

## **General Conditions of Supply of AL-KO THERM GmbH Maschinenfabrik**

### **I. General Provisions**

1. The following supply and payment conditions (hereinafter called "Conditions") shall apply exclusively to any of our supplies and services provided in the course of business with companies in terms of § 14 of the German Civil Code (BGB) (hereinafter called "Contract Partner") in the version applicable at the time of the supply of goods or services. Any diverging business conditions, in particular purchase conditions, shall only be valid if expressly accepted in writing. This shall also apply in the case that any delivery is made by us without reservation after the Contract Partner has objected to the validity of our Conditions.
2. The General Business Conditions may be supplemented by special conditions depending on the Business Division.
3. Upon giving an order the Contract Partner accepts the validity of our Business Conditions (also in relation to future business transactions) as a whole.
4. Any oral acceptance by our representatives or employees as well as any other agreements, in particular changes to these Business Conditions, shall only be valid if confirmed by us in writing.

### **II. Offer, Formation of Contract**

1. Our offers are always non-binding unless otherwise agreed in writing.
2. For the acceptance of any order, the scope of the supply and the date of delivery shall be determined exclusively by our written order confirmation. This shall be subject to correct and timely delivery by our suppliers. We shall notify the Contract Partner without delay as to any non-availability of the goods to be delivered and in case of termination we shall reimburse the appropriate consideration to the Contract Partner.
3. Any pictures, weight and measurement details, technical data etc. of our goods shall be valid, regardless of the form of the respective data carrier, only as normal trade approximations, unless expressly designated by us in the order confirmation as being binding.
4. Any objections against order confirmations shall be in writing and shall be received by us at once, but no later than within eight days from the date of issue.

### **III. Prices**

1. Unless otherwise stated we shall be bound by the prices contained in our offer for a period of 30 days from the date of the offer. The binding prices shall be those named in the order confirmation in EURO plus the applicable turnover tax. Any further supplies or services such as, for example, testing and processing costs as well as any changes at the request of the Contract Partner shall be invoiced separately.
2. Our prices are ex works/store excluding packaging, freight and customs costs plus the applicable rates of turnover tax valid on the date of the supply of goods or services.
3. In the event of any substantial change to wage, material or energy costs either Party may require a reasonable adjustment of the prices taking into consideration such factors.

### **IV. Supply of Goods and Services, Reservation of Right of Modification**

1. Insofar as nothing else is agreed we shall deliver ex works.
2. The "*circa*" or approximate dates for the supply of goods or services by us are not legally binding. Any fixed dates require our written confirmation as such to be binding. Any delivery deadline shall be deemed to have been met if the goods to be delivered have left our store by the required time or the Contract Partner has been notified that the goods are available for delivery.
3. Part deliveries of goods or the supply of services in instalments shall be allowed, insofar as such is normal in the trade, and such may be invoiced by us separately. Part deliveries of goods and the supply of services in instalments shall not be allowed in exceptional cases when such would be unreasonable for the Contract Partner.
4. In the event that a non-binding deadline for supplying goods or services is exceeded by more than 6 weeks the Contract Partner may demand in writing that we supply the goods or services within a further set reasonable period of time. In the event that such are not supplied by us within the set reasonable period of time, the Contract Partner may terminate the Contract in writing. Damages for delay or damages for non-performance may be sought by the Contract Partner insofar as such claims are based on an intentional or grossly negligent breach of duty on our part.
5. We shall not be responsible, even in cases involving agreed binding deadlines, for any delay in the supply of goods or services resulting from acts of God or other events which substantially restrict the supply or make it impossible, including in particular labour disputes, disruptions in operations, difficulties in the supply of energy, unrest, actions of the authorities, failure to deliver by our suppliers, transportation disruptions etc. In such cases we shall be obliged to notify without delay the Contract Partner of the difficulty in the supply of goods or services as well as the likely period of delay. In such cases, any deadline or periods for supply of services or goods shall be extended for the period of the restriction plus a reasonable run-up period. Such unforeseeable events shall allow us to terminate the Contract in part or in whole. Any claims for damages by the Contract Partner are excluded unless such are based on an intentional or grossly negligent breach of duty on our part.
6. Our duty to supply goods and services is subject to the timely and correct performance of the contractual duties of the Contract Partner, in particular the duty to pay.
7. In the event that a delay in supply takes place at the request of the Contract Partner, the Contract Partner shall bear any resulting extra costs as well as the risk related to the accidental destruction or deterioration of the goods to be supplied from the time of being notified of their readiness for delivery. Goods which have been correctly notified as being ready for delivery shall be collected without delay. Otherwise we may after a previous warning at our choice either deliver the goods at the expense and the risk of the buyer or we may at our own discretion store the goods and invoice such immediately.
8. The right to make any design change or variations from the brochure or catalogue details is expressly reserved even after the dispatch of any order confirmation, provided that price and/or material characteristics or any delivery date is not changed and the change/variation is reasonable for the Contract Partner.
9. The duty of the Contract Partner to examine and give notice of any defect in accordance with § 377 of the Commercial Code [Handelsgesetzbuch - HGB] shall apply by analogy also to our supply of goods and services not normally subject to Sales Law.

