

General Terms and Conditions for Deliveries and Services of

KOMINEX Minerals + Processing GmbH & Co. KG (KOMINEX)

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1. Scope of application

1.1 KOMINEX provides all deliveries and services only in accordance with the following General Terms and Conditions for deliveries and services (terms of business). The addressees of these terms and conditions are business owners as defined by §§ 14, 310 BGB (German Civil Code).

1.2 Deviating general terms and conditions of the purchaser are only valid, if KOMINEX has agreed to this explicitly in writing. If the purchaser has recognised the terms and conditions of KOMINEX, after he/she has knowledge of the contents of the same, they shall also apply for future contracts with him/her, without reference having to be explicitly made in individual cases.

2. Offer, contract conclusion

2.1 All details made on websites, in brochures, advertising and non-binding offers represent an invitation to the purchaser to place a binding order. The acceptance of the order is carried out by order confirmation, delivery or execution of the services.

2.2 Samples, specimens supplied by KOMINEX to the purchaser or taken by him/her are to be complied with bindingly, as well as other details on characteristics of goods or processed materials, within the framework of agreed tolerances or standards, if these become integral part of the contract concluded with the purchaser. Where no special specifications form the basis of the materials to be produced or supplied, they take place on the basis of average guides and features, from which deviations are possible to a customary extent. The purchaser is responsible for special non-recorded application uses. The compliance with statutory and official regulations in a third country is only due, if KOMINEX has declared this in advertisements or quotations or has agreed this contractually in individual cases.

2.3 Legally binding concluded contracts commit the purchaser to accept and pay for the agreed deliveries and produced materials according to the statutory provisions at the place of delivery.

2.4 If KOMINEX takes on the processing of residual materials after prior analysis of samples given, the purchaser shall ensure that the materials provided show the characteristics of the samples and confirm their composition. Otherwise KOMINEX can reject their acceptance for processing.

3. Prices, payment, offsetting

3.1 The agreed price, calculated according to place of delivery each time is decisive. The price owed is due for payment immediately after delivery or acceptance after processing. KOMINEX is not committed to maintain this price also for future orders, not yet placed, unless otherwise agreed with the purchaser. If no other agreement is made, the prices shown in the current KOMINEX price list at the time of concluding the contract are decisive. The prices are to be understood exclusive of VAT. Packaging, transport and transport insurance costs. These and all further auxiliary costs, even if KOMINEX undertakes transport in individual cases, are to be paid for separately by the purchaser.

3.2 For deliveries that are to be carried out within a period of more than four months after the conclusion of the contract, KOMINEX has the right to adjust the price according to increases in costs that have meanwhile taken place. If KOMINEX agrees a price determination with customers, dependent on certain price factors, such as raw material

prices, changes to these may lead to corresponding price adjustments even beforehand.

3.3 KOMINEX agrees with the purchaser advance payment, if no business relationship existed to him previously, deliveries are to be made abroad, the purchaser has his place of business abroad or in individual cases reasons exist that give reason for doubts regarding punctual payment after delivery. Payment is to be made immediately after receiving the invoice without any deduction.

3.4 In the case of late payment KOMINEX is entitled to demand interest on late payment amounting to 9 percent points above the basic interest rate. The right to assert further damage, in particular higher interest for other legal reasons, remains reserved.

3.5 If a significant deterioration of the financial circumstances of the purchaser arises at the time of the delivery, KOMINEX is entitled to refuse to continue the contractual execution, until the purchaser effectuates payment or provides security for it. If the purchaser defaults with payments, all outstanding receivables against him/her, regardless of whether they are already invoiced or not, become due for immediate payment.

3.6 The purchaser is not entitled to offset against other undisputed receivables or those established as being legally effective.

4. Deadlines and dates

4.1 Deadlines and dates are only binding, if they are explicitly agreed between KOMINEX and the purchaser. In the case of non-compliance the purchaser has to grant KOMINEX an appropriate additional respite to provide the contractually owed performance. The additional respite must be declared in writing.

4.2 The delivery by KOMINEX has taken place punctually, if the merchandise is made available at the place of business or warehouse for acceptance. Subsequent changes or supplementary wishes of the purchaser or delays in the delivery of materials to be processed for the purchaser lead to an appropriate extension of agreed dates and deadlines.

4.3 In cases of force majeure as well as other circumstances for which KOMINEX is not accountable, KOMINEX is released from liability due to non-compliance with agreed dates and deadlines.

4.4 KOMINEX is entitled to make partial deliveries and partial services in individual cases, where these can be tolerated by the purchaser. Premature deliveries or services by KOMINEX are admissible, unless something else has been explicitly agreed.

4.5 In case of default KOMINEX is liable according to statutory provisions, where a delivery delay is due to premeditated or grossly negligent contract violation or the violation of an important contractual duty for which KOMINEX is accountable. The liability is limited to the foreseeable, typically occurring damage, if slight negligence exists or an important contractual duty is violated slightly negligently.

4.6 If an impediment in the case of continuing obligation lasts longer than four weeks without interruption, each contractual party has the right to rescind the contract with a written explanation. The right to assert expenses and damages arising in the event of the fault of the other contractual party remains reserved.

4.7 If the purchaser is in default of acceptance or if he/she does not fulfil his/her obligation to co-operate despite warning, KOMINEX is entitled to demand compensation for damages resulting from this including possible additional expenses. KOMINEX retains further rights according to the statutory provisions.

