

**KONVEKTA AG general purchasing terms and conditions  
January 2021**

**1. General provisions**

All orders are subject exclusively to the purchasing terms and conditions of KONVEKTA AG (hereinafter also referred to as the orderer, customer or KONVEKTA). These terms and conditions are deemed to be accepted no later than when an order confirmation is first issued by the SUPPLIER. Therefore, the general business terms and conditions also apply for all future business relations, with no need for repeated confirmation/agreement. KONVEKTA hereby objects to conflicting confirmations by the SUPPLIER (vendor) referring to their own business terms and conditions.

Unless otherwise agreed, the respective valid, current version of the KONVEKTA AG code of conduct for suppliers and (insofar as applicable) the KONVEKTA AG logistics manual at the time the contract is concluded also become part of the respective contract. These documents are available at [www.konvekta.de](http://www.konvekta.de).

Orders are only placed in writing. Verbal agreements only become part of the contract if they are confirmed in writing on a case-by-case basis.

**2. Delivery, delivery time, delivery costs & packaging**

Only the delivery date in the order letter issued by KONVEKTA AG is binding. The date the goods are received by KONVEKTA AG, Schwalmstadt or at the agreed place of delivery is relevant for meeting the delivery date or term of delivery. If it cannot be met, a written notice has to be issued to KONVEKTA AG in advance.

We expect an order confirmation by fax or e-mail within 2 days from placing the order. If the SUPPLIER does not communicate any changes or reject the order within 3 working days after it is placed by KONVEKTA AG, the entire order is deemed to be accepted and binding. This applies in particular for the delivery date according to the order.

If the quality of ordered goods is not described in detail, the quality and execution of previous orders, if any, shall apply, or as a minimum the legal requirements and recognised standards of good practice at the time of delivery.

Partial deliveries deviating from the order require the express consent of KONVEKTA AG, unless the partial deliveries do not result in greater effort and higher costs for KONVEKTA AG and are reasonable for KONVEKTA AG.

Separate confirmation by the SUPPLIER is not required in case of orders with successive delivery agreements, notably on the basis of master supply agreements (also called master agreements). The binding periods of acceptance established in the master agreement are deemed to be agreed unless the SUPPLIER objects promptly in writing, no later than within the periods established in the master agreement. Unless a deviating provision is included in the master agreement, the period for issuing a written objection ends at the end of the working day following the call-off.

Costs for insurance, if any, are covered by KONVEKTA AG to the extent agreed in advance and in writing.

Crates and other transport containers and accessories that are returned carriage paid have to be taken back by the SUPPLIER at their own expense. All delivery costs and possible costs for inner packaging are borne by the SUPPLIER. Carriage at the receiving location is only paid when freight forwarding was requested by KONVEKTA AG.

Special legal, official or delivery-specific effective requirements and/or conditions shall be communicated to KONVEKTA by the SUPPLIER with the submission of the offer in the respective current, valid version (referring to a possible source of supply and/or other applicable documents is not sufficient). In case of failure to do so, KONVEKTA AG shall assume that the goods can be used with no restrictions and indemnifies the SUPPLIER from possible related third-party claims under public and/or civil law. The SUPPLIER is liable for possible damage incurred by KONVEKTA AG unless the SUPPLIER provides proof of no fault.

The delivery note for all deliveries must include the KONVEKTA order number (for scheduled release orders the DS number), the KONVEKTA article number and the delivery note number as a bar code (Code39, Code128 or DataMatrix code). If this information cannot be provided for technical reasons, deliveries have to be identified with goods tags according to the VDA recommendations. Samples of valid goods tags are available at [www.konvekta.de](http://www.konvekta.de).

If the bar coding on the delivery note and/or the goods tags on the delivery note are lacking, KONVEKTA AG has the right to refuse acceptance. Without prejudice to proof of additional damage, the SUPPLIER shall pay lump sum compensation of EUR 50 net per defective shipment to KONVEKTA AG for the additional administrative effort.

The order or the receivable arising from a delivery cannot be transferred or assigned to third parties without the prior written consent of KONVEKTA AG.

Deviations are only permitted with the prior written consent of KONVEKTA AG.

**3. Warranty, notice of defects**

The warranty period for deliveries and services begins with delivery at the delivery location or with acceptance (depending on the type of contract). Unless otherwise agreed, the warranty period is 36 months.

