proceedings against the customer's property or its opening is refused for want of assets or if the customer negotiates a general judicial or extra-judicial settlement with his creditors or becomes insolvent;
- b) the customer is in default with his payment obligations toward KOSTYRKA;
- c) personal cheques made out by the customer are not honoured or bills of exchange accepted from him are protested for want of payment;
- d) the customer loses his legal competency and
- e) the customer infringes his normal contractual obligations towards KOSTYRKA and does not rectify the infringement within a week following a written warning from KOSTYRKA drawing attention to this legal position.

10 Packaging

Packaging material is to be disposed of by the customer.

In the event that products manufactured by KOSTYRKA need to be returned, the packaging requirements of KOSTYRKA must be strictly observed. If damage is caused due to incorrect packaging during transport arranged by the customer, KOSTYRKA is entitled to either refuse to accept the return or issue an invoice for the cost of repair to the customer.

11 Retention of Title

11.1 KOSTYRKA retains title to the delivered object until the receipt of all payments arising from the business dealings with the customer. The retention of title also extends to the recognised balance, insofar as KOSTYRKA enters claims against the customer in current accounts (retention of current account).

11.2 Repossession of the delivered object by KOSTYRKA does not signify withdrawal from the contract, unless this had been expressly stated in writing. Seizure of the delivered object always signifies withdrawal from the contract. In the case of seizures or other encroachments by third parties the customer must immediately inform KOSTYRKA in writing, so that KOSTYRKA can sue in accordance with 771 of the Code of Civil Procedure. If the third party is not in a position to reimburse KOSTYRKA for the judicial and extra-judicial costs of a lawsuit in accordance with 771 of the Code of Civil Procedure, the customer is liable for the expenditure incurred.

11.3 The customer is entitled to sell on the delivered object in the course of normal business; however, he hereby assigns to KOSTYRKA all claims amounting to the total of the final invoice (including VAT), which accrue to him against his purchaser or against a third party through the selling-on and indeed regardless of the fact as to whether the delivered object has been sold on without or following processing. KOSTYRKA accepts the assignment. The customer is authorised to collect this claim, even after its assignment. This does not affect KOSTYRKA's competence to collect the claim itself, KOSTYRKA does, however, undertake not to collect the claim as long as the customer fulfils his payment obligations in the prescribed manner and is not in default of payment. In the latter case KOSTYRKA can demand that the customer gives it the assigned claims and the names of the debtors concerned, provides all information necessary for the collection, hands over the relevant documents and informs the debtors (garnishees) of the assignment.

11.4 The processing or transformation of the delivered object by the customer always takes place on behalf of KOSTYRKA. If the delivered object is processed together with objects which do not belong to KOSTYRKA, KOSTYRKA acquires co-ownership of the new article in the proportion of the value of the delivered object to the other processed objects at the time of the processing. The same also applies to the article produced by processing as to the retained goods, in particular the customer's claim against his purchaser arising from the sale of the new article is assigned to KOSTYRKA for the amount of KOSTYRKA's claim. KOSTYRKA accepts the assignment.

11.5 If the delivered object is inseparably mixed with objects not belonging to KOSTYRKA, KOSTYRKA acquires coownership in the new article in the proportion of the value of the delivered object to the other mixed objects at the time mixing took place. If the mixing takes place in such a manner that the customer's article is to be regarded as the main article, it is considered to have been agreed that the customer hands over co-ownership to KOSTYRKA proportionately. The customer holds sole or co-ownership on KOSTYRKA's behalf. The same also applies to the article produced by processing as to the retained goods, in particular the customer's claim against his purchaser arising from the sale of the new article is assigned to KOSTYRKA for the amount of KOSTYRKA's claim. KOSTYRKA hereby accepts the assignment.

11.6 At the customer's request, KOSTYRKA undertakes to release the securities to which it is entitled when their value exceeds that of the claims to be secured by more than 20%, insofar as these have not yet been settled.

