

1. Commercial Conditions

1.1 Formation of Contract

1. The Contract shall be deemed to have been entered into when, upon receipt of an order, KOEHL AG or an affiliated company of KOEHL AG has sent an acceptance in writing within the time-limit (if any) fixed by the Purchaser.
2. If the acceptance by KOEHL contains amplifications, limitations, or other modifications of the order, the Purchaser shall be deemed to consent unless he objects in writing and without delay.

1.2 Contract Items

1. Contract Items are those items and services specified in KOEHL's Detailed Specification and Technical Notes, which are integral parts of the Contract.
2. After KOEHL's written acceptance of Purchaser's order and Purchaser's payment of first instalment as defined in article 4 (1) KOEHL shall provide the Purchaser with one set of workshop drawings for approval. The Purchaser shall return these drawings to KOEHL stamped and signed with all modifications (if any) clearly marked on each drawing. Modifications and additional requirements of the Purchaser become part of the Contract only, if accepted by KOEHL in writing.
3. All Contract Items shall be delivered in accordance with the latest standards of IEC.

1.3 Prices

1. All prices in this Contract are stated in EURO (€). They are only valid for this Contract and for the quoted quantities and services specified in the Performa Invoice. All modifications and additional requirements demanded by the Purchaser, which are either not covered by the Proforma Invoice or demanded after technical clarification of the order may be subject to a surcharge. Unless otherwise expressly provided in the Contract the prices shall not include commissioning, installation, assembly, and related on-site services. Please note that in case of order the stipulated amount will be charged with the individually agreed budget exchange rates.
2. Prices are exclusive of value added tax and customs and import duties, which shall be an additional liability of the Purchaser.
3. Unless otherwise expressly provided in the Contract, prices are "ex-works" INCO-terms as defined by the International Chamber of Commerce Guide to INCO-terms in force at the date of formation of the Contract.
Please note that packing and freight costs for CPT -term in addition to EXW will be charges separately according the standard regulation in force.
4. Unless otherwise specified, prices stated in the Contract include the cost of packing or protection required under normal transport conditions to prevent damages to or deterioration of the Contract Items before they reach their destination as stated in the Contract.
5. Compensation
Compensation, according to changes of DEL Notice at time of quotation. For this quote the compensation is based on DEL Notice 150,00€ /100kg (Deutsche Elektrolytkupfernotierung für Leitzwecke)

1.4 Payment

1. Payments pursuant to article 4 (1) (a) and article 4 (1) (b) shall be made by telegraphic transfer in favor of KOEHL.

Payments pursuant to article 4 (1) (c) shall be made by irrevocable, unconditional, and confirmed letter of credit (L/C) opened in favor of KOEHL by European Bank.

2. If the Purchaser delays in making any payment, KOEHL may postpone the fulfilment of his own obligations until such payment is made, unless the failure of the Purchaser is due to an act or omission of KOEHL.

KOEHL shall be entitled to refuse performance if, due to a circumstance that originated after the formation of the Contract, he has reason to fear he may not receive the performance of the Purchaser completely or in time.

3. If a payment of a sum payable under article 4 (1) is delayed, KOEHL shall be entitled to receive interest on the amount unpaid during the period of delay. The interest shall be at the rate of 2 % per annum above the discount rate of the German Central Bank. KOEHL shall be entitled to interest without prejudice to any other right or remedy.

1.5 Property

If delivery has been made before payment of the total amount payable under the Contract, Contract Items delivered shall, to the extent permitted by the law of the country where the Contract Items are situated after delivery, remain the property of KOEHL until such payment has been effected. If such law does not permit KOEHL to retain the property in the Contract Items, KOEHL shall be entitled to the benefit of such other rights in respect thereof as such law permits him to retain. The Purchaser shall give KOEHL every assistance in taking any measures required to protect KOEHL's right of property or such other rights as aforesaid.

