

## Standard Terms and Conditions of Purchase of Komar Products GmbH & Co. KG (T&Cs)

[July 2022]

### 1. Scope, form

- 1.1 These Standard Terms and Conditions of Purchase (T&Cs) apply to all business relationships with our business partners and suppliers (hereafter Suppliers). The T&Cs only apply if the Supplier is an entrepreneur ('Unternehmer' within the meaning of Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.
- 1.2 The T&Cs apply in particular to contracts for the sale and/or supply of movable goods (Goods), irrespective of whether the Supplier manufactures the goods itself or purchases them from subcontractors (Sections 433, 650 BGB). Unless otherwise agreed, the T&Cs in the version valid at the time of our order, or at least in the version last notified to the Supplier in text form, will also apply as a framework agreement for similar future contracts without our having to refer to them again in each individual case.
- 1.3 These T&Cs apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Supplier will only become part of the contract if and to the extent that we have expressly agreed to their validity in writing. This approval requirement will apply at all times; for example, even if the Supplier refers to its general terms and conditions within the scope of the order confirmation and we do not expressly object to this.
- 1.4 Individual agreements (e.g. framework supply agreements, cooperation agreements, quality assurance agreements) and the information specified in our order take precedence over the T&Cs. In case of doubt, commercial clauses will be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of contract conclusion.
- 1.5 Legally relevant declarations and notifications by the Supplier with regard to the contract (e.g. setting of deadlines, reminders, rescission) must be made in writing. Written form within the meaning of these T&Cs includes written and text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in case of doubt about the identification of the declarant, remain unaffected.
- 1.6 References to the applicability of statutory provisions are for clarification purposes only. Therefore, even without such clarification, the statutory provisions will apply unless directly amended or expressly excluded in these T&Cs.

### 2. Conclusion of contract

- 2.1 If the Supplier submits a quotation in response to a request for quotation, this must comply with the specifications and the wording of our request. The Supplier must expressly advise us of any deviations from our request for quotation. If and to the extent that the Supplier submits quotations for services which it does not perform itself but has performed by third parties, it must explicitly refer to this in the quotation (see also No. 5 of the T&Cs).
- 2.2 Our order will be deemed binding at the earliest upon written submission or confirmation. Prior to acceptance, the Supplier must advise us of any obvious errors (e.g. spelling and calculation errors) in and omissions from the order, including the order documents, for the purpose of correction or completion; otherwise, the contract will be deemed not to have been concluded. Verbal subsidiary agreements to orders and any amendments or addenda thereto are binding only if confirmed by us in writing.
- 2.3 The Supplier is required to confirm our order in writing within 5 days through unconditional order confirmation or, in particular, to execute it unconditionally by dispatching the goods (acceptance). This also applies to subsequent changes or additions to orders.
- 2.4 In the event of late acceptance or an acceptance that modifies our order, this will be deemed a new quotation requiring acceptance by us.
- 2.5 We are entitled to withdraw from the contract at any time by written declaration, stating the reason, in any of the following cases:
  - (a) The Supplier fails to accept the order in writing or execute it unconditionally within the period specified in section 2.3 of these T&Cs
  - (b) If we are no longer able to use the ordered goods in our business operations or are only able to use them at considerable expense due to circumstances that occurred after conclusion of the contract and for which the Supplier is responsible (such as lack of compliance with legal requirements)
  - (c) The admissible filing of a petition for bankruptcy or comparable statutory proceedings in respect of the Supplier's assets, the opening of such proceedings or the rejection of the opening of such proceedings for lack of assets.

