

# General Terms and Conditions of Business for use in commercial transactions with businesses

– valid from 01.01.2009 –

## 1. General

These general terms and conditions of business alone shall govern the entire business relationship with our customers. They shall also apply for all future business relationships without having to be expressly included again. Any terms and conditions of purchase or other terms and conditions of business of our customers which may contradict our terms and conditions of business shall not become part of the contract should we not object to them or should we deliver the consignment. We hereby reject the application of such terms and conditions. Agreements to the contrary or deviating from these terms and conditions of business to hand must be made in writing to be valid.

The customer shall guarantee that the information and documentation he provides to the tax authorities is correct. In the event that Koinor should lose the right to offset its VAT payments as a result of incorrect information or has to pay value added tax as a result of an invalid VAT registration number, the customer alone shall bear the risk.

## 2. Scope of performance

The quality shown in our current catalogues and price lists defines our performance and is complete. Other public statements do not include any descriptions of the goods to be delivered which may be taken as supplementing or amending the catalogue.

## 3. Terms of payment and offsetting

The remuneration shall be payable in full upon delivery, unless other terms of payment have been agreed. The Customer shall be in default thirty days from the date on which payment is due, unless he has paid, without Koinor having to declare that the Customer is in arrears. In the event that there are defects the Customer shall not be entitled to a right of retention, unless the delivered consignment in manifestly defective and / or the Customer is obviously entitled to refuse to accept the consignment. In such a case the Customer shall only be entitled to retention provided that the retained amount is in a reasonable proportion to the defects and the probable costs of subsequent fulfilment (this means in particular rectifying a defect). The Customer shall not be entitled to assert claims and rights on account of defects if he has not paid up payments which are payable and the payable amount is in a reasonable proportion to the value of the consignment beset with defects. Above and beyond this, offsetting against claims by Koinor or asserting a right of retention against a claim by Koinor is not allowed, unless this counter claim has been recognised by Koinor or has been declared final and absolute in a court of law.

## 4. Delivery date

The stated delivery dates and delivery periods are non-binding and shall reflect Koinor's production and delivery schedules. Koinor shall indeed endeavour to abide by these dates. However, the Customer shall not be entitled to have consignments delivered on specified delivery dates and Koinor shall not furnish a guarantee of compliance with its specified delivery dates.

## 5. Dispatch and passing of risk

All consignments including returns shall travel at the Customer's risk. In cross-border transactions delivery shall be FOB or Free Consignee, packing free of charge but duty not paid. Freight charges will be invoiced for small deliveries worth less than € 500.00. It shall not be incumbent upon Koinor to select any particular method of dispatch. The risk of delivery shall pass over to the Consignee at the point in time at which the goods are handed over to the carrier. Koinor shall not accept any liability for damage and loss during transportation. The goods shall not be insured by Koinor during transit.

## 6. Reservation of title

Koinor shall be granted the following securities until all the claims to which Koinor is entitled (including all claims on the balance of current account) based on any legal reason against the Customer now or in future until all Koinor's claims are fulfilled. Upon demand such securities shall be released by Koinor at its choice, provided that the value of such securities exceeds its claims by more than 20% on a permanent basis.

The goods shall remain the property of Koinor until all its secured claims have been paid for in full. Processing or transformation of the goods shall always be effected for Koinor as manufacturer, without however, this creating any obligation for Koinor.

If the (co) ownership of Koinor expires as a result of its products being combined with other products, it shall consequently be agreed here and now that the (co) ownership of Koinor to the combined thing shall pass over to Koinor in proportion to the value of Koinor's goods to the invoiced value of the combined thing. The Customer shall keep the (co) ownership of Koinor without payment. Goods to which Koinor is entitled to (co) ownership, shall be known in the following as goods subject to reservation of title.

The Customer shall be entitled to process and sell the goods subject to reservation of title in the course of a proper commercial transaction, as long as he is not in default with paying Koinor's invoices. The Customer must not pledge the goods subject to reservation of title or assign them by bill of a sale as a security. The claims created with regard to the goods subject to reservation of title (including all claims on the balance of current account) from resale or other legal reason (insurance, claim against third parties for damages in compensation on account of an illegal act) shall be assigned by the Customer to Koinor here and now and in full for the sake of security. Koinor authorises the customer revocably to collect the assigned claims for Koinor's account but in his own name. This collection authorisation can be revoked, if the Customer does not fulfil his payment obligations to Koinor properly.

In the event of third party seizures of the goods subject to reservation of title, the Customer shall point out that the goods are the property of Koinor and notify Koinor

of the seizure immediately. Costs and damages shall be reimbursed by the Customer. In the event of breaches of duty by the Customer, in particular default in payment, Koinor shall be entitled, even without setting a time limit, to demand the surrender of the delivered goods and / or to withdraw from the contract; the Customer shall be obliged to hand over the goods. A demand for the surrender of the delivered goods shall not constitute withdrawal from the contract by the Seller, unless this is expressly stated.