1.6 Delivery

1. Unless otherwise expressly stated in the Contract, the delivery time "ex-works" will be three to four months after receipt of technically cleared order, approved drawings, import and export permits and licenses, and KOEHL 's acceptance of payment and L/C conditions. The period of delivery is approximate and not an essential term of the Contract though KOEHL will make all reasonable endeavors to comply therewith.

2. The period of delivery in the Contract is observed, if the Contract Items have been shipped or collected before the expiration of the period of delivery; if timely delivery is not possible due to reasons for which the Purchaser is responsible, the period of delivery is observed by informing the Purchaser that the Contract Items are ready for shipment.

3. In the event KOEHL fails to comply with the period of delivery expressly provided in the Contract for reasons other than those circumstances mentioned in article 15 (1) - and if Purchaser can show that he sustained damage caused by the said failure -, the Purchaser shall be entitled to claim a deduction of the price payable under the Contract or a payment by KOEHL. The deduction of payment shall equal 0.5 % of the value stated in the Contract of such parts of the Contract Items as cannot as the consequence of the said failure be put to the use intended for each week between the end of the period of delivery and the actual date of delivery.

The total amount so deducted or paid shall not exceed 5 % of the value stated in the Contract of such parts of the Contract Items as cannot as the consequence of the said failure be put to the use intended and such payment shall be in full satisfaction of KOEHL 's liability of said failure. The said limitation shall not apply in case of intentional or gross negligent conduct on part of KOEHL.

4. Save as provided in article 6 (3), the Purchaser may terminate the Contract when the Purchaser's written grace period for delivery has expired without KOEHL having effected delivery as stated in article 6 (2).
5. KOEHL has the right in his absolute discretion to make part or instalment delivery.

1.7 Passing of Risk

1. Save as provided in article 8 (1) the time at which the risk shall pass shall be fixed in accordance with the INCO-terms of the International Chamber of Commerce in force at the date of formation of the Contract.
Where no indication is given in the Contract of the form of sale, the Contract Items shall be deemed to be sold "ex-works".
2. In the case of sale "ex-works", KOEHL must give notice in writing to the Purchaser of the date on which the Purchaser must take delivery of the Contract Items. The notice of KOEHL must be given in sufficient time to allow the Purchaser to take such measures as are normally necessary for the purpose of taking delivery.
3. If KOEHL, in case of sale "ex-works", and upon request by the Purchaser, undertakes to send the Contract Items to their destination, the risk shall pass to the Purchaser upon delivery to the first courier, provided that this date is prior to the date indicated in article 7 (2). If the Purchaser, in the case of sale "ex-works", fails to take delivery of the Contract Items on the ground of one of the circumstances referred to in article 15 (1), the risk shall pass to the Purchaser no later than the date this circumstance appears.

1.8 Delayed Acceptance of Delivery

1. If the Purchaser fails to accept delivery of the Contract Items on due date, he shall nevertheless make any payment conditional on delivery as if the Contract Items had been delivered. KOEHL shall arrange for the storage of the Contract Items at the risk and cost of the Purchaser. If required by the Purchaser, KOEHL shall insure the Contract Items at the cost of the Purchaser.
2. KOEHL may require the Purchaser by notice in writing to accept delivery within a reasonable time. If the Purchaser fails for any reason whatever to do so within such time, KOEHL shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any court, to terminate the Contract in respect of such portion of the Contract Items as is by reason of the failure of the Purchaser aforesaid not delivered and thereupon to recover from the Purchaser any loss suffered by reason of such failure up to an amount not exceeding that part of the price payable under the Contract which is properly attributed to such portion of the Contract Items.

1.9 Workshop Acceptance Test

Unless otherwise expressly provided in the Contract, KOEHL shall carry out his standard workshop acceptance test according to IEC standards.

1.10 Import and Export Permits and Licenses

1. The Purchaser shall obtain all import permits or licenses required for any part of the Contract Items within reasonable time having regard to the time of delivery of the Contract Items. In the event that the Purchaser shall fail to obtain such import permits or licenses the additional cost reasonably incurred by KOEHL in consequence thereof shall be paid by the Purchaser.