5. Delivery, despatch, transfer of risk

- 5.1** The delivery of materials to be processed for the purchaser or of other materials and trade goods takes place at KOMINEX's place of business as a rule.
- 5.2** if KOMINEX also undertakes the despatch, this is carried as KOMINEX chooses ex works or ex warehouse at the risk and cost of the purchaser. This also applies for freight-free deliveries, if such are agreed. Independent of this, the risk of accidental perishing or an accidental loss or deterioration of characteristics of materials to be produced / delivered is transferred to the purchaser, if he/she is in default of acceptance.

6. Reservation of proprietary rights, rescission

- 6.1** KOMINEX reserves the right to ownership of deliveries until full payment has been made. The purchaser is entitled to sell the delivery owned by KOMINEX (goods subject to retention of title) in a proper business transaction. He/she already cedes to KOMINEX any debt claims resulting from the further sale up to the amount of the agreed delivery price. If the goods subject to retention of title are sold with other deliveries that do not belong to KOMINEX, the purchaser's debt claim to his customer counts as ceded to the amount of the delivery price agreed between himself/herself and KOMINEX for the goods subject to retention of title.
- 6.2** Handling and processing of delivered goods subject to retention of title takes place for KOMINEX as manufacturer as defined by § 950 BGB. The processed goods count as goods subject to retention of title. In the case of processing or combination of the goods subject to retention of title with other goods by the purchaser KOMINEX is entitled to co-ownership of the new product in the proportion of the delivery price subject to retention of title to the delivery price of the other goods used.
- 6.3** Before the transfer of ownership pledging or assigning as security is not admissible without the explicit consent of KOMINEX. The purchaser is obliged to notify KOMINEX without delay, if third parties assert a claim to the goods subject to retention of title.
- 6.4** In the event of the purchaser's conduct being contrary to the contract, in particular in case of payment default, KOMINEX is entitled to take back the delivery, if KOMINEX has rescinded the contract. KOMINEX is authorised to exploitation of the goods after accepting their return. The proceeds from the exploitation are to be offset against the liabilities of the purchaser - minus appropriate exploitation costs.
- 6.5** In case KOMINEX's ownership of the delivered good ceases to exist due to combination, the (co-)ownership of the purchaser in the joint matter is transferred proportionally to KOMINEX according to the invoiced value of the goods subject to retention of title and is secured by the purchaser free of charge.
- 6.6** KOMINEX undertakes to release the securities in this respect at the request of the purchaser, if its realisable value exceeds the debt claims to be secured by more than 10 %.

7. Warranty rights, liability for defects, other liability

- 7.1** The purchaser shall inspect the delivered materials in the scope of § 377 HGB immediately after delivery and notify KOMINEX immediately in writing of any defects that occur. The notice of defects has to describe the appearing defect symptoms in detail. An obligation to give notice of defects also exists in case of ascertained defects on materials processed for the purchaser.

- 7.2** The risk is transferred to the purchaser at the place of delivery resp. upon acceptance, if such is legally stipulated. Warranty rights of the purchaser assume that these cease to exist if he/she does not comply with the specified storage conditions for the delivery and this causes the deficiency.

- 7.3** The purchaser's claims for duly notified defects comply with the statutory provisions. The purchaser has to grant KOMINEX according to these the possibility of subsequent performance by eliminating the defect or delivery of fault-free goods within an appropriate additional respite. The setting of the additional respite by the purchaser has to be made in writing. If the subsequent performance fails, the purchaser has the right to reduce the payment or to rescind the contract. The purchaser only has the right to carry out rectification himself/herself, if KOMINEX defaults in the subsequent performance in the case of defects on the residual processed materials made available to him/her. The purchaser's right to withdraw is excluded, if the breach of duty is insignificant. This also applies if the delivery has already been processed and the purchaser can use it for the contractual purposes despite the defects. Purchaser's claims for damages due to defects or a claim for reimbursement of expenses comply with section 7.4.

- 7.4** KOMINEX is liable for compensation according to statutory provisions, in the case of defect claims as well as in other cases of breach of duty, irrespective of legal basis, if these are based on the premeditation or gross negligence of KOMINEX. For the slightly negligent breach of important contractual duties liability is limited to the typically foreseeable damage. In remaining cases liability is excluded, unless guaranteed characteristics are not complied with, defects fraudulently concealed. The statutory liability for injury to persons and the compulsory liability according to the Product Liability Act remain unaffected.

- 7.5** A limitation period of twelve months applies for warranty rights of the purchaser. The statutory limitation period applies in the event of fraudulent concealment of defects and in cases of liability due to premeditation or gross negligence or in the event of fraudulent concealment of a defect. If the delivery has been used for a building according to its customary use and if it has caused its deficiency, and in the case of claims due to injury to persons, the statutory limitation period also applies.

8. Place of performance, place of jurisdiction, applicable law

- 8.1** The place of performance for deliveries and payment is the business location of KOMINEX.
- 8.2** The place of jurisdiction is the competent court of KOMINEX or the general place of jurisdiction of the purchaser if chosen by KOMINEX, where he/she is a trader as defined in the HGB (German Commercial Code), a corporate body under public law or a legal entity under public law.
- 8.3** The law of the Republic of Germany shall apply, excluding the United Nations Agreement on Contracts pertaining to the International Sale of Goods (UN Purchasing law; CISG) dated 11 April 1980.