## 7. Limitation of liability and conditions for claims based on defects

Warranty claims are not valid for an insignificant deviation from the quality, which has been agreed on, or for an insignificant impairment of usefulness. In addition, warranty claims shall only be valid if notification of recognizable defects is made in writing before transfer of possession or delivery to the end customer. Every complaint about a defect must be in writing. Each complaint must be made promptly. This means that the notification of a defect must be received in writing by Koinor no later than 20 (twenty) calendar days after the delivery and for overseas deliveries 60 (sixty) calendar days. The fulfillment of this obligation to notify in writing is also a prerequisite for claims according to paragraph 478 of the German Civil Code.

In all cases Koinor shall be entitled to choose between rectifying the defect and supplying new goods. If the subsequent fulfilment is unsuccessful, the Customer shall consequently be entitled to reduce the price or to withdraw from the contract. If the Customer demands compensation for damages instead of performance, or carries out a repair himself, Koinor shall be allowed a second attempt to effect subsequent fulfilment. Only once this second attempt has failed shall subsequent fulfilment be regarded as having been unsuccessful.

The expenditure required for the purposes of subsequent fulfilment shall be borne by the Customer, in so far as they increase as a result of the goods and services having to be rendered to a place other than the Customer's premises.

In cases of intent or gross negligence Koinor shall be liable in accordance with the law. Moreover Koinor shall only be liable in accordance with the (German) Product Liability Act on account of loss of life, physical injury or impairment of health or on account of a culpable breach of important contractual obligations. The right to compensation for the breach of important contractual duties is however, limited to damages which are foreseeable for this type of contract. Koinor's liability shall also be limited in all cases of gross negligence to damages which are foreseeable for this type of contract. Liability for damage to the Customer's legal property is ruled out. This shall only not apply in cases of intent or gross negligence or on account of loss of life, physical injury or impairment to health.

The exclusion of liability shall also cover compensation for damages plus performance and compensation for damages instead of performance, regardless of the legal reason, in particular on account of defects, the breach of duties under the obligation or illegal act.

Moreover, Koinor's liability on account of delay in performance for compensation for damages in addition to performance shall be limited to 5% and for compensation for damages instead of performance to 10% of the value of the goods or service. Claims by the Customer over and above this shall be ruled out.

Liability by Koinor on account of impossibility for compensation for damages and to the reimbursement of expenditure spent unsuccessfully shall be limited to a total of 10% of the value of the goods and services. Claims over and above this by the Customer on account of impossibility of supply are ruled out. These limitations shall not apply in cases of intent, gross negligence or on account of loss of life, physical injury or impairment to health. The Customer's right to withdraw from the contract on account of impossibility shall not be affected as a result of this.

The limitation period for defect claims concerning deliveries and services amounts to one year from the time of delivery. This does not however apply to cases under Section 479(1) of the Bürgerliches Gesetzbuch ('German Civil Code'), unless the recourse claims of the customer against Koinor are effectively excluded.

Claims and rights arising due to defects in the deliveries of used articles – regardless of the legal grounds – are excluded. This exclusion provision for the deliveries of used articles also applies to all claims for damages against Koinor which are connected to the defects, regardless of the legal ground for the claim. To the extent that claims for damages of any kind exist against Koinor which are not connected to a defect, these shall be excluded.

The provision on the limitation period and the exclusion provision are not generally applicable in the case of intent, if Koinor has maliciously not disclosed a defect, for claims for damages in cases of injury to life, limb, health or freedom, for claims stemming from the Produkthaftungsgesetz ('Product Liability Law'), in the case of a gross negligent breach of duty or in the case of a violation of essential contractual duties.

The Customer shall not have any right of recourse against Koinor in accordance with § 478 BGB, because Koinor grants a discount on the purchase prices charged to date in line with the net purchase list in force at that time.

## 8. Place of fulfilment and place of jurisdiction

Koinor's headquarters in 96247 Michelau, Germany shall be regarded as the place of fulfilment for all deliveries. The sole place of jurisdiction for all legal disputes is the local court in Lichtenfels or the regional court in Coburg. These terms and conditions of business shall be governed by German law. In the event that there should be a legal dispute in a court other than a German court the Buyer shall be obliged to bear the costs of the legal dispute and to reimburse the lawyers' costs incurred by Koinor. The Buyer is aware that his data will be stored on a computer.

## 9. Validity

If any provisions in these general terms and conditions of business should be legally invalid, this shall not affect the validity of the remaining provisions. In this case the invalid provision shall be replaced by a legal provision coming as close as possible to the economic content of the invalid provision. These general terms and conditions of business shall come into force on 01.04.2005 in place of the former general terms and conditions of business.