2. KOEHL shall obtain all export permits and licenses required. KOEHL shall file all necessary applications with the German "Bundesausfuhramt" (Federal Office of Export) immediately after having received the Purchaser's order.

1.11 Drawings and Descriptive Documents

1. The weight, dimensions, capacities, prices, performance ratings, and other data including catalogues, prospects, circulars, advertisements, illustrated matter, and price lists constitute an approximate guide. These data shall not be binding except if it is expressly stipulated in the Contract.

2. Any drawings or technical documents submitted to the Purchaser prior or subsequent to the formation of the contract remain the exclusive property of KOEHL. They may not, without KOEHL's consent, be utilized by the Purchaser or copied, reproduced, transmitted or communicated to a third party. In the event that KOEHL and the Purchaser do not enter into a Contract or the Contract is terminated, the Purchaser shall upon request of KOEHL return any drawings or technical documents immediately.

3. Any drawings or technical documents submitted to KOEHL by the Purchaser prior or subsequent to the formation of the Contract remains the exclusive property of the Purchaser. They may not, without his consent, be utilized by KOEHL or copied, reproduced, transmitted, or communicated to a third party except to sub-contractors of KOEHL.

1.12 Defects Liability

1. Subject as hereinafter set out, KOEHL undertakes to remedy any defect resulting from faulty design, materials, or workmanship.

2. This liability is limited to defects, which appear during a period of twelve months (provided that no other period has been expressly agreed upon in the Contract) commencing on passing of risk.

3. KOEHL's liability does not cover defects due to causes arising after passing of risk. In particular it does not cover defects arising from the Purchaser's faulty maintenance or from alterations carried out without KOEHL's consent in writing, or from repairs carried out improperly by the Purchaser, nor does it cover normal deterioration.

4. A fresh period of liability of three months shall apply, under the same terms and conditions as those applicable to the original Contract Items, to parts supplied in replacement of defective parts or to parts renewed in pursuance of this article. This provision shall not apply to the remaining parts of the Contract Items, the period of liability of which shall be extended only by a period equal to the period during which the Contract Items are out of action as a result of a defect covered by this article.

5. In order to be able to avail himself of his rights under this article the Purchaser shall notify KOEHL in writing without delay of any defects that have appeared and shall give him every opportunity of inspecting and remedying them.

6. Upon receipt of such notification KOEHL shall remedy the defect forthwith and, save as mentioned in article 12 (7), at his own expense. Save where the nature of the defect is such that it is appropriate to effect repairs on the site, the Purchaser shall return to KOEHL any part in which a defect covered by this article has appeared, for repair or replacement by KOEHL, and in such case the delivery to the Purchaser of such part properly repaired or a part in replacement thereof shall be deemed to be a fulfilment by KOEHL of his obligation under this paragraph in respect of such defective part.

7. Unless otherwise agreed, the Purchaser shall bear the cost and risk of transport of defective parts between the place where the defective part is situated and German frontier; cost and risk of transport of parts supplied in replacement of such defective parts shall be borne by KOEHL pursuant to the provisions in article 3 (3) and article 7 governing the delivery of the original Contract Items.

8. Defective parts replaced in accordance with this article shall be placed at the disposal of KOEHL.

9. If KOEHL fails to fulfil his obligation under this article or fails to proceed with due diligence after being required to do so, the Purchaser shall be entitled to claim a reduction of the price or the rescission of the Contract.

10. KOEHL's liability does not apply to defects arising out of the materials provided, or out of a design stipulated, by the Purchaser. KOEHL shall not be liable with respect to manufactured goods supplied by the Purchaser.

11. All claims of the Purchaser based on defects shall expire twelve months after assertion of the defectiveness, except where they have been recognized by KOEHL or the Purchaser has brought an action in court prior to the expiry of the said time limit.

12. It is expressly agreed that the Purchaser shall have no claim in respect of personal injury or of damage to property not the subject matter of the Contract arising after passing of risk nor for loss of profit unless it is shown from the circumstances of the case that KOEHL has been guilty of intentional or gross negligent conduct.

