

General terms and conditions of sales, shipping and payment of Konvekta AG

Version as of December 2014

The following terms and conditions shall apply exclusively to all orders submitted to us. Any purchasing conditions on the part of our buyers are only obligatory if we explicitly agree to them in writing. These general terms and conditions apply exclusively to business with companies under § 14 BGB (German Civil Code). Any third party general terms and conditions shall not apply to the contractual relationship between Konvekta AG and buyers.

The following conditions shall be binding for all purchases and shipments in so far as no other agreements or additional agreements have been made in writing.

1 Contract closing and prices

1.1 Offers, shipments and services from Konvekta AG, Schwalmstadt or a company affiliated with Konvekta AG under §§ 15 et seqq. Aktiengesetz (German Stock Corporation Act) (hereinafter "Konvekta") shall take place exclusively based upon these general terms and conditions of sales, shipping and payment. This shall also apply to all future business relationships even when the applicability of these terms and conditions has not yet been explicitly stated. The buyer consents to these terms and conditions at the latest when he accepts a shipment without contest. The buyer's general terms and conditions shall only apply in so far as they overlap these general terms and conditions of sale and shipping. For the rest, the buyer's general terms and conditions shall not apply, even if they are not explicitly opposed by Konvekta.

1.2 Offers and transactions shall be non-binding in so far as this is explicitly stated. Prices, sizes and weight information in offers and other printed matter are non-binding, in so far as this is stated.

1.3 The prices indicated by Konvekta are to be understood as ex factory plus the statutory VAT, excluding packaging costs and excluding customs or other additional costs in so far as nothing else has been agreed to in writing.

1.4 Offers shall be valid for a maximum of 4 weeks. Should an offer be accepted after this date, the acceptance shall be viewed as a new offer requiring confirmation by Konvekta. Every contract, however, shall only come into final effect after Konvekta's confirmation has been received by the principal/buyer.

1.5 Konvekta shall be entitled to bill for the valid price on the day of shipping if the customer does not pick up or release the merchandise at the latest within 30 days of receiving notice that it is ready for shipment.

1.6 Konvekta shall furthermore be entitled – particularly for agreed upon partial shipments and/or release shipments – to bill the valid price on the day of the partial shipment order and/or shipment release. This shall not apply when the agreed upon shipments and services are to be rendered within three months after signing the contract.

1.7 The currently valid Konvekta price lists can be found at www.konvekta.com.

2 Shipping conditions

2.1 The written order confirmation from Konvekta shall be binding for the scope of the shipment. Additional agreements and modifications in particular shall require confirmation in written form from Konvekta. Safeguards, installation guides, assembly guides, operation guides and similar for shipped Konvekta objects shall only be included in so far as this has been contractually agreed upon or is required by the Federal Republic of Germany.

2.2 For prototypes, samples, test builds and similar components (referred to as a whole in the following as: 'prototypes') the following restrictions and conditions shall apply: Prototypes shall principally serve for development, demonstration, pre-testing and similar procedures. They may deviate from the planned development targets or series components in their specifications. This shall apply in particular for compliance with safety and approval requirements of any type as well. Prototypes are therefore not suitable for series production. No liability shall be assumed for prototypes with the exception of liability for

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culpable personal damage and liability for malice and gross negligence. In the case of development contracts which also include shipping series assemblies, the order of this series assembly group shall be construed as acceptance of the applicable prototype.

2.3 The agreement of binding delivery dates or deadlines shall require the written form.

2.4 Should the shipment be delayed due to circumstances which are the fault of the buyer or for other reasons which are not Konvekta's fault, the agreed upon shipping date shall be correspondingly extended. Reasons which are not the fault of Konvekta include, in particular, cases of force majeure such as natural catastrophes, strikes, civil unrest, governmental measures and other unanticipated, unavoidable and severe events.

2.5 Should a shipping date be prolonged more than two months, both parties to this agreement shall be entitled to termination. Damage claims shall only exist within the framework of the statutory regulations for the rest.