## **V. Conditions of Payment**

1. In principle, payment shall take place by the agreed date, otherwise within 30 days from the date of the invoice with no deductions, and payment shall be made to the bank account as detailed.
2. The payment target detailed in our invoice shall be deemed to be a contractually-agreed due date. If payment is not made by the due date such shall constitute a default, without any requirement for notice thereof. In the event of such default we may demand default interest at the normal credit rate but at no less than the legal default interest rate in accordance with § 288 of the Civil Code [Bürgerliches Gesetzbuch - BGB]. Any further rights or claims based on payment default shall not be affected hereby.
3. We will only accept bills of exchange on the basis of a specific written agreement. Banking, discounting and cancellation costs shall be borne by the Contract Partner.
4. In case of delayed payment we may suspend the performance of our duties after giving written notice thereof to the Contract Partner until such time as the payments are received.
5. In the event that after entering the Contract we become aware of any circumstances which may reduce the creditworthiness of the Contract Partner we may refuse to perform and allow the Contract Partner a reasonable period within which payments are to be made concurrently with supply or for security to be provided. In the event of non-acceptance by the Contract Partner or the expiry of such deadline we may terminate the contract and demand damages for non-performance.
6. The Contract Partner shall not withhold the purchase price on the basis of any counter claims not based on this contractual relationship. Any right of set-off shall only exist in cases of an undisputed or legally-binding final judgment.

## **VI. Retention of Title**

1. All delivered goods (Reserved Goods) shall remain our property until such time as complete payment of all moneys outstanding from the business relationship including any future payment based on whatever legal grounds even if payments are made to specified debts due. In the case of current account the retention of title shall be a security for any outstanding balance claimed by us.
2. The Contract Partner may only resell the Reserved Goods in the ordinary course of business and provided that he/she is not in default and subject to the condition that the buyer cannot set off any counter claim arising from the resale. The Contract Partner is not authorised to otherwise dispose of the Reserved Goods, in particular by way of security or lien.
3. Any claims arising from the further resale of the Reserved Goods are hereby assigned to us in advance until such time as the full settlement of all of our outstanding claims (Paragraph 1). We hereby accept such assignment.
4. The Contract Partner may collect any moneys from the resale until due revocation by us which allowed at any time. Any moneys received from the resale of our Reserved Goods shall be our immediate property up to the amount of our respective invoicing. The Contract Partner shall hold our share of the resale amount separate from its other assets and in trust for us. The amount held in trust shall be made available to us without delay but no later than by the due date of the applicable invoice claim. In the event of non-compliance with these conditions of payment our right to collect any claim assigned to us shall not be affected hereby. Upon our request the Contract Partner shall be obliged to inform his/her customers of the assignment to us and to provide us with all necessary information to enforce the claim. In the event of compulsory enforcement measures by third parties in relation to any of our rights of security the reseller shall draw attention to our rights and immediately inform us.

5. In the event of default in payment by the Contract Partner and after the expiry of a further reasonable period set for payment without payment being made, even if we do not terminate the contract, we may demand the return of the Reserved Goods at the expense of the Contract Partner.
6. The right of the Contract Partner to do resales and to collect any claims shall extinguish automatically without any need for a further deadline to be set if the conditions exist under which the Contract Partner could be subject to the opening of insolvency proceedings. The same shall apply in the event of a deadline not being met in terms of Paragraph V.5. In the event that the right of resale of the Contract Partner ends we may demand the return of the Reserved Goods at the expense of the Contract Partner. Additional freight, transportation and other costs as well as any reduction in value of the goods shall be reimbursed in any case by the Contract Partner.
7. The processing of the Reserved Goods takes place for us, as the manufacturer, in terms of § 950 I of the Civil Code [BGB] without placing any duty on us. In the event that the Reserved Goods are mixed or processed with any other goods not belonging to us we shall obtain a right of title to the new goods in proportion of the invoice value of our goods to the invoice value of the other goods used. Processed goods or those goods in which we have a title shall be deemed to be Reserved Goods in terms of the above Paragraphs 1 - 5.
8. In the event that the value of the security available to us exceeds our claims on a permanent basis and in total by more than 20 % we may, upon request, release any security at our choice for the respective amount.

