

# **KARL STORZ General Terms and Conditions for Purchasing and Repairs**

(valid from 01.01.2021)

## **1. General**

- 1.1. All deliveries and services including repair services and offers (hereinafter generally referred to as "delivery(-ies)/service(s)") to KARL STORZ SE & Co. KG (hereinafter "KARL STORZ") by suppliers/repair companies/other services providers (hereinafter "Contractual Partners") are subject to these General Terms and Conditions for Purchasing and Repairs (hereinafter "Terms & Conditions"). These form part of all agreements which KARL STORZ enters into with its Contractual Partners concerning the deliveries or services they offer. Any terms on the part of the Contractual Partner which deviate in whole or in part from these Terms & Conditions do not apply, even if they are not expressly rejected by KARL STORZ. This is also the case if KARL STORZ unconditionally accepts the delivery or service or makes payments while aware of contradictory or deviating terms on the part of the Contractual Partner. Likewise, any reference to offer documents of the Contractual Partner in the order from KARL STORZ does not constitute acknowledgment of the commercial terms of the Contractual Partner. Any deviating terms only apply if and to the extent that they are expressly acknowledged by KARL STORZ in writing.
- 1.2. These Terms & Conditions also apply to future business relations with the Contractual Partner, even if these have not yet been expressly agreed between the Parties.
- 1.3. The agreements between KARL STORZ and the Contractual Partner apply in the following order of priority in the event of contradictory or missing regulations – if relevant: Individual contract, these Terms & Conditions, statutory regulations. There are no oral auxiliary agreements between the Contractual Parties.

## **2. Order Placement and Order Processing for Deliveries**

- 2.1 The Contractual Partner shall draw up offers free of charge for KARL STORZ.
- 2.2 Orders are binding only once they have been issued or confirmed by KARL STORZ in writing. Amendments or additions to orders or contracts require written acceptance by KARL STORZ.
- 2.3 KARL STORZ is bound by the order for a period of two weeks, starting from the date the order is sent. The order may be accepted by the Contractual Partner

by way of order confirmation within this period. Late acceptance is regarded as a new offer and requires acceptance by KARL STORZ. After expiry of the period, KARL STORZ is entitled to cancel the order, the cancellation being considered timely if it has been sent before receipt of an order confirmation. The delivery items will be ordered in accordance with the offers by the Contractual Partner. The Contractual Partner must check whether the order specifications in the order notification are correct and that the materials are sufficient for the specified purpose. If the Contractual Partner has doubts in this regard, it must affirm the purpose of the delivery/service with KARL STORZ. The Contractual Partner warrants in full that the delivery/supply will be suitable for the specified purpose. Unless stipulated otherwise, the best material and design quality is deemed to be agreed. Comprehensive serialization of the individual delivery must be ensured for tracking purposes.

- 2.4 A delivery note must be enclosed with each delivery. Aside from the usual information, this delivery note must in particular include the KARL STORZ order number, the consignment description, the KARL STORZ item number, the precise description of the goods and the delivered quantity, information on the country of origin and country of manufacture, as well as dimensions, weight and packaging. If available, batch or serial number information as well as export control notes must also be included. Foreign Contractual Partners must also enclose the required customs documents for shipments to the Federal Republic of Germany, along with the usual shipping documents. In the case of deliveries of hazardous goods, the relevant regulations must be complied with as far as the place of destination. KARL STORZ reserves the right to refuse acceptance of the delivery if information is missing from the delivery note. Deliveries are returned at the expense of the Contractual Partner.
- 2.5 The documents required in connection with the delivery in accordance with Point 2.4 of these Terms & Conditions must be stored by the Contractual Partner for a duration of 15 years after the delivery.
- 2.6 The Contractual Partner may not pass any orders by KARL STORZ on to third parties for the purpose of fulfillment without the consent of KARL STORZ.

### **3. Order Placement and Order Processing for Repairs**

- 3.1 The Contractual Partner shall draw up cost proposals free of charge for KARL STORZ.
- 3.2 After KARL STORZ has shipped the contractual object requiring repair, the Contractual Partner shall submit a repair cost proposal to KARL STORZ within five working days. The offer presented in the cost proposal expires after a period of 6 weeks.