The SUPPLIER warrants that the delivered goods correspond to the recognised standards of good practice, the regulations and directives of public authorities, employer's liability insurance associations and trade/professional associations and the legal provisions applicable at the time of delivery. Only recognised proprietary brands shall be used; KONVEKTA AG's prior approval is required in case of doubt.

The SUPPLIER warrants that all delivered goods are pre-registered or registered under REACH. In particular, the SUPPLIER is liable for all impairments of health arising from the use of the goods and for subsequent damages caused by defects of the SUPPLIER's products.

The SUPPLIER is liable for all consequences of violations of copyrights, patents, utility patents and other rights, in particular their protection provisions. The SUPPLIER is responsible for the correct designation of quality and origin on the invoice. Furthermore, the SUPPLIER is responsible for providing the required descriptions of goods directly on the goods and through supplements in the packaging.

The notification of defects is deemed to be in good time in any case when submitted promptly upon discovery of the defect. On delivery, KONVEKTA AG is merely obliged to conduct a visual inspection, in case of bulk shipments also only on the basis of random samples. Furthermore, the inspection obligation according to Section 377 of the German Commercial Code (HGB) is excluded for all defects, except for apparent or readily identifiable defects that can be detected with customary attentiveness. Otherwise, KONVEKTA AG's

obligation to notify begins only when the goods are withdrawn, used or processed further, in case of transfer to an end customer at the time of transfer, and for functional components when the system is complete and functional at the end customer's site. This applies even if the purchase price has already been paid and/or an agent of KONVEKTA AG has accepted the goods at the SUPPLIER's plant.

In particular, the payment of an invoice does not constitute waiving a notice of defects or compensation claims.

#### **4. Quality standard, changes to the object of the contract**

In its performance, the SUPPLIER shall apply and consider the provisions of KONVEKTA AG's quality assurance agreement (in the respective current version). The respective current version is available at [www.konvekta.de](http://www.konvekta.de).

All technical changes to approved delivery items (project engineering, design, selection of materials, production or similar) intended by the SUPPLIER shall be communicated to KONVEKTA AG by the SUPPLIER in writing as early as possible, but no later than 12 months prior to the planned implementation of the change.

Each technical change to a delivery item requires KONVEKTA AG's prior written initial sample approval and agreement to delivery.

The costs of the initial sample approval shall be borne by the SUPPLIER. The aforesaid applies correspondingly for the change of procurement sources for primary materials and/or components, for changing the production site, and/or for significant changes in the production process.

To the extent this is economically reasonable, KONVEKTA AG may demand technically or legally required changes to the design and execution of the objects of the contract. The parties shall reach a reasonable mutual agreement about the effects, notably regarding increased and decreased costs as well as delivery dates.

#### **5. Proprietary rights**

The SUPPLIER warrants that the delivery item does not violate domestic or foreign proprietary rights, directly or indirectly. The SUPPLIER is obliged to indemnify KONVEKTA AG from all possible third-party claims due to the violation of such proprietary rights. The SUPPLIER is liable to KONVEKTA for the culpability of subcontractors, manufacturers and sub-suppliers as for own culpability according to Section 278 of the German Civil Code (BGB).

#### **6. Prices, payment terms**

The prices quoted on the order are binding.

COD payment is excluded. The following payment terms apply unless deviating terms are agreed in writing on a case-by-case basis:

Invoices can only be processed if they, according to the specifications in our order, contain the designated purchasing data and the information prescribed by the fiscal authorities. The SUPPLIER is responsible for all consequences of failing to meet this obligation. In particular, the following cash discount periods only begin when invoices meeting these requirements are received.

KONVEKTA AG is entitled to deduct a discount of 3% net within 14 days from receipt of the invoice. When invoices fail to meet the requirements described above, KONVEKTA is entitled to the discount for a period of 14 days after a proper invoice is received.

#### **7. Substances in products**

The SUPPLIER warrants that the requirements of the EU REACH regulation (Regulation (EC) no. 1907/2006 of 31 December 2006) in the respective current version – hereinafter the REACH regulation – are met and, in particular, that the registration of substances has been completed. KONVEKTA AG is not obliged to obtain approval according to the REACH regulation for goods delivered by the SUPPLIER, subsequently and/or at its own expense.