2.6 A shipping date which has been agreed to shall be considered met when Konvekta has announced the readiness for shipping two working days (Monday through Friday) before the date at the latest and the buyer has not released the merchandise, or instead – when notice of shipping and release order have not been agreed upon – when the merchandise has been transferred to the carrier by the expiration of the shipping date which was agreed upon.

2.7 Should Konvekta be at fault for not shipping or delayed shipping, the buyer shall be entitled to damage claims after meeting the statutory requirements, in particular after an appropriate grace period has expired. The same shall apply to conditions for claims independent of liability, in particular for setting deadlines, in so far as the buyer wants to terminate the contract.

2.8 Damage compensation under § 323 BGB (German Civil Code) may only be demanded by the buyer in so far as malice or gross negligence on the part of Konvekta can be proven.

2.9 Potential damage claims must be verified concretely according to reason and amount. Abstract damages according to, for example, a hypothetical coverage, shall not be accepted.

2.10 Should changes by the buyer/purchaser be desired retroactively, the shipping times shall be extended correspondingly.

3 Terms of payment

3.1 Unless otherwise agreed, Konvekta's invoices are to be paid at the latest within 30 days of the invoice date and notice of readiness to ship or, if the latter is not necessary, after the risk has been transferred. Should the payment be late, the buyer shall be considered in arrears without further dunning necessary. Should the buyer come into arrears with the payment, Konvekta shall be entitled to calculate interest in the amount of nine percent points over the current base interest. In so far as Konvekta accepts checks or bills of exchange, this shall only occur for execution, whereby Konvekta shall reserve the right to return the bill of exchange and instead demand immediate payment or the offer of another security if there is a risk that the bill of exchange will not offer sufficient security. Discount and bill of exchange fees shall be carried by the buyer and shall be due immediately.

3.2 Should Konvekta receive knowledge which gives it to believe that the assets of the buyer have significantly worsened since the signing of the contract, in particular when the buyer has not paid the due amount by the deadline in spite of dunning, Konvekta shall be entitled to apply delivery versus payment (DVP) on shipments for complete payment only, or for a security as per § 232 BGB (German Civil Code).

3.3 Should buyer insolvency, an insolvency request against the buyer's assets or some other excessive indebtedness and/or bankruptcy on the part of the buyer occur, Konvekta shall be entitled to terminate all not yet completely fulfilled contracts.

3.4 The buyer shall only be entitled to compensation when the counter claims are uncontested or legally determined.

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4 Packaging

The packaging of the shipped items has been executed with great diligence. Its design and features have been left up to Konvekta's discretion. Packaging shall only be taken back when this has been explicitly agreed upon by the contracting parties.

5 Place of execution, shipping, risk transfer

5.1 The place of execution for the mutual rendering of services shall be Schwalmstadt in so far as nothing to the contrary has been agreed in writing.

5.2 Should the merchandise be shipped, the risk of transfer goes to the buyer when the merchandise is handed over to the forwarding agent or freight carrier. In particular, the risk goes to the recipient/buyer as well when carriage paid to (CPT) shipping has been agreed upon. The freight carrier shall not be considered a vicarious agent of Konvekta.

5.3 Merchandise for which notice of readiness to ship shall be requested without delay. Otherwise, Konvekta shall be entitled to store it at the buyer's cost and risk according to its own discretion and to invoice it as ex factory. In such a case, the risk of the merchandise deteriorating and/or its accidental demise shall be the buyer's, with the exception that Konvekta shall be liable for malice or gross negligence. The same shall apply should the merchandise be provisionally stored by request of the buyer and without charge by Konvekta.

5.4 Should instructions or agreement be insufficient regarding the selection of the shipping means and transport route, Konvekta may decide using dutiful discretion without liability for the choice.

6 Damages during shipping as well as other inspection and notification duties

6.1 The merchandise shall only be insured against transportation damage and/or breakage if requested by the buyer. Konvekta shall bill for the costs which result in this case. Konvekta shall assume no responsibility for the execution of the insurance itself. The buyer shall be solely responsible for any insurance from the point of arrival of the merchandise at the destination of the shipment.