### 3. Performance, modifications to the scope of service, subcontractors

- 3.1 The Supplier shall notify us in writing without delay of any modifications/extensions to the scope of supply/service that prove necessary and expedient during execution and require our prior written consent. If the modification results in a delay in the originally specified performance/delivery time, the Supplier shall state a new binding date in its notification. Following our written consent, the Supplier shall provide the modified service within the originally agreed performance/delivery time or, where we have been informed and given our approval, within the newly specified performance/delivery time.
- 3.2 Any modifications requested by ourselves shall be reviewed by the Supplier for their possible consequences within five calendar days and we shall be notified of the outcome in writing. Taking the calculation as a basis, the Supplier shall inform us in writing of the effects, in particular about any additional or reduced costs or effects on the performance/delivery time or technical execution. This is to be agreed by mutual consent.
- 3.3 The Supplier is not entitled to have a third party (subcontractors for example) provide the services owed by the Supplier without our prior written consent. The Supplier bears the procurement risk for its services unless otherwise agreed in individual cases (e.g. stock limitation).
- 3.4 We will grant consent unless there is a material reason not to do so. Our consent will not affect the contractual obligations of the Supplier towards us.
- 3.5 In the event of our written consent to the third-party provision of services on the Supplier's behalf, the Supplier shall impose on the third party all contractual obligations which it has assumed towards us and ensure the third party's compliance therewith.
- 3.6 The Supplier shall not, by means of exclusivity agreements or other, prevent its subcontractors from concluding contracts with us for deliveries/services other than those covered by the contract.

#### **4. Delivery time and default**

- 4.1 The performance/delivery time stated by us in the order is binding. Early deliveries are permissible only with our written consent. In the event that the Supplier anticipates not being able to meet the agreed performance/delivery times for whatever reason, the Supplier shall inform us immediately in writing.
- 4.2 The timeliness of deliveries will be determined by the date of receipt at the destination specified in the order or agreed elsewhere. If the destination is not specified and nothing else has been agreed, the delivery shall be made to our place of business in 93509 Kolbermoor. The timeliness of deliveries that include assembly or work performance will depend on the acceptance thereof.
- 4.3 The Supplier may only assert the absence of necessary documents to be supplied by us, such as releases, if the Supplier has not received these documents within a reasonable period despite prior written request.
- 4.4 Acceptance of a delayed delivery or service will not constitute a waiver of any claims whatsoever, in particular claims for damages.
- 4.5 If the Supplier fails to provide the service or does not provide it within the agreed performance/delivery time or if it is in default, our rights, in particular to rescission and damages, will be determined in accordance with the statutory provisions. The provisions in the following clause remain unaffected.
- 4.6 If the Supplier is in default, we may, in addition to further statutory claims, demand lump-sum compensation for our damage caused by default in the amount of 1% of the net price per completed calendar week, but not more in total than 5% of the net price of the goods delivered late. We reserve the right to prove that higher damages have been incurred. The Supplier reserves the right to prove that no damage has been incurred or significantly less damage.

#### **5. Delivery, transfer of risk, default of acceptance**

- 5.1 The Supplier is not entitled to make partial deliveries without our prior written consent.
- 5.2 Unless otherwise agreed in writing, delivery shall be made DDP (Incoterms 2020) to the destination specified in the order or agreed elsewhere. If the destination is not specified and nothing else has been agreed, our place of business in 93509 Kolbermoor will be considered the destination. The respective destination is also the place of performance for the delivery and any rectification (obligation to deliver).
- 5.3 A delivery note stating the date (issue and dispatch), content of the delivery (SKU and quantity) and our order identification (date and number) must be enclosed with the delivery. If the delivery note is missing or incomplete, we will not be responsible for any delays in processing and payment resulting therefrom.
- 5.4 The risk of accidental loss and deterioration of the item will pass to us upon handover at the place of performance (see No. 5.2 above). Insofar as acceptance has been agreed, this will be decisive for the transfer of risk. In all other respects, the statutory provisions on contracts for work and services ('Werkvertragsrecht') apply in the case of acceptance. Default of acceptance on our part will be equivalent to handover or acceptance.
- 5.5 The statutory provisions will apply to default in acceptance on our part. However, the Supplier must also expressly offer us its performance if a defined or definable calendar time has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the Supplier may demand compensation for its additional expenses in accordance with the statutory provisions (Section 304 BGB). If the contract pertains to a non-fungible item (custom-made item) to be manufactured by the Supplier, the Supplier will only be entitled to further rights if we are obliged to cooperate and are responsible for the failure to cooperate.

