

KOLIBRI GmbH – General Terms and Conditions of Sale and Delivery for Contracts with Companies, Public Law Legal Entities and Public Law Special Funds

Hereinafter the KOLIBRI GmbH shall be referred to as "KOLIBRI" and the party purchasing from KOLIBRI or is in a pre-contractual relationship with KOLIBRI regarding purchasing from KOLIBRI shall hereinafter be referred to as the "BUYER".
These General Terms and Conditions of Sale and Delivery shall hereinafter be referred to as the "CONDITIONS".

1. Area of Application

These CONDITIONS are applicable to all offers, acceptance of offers and sales. They shall apply in the sense of § 14 BGB (German Civil Code), for public law legal entities and public law special funds and for other persons shall apply insofar as legally permitted. Any differing conditions of the BUYER shall be opposed, they shall only be effective if KOLIBRI expressly agrees in writing.

2. Offers, Contract Conclusion and Purchase of Products, Exports

- 2.1 All offers are without obligation and dependent on the timely receipt of materials and guaranteed cover by KOLIBRI's trade credit insurance policy. Catalogues and other sales documents and presentations by KOLIBRI – also in electronic form – apply merely as an invitation to place an order.
- 2.2 The order by the BUYER represents a binding offer to conclude a purchase contract. Orders from the BUYER shall be accepted only if within 30 days KOLIBRI expressly confirms acceptance of the order in writing or by email or if the products are delivered directly after receipt of the order. The invoice shall then apply as confirmation of the order.
- 2.3 Any verbal agreements given by KOLIBRI's sales staff or trade representatives, which go further than the written contract or confirmation of order, shall only apply if they are confirmed by KOLIBRI in writing. This does not apply to declaration of persons, who are empowered by KOLIBRI with unlimited representation or unlimited representation towards the outside.
- 2.4 Volumes, quality and descriptions as well as any specifications of the products are directed at the offer from KOLIBRI, if it is accepted by the BUYER or KOLIBRI's current catalogue in connection with the confirmation of order by KOLIBRI in the case of an order by the BUYER are to be handled confidentially and may not be made accessible to third parties without the prior agreement of KOLIBRI.
- 2.5 Obvious or erroneous errors in catalogues, price lists, offer documents or other documents may be corrected by KOLIBRI without resulting in any claims on the part of the BUYER.
- 2.6 KOLIBRI reserves the right to change or improve the products without informing the BUYER, insofar as legal requirements have to be considered and/or insofar as no lasting deterioration with regard to quality, function or usability is incurred. The BUYER shall have no ground for claims for reason of such changes.
- 2.7 Products manufactured as a series are sold according to sample. There is no claim on the delivery of exhibition parts. Testers and samples apply as approximate viewing items for quality, measurements, weight and colour.
- 2.8 Variances in products and goods such as natural marking in leather, colour variations of up to +/- 10 % and register differences up to 0.1 mm in the case of prints, insignificant minor variations in colour and contour guides depending on the material and the coatings with engravings comply with the contract. This shall also apply to repeat orders and supplementary orders.
- 2.9 Export of the delivered products requires the express agreement of the seller. This shall not apply to sales in members states of the European Union and the countries in the European Economic Area.

3. Cancellation and Return of Products

The cancellation of an effectively realised contract, if applicable in conjunction with the return of already delivered products requires express agreement between the seller and the BUYER. In the case of products specially finished or specially created for the BUYER cancellation of the contract and the return of already delivered defect-free products is generally excluded. Bin the event of cancellations by the BUYER of orders already recorded by the seller, a cancellation fee shall apply. In the case of manufacturing to be done on order of the BUYER this shall amount to 30% of the order value, otherwise a fee of 15% of the order value shall apply. The BUYER has the burden of proof to justify lower cancellation charges.