6.2 Upon receipt, the customer agrees to immediately inspect the merchandise for completion as well as any defects and damages and to notify Konvekta of such without delay. In such a case, it is recommended for reasons of verification to have the carrier issue a certificate of the shipping condition. Clear defects are to be reported, at the latest, within five working days (Monday through Friday) – calculated from the day the buyer receives the merchandise. The date of receipt of the notification by Konvekta is decisive.

6.3 It is strongly advised that no changes be undertaken on the defective merchandise because this could cause the warranty obligations to become void.

6.4 In the event that only a part of the shipment is defective, the buyer shall not be entitled to cancel the entire contract. Replacement of damage which is not directly and immediately caused by a defect in a device or device part or, respectively, replacement part, delivered by Konvekta is hereby excluded.

7 Warranty

7.1 Konvekta shall provide materials defect liability for the devices it delivers in terms of flawless properties and adequate execution for a period of 24 months as of the risk transfer.

7.2 For replacement parts, the warranty shall be limited to 12 months as of the transfer of risk.

7.3 It is strongly advised that no changes on the damaged and/or defect merchandise be undertaken

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because this could cause the warranty obligations to become void.

7.4 In so far as Konvekta is accordingly legally obliged to provide a warranty, Konvekta shall be entitled to choose providing a replacement instead of rectifying defects within the framework of its subsequent fulfillment.

7.5 The removed, defective parts are to be sent for inspection to Konvekta at own cost. Should a material defect be ascertained, Konvekta agrees to reimburse the shipping costs. The buyer is hereby informed that Konvekta requires the defective merchandise for determining any rights of recourse against its own subcontractors as well.

7.6 It is recommended that the buyer completely fills out the registration card shipped with the air conditioner/transport refrigeration system after the device has been installed, or any other additional steps made, to Konvekta without delay – also for purposes of securing evidence.

7.7 Konvekta agrees to assume the necessary expenditures, particularly costs for transport, route, work and materials (§ 439 para. 2 BGB [German Civil Code]), needed for supplying a replacement or repair in the event of a warranty claim. Konvekta may also agree to assume the costs for disassembly in individual cases for reasons of good will without being obliged to do so. For this reason, it is recommended that the buyer documents the disassembly costs, on the one hand, and the assembly/installation costs, on the other, separately for the purpose of evidence for a warranty claim.

7.8 Konvekta shall not be liable for typical wear and usage damages. This shall apply, for example, to natural wear on glow plug igniters, thermal cutoffs or their fuse inserts, carbon brushes, etc.

7.9 Konvekta shall not be liable for damages based on unsuitable or inappropriate use, inappropriate storage, non-compliance with assembly, installation and/or operation guidelines, incorrect or negligent handling or unsuitable operating materials or those arising through climate and other effects in so far as these conditions are not to be traced back to a fault on the part of Konvekta.

7.10 No liability shall be assumed for defects which are caused by construction mistakes or the selection of unsuitable materials in so far as the buyer, or its contractual partner, has installed or otherwise further processed it contrary to the assembly, installation, and/or operating guidelines.

7.11 Damages not occurring on the shipped object itself and not in direct relationship to the subsequent fulfillment shall not be replaced in so far as they do not involve personal damages through the fault of Konvekta. Furthermore, they shall not be replaced in so far as they do not involve malice or gross negligence by Konvekta or its vicarious agents.

7.12 Konvekta shall be entitled to transfer claims against its own subcontractors, which arise from a materials defect liability, directly to the buyer for fulfillment processing.

7.13 A guarantee shall only exist when it has been explicitly stated by Konvekta in writing.

8 Limits of liability

8.1 Konvekta's liability is restricted to the usual, predictable damages in the following cases:

- a) in the event of culpable breach of essential contractual duties (cardinal duties), in so far as it is not caused by malice or gross negligence,
- b) in the event of gross negligence or intentional breach of other duties through Konvekta employees or vicarious agents who are not entities or management-level staff, as well as,
- c) in the event that a guarantee is assumed, however only within the scope and limits of the declared guarantee.

