

## **KOMPTECH'S GENERAL TERMS OF DELIVERY**

These General Terms of Delivery are valid for Komptech GmbH, Komptech Logistik GmbH, Komptech Umwelttechnik Deutschland GmbH, and Komptech Vertriebsgesellschaft Deutschland mbH

### **1 PREAMBLE**

1.1. These General Terms of Delivery apply insofar as the contractual parties have not expressly agreed to anything else in writing.

1.2. The following provisions regarding the delivery of goods shall also apply accordingly for services, installations, repairs, and leases. This with the additions as per Numbers 17 and 18 of these General Terms of Delivery.

### **2 CONCLUSION OF CONTRACT**

2.1. The contract is considered concluded – if a special agreement does not exist – if Komptech sends a written order confirmation upon receipt of the order, and if the Customer does not verifiably contradict this order within a period of 10 days.

2.2. In order to be effective, changes and amendments to the contract require Komptech's written confirmation. The customer's terms of supply are only binding for Komptech if these have been recognized separately by Komptech.

2.3. Should import and/or export licenses or currency approvals or similar authorizations be required for the execution of the contract, then the party who is responsible for the procurement must undertake all reasonable efforts to secure the required licenses or approvals on time.

### **3 PLANS, DOCUMENTS, AND SOFTWARE USAGE**

3.1. The details contained in catalogs, brochures, newsletters, advertisements, illustrations, and price lists, etc.; information included concerning weight, capacity, price, performance and the like are only valid if they are expressly listed in the offer and/or quotation.

3.2. Plans, sketches, cost estimates, and other technical documents, which can also be a part of the offer, always remain the intellectual property of Komptech. The same applies to samples, catalogs, brochures, and the like. Every use, duplication, reproduction, dissemination, distribution to third parties, and the publication and presentation is only permitted with the express approval of the owner.

3.3. If software is contained in the scope of delivery, the customer will be granted a non-exclusive right to use the software and the respective documentation. The software is provided for the supplied item for which it was intended. It is prohibited to use the software on more than one system. The customer may only copy, revise, translate, or transfer from the object code to the source code as this is permitted within the limits permitted by law. The customer undertakes to not remove manufacturer's info – in particular copyright notations or tags – or to change these without the express prior approval of Komptech. All other rights to the software and the documentation, including the copies, are retained by Komptech or the software supplier. The assignment of sub-licenses is not authorized.

### **4 PACKAGING**

4.1. Unless otherwise agreed,

- a) the listed prices do not include packaging costs;
- b) if standard packaging has been used in order to prevent damage to the goods during transportation to the intended destination, then these costs are carried by the customer and will only be reimbursed upon prior agreement.

### **5 TRANSFER OF RISK**

5.1. If nothing else has been agreed to, machines are considered sold "ex works" (EXW; ready for collection). Art. 4 of these General Terms of Delivery applies for all spare parts.

5.2. If the delivery is delayed or not performed due to reasons not attributable to Komptech, then the risk is transferred to the customer from the day of notification of readiness for delivery or acceptance.

5.3. Moreover, the INCOTERMS in the version valid on the date of contract conclusion shall apply.

### **6 DELIVERY PERIOD**

6.1. Unless otherwise agreed, the delivery period begins with the latest of the following dates:

- a) Date of order confirmation;
- b) Date of fulfillment of all the contractually agreed upon technical, commercial, and financial requirements as well as the provision of any official certificates or approvals that may be required.

c) Date upon which Komptech receives a prepayment before delivery of the goods and/or a deposit guarantee or other form of payment guarantee has been opened.

6.2. Komptech is authorized to process partial deliveries and pre-deliveries.

6.3. If delivery is delayed due to a circumstance arising from Komptech, and if this circumstance constitutes an exonerating reason within the terms of Art. 14, an appropriate extension of the delivery period shall be granted.

6.4. If Komptech is responsible for causing a delay in delivery, then the customer can either demand fulfillment or can withdraw from the contract upon setting a reasonable grace period.