## **VII. Liability for Defects**

1. Our Contract Partner is entitled to goods and services from us which are free of defects, including defects of title. For any such defects we shall be liable according to the law unless otherwise agreed
2. We shall not be liable in relation to any defect in the goods resulting from unsuitable or incorrect application, defective assembly or resulting from improper commencing operation by the Contract Partner or any third party, normal wear and tear, defective or negligent use, nor shall we be liable for the result of incorrect modifications to the goods or modifications or maintenance undertaken without our approval by the Contract Partner or any third party. The same shall apply to any defect which affects the value or functionality of the goods to a minor degree only, or to any defect which already has resulted in a reduction of the selling price.
3. Any apparent defect shall be notified in writing by the Contract Partner without delay upon receipt of the goods at the place of destination and any concealed defects shall be notified without delay upon detection.
4. Upon due and timely notification of any defect we shall rectify at our choice the defective goods or supply defect-free replacements. Any necessary expenses related to subsequent performance shall be borne by the Contract Partner insofar as such expenses are increased by the goods or services being brought to a place other than the premises of the Contract Partner, unless such transportation is in accordance with a contractual usage.
5. The warranty period for supplied replacements and installed parts as well as for any repairs shall be 1 year from the date of delivery/instalment.

## **VIII. Product Liability**

We shall be liable according to the provisions of the Product Liability Law for any damage resulting from a defect in the product

## IX. Limitations on Liability

1. Any liability for damage not resulting from the delivered goods shall be excluded. This shall also apply to consequential damage of any nature unless resulting from intentional or grossly negligent breaches of duty on our part or unless warranties as to characteristics expressly include consequential damage caused by defect. Any claims for damages for the breach of important contractual duties shall, however, be limited to the usual, foreseeable damage. **This exclusion of liability shall not apply** in cases in which we are liable under the Product Liability Law for defects resulting in personal injury or damage to privately used objects. **This exclusion of liability shall also not apply** in cases of personal injury or death or in cases of intentional acts or negligent breaches of duty on the part of one of our representatives or any party employed by us.
2. With respect to goods from other manufacturers any further claims are excluded, particularly those resulting from defects in products for which the manufacturer is liable. In this regard we assign any claim which we may have against the respective manufacturer and/or supplier to the Contract Partner.
3. Insofar as any liability of ours is excluded such shall also apply to our vicarious agents and parties employed by us.

## X. Other Provisions

1. The place of performance and the place of jurisdiction for both Parties is, insofar it relates to merchants, legal entities under public law or special assets under public law and it is not otherwise agreed in writing, the seat of our factory. Regardless of this, we may issue proceedings against the Contract Partner at his/her general place of jurisdiction.
2. In terms of the contractual relationship German Law shall apply exclusively.
3. The application of the United Nations Convention of 11 April 1980 concerning Contracts for the International Sale of Goods [CISG] is hereby excluded.
4. The Contract Partner hereby agrees that we may process and use personal data from the Contract Partner which we have obtained in terms of our cooperation in the business relationship in accordance with the Federal Data Protection Law [Bundesdatenschutzgesetz].
5. In the event that any provision of these Conditions or any provision of our other contractual agreements is or becomes invalid the effectiveness of the other provisions/agreements shall not be affected thereby. In such cases the Parties undertake to replace the ineffective provision with a replacement provision that most closely reflects the economic result.

Date: May 2003

In the event of any questions please contact our Legal Department:

AL-KO Kober AG  
Legal Department  
Ichenhauser Str. 14  
89359 Koetz  
Telephone: 08221/97-0  
[rechtsabteilung@al-ko.de](mailto:rechtsabteilung@al-ko.de)

## Special Conditions for Air Technology

In addition to the **General Business Conditions of the AL-KO Kober Group, the Condition for Delivery and Payment**, the following **Special Conditions** shall apply to commercial transactions concluded with **AL-KO THERM GMBH, Jettingen-Scheppach**:

### I. Secrecy

1. The Contract Partner undertakes to treat as a commercial secret all commercial and technical details not publicly known of which he/she becomes aware through the business relationship.
2. Drawings, models, templates, samples and similar objects shall not be provided or otherwise made accessible to unauthorised third parties. The copying of such material is only permitted in terms of commercial necessity and the provisions of intellectual property law.
3. The Contract Partner undertakes to return to us without delay in the event of non-acceptance any offer from us to him/her as well as the complete related documentation.