4. Purchase Price and Conditions of Payment, Payment Delay

- 4.1 The purchase price is pursuant to the offer from KOLIBRI, or in the event of no express price offer, pursuant to the valid price list applicable to the BUYER on the day of conclusion of the contract. The agreed price is in EUROS. All the prices listed in the sales documents are without obligation, and apply plus the legal VAT and packaging prices as well as ex works (under application of the "INCOTERMS 2010"), insofar as nothing other is agreed in writing.
- 4.2 KOLIBRI reserves the right in the event that more than two months pass between contract conclusion and delivery of the products, to increase the prices by notification to the BUYER before delivery, in order to pass on KOLIBRI's costs outside its control, such as in particular exchange rate amendment and/or changes in the rate of duty or more than a 10% increase in the price of materials or manufacturing costs.
- 4.3 Payment should be made only by bank transfer. Bills of exchange, cheques and payments by any other means, do not represent any fulfillment of the payment obligation, until KOLIBRI irrevocably and finally has access to the payment funds. Discount changes are for the account of the BUYER.
- 4.4 In the event of agreement to open a documentary letter of credit by the BUYER this must be done in accordance with the General Rules and Customs for documentary Letters of Credit, Issue 1993, ICC Publication No. 500. The BUYER shall pay any costs in connection with the documentary letter of credit.
- 4.5 Insofar as nothing other is agreed, the BUYER must pay the full purchase price within 21 days of receipt of the invoice. To this end late payment shall not be subject of a dunning letter. If any facts become known to KOLIBRI after conclusion of the contract, which pursuant to fulfill commercial discretion, lead to conclusions being drawn of a significant asset of credit deterioration, in particular late payment to another supplier, KOLIBRI is entitled to demand advance payment or securities and in case of refusal, to withdraw from the contract, whereby payments for already performed partial services become payable immediately.
- 4.6 If the BUYER is in delay with his payment obligations all other claims shall become due for payment immediately, without a special notice of default being required. Furthermore, KOLIBRI is entitled, regardless of other claims or rights, to choose whether to cancel the contract or withdraw from it, to demand damage compensation regarding non-fulfillment and/or refuse any further deliveries to the BUYER or demand advance payment for such, or demand interest in the legally valid amount (base rate plus 8%) from the due date until payment has been received and stop any further deliveries to the BUYER. The BUYER is entitled to provide evidence that the delay has caused no damages, or a lower level of damages.
- 4.7 KOLIBRI is entitled to withdraw from the contract and demand damage compensation, if the BUYER refuses to accept the products finally or after a prior repeated deadline of at least 5 days has still not accepted the products.
- 4.8 If the BUYER is in delay with payment or a bill of exchange is not converted to payment by the deadline, the seller is entitled to take back the products. The BUYER already at this point agrees that the seller, if applicable, may enter his premises to collect the products. The seller can furthermore, forbid the further sale and disposal of the products. The retrieval of the products does not represent a withdrawal from the contract. If the products, on the other hand, were delivered in the course of an individual order outside of a business relationship, the seller is obliged to withdraw from the contract in advance. The BUYER may, however, avert the legal consequences by paying a security in the amount of the endangered payment claim.
- 4.9 It applies as expressly agreed that all costs of legal action by KOLIBRI in the case of payment delay by the BUYER, both court costs and out-of-court costs, such as for a collection agency, are payable by the BUYER.
- 4.10 The BUYER may only set off undisputed or legally established claims; any further offsetting by the BUYER is excluded. Refusal of services and retention rights of the BUYER are excluded insofar as these are based on another contractual relationship, in particular on another purchase contract or not based on undisputed or legally established claims or attributable to gross negligence on the part of KOLIBRI. In the case of minor defects as compared to the purchase price refusal to pay the purchase price is excluded.

