

of KOMINEX Minerals + Processing GmbH & Co. KG, D-06463 Falkenstein/Harz OT Ermsleben

Status: 30 April 2021

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 and conditions). The addressees of these terms and conditions are entrepreneurs within the meaning of §§ 14, 310 BGB (German Civil Code).
- 1.2 General terms and conditions of the purchaser are only valid if KOMINEX has expressly agreed to them in writing. The purchaser's general terms and conditions of purchase shall not be recognised by the execution of orders. If the purchaser has accepted the terms and conditions of KOMINEX after they have been made known to him, they shall also apply to future contracts with him without the need for express reference to them in individual cases.

2. Offer, conclusion of contract

- 2.1 All information on websites, in brochures, advertisements and non-binding offers represent an invitation to the purchaser to place a binding order. Offers are binding if they are made in writing by KOMINEX and do not contain any reservations. Acceptance of the order shall be by confirmation of the order, delivery or performance of the services.
- 2.2 Samples and specimens provided to the purchaser by KOMINEX or taken by the purchaser, as well as other information on the characteristics of the goods or processed materials, are binding within the agreed tolerances or standards if they become part of the content of the contract concluded with the purchaser. Unless the materials to be manufactured or supplied are based on specific specifications, they shall be based on average standard values and characteristics, from which deviations to the extent customary in the trade are possible. Any special purposes not covered by the above shall be the responsibility of the purchaser. Compliance with legal and official regulations in another country is only owed if KOMINEX either declares this in advertising or in offers or agrees this contractually with the purchaser in each specific case.
- 2.3 Legally binding contracts shall oblige the purchaser to accept and pay for the agreed deliveries and manufactured materials in the agreed quantities at the agreed place of delivery within the agreed time or period in accordance with the statutory provisions.

- 2.4 If KOMINEX undertakes the processing of residual materials for the purchaser after prior analysis of samples provided, the purchaser must ensure that the materials provided have the characteristics of the samples and expressly confirm their composition, at the latest upon delivery. Otherwise KOMINEX may refuse to accept them for processing.

3. Prices, payment, offset

- 3.1 The agreed price, calculated according to the place of delivery, shall be decisive in each case. The price owed shall be due for payment immediately after delivery of the materials in accordance with the contract or, in the case of processed materials, after acceptance. KOMINEX shall not be obliged to maintain this price for future orders not yet placed, unless otherwise agreed with the purchaser. Unless otherwise agreed, the prices shown in the price list of KOMINEX valid at the time of conclusion of the contract shall be payable. Prices are exclusive of VAT. Packaging, transport and transport insurance costs. These and all other ancillary costs are to be borne separately by the purchaser, even if KOMINEX undertakes the transport in individual cases.
- 3.2 For deliveries which are to be made within a period of more than four months after the conclusion of the contract, KOMINEX has the right to adjust the price according to the cost increases which have occurred in the meantime. Special agreements for framework contracts are possible. If KOMINEX has agreed with its purchasers to fix prices depending on certain price factors and indices, e.g. raw material prices, changes in these factors and indices, e.g. depending on agreed delivery day prices, may lead to corresponding price adjustments.
- 3.3 KOMINEX shall agree with the purchaser on advance payment if there is no previous business relationship with the purchaser, if deliveries are to be made abroad, if the purchaser's registered office is abroad or if in individual cases there are reasons to doubt timely payment after delivery. In other cases, the price owed shall be due for payment immediately after delivery in accordance with the contract. Payment shall be made without deduction immediately after receipt of the invoice.
- 3.4 In the event of delayed payment, KOMINEX shall be entitled to charge interest on arrears in the amount of 9 percentage points above the base interest rate. IMEXCO reserves the right to claim higher interest on other legal grounds and to claim further damages.

3.5 If at the time of delivery a significant deterioration in the financial circumstances of the purchaser occurs, KOMINEX shall be entitled to refuse further fulfilment of the contract until the purchaser has paid the consideration or provided security for it. If the purchaser is in default of payment, all claims against the purchaser, regardless of whether they have already been invoiced or not, shall become due immediately.