6.5. If the grace period noted in Art. 6.4 is not utilized due to the culpability of Komptech, then the customer can withdraw from the contract in terms of all non-delivered goods by issuing a written notification. The same applies for already supplied goods that cannot be used in a reasonable way without the delivery of the outstanding goods. In this case, the customer has the right to refund for payments made for the non-delivered or non-usable goods. Beyond this, the customer may claim – insofar as the delay in delivery has been caused by the negligence on behalf of Komptech – reimbursement of the justified expenses which the customer incurred up to the point of contract termination and which can no longer be used. However, these customer claims shall be limited to 0.5% for each full week of delay, but in total to a maximum of 5% of the value of that part of the total delivery which cannot be used on time or in accordance with the contract as a result of the delay. Goods that have already been supplied but that remain unused must be returned by the customer to Komptech.

6.6. If the customer does not accept the goods supplied in accordance with the contract at the contractually agreed place or time, and if the delay is not due to an act or omission on the part of Komptech, then Komptech can either demand fulfillment or withdraw from the contract by setting a grace period. If the goods have been sorted out, then Komptech can store the goods at the expense and risk of the customer. In addition, Komptech can demand reimbursement of all justified expenses that were required for the execution of the contract and that are not contained in the received payments.

6.7. Due to delay, the customer is not entitled to any other claims against Komptech, other than those listed in Art. 6. This particularly includes claims for production stoppages, lost profits, downtimes, contract losses, contractual penalties, or any other economic or indirect consequential damage.

## **7 ACCEPTANCE TEST**

7.1. If the customer desires an acceptance test, then this must be expressly agreed to in written form with Komptech. If no deviating provisions have been made, the acceptance test must be completed at the place of manufacture or at a place to be determined by Komptech. The acceptance test must be conducted during Komptech's standard business hours. In this context, the general practice of the industrial sector in question is decisive for the acceptance test. Komptech must inform the customer of the acceptance test in due time so that the customer is on site for the tests or can be represented by an authorized representative. If the delivery item proves to be in breach of contract during the acceptance test, Komptech shall immediately remedy any defect and produce the contractual condition of the delivery item. The customer can demand that the test be repeated in cases where significant defects exist. The customer may not refuse acceptance if there is a minor defect. This shall not affect any rights to a reduction of the purchase price. Upon completion of the acceptance test, an acceptance protocol must be completed. If the acceptance test has resulted in the faultless design and functionality of the delivered product as required by the contract, then this must be confirmed by both parties to the contract. If the customer or their authorized representative is not present at the acceptance test despite timely notification provided by Komptech, the acceptance protocol must only be signed by Komptech. In all cases, Komptech must provide the customer with a copy of the acceptance test. The customer can no longer contest the results if the customer or its authorized representative could not sign the acceptance test due to lack of attendance. If nothing else has been agreed to, then Komptech bears the costs for the conducted acceptance test. In every case, the customer or its authorized representative must bear the expenses that it incurs in association with the acceptance test. These costs include, e.g., travel expenses, cost of living, and expense allowances.

7.2. The execution of an acceptance test does not replace the obligations to examine and give notice of defects. Upon delivery of the goods by Komptech, the customer must immediately examine the goods insofar as this is feasible in the ordinary course of business, and to notify Komptech without undue delay in the event of a defect.

7.3. If the customer does not notify Komptech, then the goods are considered approved. This does not apply to any defects that are not recognizable upon inspection. If such a defect appears at a later time, then notification must be made immediately after discovery; otherwise, the goods shall be deemed to have been approved, even in view of this defect. In order to retain the customer's rights, it is sufficient to provide timely notification.

7.4. As long as the defect was not seen during the inspection test and was not noted in the acceptance protocol, the customer is not obligated to make another notification related to this defect.

7.5. If Komptech has maliciously concealed the defect, then Komptech cannot rely on these regulations.

## 8 PRICE

8.1. As long as nothing else has been agreed to, the prices apply ex works from Komptech without loading. The prices do not include the applicable statutory value-added tax rate.