- 3.3 Orders are placed by KARL STORZ by accepting the service identified in the repair cost proposal. If this is not accepted within 10 working days, the Contractual Partner must re-submit the proposal to KARL STORZ. If this is not accepted, the Contractual Partner shall return the contractual object without repair at the expense of KARL STORZ.
- 3.4 The Contractual Partner shall provide the repair stated in the order according to the state of the art. The repair services are work agreement services.
- 3.5 Any sub-commissioning of subcontractors requires the written consent of KARL STORZ.
- 3.6 The Contractual Partner shall document execution of the repair on an order by-order basis. Comprehensive serialization of the individual repairs must be ensured for tracking purposes. Repairs resulting from customer complaints must be recorded separately in complaints reports.
- 3.7 Each repair service must be inspected by the Contractual Partner on the basis of a binding outgoing goods check in accordance with the relevant legal provisions (esp. regarding medical devices). The outgoing goods check must include the documentation of test logs, including verification management (describing the nature and extent of the inspection).

#### **4. Agreed Dates for Order Processing**

- 4.1 The agreed dates or lead times are binding.
- 4.2 Unless expressly agreed otherwise, the lead time for the delivery/service commences with the date of the order. If no lead time is agreed, it must be delivered or provided without delay.
- 4.3 Arrival of the material at the premises of KARL STORZ (delivery address) is decisive for compliance with the agreed dates and lead times. The supplier remains responsible for the safety of the goods until the material is accepted by KARL STORZ. For deliveries with setup or assembly tasks, as well as other associated services, acceptance by KARL STORZ is decisive. Risk first passes upon acceptance.
- 4.4 Any risk of delay to the provision of deliveries/services must be notified to KARL STORZ in good time and immediately in writing; this notification must specify the reasons and the expected duration of the delay.
- 4.5 Unless agreed otherwise, deliveries must be performed FCA, Incoterms® 2020, including packaging. The Incoterms® apply in the version valid upon conclusion of the contract.

- 4.6 Independent of the agreed Incoterms®, KARL STORZ reserves the right to determine the dispatch route, dispatch type and transport service provider. The Contractual Partner shall only use the transport service provider agreed with KARL STORZ beforehand. In addition, the Contractual Partner must provide or dispatch the material in a timely manner under consideration of the time required for loading and transport and send KARL STORZ the pick-up or dispatch notification in writing.
- 4.7 The conclusion or taking out of transport insurance requires prior written approval by KARL STORZ.
- 4.8 If the precise delivery/service date is set by the calendar as agreed between the Parties, the Contractual Partner is considered to be in delay once this day has passed, without requiring a reminder from KARL STORZ.
- 4.9 In the case of a delay to the delivery/service, KARL STORZ is entitled to legal claims without limitation.
- 4.10 For delays resulting from force majeure or non-culpable labor disputes, KARL STORZ may, either after expiry of a reasonable grace period, withdraw in whole or in part from the contract or postpone the delivery/service to a later time, without the Contractual Partner being entitled to any claims in this respect.
- 4.11 The Contractual Partner is authorized to make partial or excess deliveries only after prior written approval by KARL STORZ.
- 4.12 In the event of insolvency proceedings against the Contractual Partner or a change in its ownership structure, KARL STORZ is entitled to withdraw in whole or in part from the contract, without prejudice to procedural consequences. The Contractual Partner is obligated to inform KARL STORZ of any such circumstances immediately.
- 4.13 To the extent that the Contractual Partner is obligated, in accordance with the provisions of the Packaging Ordinance, to take back packaging, it must pick these up from KARL STORZ at its own expense. If the Contractual Partner wishes for the packaging concerned to be sent back, it shall bear any resulting costs of shipping.

## **5. Prices**

- 5.1 Unless agreed otherwise, the price set out in the order confirmation/cost proposal is binding and applies in addition to the legally applicable value added tax at the time of the delivery or service.

5.2 In the absence of any deviating agreement, the agreed prices include all services, auxiliary services (e.g. assembly, installation) and expenses associated with the delivery/service, in particular proper packaging.

## **6. Payments**

6.1 Unless agreed otherwise, payment will be made by KARL STORZ within 14 working days of receiving the goods/service and invoice with a discount deduction of 3% of the invoice amount or within 30 days without deduction. Receipt of the transfer order at the bank is sufficient for the timeliness of the payments made by KARL STORZ.

6.2 Invoices are to be submitted in the quantity specified in the order after each delivery/service or any partial delivery/partial service.