3.6 The purchaser shall not be entitled to set off any claims other than undisputed, recognised or legally established claims.

4. Time limits and deadlines

4.1 Time limits and dates are only binding if they have been expressly agreed between KOMINEX and the purchaser. In the event of non-compliance, the purchaser shall grant KOMINEX a reasonable period of grace to perform the contractual service owed. The grace period must be declared in writing.

4.2 Delivery by KOMINEX shall be deemed to be on time if the goods are ready for acceptance at the place of business or warehouse. Subsequent requests for changes or additions by the purchaser or delays in the delivery of materials to be prepared for the purchaser shall result in a reasonable extension of the agreed dates and deadlines.

4.3 Agreed delivery periods and dates shall be extended by at least the duration of the hindrance in cases of force majeure and other circumstances for which KOMINEX is not responsible, including other unforeseeable events which are beyond KOMINEX's control and which may be caused, for example, by the consequences of a pandemic. In such cases, KOMINEX shall be exempt from liability for non-compliance with agreed deadlines and dates. If the hindrance lasts without interruption for more than six weeks, each party to the contract shall be entitled to withdraw from the contract by means of a written declaration, without the other party to the contract being obliged to pay compensation for any expenses and damages incurred or to be incurred as a result. The right to claim expenses and damages incurred through the fault of the other party is reserved.

4.4 In individual cases, KOMINEX is entitled to make partial deliveries and partial performances, as far as this is reasonable for the purchaser. Premature deliveries or services by KOMINEX are permitted unless expressly agreed otherwise.

4.5 In the event of delay, KOMINEX shall be liable in accordance with the statutory provisions insofar as the delay in delivery is based on an intentional or grossly negligent breach of contract for which KOMINEX is responsible or on the breach of an essential contractual obligation. Liability shall be limited to reasonably foreseeable, typically occurring damage in the event of a slightly negligent breach of an essential contractual obligation.

4.6 If the purchaser is in default of acceptance or if he does not fulfil his obligations to cooperate in spite of a reminder, KOMINEX is entitled to demand compensation for the resulting damage, including any additional expenses. KOMINEX retains further rights in accordance with the statutory provisions.

5. Delivery, dispatch, transfer of risk

5.1 The delivery of materials to be prepared for the purchaser or of other materials and goods shall always take place at the registered office of KOMINEX.

5.2 If KOMINEX also undertakes the dispatch, this will be at the discretion of KOMINEX "ex works" or "ex warehouse" at the risk and expense of the purchaser. This also applies to carriage paid deliveries, if such have been agreed. Notwithstanding the foregoing, the risk of accidental loss or accidental deterioration of materials to be manufactured/supplied shall pass to the purchaser if the purchaser is in default of acceptance.

6. Retention of title, cancellation

6.1 KOMINEX retains ownership of deliveries until full payment has been made. The purchaser shall be entitled to resell the delivery (reserved goods) owned by KOMINEX in the ordinary course of business. The purchaser already now assigns to KOMINEX all claims arising from the resale up to the amount of the agreed delivery price. If the goods subject to retention of title are resold together with other deliveries not belonging to KOMINEX, the purchaser's claim against his purchasers shall be deemed to have been assigned in the amount of the delivery price agreed between him and KOMINEX for the goods subject to retention of title.