## 9 PAYMENT

9.1. Payments must be made as per the agreed payment terms. In the absence of agreed payment terms, one-third of the price must be paid upon receipt of order confirmation, one-third after half the delivery period, and the rest once delivery has been made. Regardless of this, the sales tax contained in the invoice must be paid no later than 30 days after the invoice has been issued.

9.2. The customer is not authorized to retain payment due to warranty claims or other counter-claims not recognized by Komptech.

9.3. If the customer is in arrears on payment or delayed in the provision of other services, then Komptech can either demand contract fulfillment and

- a) the fulfillment of its own obligations until the outstanding payments have been received or it may delay the performance of other services,
- b) or claim a reasonable extension of the delivery period,
- c) demand payment of the full outstanding purchase price,
- d) if the customer has no grounds for exoneration within the terms of Art. 14, Komptech can charge interest on outstanding payments in the amount of 10% p. a. from the due date, or declare withdrawal from the contract by granting a reasonable grace period.

Upon Komptech's request, the customer must return delivered goods to Komptech and reimburse Komptech for the decrease in value of the goods as well as reimburse all justified expenses that Komptech incurred for the execution of the contract. In terms of the non-delivered goods, Komptech is authorized to provide the customer with the manufactured or processed parts and to demand the respective portion of the sales price.

9.4. The customer must reimburse to Komptech the incurred dunning charges and processing costs.

## 10 RESERVATION OF OWNERSHIP

10.1. Komptech reserves the right of ownership of the object of purchase until complete fulfillment of all financial obligations of the customer. Komptech is authorized to make the ownership of the delivery item identifiable through an external marking. The customer must comply with the necessary formal requirements to maintain the retention of title. In case of seizure or other claims, the customer must enforce the ownership of Komptech and must immediately inform them.

10.2. In case of non-fulfillment of the contractual obligations by the customer, Komptech is authorized to assert the rights arising from the retention of title itself without recourse to legal assistance. The customer authorizes Komptech, in particular to removal of the delivery object and acknowledges that the removal does not represent a withdrawal from the contract but only the securing of the delivery item, unless Komptech declares anything to the contrary. This removal does not lead to any compensation claims on the part of the customer toward Komptech whatsoever.

## 11 WARRANTY

11.1. Komptech is obliged, in accordance with the following provisions, to remedy any defects that might impair the serviceability, and which are based upon faulty design, materials, or workmanship. Komptech must be responsible for defects on expressly stipulated characteristics.

11.2. This obligation only applies to defects that occur within a period of one year up to a maximum of 1,000 operating hours from the point of delivery to the end customer, however no later than 3 months after the transfer of risk, unless something else has been agreed to in writing.

11.3. The customer may invoke this article only if he immediately communicated the detected defects in writing to Komptech. The Assumption Rule as per Art. 924 ABGB (Austrian Civil Code) is excluded. After having been notified of said defects, and if the defects are to be remedied by Komptech in accordance with the provisions of this article, Komptech must, at its option:

- a) rectify the defective items on site;
- b) have the defective items or parts returned for reworking;
- c) replace the defective parts;
- d) replace the defective goods.

11.4. If Komptech has the defective goods or parts returned for the purpose of repair or replacement, the customer must bear the costs and risk of transportation, unless otherwise agreed. The repaired or replaced items or parts shall be returned to the customer at the expense and risk of Komptech, unless otherwise agreed.

11.5. The defective items or parts replaced under this provision are at the disposal of Komptech.

11.6. Komptech must only reimburse the costs associated with defects corrected by the customer itself if Komptech provided its written authorization to do so. However, this is also the case if the customer's corrective actions were urgently required and not doing so would have otherwise endangered operations or avoided more extensive damage. In all cases, Komptech must be immediately informed.