### II. Order

In the event of non-fulfilment of the purchase contract we may either claim the actual loss incurred or, without providing evidence of such loss, 25% of the agreed purchase price as liquidated damages unless and until the Contract Partner can provide evidence of less damage.

### III. Orders on Call

Orders on call shall be called up by the Contract Partner no later than 6 months from the date of the order confirmation. If, after the expiry of a reasonable further period of time to be set by us for the Contract Partner, the orders are not called up we may either deliver such at our discretion without calling up at the prices applicable on the day of delivery, or demand damages for non-fulfilment or terminate any defaulting parts of the contract.

### IV. Packaging

Packaging material shall be invoiced at net cost and shall not be taken back.

### V. Delivery Periods

1. Delivery periods shall commence with the sending of the order confirmation, but in no case before the complete clarification of all details of the order and the providing of the necessary documentation to be obtained by Contract Partner, including permits and releases and not before the receipt of any agreed down payments or the opening of a letter of credit.
2. Delivery periods shall be extended, without affecting our rights arising from delay of the Contract Partner, for that period for which the Contract Partner is delayed in fulfilling his/her duties under this or other transactions with us. The same shall apply accordingly to delivery dates.
3. In any case we shall only be in delay if, after the expiry of a written demand notice of the Contract Partner, we do not perform for reasons for which we are responsible within a subsequent period set.

## VI. Assembly Work

Unless otherwise agreed in writing assembly work at the place of destination of the goods is not included in the scope of delivery.

## VII. Supply

Goods notified as being ready for supply shall be called upon or collected without delay. Otherwise we may at our own choice send the goods.

## VIII. Defect

1. Our warranty duties are subject to the provision that our delivered goods are correctly assembled by a recognised specialist company having regard to the applicable norms and recognised principles of technology and that further the goods delivered by us are used exactly in accordance with our directions. Any duties under warranty shall be extinguished if the apparent defect results from an incorrect change, processing or other action. We shall not be liable for damage resulting from normal wear and tear of the parts normally subject to such, for excessive use, defective servicing, forcible damage, non-observance of our operation instructions, incorrect use or false operation or circumstances beyond the normal operating conditions.
2. Our duties under warranty are subject to the provision that the Contract Partner describes to us in a written form any apparent defect and gives us a sufficient period for remedying the defect or for replacement. We, or our representative, shall be provided with an opportunity to inspect the defect on site. The Contract Partner shall after consultations give us the necessary time and opportunity and shall upon request make available any necessary personnel to undertake any necessary improvement or replacement performance in accordance with our own discretion.
3. Only in urgent cases of danger to safety (of which we should be informed at once), or if we are overdue in the remedying of any defect, may the Contract Partner remedy the defect himself/herself or arrange for a third party to do so and demand reasonable reimbursement for his/her costs.
4. Notwithstanding the statutory periods our liability under warranty for our goods or any part thereof installed into any construction of the Contract Partner is limited to **two years**. In relation to any parts affected by fire in heating plants **the limitation period for warranties** shall, notwithstanding sentence 1, be **only one year**. Even for machine and electro-technical and electronic equipment or parts thereof in which servicing has an effect upon the safety and functionality, the limitation period for claims for warranties shall be only one year if the Contract Partner has decided not to charge us with the servicing for the period of the warranty.

## IX. Retention of Title

1. In the event that any goods or supplementary equipment delivered by us is connected with land or any building or heating plants such shall take place for a temporary purpose in terms of § 95 German Civil Code (BGB) with the intention of later separation, as soon as we make any claim based on retention of title. In the event that the building does not belong to the Contract Partner, the Contract Partner should make clear to the owner that the adjunction or installation of the goods delivered is only for a temporary purpose.
2. If our Reserved Goods are incorporated into land or a building the Contract Partner hereby assigns to us now any claims against third parties to the amount of the value of the invoice for our goods including the right to obtain a security mortgage.

## **X. Return of Goods**

Goods which have been correctly ordered and delivered shall generally not be taken back. If however, we decide in exceptional cases to take back such goods we shall reimburse 90% of the invoice amount for defect-free and unused goods minus any expenses for freight, transport damage etc.

Date: May 2003

In the event of any questions please contact our Legal Department:

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