Furthermore, the SUPPLIER warrants that no products will be delivered that contain substances according to:

- Annex 1 through 9 of the REACH regulation in the respective current version
- Council Decision 2006/507/EC (Stockholm Convention on Persistent Organic Pollutants) in the respective current version
- EC Regulation 1005/2009 on substances that deplete the ozone layer in the respective current version
- The Global Automotive Declarable Substance List (GADSL) in the respective current version (available at [www.gadsl.org](http://www.gadsl.org))
- RoHS (2011/65/EU) for products according to their field of application

If the delivered goods contain substances included in the Candidate List of Substances of Very High Concern (SVHC list) according to REACH, the SUPPLIER is obliged to promptly notify KONVEKTA. This applies correspondingly when previously unlisted substances are added to this list in the course of ongoing deliveries. The respective current list is available at <https://echa.europa.eu/web/guest/candidate-list-table>.

Furthermore, the products are not permitted to contain asbestos, biocides or radioactive materials.

If the delivered products contain such substances, written notification is required as far as possible in advance of delivery, specifying the substance and identification number (e.g. CAS) and including a current safety datasheet for the product being delivered. Delivery of such products requires the separate written approval of KONVEKTA AG.

The SUPPLIER indemnifies KONVEKTA AG from all liability related to non-compliance with the aforementioned regulations by the SUPPLIER and, unless proof of non-culpability is provided, shall compensate KONVEKTA AG for all direct and indirect damage incurred due to non-compliance with the regulations. The SUPPLIER is liable to KONVEKTA for the culpability of subcontractors, manufacturers and sub-suppliers as for own culpability according to Section 278 of the German Civil Code (BGB).

If the registered office of a supplier/contractor is in a country outside the European Union, a declaration of conformity with the requirements of the REACH regulation has to be submitted as far as possible in advance of delivery. In case of failure to submit, the SUPPLIER, unless proof of non-culpability is provided, hereby indemnifies KONVEKTA AG from all related direct and indirect damage and consequential costs. The SUPPLIER is liable to KONVEKTA for the culpability of subcontractors, manufacturers and sub-suppliers as for own culpability according to Section 278 of the German Civil Code (BGB).

In the course of initial sampling for new parts and changes, the SUPPLIER is obliged to upload material datasheets in IMDS. The ID number for the IMDS record has to be provided on the initial sample cover sheet. When new substances are added to the "candidate list" under the REACH regulation, these substances are already

contained in existing scopes of delivery and an IMDS record is not yet available for them, new initial sampling with submission of the material data in IMDS is required. For existing scopes of delivery with existing IMDS records, corresponding information according to Art. 33 of the REACH regulation have to be additionally submitted to KONVEKTA AG by the SUPPLIER unasked.

## **8. Declaration of the origin of goods**

If the SUPPLIER's place of business and/or production facility is in the European Union, the SUPPLIER has to issue a supplier's declaration (individual or long-term declaration) according to Art. 61 – 66 of Commission Implementing Regulation (EU) No. 2015/2447 in the respective current version based on the applicable regulations on the preferential origin of goods.

Furthermore, the SUPPLIER has to specify non-preferential origins (under commercial law) according to Art. 59 ff. of Regulation (EU) No. 952/2447 in the respective current version. This information can be provided along with issuing the supplier's declaration for preferential origin.

If the SUPPLIER delivers goods from third countries, the SUPPLIER is obliged to include a certificate of origin with each delivery or alternatively to submit a declaration of origin once a year and to promptly issue an amended declaration of origin for each change in the interim.

With the order or annually in case of an ongoing business relationship, the SUPPLIER generally receives, from KONVEKTA,

- a) a request to submit the supplier's declaration, including a description of the binding procedure, or
- b) a corresponding letter with the supplier's declaration form to be used.

The SUPPLIER shall submit the signed supplier's declaration to KONVEKTA within 4 weeks after receiving the request/letter or no later than upon delivery.