11.7. The warranty obligation of Komptech shall only apply to defects that occur under compliance of the specified operating conditions, under the intended use as per the operating manual, and under normal usage. In particular, the warranty obligation does not apply to defects that are related to: incorrect installation on the part of the customer or its authorized parties, poor maintenance, poor repairs or repairs completed without the prior written approval of Komptech, or changes made by a person or party other than Komptech or its authorized representatives; normal usage.

11.8. Parts that Komptech purchased from sub-suppliers stipulated by the customer are covered by Komptech's warranty only within the scope of its own warranty claims against the sub-supplier. If an item is produced by Komptech on the basis of design descriptions, drawings, or models provided by the customer, the liability of Komptech does not extend to the correctness of the construction but rather to the correct realization according to the customer's specifications. In such cases, the customer shall indemnify and hold Komptech harmless in the event of any infringement of industrial property rights. Komptech does not grant any warranty when accepting repair jobs, alterations or modifications of old and foreign goods, or when supplying used goods.

11.9. From the beginning of the warranty period, Komptech does not assume any liability going beyond what is determined in this provision.

## **12 LIABILITY**

12.1. The customer's claims for damages are excluded. This does not include the customer's claims for damages resulting from the injury to life, body, health, or material breach of essential contractual obligations (cardinal obligations) as well as the liability for other damages that are based on a willful or gross negligent breach of obligation or its legal representatives or vicarious agents. Essential contract obligations are those that are required in the fulfillment of the goal of the contract.

12.2. In the breach of major contractual obligations, Komptech is not only liable for contract-typical, foreseeable damages if these have simply been negligently caused, unless these are liability claims of the customer resulting from injury to life, body, or health.

12.3. The limitations of Sec. 12.1 and 12.2 also apply to the benefit of the legal representatives and vicarious agents of Komptech, if claims are made directly towards them.

12.4. The limitations of liability resulting from Sec. 12.1 and 12.2 do not apply if Komptech maliciously concealed the defect or had provided a guarantee for the item's quality. The same applies insofar as Komptech and the customer have an agreement on the quality of the item. The provisions of the product liability law remain unaffected.

## **13 CONSEQUENTIAL DAMAGES**

13.1. Unless otherwise provided in these Terms and Conditions, Komptech's liability towards the customer relating to the shutdown of manufacturing, lost profits, downtimes, loss of contracts, or any other commercial or indirect subsequent damage is excluded.

## **14 FORCE MAJEURE**

14.1. The parties to the contract are partially or fully released from timely contract performance due to force majeure events. Force majeure events are only events that are unforeseeable and unavoidable for both parties and which are not caused by them. Strikes and labor disputes are to be considered force majeure events. In case of a force majeure event, the parties to the contract must undertake all actions to remove or limit the difficulties and possible damages, and to keep the other party informed on an ongoing basis. If the other party is not informed on an ongoing basis, then the party affected by the force majeure event is liable to pay damages. At a maximum, deadlines or schedules that cannot be met due to a force majeure event will be extended for the duration of the event or, if necessary, for a period of time agreed to by both parties. If the circumstance of the force majeure event lasts more than four weeks, then the customer and Komptech will attempt to negotiate an agreement of the processing effects. Should these negotiations not lead to a mutually agreed solution, Komptech can partially or fully withdraw from the contract.

## **15 DATA PROTECTION AND CONFIDENTIALITY**

15.1. Komptech will process the customer's personalized data within the scope of the legal regulations.

15.2. The parties are obligated to absolute confidentiality towards third parties in terms of the knowledge and insight gained through this business relationship.

15.3. Not subject to confidentiality is information that:

- a) was verified to have been known by the recipient when the business relationship began;

- b) was known to – or is generally accessible by – the public when the business relationship began, or that the public was made aware of after conclusion of this agreement without the recipient's involvement or breach of this agreement;
- c) is generally considered information that is made accessible or divulged by a third party that is not obligated to confidentiality towards the other party;
- d) must be disclosed by the recipient due to mandatory statutory or official regulations. In this case, the recipient – insofar as legally permissible – will immediately inform the other party regarding the forthcoming disclosure in order to allow the other party to oppose, avoid, or limit the disclosure. The recipient will support the other party in a suitable manner. In any case, the recipient will restrict this type of disclosure to the necessary extent.