5. Delivery of the Products

- 5.1 The delivery of the products takes place principally ex works (under application of the "INCOTERMS 2010").
- 5.2 If products are to be manufactured by KOLIBRI or processed or finished in another way, over or under deliveries of up to 10% comply with the contract. In such a case the purchase price shall be amended subsequently to reflect the actual delivery volume.
- 5.3 Partial deliveries to which KOLIBRI is principally entitled without advance notification to the BUYER are to be viewed as deliveries as such, which can also be invoiced separately.
- 5.4 Insofar as no express written promise deemed to be binding of a sales employee of KOLIBRI or a verbal promise of persons empowered with unlimited representation or unlimited representation of KOLIBRI towards the outside is in place, delivery dates and deadline have not been bindingly agreed.
- 5.5 Delivery dates shall be extended – also within a contract – appropriately in the event of force majeure. Strikes, lock-outs, interventions of national or international authorities as well as all unforeseen obstructions, occurring after conclusion of the contract, for which KOLIBRI is not responsible, insofar as such obstruction can be proven to have had significant influence on the delivery. This shall also apply if these circumstances take place at KOLIBRI's, at the supplier's, or at their sub-contractors. The regulations regarding such special circumstances apply for the BUYER accordingly. Damage compensation claims are excluded in these cases.
- 5.6 If products are handed over by a freight carrier damaged in any way or products are missing, the BUYER must demand a corresponding confirmation from him immediately. Confirmation of complete and orderly hand-over by the freight carrier court against the BUYER.

6. Dispatch, Transfer of Risk

- 6.1 The shipping material and method as well as the packaging are left to the discretion of KOLIBRI.
- 6.2 The risk of deterioration, ruin or loss of the products transfers to the BUYER as follows:
 - In the case of delivery ex manufacturer's works ("ex works", "INCOTERMS 2010"), at the time when KOLIBRI informs the BUYER that the products are ready for collection.
 - In the case of dispatch by KOLIBRI to a different location, at the time when KOLIBRI hands over the products to the freight carrier, or announces willingness to do so.
 - In the case of an agreement, according to which KOLIBRI in an exceptional case has to deliver the products at its own risk to another location than their headquarters, at the time of transfer or, if the BUYER is in delay with acceptance, at the time when KOLIBRI offers the products for acceptance. KOLIBRI shall in this case store the products for the account and risk of the BUYER.

7. Retention of Proprietary Rights

- 7.1 The ownership of the products shall not transfer to the BUYER until the total purchase price has been paid and all other obligations from the business relationship have been completely fulfilled. This shall also apply if the BUYER makes payment on any claims described as special by him. The stoppage of individual claims in an outstanding account or the recognition of a total sum does not remove the retention of proprietary rights. Products, in which KOLIBRI has (co-) ownership shall hereinafter be referred to as reserved products.
- 7.2 Until payment has been completed KOLIBRI in the case where the BUYER is in delay with his payment obligations, is entitled to demand the return of the reserved products can sell them elsewhere or exploit them in another way.
- 7.3 The BUYER must save and store the reserved products on a trust basis and free of charge for KOLIBRI, separated from his own property and the third party, in an orderly manner, secured, insured and labelled as the property of KOLIBRI.
- 7.4 If reserved products are further processed or combined in another way or mixed with products that are not owned by KOLIBRI, KOLIBRI is entitled to co-ownership of the new objects to the level of the invoice value of the reserved products against the invoice value of the other goods and the further processing value. If the ownership of KOLIBRI expires on grounds of the connection, mixing or processing, the BUYER shall already at this point transfer to KOLIBRI the ownership rights to the new products of the time of conclusion of the contract, in the amount of the invoice value of the reserved products. For the resulting partial or co-ownership rights in turn the regulations for reserved products pursuant to numbers 7.1 to 7.3 shall apply.
- 7.5 The BUYER must use the reserved products in the orderly course of business or sell them on, as long as he is not in delay with payments. Pledging or assigning as security is not permitted.
- 7.6 The BUYER shall at this point, for the sake of security, assign all claims that arise for him from the use or sale, including any insurance or damage compensation services and all current account balance requests to KOLIBRI, who accepts this assignment.
- 7.7 The BUYER is not entitled to make any further assignment of the claim. An assignment in the way of true factoring is only permitted if KOLIBRI is provided with information of the factoring bank and the account details of the BUYER, and the factoring revenue exceeds the sum of the insured claim of KOLIBRI. As soon as the receipt for the factoring revenue is received the claim of KOLIBRI becomes due immediately.
- 7.8 KOLIBRI hereby grants the BUYER revocable empowerment to collect payments/receivables under his own name and for his own account. This empowerment can only be cancelled if the BUYER does not fulfill his payment obligations in an orderly manner. The BUYER is obliged on demand from KOLIBRI, to inform his client immediately of the assignment to KOLIBRI – insofar as KOLIBRI has not done so – and to give KOLIBRI all the necessary information and documents for collection.
- 7.9 Any remuneration received on grounds of the collection empowerment, or other items must be saved by the BUYER on a trust basis and free of charge for KOLIBRI, separated from his own assets or the third party. This serves for the security of KOLIBRI to the same extent as the reserved products.
- 7.10 In the case of payment by cheque, the ownership of this transfers to the seller, as soon as purchased by the BUYER. In the event of payment by bill of exchange, the BUYER shall assign any resulting rights to KOLIBRI in advance, who accepts these rights. The transfer of these papers is replaced by the fact