6.3 The invoices must contain the data included on the delivery or freight note.

6.4 If the (repaired) item arrives at KARL STORZ later than the invoice or if the invoice is incomplete, the arrival date of the item or the arrival date of the proper invoice is decisive for the calculation of the payment and discount period.

6.5 Sent payments do not mean that the delivery/service has been accepted as being contractually proper. In the event of incorrect or incomplete deliveries/services, KARL STORZ is entitled, without prejudice to other rights, to withhold payments to an appropriate extent until proper fulfillment.

6.6 KARL STORZ is entitled to offsetting and retention rights as well as the right to invoke non-performance within the legal scope. KARL STORZ is in particular entitled to withhold due payments for as long as claims arising from incomplete or faulty deliveries/services are in place against the Contractual Partner.

## **7. Warranty Rights in the Case of Material Defects**

7.1 The statutory provisions apply concerning the rights of KARL STORZ in the case of material defects and defects of title with respect to the goods (including incorrect and under-delivery as well as improper assembly, defective assembly, operating or handling instructions) and in the case of other breaches of obligation by the Contractual Partner, unless otherwise agreed in the following.

7.2 The Contractual Partner is responsible for deliveries/services being free from defects as well as the guaranteed characteristics being present. The Contractual Partner shall in particular ensure that the deliveries/services correspond to the state of the art, comply with general technical and relevant safety provisions concerning medical devices from authorities and professional associations and comply with the applicable law. The Contractual Partner

warrants the following: use of the best, appropriate and brand new materials, professional design in accordance with the drawings, appropriate construction and, if applicable, problem-free assembly. If the delivery/service relates to machines, devices or systems, these must also comply with the requirements laid down in the special safety provisions for machines, devices and systems applicable at the time of contractual fulfillment and possess a CE label. Furthermore, technical descriptions and operating or handling instructions must be provided free of charge with the delivery of devices. For software products, the delivery obligation is not considered fulfilled until full documentation has also been handed over.

- 7.3 KARL STORZ shall perform an incoming goods check only for obvious defects, transport damage, completeness and identity of the goods. Other defects are the responsibility of the outgoing goods check by the Contractual Partner. If acceptance is part of the agreed process, there is no obligation for inspection. Complaints about unconcealed quality and quantity deviations are considered timely if they have been notified to the Contractual Partner within ten working days after receipt of the goods. Complaints about concealed defects are considered timely if the complaint is received by the Contractual Partner within five working days after a defect has been found in the delivery/service. In some circumstances, a much longer complaint deadline may arise based on the nature of the delivery/service.
- 7.4 If a defect appears within the limitation period according to Point 7.8, it is assumed that it was already present upon the passing of risk, unless this assumption is incompatible with the nature of the defect.
- 7.5 KARL STORZ is entitled to statutory claims for defects in full. KARL STORZ is authorized to request post-fulfillment (at the behest of KARL STORZ: a substitute delivery or rectification) from the Contractual Partner. The Contractual Partner is obligated to bear all the necessary costs and expenses for the purposes of post-fulfillment. The right to compensation, including due to damage to objects other than the delivered object (consequential damage, indirect damage, lost profit) remains explicitly reserved.
- 7.6 If the Contractual Partner does not fulfill its post-fulfillment obligation within the reasonable period set by KARL STORZ, KARL STORZ may eliminate the defect itself and request compensation from the Contractual Partner for the necessary expenses or a corresponding advance payment. If post-fulfillment by the Contractual Partner fails or is unreasonable for KARL STORZ (for example, due to special urgency, risk to operational safety or a risk of the occurrence of disproportionate damage), no period needs to be set. Circumstances of this nature must be notified to the Contractual Partner without delay, and if possible, beforehand.