1.13 Protective Devices

The Purchaser shall inform KOEHL what protective devices he requires against damages originating from the use of the Contract Items. The protective devices shall be delivered at the Purchaser's own expense if both parties have agreed on the kind and scope of protective devices to be delivered; the failure to deliver other protective devices shall not be deemed to be a defect in terms of article 12 (1).

1.14 Exclusion of Other Claims Lodged by the Purchaser

1. Save of the Purchaser's claims for damages expressly provided in these General Conditions of Contract all further claims lodged by the Purchaser, above all claims to make good any loss or damage from whatever cause arising, including damage not occurring to the Contract Items themselves, shall be excluded, whatever legal ground may be underlying such claims.

2. The said exclusion of liability shall not apply in case of intentional or gross negligent conduct on part of KOEHL, nor in cases of negligent breach of a condition which goes to the root of the Contract ("Wesentliche Vertragspflichten"). In cases of negligent breach of a condition which goes to the root of the Contract ("Wesentliche Vertragspflichten") KOEHL shall be liable only - except in cases of intentional or gross negligent conduct on part of KOEHL - for reasonably foreseeable damage which is intrinsic to the Contract.

3. Furthermore, the said exclusion does not apply in cases of strict liability, under the Product Liability Act ("Produkthaftungsgesetz"), for defects of Contract Items causing personal injury, or damage to items of property that are used privately. In addition, the said exclusion of liability shall not apply in the absence of expressly warranted qualities if this warranty served the purpose of protecting the Purchaser against damage occurring to items other than the Contract Items themselves.

1.15 Force Majeure

1. Force Majeure means:

- acts of God, explosion, flood, fire, theft, or accident;
- war or threat of war, sabotage, civil disturbance or requisition;
- acts, restrictions, regulations, by-laws, prohibitions, or measures of any kind on the part of any governmental or local authority;
- import or export regulations, or embargoes;

- strikes, lock-outs, shortened working hours or other industrial actions, or trade disputes (whether involving employees of KOEHL or the Purchaser, or those of any subcontractor of KOEHL or the Purchaser, or of a third party);
 - difficulties in obtaining raw materials, labour, fuel, parts, or machinery;
 - delays in transport, accidents, power failure, or break-down in machinery;
 - any circumstances beyond the reasonable control of either of the parties.
2. KOEHL shall not be liable to the Purchaser or deemed to be in breach of Contract by reason of any delay in performing, or any failure to perform any of KOEHL's obligations in relation to the supply of Contract Items and Fitting Work, if the delay or failure was due to Force Majeure.
 3. If the Purchaser is unable to fulfil his obligations stated in the Contract due to Force Majeure both parties shall re-negotiate the Contract in good faith. Upon failure of such negotiations, the Purchaser may cancel the Contract by immediate written notification to KOEHL.

1.16 Choice of Jurisdiction and Venue and Law Applicable

1. The courts at the registered principal office of KOEHL shall have exclusive jurisdiction and venue for all disputes arising out of the Contract.
2. The Contract shall be interpreted, construed, and governed in accordance with German law excluding the application of the United Nations Convention on Contracts for the International Sale of Goods as well as excluding any rule of law which would direct application of the law of any other jurisdiction.

1.17 Miscellaneous

1. All stipulations of the parties to the Contract must be made in writing in order to be valid.
2. No variation or exclusion of or addition to these General Conditions of Contract shall be effective unless expressly agreed in writing by KOEHL.
3. Unless otherwise expressly stated this offer is valid for a period of 2 month starting from the date of issue.
4. Any standard conditions employed by the Purchaser are hereby expressly excluded from any Contract with KOEHL, save to the extent that KOEHL expressly agrees in writing that they shall be included. In the event of such inclusion these General Conditions of Contract shall prevail in the event of any conflict with the Purchaser's conditions.
5. In the event any one of the provisions of the Contract shall, for any reason, be held to be invalid or unenforceable, the remaining provisions of the Contract shall be unimpaired.