#### **6. Prices, invoicing and terms of payment**

- 6.1 The price stated in the order is binding. All prices include statutory value added tax unless this is shown separately.
- 6.2 Unless otherwise agreed, prices are to be understood as delivered free at agreed destination (see section 5.2 above) and duty paid (DDP in accordance with Incoterms 2020). Unless otherwise agreed in individual cases, the price includes all services and ancillary services of the Supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs, road tolls including any transport and liability insurance).
- 6.3 The agreed price is due for payment within 30 calendar days of complete delivery or, in the case of services for which acceptance has been agreed, of acceptance and receipt of a proper invoice. Original invoices must not be enclosed with the delivery of goods. The invoice shall be issued after performance of the delivery/service, stating the complete order number and SKU(s); all necessary invoicing documents (bills of material, worksheets, measurements, etc.) shall be enclosed. If one or more of these details are missing and this delays processing by us in the normal course of business, the payment and discount periods regulated herein will be extended by the period of the delay.
- 6.4 If we make payment within 14 calendar days, the Supplier shall grant us a 3% discount on the net amount of the invoice. In the case of a bank remittance, payment will be deemed to have been made on time if our remittance order is received by our bank before the expiry of the payment deadline; we will not be responsible for any delays caused by the banks involved in the payment process.
- 6.5 We do not owe any interest from the due date. The statutory provisions apply to default of payment.
- 6.6 We will be entitled to offsetting and retention rights as well as the defence of non-performance of the contract to the extent provided by law. In particular, we are entitled to withhold due payments for as long as we are still entitled to claims against the Supplier arising from incomplete or defective performance.
- 6.7 The Supplier will only be entitled to offsetting and retention rights on the basis of counterclaims that have been legally established or are undisputed.

#### **7. Non-disclosure, retention of title and copyrights**

- 7.1 We reserve the property rights and copyrights to photographs, films, illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other documents originating from us. Such documents are to be used exclusively for contractual performance and returned to us after completion of the contract. The documents must not be disclosed to third parties, even after termination of the contract. The non-disclosure obligation will expire only if and to the extent that the knowledge contained in the documents provided has become generally known. Special non-disclosure agreements and statutory provisions to protect confidential information remain unaffected.
- 7.2 The above provision applies mutatis mutandis to materials (finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Supplier for production purposes. In particular, printing plates (metal plates, stones, etc.), cylinders, lithographs, master copies (negatives and slides on film or glass, USB sticks, DVDs and CDs), matrices, punches and similar, which the Supplier receives from us for the execution of the orders, will remain our property. Except where they are processed, items of this kind are to be kept separately by the Supplier at its expense and insured to the customary extent against destruction and loss.
- 7.3 The copyrights and ancillary copyrights as well as the rights of use and exploitation of the sketches, drafts, originals, photographs, films and the like provided by us within the scope of the order will remain with us, subject to any express agreement to the contrary.
- 7.4 Without our previous written consent, the Supplier is neither allowed to refer to our business relations on advertising material, brochures, etc. nor to exhibit the products manufactured for us.