Each (long-term) supplier's declaration generally has to be signed by hand. The responsible persons have to be identified by name, including their position in the company. A manual signature is not required on documents prepared electronically. In this case, KONVEKTA has to be provided with a written formal obligation no later than at the time of submitting the first declaration (see Art. 63(3) of Commission Implementing Regulation (EU) No. 2015/2447). The formal obligation has to be sent to KONVEKTA AG. Insofar as the SUPPLIER, deviating from the above, prepares the supplier's declaration on its own business documents by way of exception or submits preference/origin information by remote data transmission, this procedure has to be coordinated with KONVEKTA in advance. In this case, the SUPPLIER is obliged to ensure that the wording of the submitted supplier's declaration exactly complies with the legal requirements according to the Commission Implementing Regulation (EU) No. 2015/2447 in the respective current version. The delivered goods must be designated precisely in the supplier's declaration so the reference to the goods is clearly discernible. As a minimum, the KONVEKTA article number and designation of the goods are required.

The SUPPLIER is obliged to promptly inform KONVEKTA if the information provided in a long-term supplier's declaration ceases to apply.

Furthermore, the SUPPLIER has to inform KONVEKTA if the SUPPLIER determines that declarations regarding the preferential and non-preferential origin of goods (supplier's declaration/long-term supplier's declaration/movement certificate/declaration on the invoice) were wrongly issued in the past.

If the SUPPLIER's place of business and/or a production facility of the SUPPLIER are in a country for which an EU free trade agreement is in force, the SUPPLIER has to issue proof of preferential status (movement certificate/declaration of origin on the invoice) for each delivery. Compliance with the provisions of the free trade agreement is required.

## **9. Obligation to notify in case of goods subject to mandatory export control**

The SUPPLIER is obliged to notify KONVEKTA if the delivered goods (including software and technology) are included in export control lists of goods (such as the list of dual-use items according to Annex I of the EC Dual-Use Regulation 428/2009 or the US Commerce Control List) according to German, EU or US export control laws and the national export control laws of the country of origin for the goods. The SUPPLIER has to notify KONVEKTA insofar as the delivered goods are "US goods" in terms of US export control law (= items subject to the EAR or subject to the ITAR). Insofar as the delivered goods contain US components, the SUPPLIER is also obliged to disclose the value (usual purchase price or current market price), the US component in total and the applicable export control classification (ECCN XXXXX or EAR99) provided this information is available to the SUPPLIER. To meet the aforementioned notification obligations, the SUPPLIER has to provide KONVEKTA with the applicable export list numbers (e.g. item in the German export list or Annex I of the EC Dual-Use Regulation 428/2009, Export Control Classification Number [ECCN], US Munitions List [USML] etc.) and, if applicable, disclose the value of corresponding US components of the goods for the corresponding items, including the KONVEKTA part number (if any). The SUPPLIER is also obliged to promptly inform KONVEKTA of all changes to data of delivered goods that are relevant for export control.

## **10. General customs law obligations**

For sales of goods subject to customs across customs borders, the delivery note and/or invoice has to include all information relevant for customs and payments according to the respective applicable Incoterms® 2020 (e.g. place of delivery, freight and insurance costs).

Costs not directly related to the goods to be delivered have to be listed separately on the invoice (e.g. costs for setup and training in case of machine and equipment deliveries). In case of deliveries not based on a purchase transaction (e.g. free deliveries, leasing, rental etc), a proforma invoice/customs invoice to accompany the goods has to be prepared, stating their customs value. In case of deliveries at no charge, the proforma invoice/customs invoice accompanying the goods has to state the reason (e.g. sample shipment, development sample etc.).

Unless otherwise agreed, the SUPPLIER is responsible for the proper export of the goods from the SUPPLIER's customs territory, which includes meeting all of the SUPPLIER's associated legal obligations as the exporter. Unless otherwise agreed, KONVEKTA is responsible for the proper import of the goods to the destination country, which includes meeting all of KONVEKTA's associated legal obligations as the importer. To the extent that the SUPPLIER assumes obligations under customs law in the context of importing goods to the destination country without being explicitly authorised to do so by KONVEKTA in advance and in writing, the SUPPLIER shall be responsible for all fees and costs incurred by KONVEKTA due to a possible loss of procedures under customs law (e.g. customs procedures of economic significance, bonded storage, customs free zones etc.).