that the BUYER keeps them safe for KOLIBRI, or if he does not directly gain ownership of them shall assign his claims against third parties in advance to KOLIBRI; he shall immediately issue these papers to KOLIBRI furnished with his endorsement.

7.11 In the event of pledging or other intervention by third parties in the co-ownership of KOLIBRI, the BUYER must refer to the ownership of KOLIBRI and inform KOLIBRI immediately of the intervention by third parties in the products delivered under the retention of proprietary rights, so that KOLIBRI can apply its rights. The BUYER is obliged to send KOLIBRI a photocopy of the pledging report. Insofar as the third party is not in a position to report KOLIBRI for any court or out-of-court costs in this regard, the BUYER is liable for all damages resulting for KOLIBRI on these grounds. In the case of non-fulfillment of the obligation to inform and duty of notification the BUYER is liable for all damages incurred for KOLIBRI.

7.12 Taking back or pledging the reserved products by KOLIBRI does not indicate withdrawal from the contract.

7.13 KOLIBRI undertakes on demand of the BUYER to release the securities due to him insofar as the realizable value of the securities exceeds the claims due to KOLIBRI by more than 20%. Selection of the securities to be released is at the discretion of KOLIBRI alone.

8. Warranty and Liability Exclusion

KOLIBRI offers warranty for defects in the sense of § 434 BGB for the products it sells and is liable under the following conditions:

- The BUYER must check all products delivered pursuant to § 377 HGB and raise any complaints principally without delay, but by latest within seven days, however, before an onward sale or processing, in writing, giving all the details. Any further obligations remain unaffected.
- If the BUYER determines defects in the products he may not attempt to remove these himself without the agreement of KOLIBRI if there is a danger of greater damage.
- The BUYER is obliged to make the defective object of purchase or samples of it available to KOLIBRI on demand. The warranty shall lapse if this is refused. Replaced items of parts become the property of KOLIBRI.
- KOLIBRI, except in the event of a written declaration, is not liable for the fact that the products are suitable for a particular purpose.
- For defects or damages in the delivery of products, which have been manufactured pursuant to the specification of the BUYER, or based particularly on a description, specification, construction or construction documents of the BUYER, or clearly tailored to the personal requirements of the BUYER, warranty and liability are excluded, unless the defects are clearly recognizable to KOLIBRI, without additional testing. The same applies to defects or damages on basis of parts, material or other objects that the BUYER has made available to KOLIBRI, or has had manufactured by third parties for his account.
- KOLIBRI gives no warranty and is not liable for defects or damages that result from installation being contrary to contract, erroneous or inappropriate, services of connections, usage or similar treatment by the BUYER, or by third parties contracted by him. The inappropriateness and acts contrary to contract are determined in particular by the instructions of the manufacturer.
- In the event of justified claims, KOLIBRI is entitled, taking into account the type of defect and the justified interests of the BUYER, to determine the type of supplementary performance (removal of the defect, substitute delivery).
- Only if the attempt of supplementary performance by KOLIBRI fails owing to the same defect or fails on the second attempt, or is refused, may the BUYER decrease the price payable or withdraw from the contract.
- The BUYER must inform KOLIBRI immediately of any warranty case that occurs.
- The claims of the BUYER with regard to defect in an item are time-barred after a year from the date of delivery of the item. This shall not apply insofar as longer deadlines are prescribed in the law pursuant to §§ 438 sub-section 1 No 2 and § 479 sub-section 1 BGB.
- Recourse claims pursuant to §§ 478, 479 BGB are only applicable insofar as the claim by the consumer was justified and only to the legal extent, not on the other hand for goodwill regulations agreed with KOLIBRI. They furthermore depend on the adherence to own obligations of the party entitled to recourse, in particular adherence to the regulation to report objections.
- The general liability limitations pursuant to the following No 9 shall apply to damage compensation claims.