- 7.5 The right to use the (image) files provided by us by the Supplier is granted exclusively for the purpose of executing our order. Permission to copy, duplicate, edit and process the (image) files provided is granted only to the extent necessary for this purpose. Even within this scope of use, however, the Supplier is not permitted to process the (image) files further than is necessary for execution of the order or to publish, transfer, license, sell or otherwise make them or their processing available to third parties, unless this is done on our express and written instructions.
- 7.6 For further details, refer to the additional "General Conditions for the Execution of Print Orders for the (Image) Files Provided by Komar Products GmbH & Co.KG".
- 7.7 Tools, templates, samples, models, fabrics, materials and other auxiliary materials which are manufactured by the Supplier for the fulfilment of our orders, and which are invoiced separately by the Supplier will become our property at the time of manufacture. These will initially be kept safe by the Supplier and may only be used for the execution of our orders.
- 7.8 Any processing, mixing or combining (further processing) of provided items shall be carried out by the Supplier on our behalf. The same applies in the event of our further processing of the delivered goods, such that we will be deemed to be the manufacturer and will acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.
- 7.9 The transfer of ownership of the goods to us will be unconditional and without regard to payment of the price. If, however, we accept an offer of transfer of ownership from the Supplier conditional on payment of the purchase price in an individual case, the Supplier's retention of title will expire at the latest upon payment of the purchase price for the goods delivered. We will remain authorised to resell the goods in the ordinary course of business even before payment of the purchase price with advance assignment of the claim arising therefrom (alternatively, the simple retention of title extended to resale will apply). This excludes all other forms of retention of title; in particular, the extended retention of title, the forwarded retention of title and the retention of title extended to further processing.

## 8. Compliance with laws, safety requirements, quality, environmental and health protection

- 8.1 The Supplier shall comply with all pertinent statutory and official provisions in respect of the contractual relationship; in particular, anti-corruption and money laundering laws as well as antitrust, labour and environmental protection regulations.
- 8.2 The Supplier shall ensure that the products supplied comply with all relevant requirements for placing on the market in the European Union and European Economic Area. The Supplier shall furnish us with suitable documentary evidence of this conformity. In particular, all products, components and materials supplied by the Supplier shall meet the applicable requirements of the CE Directives, EU Market Surveillance Regulation (2019/1020), the German Product Safety Act (ProdSG), including annexes thereto, and regulations pertaining to the ProdSG. The products shall be supplied with assembly and operating instructions, an EC declaration of conformity, a CE marking and, if applicable, a type examination. Products shall always be supplied with a CE marking; if a certification mark has not been issued, the Supplier shall provide us with suitable evidence of compliance with the above-mentioned regulations. The Supplier shall ensure that the technical documentation for the products can be made available to the market surveillance authorities or other governmental and intergovernmental bodies upon request. Special reference is made to No. 12 of these T&Cs.
- 8.3 With regard to the goods ordered by us, the Supplier shall be responsible for the timely fulfilment of all of its obligations arising out of the Packaging Act and for assisting us in fulfilling our obligations under this Act insofar as these relate to deliveries by the Supplier. In particular, the Supplier shall comply with its registration and, where applicable, licensing and reporting obligations. No fee is agreed for this and any costs incurred will not be reimbursed by us.  
Insofar as the Supplier has signed up to a (dual) system in Germany for the nationwide collection and recovery of packaging that is subject to system participation, the following legally binding declaration must be included in the quotation as well as in every delivery note and invoice:  
*"The packaging of all goods listed is exempt from obligation under licence number..."*  
The Supplier shall take back the packaging of its consignments and goods, unless it is required for further processing or dispatch by us, and shall dispose of it at its own expense.
- 8.4 If supplying hazardous substances within the meaning of the German Ordinance on Hazardous Substances (GefStoffV), all product information, in particular current EC safety data sheets in German, must be sent to us in good time before delivery to the receiving point. The same applies to information concerning marketing restrictions required by law. The provisions of the German Act on the Transport of Dangerous Goods (GGBG) must be complied with.
- 8.5 The Supplier shall comply with the provisions of the REACH Regulation (Regulation (EC) No. 1907/2006) and the RoHS Directive (Directive 2011/65/EC). It guarantees that the supplied substances and items do not contain any prohibited substances or ingredients that exceed the specified limit values.
- 8.6 The Supplier shall implement state-of-the-art quality assurance measures of suitable type and scope and provide us with evidence thereof upon request. If necessary, the Supplier shall conclude a corresponding, separate quality assurance agreement with us.
- 8.7 Modifications of the delivered product require the prior written consent of the Customer.
- 8.8 The Supplier shall comply with the principles set out in our **"Supply Chain Code of Conduct"**.