6.2 Any processing or transformation of the goods subject to retention of title shall be carried out for KOMINEX as the manufacturer within the

- meaning of § 950 BGB (German Civil Code). The processed goods shall be deemed to be reserved goods. If the reserved goods are processed or combined with other goods by the purchaser, KOMINEX shall be entitled to co-ownership of the new item in the ratio of the delivery price of the reserved goods to the delivery price of the other goods used.
- 6.3 Prior to the transfer of ownership, the goods may not be pledged or assigned as security without the express consent of KOMINEX. The purchaser is obliged to inform KOMINEX immediately if third parties assert claims to the reserved goods.
- 6.4 In case of breach of contract by the purchaser, in particular in case of default in payment, KOMINEX is entitled to take back the delivery, in case of default in payment, KOMINEX is entitled to withdraw from the contract. After taking back the goods, KOMINEX shall be entitled to dispose of them. The proceeds from the sale shall be credited against the purchaser's liabilities - less reasonable costs of sale.
- 6.5 If KOMINEX's title to the goods delivered under retention of title expires due to combination, the purchaser's (co-)title to the uniform object shall pass to KOMINEX in proportion to the invoice value of the goods delivered under retention of title and shall be stored by the purchaser free of charge.
- 6.6 KOMINEX undertakes to release the securities at the request of the purchaser to the extent that their realisable value exceeds the claims to be secured by more than 10%.
- 7. Warranty rights, liability for defects, other liability**
- 7.1 In the case of a commercial purchase, the purchaser must inspect the delivery in the ordinary course of business immediately upon receipt in accordance with § 377 HGB (German Commercial Code) and notify KOMINEX immediately in writing of any defects, shortages or incorrect deliveries found, stating the reasons for the complaint. Weight complaints must be made in writing within 3 days of delivery. Hidden defects must be reported immediately after discovery. The purchaser must give KOMINEX the opportunity to determine the defect, e.g. by presenting defective goods in a verifiable and meaningful quantity or by presenting retained samples taken upon receipt of the goods.
- 7.2 The risk shall pass to the purchaser at the place of delivery or at the time of acceptance if such acceptance is required by law. The purchaser's warranty rights shall lapse if the purchaser fails to comply with the prescribed storage conditions for the delivery and this causes the defect.
- 7.3 The purchaser's claims in respect of duly notified defects shall be governed by the statutory provisions. The purchaser shall grant KOMINEX the option of subsequent performance by remedying the defect or delivering defect-free goods within a reasonable period of grace. The purchaser shall set the period of grace in writing. If the supplementary performance fails, the purchaser has the right to reduce the remuneration or to withdraw from the contract. The purchaser's right of withdrawal 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. The purchaser's claims for damages due to defects or claims for reimbursement of expenses shall be governed by section 7.5.
- 7.4 The purchaser is only entitled to remedy the defect himself if KOMINEX is in default with subsequent performance due to faulty processing of residual materials provided to KOMINEX.
- 7.5 KOMINEX is liable for claims due to defects as well as in other cases of breach of duty, regardless of the legal basis, in addition to the claims listed in section 4.5, for damages or reimbursement of expenses in accordance with the statutory provisions, if these are based on intent or gross negligence on the part of KOMINEX. In the event of a slightly negligent breach of essential contractual obligations, KOMINEX's liability shall be limited to the reasonably foreseeable damage typical for the contract. In all other cases, liability is excluded unless guaranteed characteristics are not met or defects are fraudulently concealed. The statutory liability for personal injury and mandatory liability under the Product Liability Act remain unaffected.
- 7.6 The purchaser's warranty rights are subject to a limitation period of twelve months. In the event of fraudulent concealment of a defect and in cases of liability for wilful misconduct or gross negligence or fraudulent concealment of a defect, the statutory limitation period shall apply. The statutory period of limitation shall also apply if the delivery has been used for a building in accordance with its normal use and has caused its defectiveness, as well as in the case of claims for personal injury.
- 7.7 The purchaser's statutory rights of recourse under §§ 478, 479 of the German Civil Code (BGB) for defects in consumer goods and the statutory limitation period for recourse claims under § 445b of the German Civil Code (BGB) shall remain unaffected.

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

- 8.1 The place of performance for deliveries and payments is the registered office of KOMINEX.
- 8.2 The place of jurisdiction is the competent court at the registered office of KOMINEX or, at the discretion of KOMINEX, the general place of jurisdiction of the purchaser, provided that the purchaser is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law.
- 8.3 The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980.