8.2 In the event of Number 8.1, no liability for indirect damages, defect damages or lost profits shall exist.

8.3 Liability under German product liability law for personal injury to life, body and health and liability for the malicious concealment of a defect or malicious pretension to a property shall remain intact.

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8.4 Numbers 8.1 through 8.3 shall also apply when the merchandise is only determined by the type.

8.5 Numbers 8.1 through 8.4 shall also apply for any damage claims on the part of the buyer towards employees or vicarious agents of Konvekta.

9 Copyrights, protective rights

All documentation, in particular drawings and calculations, shall remain the exclusive intellectual property of Konvekta. They may not be used for any purpose other than that intentioned in this contract, excepting that Konvekta has provided authorization, and are to be returned unasked after fulfilment. Konvekta shall not be liable for intellectual property infringements and any resulting costs which could arise for the user or customer through the use of a Konvekta product.

10 Retention of title, duties of obligation

10.1 The merchandise shipped by Konvekta shall remain the property of Konvekta until it has been fully paid.

10.2 In the event that shipped merchandise is mixed or linked to other objects, with its leading declaration of intent, the buyer already agrees to relinquish its claims towards third parties for surrender and its ownership and co-ownership rights to the newly fabricated objects to Konvekta, and negotiates in so far with business diligence on trust in its own name for the account of Konvekta. Konvekta shall assume this relinquishment as of this point.

10.3 The buyer may not pledge the rights of merchandise subject to retention of title to third parties or transfer ownership as security. However, the buyer shall be entitled to sell the merchandise subject to retention of title in orderly business transactions in so far as he has also agreed to the retention of title here. For this he agrees to relinquish in complete scope and for the purpose of security all of the receivables arising from resale or another legal basis to Konvekta. He does so already with his declaration of intent leading to the signing of the contract with Konvekta. However, he shall be precariously authorized to collect claims on his own behalf for accounts assigned to Konvekta, whereby Konvekta may only revoke this authorization if the buyer does not duly fulfill his payment obligations.

10.4 In the event of seizure of the merchandise subject to retention of title by third parties, the buyer agrees to report the ownership of Konvekta and to notify Konvekta without delay. Costs and damages arising from non-compliance with this obligation shall be reimbursed by the buyer to Konvekta.

10.5 In the event of contractual violation on the part of the buyer, in particular should he stop payment and/or submit an application to open bankruptcy proceedings for his assets, or by other excessive debt and/or inability to pay on the part of the buyer, Konvekta shall be entitled to take back the merchandise subject to retention of title or to identify it and to enter into the buyer's business premises for this purpose.

10.6 Should the value of the existing security for Konvekta exceed that of Konvekta's receivables in total by more than 20%, Konvekta agrees to release the securities beyond that amount to the buyer upon request according to Konvekta's choice.

11 Returns

A note of credit for returned merchandise which has been delivered shall only be possible with explicit agreement from Konvekta. Should Konvekta accordingly, for any reason, accept the returned merchandise, the contract shall only be terminated if this is acknowledged by Konvekta in writing.

12 Place of execution and venue of the court, applicability of German law, final provisions

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12.1 In so far as nothing other is determined by the law, the venue of the court for both contracting parties shall be Schwalmstadt. For any potential legal dispute, the law of the Federal Republic of Germany shall apply exclusively both formally and materially. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

12.2 The contract shall also remain unchanged in effect in its other parts even if individual points are invalid. In place of the invalid clause, a clause which is legally enforceable and closest in intent to the invalid clause shall replace it.

12.3 The subtitles in this agreement to terms and conditions only serve the purpose of clarity and do not to define or limit the provisions of this agreement to terms and conditions as such, in particular not in relation to the contents of the individual sections.

12.4 The contractual language shall be English.

Konvekta AG