## 9. Non-conforming delivery

- 9.1 In the event of material defects and defects in title pertaining to the goods (including incorrect and short delivery as well as improper assembly/installation or deficient instructions) or other breaches of duty by the Supplier, the statutory provisions and, exclusively for our benefit, the following supplements and clarifications apply to our rights.
- 9.2 In accordance with the statutory provisions, the Supplier is liable, in particular, for ensuring that the goods are of the agreed quality at the time risk is transferred to us. Product descriptions forming the subject matter of the respective contract or included in the contract in the same way as these T&Cs, especially if referred to or referenced in our order, will in any event constitute an agreement on the quality. It makes no difference whether the product description originates from us, from the Supplier or from the manufacturer.
- 9.3 Where goods have digital elements or other digital content, the Supplier shall provide and update the digital content to the extent that this requirement arises from an agreement on quality pursuant to (2) or other product descriptions by or on behalf of the manufacturer, in particular on the Internet, in advertising or on the goods label.
- 9.4 We are under no obligation to inspect the goods or make special enquiries about any defects upon conclusion of the contract. In partial deviation from Section 442 (1) clause 2 BGB, we are therefore also entitled without restriction to claims for defects if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.
- 9.5 The statutory provisions (Sections 377 and 381 of the German Commercial Code (HGB)) apply to the commercial obligation of inspection and notification of defects with the following proviso: Our obligation to inspect is restricted to apparent defects which can be visually identified, including delivery documents (for example transport damages, wrong and short delivery) as well as our quality inspection by random samples. Insofar as acceptance has been agreed, there shall be no obligation to inspect. Moreover, it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the case. Our obligation to give notice of defects that are discovered at a later time remains

unaffected. Notwithstanding our obligation to inspect, our notice of defect shall be deemed to have been made without delay and in good time if it is sent within 5 working days of discovery or, in the case of obvious defects, of delivery.

- 9.6 Rectification also includes the removal of the defective goods and their re-installation, provided that the goods were installed in another item or attached to another item in accordance with their type and intended use before the defect became apparent; our statutory claim to reimbursement of corresponding expenses (removal and installation costs) remains unaffected. The Supplier shall bear the expenses required for the purpose of inspection and rectification, in particular transport, travel, labour and material costs and, if applicable, removal and installation costs, even if it transpires that there was actually no defect. Our liability for damages in the event of an unjustified request to remedy a defect remains unaffected; we shall, however, only be liable in this regard if we recognised that there was no defect or were grossly negligent in not recognising that there was no defect.
- 9.7 Without prejudice to our statutory rights and the provisions of 9.5, the following applies: In the event that the Supplier fails to honour its rectification obligation – at our choice by remedying the defect (repair) or by delivering an item free of defects (replacement delivery) – within a reasonable time limit as set by us, we shall be able to remedy the defect ourselves and demand from the Supplier compensation for the expenses necessary for this or an appropriate advance payment. If rectification by the Supplier has failed or is unreasonable for us (e.g. due to particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), no time limit need be set; we shall inform the Supplier of such circumstances without delay, if possible in advance.
- 9.8 Otherwise, in the event of a material defect or defect of title, we will be entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we will be entitled to compensation for damages and expenses in accordance with the statutory provisions.