15.4. The obligation to confidentiality also applies to the end of this agreement (for a period of ten years / as long as the information remains confidential through no fault of the recipient).

## 16 TRANSFER OF MACHINE DATA

16.1. The machines come with a telemetry system that processes machine data automatically. Machine data includes, among other things:

- a) Positioning data, for example about the (global) location of the machine
- b) Status data that describes the condition of the machine or its accessories, such as whether the machine or radio remote control is switched on or off
- c) Parameter data that provides information about operation of the machine, such as fuel consumption, temperature and pressure conditions.

The machine data does not contain personal data.

16.2. Automatic processing of the machine data includes collecting, processing and storing the machine data. The machine data can be transferred over a wired connection and wirelessly. The transferred data is stored by Komptech.

16.3. Automatic processing and the transfer of machine data is primarily used to record the collected machine data systematically in databases, so that Komptech can analyze, use and make the data available in order to:

- a) detect, eliminate and avoid machine errors;
- b) use the data as the basis for internal business calculations;
- c) further develop and market the machines;
- d) provide customer services.

16.4. Komptech is entitled at any time, without giving prior notice to the customer, to access the telemetry system and the machine data and evaluate the data, unless Komptech has expressly agreed otherwise with the customer. The customer shall ensure that Komptech can access the machine's telemetry system to a reasonable extent. The customer shall notify Komptech as soon as it becomes aware that the telemetry system is not functioning.

16.5. Komptech may authorize a third party to exercise its rights under this section. Komptech may also disclose the acquired data to third parties at any time and without restriction. Komptech is entitled, but not obligated, to place the acquired data at the customer's disposal.

## 17 INSTALLATION

These General Terms and Conditions of Delivery shall also apply analogously to installations with the following amendments:

17.1. The customer must support the installation staff in the execution of the installation at its own expense.

17.2. The customer must provide the required special measures at the installation area in order to protect the staff and the objects. The customer must also advise and instruct the installation supervisor regarding existing special safety regulations insofar as these are important for the installation personnel. The customer informs Komptech regarding any infringement of the installation staff against these safety regulations. In case of serious violations, the customer can refuse the offender's access to the installation area in consultation with the supervisor.

17.3. The customer is obligated to organize and bear the costs for technical assistance, in particular to:

- a) Provisioning of the required suitable temporary workers. The temporary workers must follow the instructions of the supervisor. Komptech assumes no liability for the temporary workers.
- b) Provisioning of the required fixtures and heavy tools (e.g., lifting equipment, compressors) as well as the required consumer articles and materials.

- c) Provisioning of heating, lighting, operating power, water, including the required connections.
- d) Provisioning of necessary, dry, and lockable rooms for the storage of the installation staff's tools.
- e) Transport of the installation parts to the installation area, protection of the installation area and materials from all types of harmful influences, cleaning the installation area.
- f) Provisioning of suitable, theft-proof common areas and workplaces (with heating, lighting, washing facilities, sanitary facilities (restrooms)), as well as first aid for the installation personnel.
- g) Provisioning of materials and performance and all other activities that are necessary for the balancing of the object to be installed and for the execution of a contractually agreed trial run.

17.4. The Customer's technical assistance must ensure that the installation is immediately started upon arrival of the installation staff, and that it can be executed without delay until the customer's acceptance. Insofar as special plans or instructions are required on the part of Komptech, these will be provided to the customer in a timely fashion.

## 18 REPAIRS

These General Terms and Conditions of Delivery shall also apply analogously to repairs and the supplements for installations (see Art. 17) shall apply analogously as supplements for repairs. The following also applies:

18.1. If the object to be repaired has not been delivered by Komptech, then the customer must refer to existing commercial property rights; insofar as Komptech is not culpable, the customer will indemnify Komptech from any potential third-party claims resulting from commercial property rights.