The SUPPLIER is obliged to include all documents, certificates and similar that are required for the import of the goods by KONVEKTA with the goods, or to provide them to KONVEKTA on request

(declarations/certificates regarding trade policy and/or non-preferential origin, declarations of conformity etc.). If the SUPPLIER is delivering goods from a customs territory with which the destination country for the goods has concluded a free trade agreement/preferential agreement (FTA), the SUPPLIER shall issue the proof of origin/declaration of preference prescribed for these goods according to the respective FTA to KONVEKTA insofar as the SUPPLIER's goods meet the corresponding value creation criteria (local content).

Benefits of customs procedures of economic significance implemented by the SUPPLIER have to be passed on to KONVEKTA in the selling price of the goods (e.g. benefits of active upgrading).

### **11. Sustainability reporting**

On request, the SUPPLIER has to provide the orderer with information for sustainability calculations (e.g. life cycle analysis, carbon footprint, life cycle assessment) for its services and transportation routes in the data format specified by the orderer.

### **12. Obsolescence**

Strategic obsolescence management is essential in order to ensure the long-term availability of the products in the desired quality. In this regard, the SUPPLIER warrants the ongoing proactive monitoring of the assemblies/components of its delivery items regarding changes and discontinuations. If the SUPPLIER intends to permanently stop producing a delivery item, or plans to implement changes for the same related to the geometry, interfaces, function or service life, the SUPPLIER is obliged to notify KONVEKTA in writing as early as possible (but no later than 12 months before the production stop/changes), stating

- a) the date by which final orders have to be placed, and
- b) the available quantities as well as the date by which final deliveries will be made, and
- c) how support and maintenance of the delivery item will be ensured for its remaining economic useful life. Finally, the SUPPLIER has to proactively provide information about any successor products and their specifications.

### **13. Delayed delivery/withdrawal/compensation**

The SUPPLIER is obliged to precisely adhere to the delivery date. KONVEKTA specifies a binding delivery date in the order. In case of SUPPLIER default notwithstanding a reasonable grace period, KONVEKTA AG has the right to withdraw from the contract and to demand compensation. In particular, KONVEKTA AG has the right to demand compensation in lieu of performance after a reasonable grace period has fruitlessly elapsed.

In case of default in delivery, KONVEKTA is entitled to demand flat-rate compensation for the damage caused by default in the amount of 1% of the delivery value per full calendar week, but no more than 10% of the delivery value, without prejudice to proof of further claims. The SUPPLIER has the right to provide proof to KONVEKTA of substantially lesser or no damage caused by default.

In case of default or insolvency of the SUPPLIER, KONVEKTA AG has a right of withdrawal.

The applicable legal provisions apply in addition, in particular regarding legal consequences in case of subjective and objective impossibility of performance.

### **14. Force majeure**

Without prejudice to other rights, business disruptions of any kind (such as strikes, lock-outs), unrest, official measures and other unavoidable events that occur through no fault of KONVEKTA AG

release KONVEKTA AG from the obligation to accept ordered goods without giving the SUPPLIER a right to assert damages and/or other claims.

Both contracting parties are obliged to promptly provide the required information as far as reasonable and to adjust their obligations to the changed conditions in good faith.

### **15. Place of fulfilment, jurisdiction and applicable law**

The place of fulfilment and jurisdiction is Schwalmstadt, Germany. KONVEKTA AG also reserves the right to assert claims against the SUPPLIER directly at the SUPPLIER's registered office/general jurisdiction where applicable.

The formal and substantive law of the Federal Republic of Germany applies exclusively; the application of the Hague Sales Law and the United Nations Convention on the International Sale of Goods (CISG) is excluded.

### **16. Severability clause, conflicting clauses**

If individual provisions of the contract with the contractual partner, including the aforementioned provisions of these general purchasing terms and conditions, are invalid, ineffective or unenforceable for any reason, the validity of the remaining provisions and the underlying contract shall remain unaffected. Ineffective clauses shall be replaced by legal rules that come as close as possible to the will of the parties as documented here.

Headings in these purchasing terms and conditions are merely for clarity and do not define or limit the provisions of these general business terms and conditions as such, in particular not in reference to all content of the individual sections.

An order confirmation with deviating conditions does not override these purchasing terms and conditions. KONVEKTA AG does not recognise deviating terms and conditions unless they are expressly confirmed by KONVEKTA AG in writing.

KONVEKTA AG, Schwalmstadt, Germany in January of 2021