## **10. Recourse against the Supplier**

- 10.1 In addition to claims for defects, we will have unrestricted entitlement to our legally determined rights of recourse within a supply chain (recourse against the Supplier (Lieferantenregress) pursuant to Sections 478, 445a, 445b or Sections 445c, 327(5), 327u BGB). In particular, we will be entitled to demand precisely the type of rectification (repair or replacement) that we owe our customer in the individual case; in the case of goods with digital elements or other digital content, this also applies to the provision of necessary updates. This does not limit our statutory right of choice (Section 439(1) BGB).
- 10.2 Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses pursuant to Sections 445a(1), 439(2)(3)(6) clause 2, 475(4) BGB), we will notify the Supplier and request a written statement, briefly explaining the facts. If a substantiated statement is not made within a reasonable period of time and if no amicable solution is precipitated, the claim for defects effectively allowed by us will be regarded as owing to our customer. In this case, the onus will be on the Supplier to provide evidence the contrary.
- 10.3 Our claims for recourse against the Supplier will also apply if the defective goods have been combined with another product or processed in any other way by us, our customer or a third party, e.g. by installation, attachment or installation.

## **11. Certificates of origin / Supplier declarations**

- 11.1 The Supplier shall inform us in writing as early as possible before the delivery date of any licensing requirements for its goods under the applicable German, European (EU), US export, customs and foreign trade law as well as under the export, customs and foreign trade law of the country of origin of its goods. The Supplier shall provide the following information and data in this regard:
- The export list number according to Annex AL to the German Foreign Trade and Payments Ordinance (AWV) or equivalent list items of applicable export lists;
  - The Export Control Classification Number pursuant to the U.S. Commerce Control List (ECCN) if the goods are subject to U.S. Export Administration Regulations (EAR);
  - The country of origin (commercial/non-preferential origin), label of origin key: D = third country / E = EU / F = EFTA;
  - (Long-term) supplier declarations of preferential origin (for EU suppliers) or preferential certificates (for non-EU suppliers);
  - All other information and data required by the Customer for export and import and, in the case of resale, for re-export of the goods.
- 11.2 The Supplier shall inform the Customer immediately in writing of any changes to the above information and data.
- 11.3 If the Supplier breaches its obligations under 11.1 and 11.2 above, it shall bear all expenses and damages as well as other disadvantages (e.g. additional demands for foreign import duties, fines, etc.) incurred by us as a result. This does not apply if the Supplier is not responsible for the breach of duty.

## **12. Manufacturer's liability**

- 12.1 If the Supplier is responsible for product damage, it shall indemnify us against third-party claims to the extent that the cause of such damage was within the Supplier's control and organisation and provided the Supplier is liable itself on the basis of the external relationship between the parties.
- 12.2 Within the scope of its indemnification obligation, the Supplier shall reimburse expenses (Aufwendungen), within the meaning of Sections 683 and 670 BGB, arising from or in connection with a third-party claim including product recalls effected by us. We will, far as practicable and reasonable, inform the Supplier about the content and scope of product recalls and give the Supplier opportunity to comment. Statutory claims above and beyond this remain unaffected.
- 12.3 The Supplier shall take out and maintain product liability insurance with an indemnity limit of at least EUR 10 million per personal/property damage claim.

## **13. Property rights**

- 13.1 The Supplier is responsible for ensuring that the products produced by the Supplier or on behalf of the Supplier in countries of the European Union or other countries do not infringe the property rights of third parties. The Supplier shall indemnify us against all claims made against us by third parties on account of such infringement of property rights and to reimburse us for all necessary expenses in connection with such claims. This will not apply if the Supplier proves that it is neither responsible for the infringement of the property right nor, having exercised due diligence, should it have been aware of the infringement at the time of delivery.
- 13.2 Our further statutory claims resulting from a defect in title of the goods supplied to us remain unaffected.

## **14. Limitation**

- 14.1 The reciprocal claims of the contracting parties will become statute barred in accordance with the legal provisions unless agreed otherwise in the following.