18.2. The customer must inform Komptech in a timely manner and in writing about contaminations, eventual hazardous residues in the objects to be repaired, as well as transport risks, and other necessary repair-relevant measures.

18.3. The services required for providing a cost estimate as well as the other verifiable expenditures (troubleshooting time is considered work time) will be invoiced to the customer if the repair cannot be completed by Komptech due to reasons for which Komptech is not responsible.

18.4. Cost estimates only contain suggested prices; the billing of the repair work is based on actual work and expenditures. Binding prices must be agreed to separately in writing.

18.5. If nothing else has been agreed to in writing, the transport and removal of the repaired item – requested by the customer and executed by Komptech (including all required packaging and loading) – is done so on the customer's account, otherwise the object to be repaired will be delivered by the customer at its expense to Komptech and will be picked up by the customer after the repair has been carried out at Komptech. The customer bears the risk of transport.

18.6. There is no insurance cover during the period of repair at the Komptech plant. The customer must ensure the continuation of the existing insurance cover for the object to be repaired, e.g., fire insurance, water insurance, storm insurance, and machinery breakdown insurance. Only upon the express wish, and at the expense of the customer, can insurance cover be organized for these risks.

18.7. If the customer is delayed in acceptance, Komptech can demand a storage fee for storage at their facility. If Komptech chooses, the object to be repaired can also be stored in a different manner. The costs for risk of storage are carried by the customer insofar as the customer is delayed in acceptance.

18.8. Repair deadlines are based on estimation and are non-binding, insofar as nothing else has been agreed to separately.

18.9. Komptech is entitled to a lien on the customer's object of repair, which has become the property of the customer due to its claim from the repair contract. The right of lien may also be asserted for claims arising from work carried out earlier, spare parts deliveries and other services, insofar as they are related to the object of repair. For all other claims resulting from the business relationship, the right of lien is only valid if this is undisputed or absolute.

## 19 COMPLIANCE AND SOCIAL RESPONSIBILITY

19.1. The Contractual Partner shall not take any actions, and shall refrain from actions which may lead to prosecution due to fraud, breach of trust, antitrust violations, granting of advantages, the acceptance of benefits, bribery or similar facts (offenses or crimes) in terms of the Criminal Act, the Act against Unfair Competition, etc of people employed by the Contractual Partner and/or officers/directors and/or third parties. Even a single breach entitles Komptech to end respectively terminate all contractual relations immediately. In principle, the Contractual Partner is obliged to comply with all laws and relevant regulations (directives, regulations, etc.) concerning him and the contractual relationship with Komptech

19.2. The Contractual Partner commits himself to obey the following principles and rights in the context of the fulfilment of his contractual obligations worldwide:

- a) Respect for human dignity and human rights, ban on child labour and forced labour

- b) No discrimination based on religion, sex, nationality, age, origin, disability, sexual orientation or the like;
- c) Compliance with social adequate working conditions;
- d) Responsible behaviour of all employees regarding the sustainable treatment and protection of the environment;
- e) Compliance of requirements of employee protection and health protection.

19.3. The following code of conduct published by the parent company of Komptech on its homepage is mandatory for the customer. It can be viewed online at:

[http://www.hirtenberger.com/wp-content/uploads/2016/10/HG\\_Code\\_of\\_conduct\\_d\\_Ansicht.pdf](http://www.hirtenberger.com/wp-content/uploads/2016/10/HG_Code_of_conduct_d_Ansicht.pdf)

## **20 PLACE OF JURISDICTION, APPLICABLE LAW, PLACE OF PERFORMANCE**

20.1. The place of jurisdiction for all disputes arising directly or indirectly from the contract shall be the local court having jurisdiction for the registered office of Komptech. Komptech reserves the right to also appeal to the court with jurisdiction for the customer.

20.2. The contract is subject to the national laws of Komptech to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980.

20.3. For delivery and payment, the place of performance is the registered seat of Komptech, even if it has been agreed to take delivery or make payment at a different location.