- 7.7 If, as a result of the defective delivery/service performance, KARL STORZ incurs costs for an incoming goods check exceeding the agreed or usual scope, the costs will be borne by the Contractual Partner.
- 7.8 Unless a longer warranty period is stipulated in law, the limitation period for claims for defects is 24 months from the passing of risk in accordance with Point 7.9. In the case of post-fulfillment, a new limitation period for claims for defects of 24 months commences with regard to the improved or replaced parts from the completion of the improvement work or passing of risk.
- 7.9 Risk passes, regardless of the agreed Incoterms®, to KARL STORZ only once the delivery/service has been handed over to the agreed delivery address/place of fulfillment or the delivery/service has been accepted by KARL STORZ. If no delivery address/place of fulfillment is specified in the order, the place of fulfillment is Tuttlingen, Germany.
- 7.10 By acknowledging receipt of goods and accepting or approving pre-submitted drawings, patterns and samples, KARL STORZ does not waive its rights under warranty or other rights.
- 7.11 In the case of delayed delivery/service performance, along with being entitled to fulfillment, KARL STORZ is entitled to a contractual penalty of 1% of the net value of the delivery/service per calendar week that the delivery/service deadline is exceeded up to a total amount of 5% of the net value of the delivery/service, unless the Contractual Partner can demonstrate that the delay is not its fault. The right to provide evidence of greater damage remains reserved. Acceptance of a delivery/service as fulfillment does not waive the right to claims arising from contractual penalties, including if this right is not expressly reserved. Further claims remain unaffected.

## **8. Warranty Rights in the Case of Defects of Title**

- 8.1 The Contractual Partner is responsible for ensuring that no third-party property rights in the countries in which the Contractual Partner produces or has the products produced are infringed in connection with the delivery/service.
- 8.2 The Contractual Partner will indemnify KARL STORZ against any claims brought by third parties against KARL STORZ as a result of the infringement of commercial property rights mentioned in Point 8.1. This requirement exists regardless of whether the Contractual Partner is at fault. Point 7.8 applies accordingly for the limitation period of these indemnification requirements.

## **9. Liability**

- 9.1 The Contractual Partner is liable towards KARL STORZ according to the contractual or statutory basis for claims (in particular Sections 823 ff. BGB, Product Liability Act, Product Safety Act, Medical Devices Act) for all personal and material damage that can be attributed to a defective product it has delivered or a defective service it has provided and will indemnify KARL STORZ from liability towards third parties in this regard. The statutory limitation periods apply.
- 9.2 For the duration of 10 years from the last delivery/service, the Contractual Partner undertakes to inform KARL STORZ of the respective manufacturer, importer or pre-supplier if requested, immediately but no later than 10 working days, as well as to provide KARL STORZ with any appropriate evidence, in particular manufacturing documents and documents for the defense against product liability claims from third parties without delay.
- 9.3 If KARL STORZ is obligated to conduct a recall campaign due to a material defect or defect of title in the product delivered/service performed by the Contractual Partner, the Contractual Partner shall bear all costs associated with the recall campaign.
- 9.4 The Contractual Partner is obligated to take out product liability insurance with sufficient coverage at its own expense.

## **10. Replacement Parts**

- 10.1 The Contractual Partner is obligated to retain replacement parts for the products supplied to KARL STORZ for a period of at least 10 years after performance of the delivery/service.
- 10.2 If the Contractual Partner intends to discontinue production of replacement parts for the products supplied to KARL STORZ, it shall notify KARL STORZ of this immediately after the decision has been made to discontinue. This notification to KARL STORZ must take place at least 6 months before production is discontinued.

## **11. Confidentiality**

- 11.1 All production documents, models, patterns, drawings which are disclosed to the Contractual Partner by KARL STORZ as part of the business relationship – including in oral form – are confidential and may not be made accessible to third parties and used for separate purposes outside of those in this contract. The Contractual Partner may not make available to third parties objects and advertising materials, brochures, etc. provided to it by KARL STORZ for viewing



or use without the written consent of KARL STORZ. The same applies to goods produced using information from KARL STORZ; furthermore, these goods may not be made accessible to third parties in a raw condition, nor as semi-finished or finished products.

- 11.2 The Contractual Partner is otherwise obligated to keep confidential all commercial operational and technical matters of KARL STORZ that have become or become known to it in connection with the delivery/service beyond the duration of the contract. The duty of secrecy ends once the information is made publicly known without this being attributed to a breach in the duty of confidentiality.
- 11.3 The Contractual Partner may only advertise using its business relationship with KARL STORZ with the prior written consent of KARL STORZ.
- 11.4 Any breach of the above duty of confidentiality authorizes withdrawal from or termination of all existing contracts without notice, without the Contractual Partner being entitled to any claims for compensation, fulfillment or payment for goods not yet delivered.