- 14.2 In deviation from Section 438(1) no. 3 BGB, the general limitation period for claims for defects is 3 years from the transfer of risk. Insofar as acceptance has been agreed, the limitation period will commence upon acceptance. The 3-year limitation period will also apply accordingly to claims arising from defects in title without prejudice to the statutory limitation period for third-party claims in rem for the restitution of property (Section 438(1) no. 1 BGB); claims on the grounds of legal defects will not become statute-barred for as long as the third party can assert the right against us, in particular in the absence of limitation.
- 14.3 Upon the Supplier's receipt of a written notice of defect from us, the limitation period for warranty claims will be suspended until the Supplier rejects our claims or declares the defect eliminated or otherwise refuses to continue negotiations in respect of our claims. In the event of replacement delivery and rectification of defects, the warranty period for replaced and repaired parts will start anew, unless we had to assume from the Supplier's conduct that the Supplier did not admit that it was obliged to take the measure and only undertook the replacement delivery or rectification of defects as a gesture of goodwill or for a similar reason.
- 14.4 The limitation periods of sales law, including the aforementioned extension, apply for all contractual claims for defects to the extent permitted by law. The regular statutory limitation period (Sections 195 and 199 BGB) will apply to any non-contractual claims we may have for damages on account of defects, unless the application of the limitation periods under the law governing the sale of goods leads to a longer limitation period in a particular case.

## 15. Force Majeure

- 15.1 Force Majeure means any event or circumstance that prevents a party from performing one or more of its contractual obligations if and to the extent that the party affected by the impediment proves: (a) that the impediment is beyond its reasonable control; and (b) it was not reasonably foreseeable at the time of entering into the contract; and (c) the effects of the impediment could not reasonably have been avoided or overcome by the affected party.
- 15.2 In the absence of evidence to the contrary, the following events affecting a party will be presumed to meet the requirements of 15.1b of this clause: (i) war (declared or undeclared), hostilities, attack, acts of foreign enemies, large-scale military mobilisation; (ii) civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy; (iii) monetary and trade restrictions, embargoes, sanctions; (iv) acts of authority whether lawful or unlawful, compliance with laws or government orders, expropriation, seizure of works, requisitioning, nationalisation; (v) plague, epidemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged failure of means of transport, telecommunications, information systems or power supply; (vii) general labour disturbances such as boycotts, strikes and lockouts, slowdowns, occupation of factories and buildings.
- 15.3 A party who successfully invokes this clause will be released from its obligation to perform its contractual obligations and from any liability for damages or any other contractual remedy for breach of contract from the time when the impediment renders performance impossible, provided that this is notified without delay. If the notification is not effected immediately, the exemption will take effect from the time when the notice reaches the other party. If the effect of the asserted impediment or event is temporary, the consequences set out above will apply only for as long as the asserted impediment prevents performance of the contract by the affected party. If the duration of the asserted impediment deprives the contracting parties of their reasonable entitlements under the contract, either party will have the right to terminate the contract vis à vis the other party subject to an appropriate period of notice. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either party if the duration of the impediment exceeds 120 days.

## 16. Governing law and place of jurisdiction

- 16.1 These T&Cs and the contractual relationship between us and the Supplier are governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods. Conditions and consequences of the retention of title are subject to the law of the country where the item is stored, insofar as this states that the choice of German legislation as the governing law is inadmissible or ineffective.
- 16.2 If the Supplier is a merchant (Kaufmann) within the meaning of the HGB, a legal entity under public law or a special fund under public law, the exclusive, including international, place of jurisdiction for all disputes arising from the contractual relationship will be our registered office in Kolbermoor/Rosenheim Germany. The same applies if the Supplier is an entrepreneur (Unternehmer) within the meaning of Section 14 BGB. However, we are also entitled in all cases to file a suit at the place of performance for the delivery obligation in accordance with these T&Cs or prior individual agreement or at the competent jurisdiction of the Supplier. Overriding statutory provisions, on exclusive competence in particular, remain unaffected.

*The full text of this "Standard Terms and Conditions of Purchase of Komar Products GmbH & Co. KG (T&Cs)" has been worded in German and English, considering both versions are binding, nevertheless the German version is binding for interpretation.*