12 Notification of Defects and Other Obligations of the Customer

12.1 The customer is obliged to check the delivered goods without delay.

12.2 The customer must notify KOSTYRKA of any apparent defects within 8 working days of delivery. If the customer does not submit such notification, the goods are considered to have been accepted unless it is a matter of a defect which was not discernible during checking. If any such defect appears later, corresponding notification must be provided within 8 working days following its discovery. Otherwise the goods will be considered to have been accepted, even in spite of this defect. Notifications of defects are considered valid if issued before the aforementioned deadline.

12.3 Written notification of defects which are not apparent must be provided, at the latest, one year following delivery of goods. After this, notification of defects will not be considered valid.

12.4 In the case of justified notification of defects, KOSTYRKA is entitled, at its discretion, either to rectify the goods or to replace them free of charge. If two attempts at rectification are unsuccessful, if KOSTYRKA has unjustifiably refused or unduly delayed rectification or if KOSTYRKA has allowed a deadline from the customer of at least three weeks to expire, the customer is entitled to withdraw from the contract or reduce the purchase price. Claims on the part of the customer for compensation are determined in accordance with this contract.

12.5 The customer bears the responsibility for ensuring that suitable and/or proper use, fault-free installation and/or commissioning of the delivered object takes place. He is also responsible for ensuring that the delivered object is maintained in due order and handled correctly. The customer must use suitable resources, ensure fault-free building work and a suitable construction site as well as keep chemical, electro-chemical or electrical influences away from the delivered object, insofar as they do not themselves result from the delivered object.

13 KOSTYRKA's Liability

13.1 KOSTYRKA is only liable for damage that is based on a premeditated or grossly negligent contractual infringement committed by the same or a premeditated or grossly negligent contractual infringement committed by one of its legal representatives or agents. This limitation does not apply to a liability for losses arising from injury to life or limb or to health which are caused by a negligent obligation infringement by KOSTYRKA or a premeditated or negligent infringement of an obligation on the part of one of KOSTYRKA's legal representatives or agents.

13.2 The exclusion of liability for negligent behaviour does not apply in the case of paragraph 5 unless in cases of force majeure in the sense of paragraph 6. The amount of the claim against KOSTYRKA is, however, limited to the sum arising from the operational third-party insurance, whereby insurance pleas arising from the insurance contract and/or the Insurance Contract Law (especially the insured's share of the risk, series losses, annual maximisation, risk committees) are disregarded in relation to the customer.

13.3 KOSTYRKA is not liable if, in the case of a defective delivery, the customer himself or a third party rectifies it incompetently or undertakes alterations to the delivered object without having obtained prior written approval from KOSTYRKA.

14 Applicable Law

14.1 The law of the German Federal Republic applies exclusively to the contract.

14.2 Excluded from the applicable law are the provisions of the UN Sales Convention (CISG). The present Sales, Delivery and Payment Terms and Conditions are complemented by the regulations of the German Code of Commerce and German Civil Code.

15 Place of Fulfilment and Jurisdiction

15.1 For all obligations arising from the contract and also for the customer's payment obligations the place of fulfilment is the location of KOSTYRKA's headquarters.

15.2 The place of jurisdiction for all disputes between KOSTYRKA and the customer is the headquarters of KOSTYRKA unless the customer is a merchant, a legal entity under corporate law or a special fund under public law or if the customer does not have any general place of jurisdiction in the German Federal Republic. KOSTYRKA is also entitled to take legal action at the customer's headquarters.

16 Rights regarding Drawings and Software

16.1 KOSTYRKA retains the copyright of all drawings prepared by KOSTYRKA. The drawings may be made accessible to third parties only with the express written permission of KOSTYRKA.

16.2 If KOSTYRKA supplies software, the customer is granted a non-exclusive right to use it together with the documentation. It is handed over for use on the delivered object for which it is designed. Use on more than one system is not permitted. The customer may only copy, revise, translate or convert the software from the object code to the source code to the legally permitted extent (Section 69a ff. Copyright Law). The customer undertakes not to remove the manufacturer's details, especially copyright notices, or to alter them without the specific prior authority of KOSTYRKA. All other rights relating to the software and the documentation, including the copies, are retained by KOSTYRKA or by the suppliers of the software. Sublicensing is not permitted.