## **12. Title to Resources Provided, Retention of Title**

- 12.1 All manufacturing documents, materials, tools, models and patterns provided by KARL STORZ to the Contractual Partner for the delivery/service and the commercial property rights thereto, as well as the drawings completed by the Contractual Partner based on specifications from KARL STORZ and the commercial property rights thereto, are the property of KARL STORZ. After completion of the order and any time at the request of KARL STORZ, the above resources are to be returned to KARL STORZ without prompting. The same applies if no delivery/service is provided.
- 12.2 The resources provided must be stored clearly and separately by the Contractual Partner as the property of KARL STORZ. The Contractual Partner is obligated to use the resources provided exclusively for manufacturing the goods ordered by KARL STORZ and to maintain them at its own expense. It is furthermore obligated to insure them sufficiently against fire, water, loss and force majeure at its own expense.
- 12.3 Any processing or transforming by the Contractual Partner of resources provided will only be done on behalf of KARL STORZ. Where resources are processed or combined with items not belonging to KARL STORZ, KARL STORZ retains co-ownership of the new item in proportion with the value of the provided resource to the other processed items at the time of processing. If a resource is connected or combined with a main item belonging to the Contractual Partner, it is obligated to transfer to KARL STORZ co-ownership of

the new item in proportion with the value of the provided resource to the new item.

- 12.4 Ownership of the goods must be transferred to KARL STORZ unconditionally and without regard to payment of the price. If, however, KARL STORZ accepts an offer of the Contractual Partner for ownership to be transferred on the basis of payment of the purchase price in an individual case, title ceases to be retained by the Contractual Partner no later than upon payment of the purchase price of the delivered good/service. In the proper course of business, including before payment of the purchase price, KARL STORZ remains entitled to resell the goods, with advance assignment of the arising claim (alternatively with simple retention of title lengthened to the resale). This hereby excludes in all cases all other forms of retention of title, in particular extended or forwarded retentions of title and retention of title lengthened to further processing.

### **13. Export control regulations**

- 13.1 The Contractual Partner undertakes to adhere to all requirements of the applicable national and international customs and foreign trade law, including all European or U.S. sanction lists and other personal embargoes (collectively: "export control regulations").
- 13.2 The Contractual Partner undertakes, no later than with the offer to KARL STORZ, to notify KARL STORZ, in writing and without being requested to do so, of all information and data it requires for compliance with export control regulations in the case of export, import and re-export, including in particular, the specific AL or ECCN number in the event that the goods to be delivered or their components are listed in the Export List, Annexes I and IV, or the CCL.

### **14. Final Provisions**

- 14.1 The Contractual Partner consents to data that is transmitted to KARL STORZ in the context of the business relationship being stored by KARL STORZ for the purposes of data processing and consents to the data being transmitted to third parties, to the extent this is required for conducting the business.
- 14.2 Claims by the Contractual Partner against KARL STORZ may only be assigned with the prior written consent of KARL STORZ.
- 14.3 KARL STORZ hereby declares that it complies with the statutory provisions of the Minimum Wage Law (MiLoG).
- 14.4 The Contractual Partner is obligated to comply with the laws of the respectively applicable legal system(s), including the provisions of the MiLoG. In particular, it will neither actively nor passively, directly nor indirectly, participate in any form

of bribery, infringement of fundamental employee rights or child labor. It will assume responsibility for the health and safety of its employees at the workplace, adhere to environmental protection laws, and encourage and require compliance with this code of conduct among its contractual partners as best as possible. If the Contractual Partner culpably breaches these obligations, KARL STORZ is entitled, without prejudice to further claims, to withdraw from or terminate the contract. If the breach of obligation can be remedied, this right may be exercised only after fruitless expiry of a reasonable deadline to remedy the breach of obligation.

- 14.5 The exclusive place of jurisdiction for any disputes arising from or relating to the contractual relationship is Stuttgart.
- 14.6 The relationship between KARL STORZ and the Contractual Partner is governed exclusively by the law of the Federal Republic of Germany, to the exclusion of private international law as well as the UN Convention on Contracts for the International Sale of Goods (CISG).
- 14.7 Should one or more provisions of these Terms & Conditions be or become ineffective, this will not affect or impair the validity and enforceability of the remaining provisions of this contract in any way. In this case, the Parties agree to replace the ineffective provision with a legally enforceable substitute that comes as close as possible to the commercial intentions of the provisions. The same applies in the event of a gap in the regulations.

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