9. General Liability Limitations

Damage and expense compensation claims of the BUYER (hereinafter referred to as damage compensation claims), regardless of legal grounds, in particular on breach of obligations from a contractual relationship and on grounds of unpermitted handling are excluded. This shall not apply in cases of taking on a warranty or purchase risk. It shall further not apply insofar as liability is compulsory, for example pursuant to the product liability law, in cases of malicious intent or gross negligence, on grounds of harm to life, the body or health as well as the breach of significant contractual regulations. The damage compensation claim in the case of breach of significant contractual regulations is, however, limited to the typically foreseeable contractual damages, insofar as no malicious intent or gross negligence has taken place or on grounds of harm to life, the body or health.

10. Protection Rights

- 10.1 Samples created by third parties under contract from KOLIBRI, on basis of drafts from KOLIBRI or drawing may not at any time be made accessible to third parties, in particular competitors. On breach of this obligation, the BUYER is liable for all disadvantages that KOLIBRI suffers from the exploitation of the samples by unauthorised persons.
- 10.2 The BUYER is liable for any breaches of third party protection rights, if the manufacture and delivery of the items were undertaken by KOLIBRI on his instructions. He is obliged to immediately exempt KOLIBRI from any damage compensation claims in the case of any breach of third party protection rights caused hereby and also compensate KOLIBRI for all further damages resulting from the legal action against third parties or in the course of settling such legal disputes, in particular the necessary or appropriate expenses.
- 10.3 The objects sold by KOLIBRI are used for advertising purposes. If the BUYER has a justified interest in keeping secret the object manufactured for him personally, KOLIBRI shall only undertake an obligation in this regard if an appropriate agreement has been made by latest at the time of conclusion of the contract.

11. Tools

Tools for special models manufactured by KOLIBRI or third parties under contract to KOLIBRI are the property of KOLIBRI on grounds of their construction performance and the use of internal factory experiences, even if the BUYER pays (pro-rata) the costs of manufacture or if the use of them is exclusively for orders from the BUYER pursuant to a special agreement. Storage is voluntary for a maximum of two years, whereby also for tools in the ownership of the BUYER merely a duty of care is due as in the BUYER's own cases. In the event of non-payment for the delivered products KOLIBRI has a lien in the tools in the ownership of the BUYER.

12. Contract Language, Applicable Law, Place of Performance and Place of Jurisdiction, Legal Consequences of Non-Consolidation and Ineffectiveness of General Terms and Conditions of Sale and Delivery.

- 12.1 The contract language is German. Thus alone the German version of these General Terms and Condition of Sale and Delivery is decisive.
- 12.2 German law applies, under exclusion of the CISG (United Nations Convention for the International Sale of Goods), and this even if the deliveries are made directly by a foreign delivery company directly connected to KOLIBRI. In particular the effectiveness of these General Terms and Conditions of sale and delivery is determined exclusively by German law.
- 12.3 The place of performance and the exclusive place of jurisdiction for all disputes resulting from the contractual relationship between the BUYER and KOLIBRI (including cheque or bill of exchange legal actions) is the headquarters of KOLIBRI. KOLIBRI is also entitled to choose to take legal action at the court of law responsible for the headquarters of the BUYER or at any other court of law responsible pursuant to national or international law. In the event of assignment of claims by KOLIBRI also the assignee has the right of choice of place of jurisdiction.
- 12.4 If conditions in these General Terms and Conditions of Sale and Delivery either entirely or in part have not become components of the contract or are ineffective, this shall not affect the remaining conditions. Insofar as conditions in these General Terms and Conditions of Sale and Delivery have not become components of the contract or are ineffective, the content of the contract shall be pursuant to the legal regulations.