

# KOSTAL conditions for indirect purchasing (as at 09/2022)

## KOSTAL Conditions Indirect

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### I Preamble

The legal basis between the Supplier on the one hand and KOSTAL Automobil Elektrik GmbH & Co. KG and/or its affiliated companies on the other (hereinafter referred to as the "Purchaser") - is governed by these terms and conditions and any other written agreements.

Amendments and supplements must be made in writing. This also applies to changes to the written form requirement itself. Changes to individual conditions do not affect the validity of the other conditions. The KOSTAL terms and conditions of indirect purchase of the Buyer shall apply exclusively. Other terms and conditions shall not become part of the contract, even if the Buyer has not expressly objected to them.

The Buyer and the Buyer's Affiliates may purchase Products from the Supplier and the Supplier's Affiliates under the terms of this Master Agreement by submitting purchase orders directly to the Supplier or the Supplier's Affiliates.

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Under no circumstances shall Supplier or Purchaser and their respective affiliates be jointly or severally liable for the obligations of the affiliate that has entered into the obligation.

Affiliated companies are companies within the meaning of Section 15 of the German Stock Corporation Act (AktG) or companies that control a party, are controlled by a party or are under common control with a party. Affiliated companies of KOSTAL are listed on the KOSTAL website: <https://www.kostal.com/de-de/unternehmen/zahlen-datenfakten/standorte>

### **II ORDER**

1. Orders which are not placed by the Purchasing Department or alternatively by the KOSTAL Shared Services Center (SSC) require the written approval of the Purchaser's Purchasing Department in order to be valid; this approval may also be given by e-mail.
2. Orders and confirmations or approvals are only binding if they are made in writing, either by letter, fax or data transmission (including e-mail).
3. If the Supplier does not accept the order within two weeks of receipt or expressly rejects it, the Customer shall be entitled to cancel the order.
4. Within the scope of reasonableness, the Purchaser may demand that the Supplier make changes to the delivery item in terms of design, execution, quantity and deadline. The effects, in particular the additional or reduced costs, are to be regulated appropriately by mutual agreement. Additional costs shall in any case be quantified by the Supplier before the start of those activities that lead to additional costs and offered to the Purchaser.
5. If a contractual partner ceases to make payments or if insolvency proceedings are instituted against its assets or judicial or extrajudicial composition proceedings are applied for, the other contractual party shall be entitled to withdraw from the respective individual agreement for the unfulfilled part.

### **III CERTIFICATES OF ORIGIN, SAFETY DECLARATIONS, EXPORT RESTRICTIONS**

1. In the case of a first delivery, the origin data must be communicated in writing in the form of a supplier's declaration at the latest at the time of the first delivery.
2. Furthermore, for deliveries of goods from non-EU countries with which the EU has concluded trade and preferential agreements to obtain exemption from customs duties for importers, the supplier undertakes to provide the necessary documents, e.g. proof of preference on the commercial invoices, EUR.1 documents or A.TR free movement certificates for duty-free import upon delivery. Certificates of origin must be submitted on request.
3. The commercial origin must be indicated on the supplier's respective commercial invoice. The Supplier shall ensure security in the supply chain and implement the relevant legal requirements. The Supplier shall provide appropriate evidence (e.g. security certificates, AEO or CTPAT security declarations) without delay at the request of the Purchaser.
4. If the relevant above-mentioned documents of the supplier are not available at the time of import and customs duties therefore have to be paid unnecessarily by the customer, the customer shall also reclaim these customs duties from the supplier.
5. Furthermore, missing documents will be included in the supplier evaluation.
6. In the case of free deliveries, the supplier is obliged to state a value on the pro forma invoice that reflects a standard market price and the following note "For Customs Purpose Only". The invoice or delivery bill must also state the reason for the

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- free delivery (e.g. free sample shipment).
7. The Supplier shall support the Purchaser by all means necessary to reduce or minimize our payment obligations with regard to customs duties or costs for customs clearance.
  8. The Supplier shall inform the Purchaser without being requested to do so if its deliveries are subject to import or export restrictions in whole or in part. The Supplier is obliged to inform the Purchaser of any licensing requirements or restrictions on (re-)exports of its goods in accordance with German, European, US export and customs regulations as well as the export and customs regulations of the country of origin of its goods on its business documents. Furthermore, the Supplier is obliged to inform the Purchaser in good time before the first delivery whether its goods are goods subject to BAFA approval and to inform the Purchaser immediately of any changes (technical, legal changes or official findings). Any information must be sent to the address [compliance@kostal.com](mailto:compliance@kostal.com).

### IV PRICES AND PAYMENT

1. Agreed prices are fixed prices.
2. Payment shall be made after the goods have actually been received in accordance with the contract or after successful acceptance of the service and after receipt of the proper and verifiable invoice. Where a credit note procedure has been agreed, the date of receipt of the delivery shall be decisive for payment and discount periods, otherwise the later date of receipt of the delivery and invoice. For other services, the date of acceptance shall apply. Payments are to be made within 14 days of receipt of invoice or acceptance of service or receipt of goods less 3% discount or 30 days net.
3. If early deliveries are accepted, the due date shall be based on the agreed delivery date.
4. In the event of defective delivery, the customer shall be entitled to withhold payment pro rata proper fulfillment.
5. The customer is entitled to offset his due counterclaims.
6. The supplier shall not assert any right of retention in respect of deliveries of goods, services or work performance, or rights of use.

### V PACKAGING, SHIPPING, LABELING

1. Unless otherwise agreed, the goods to be delivered must be packaged in a customary and appropriate manner. Packaging for electronic elements or components must be ESD dissipative. The supplier shall be liable for damage resulting from inadequate packaging.
2. The place of performance and fulfillment is the place of receipt specified by the customer. Deliveries, including packaging, shall be made free of charge to the place of receipt specified in each case. The INCOTERMS 2020 agreed with the Supplier shall apply.
3. Deliveries for which the customer has to bear freight costs in whole or in part shall be transported at the most cost-effective rates and shipping methods, unless the customer specifies otherwise.
4. In the case of deliveries ex works (INCOTERM EXW), the goods are not to be additionally insured for transportation unless the customer issues instructions to the contrary.
5. The order and material numbers of the customer as well as the revision status, gross and net weight, delivery quantity, number of packages, no., number of packaging materials used and the delivery bill no. must be listed on the delivery documents (KOSTAL Logistics Guideline: <https://www.kostal.com/de-de/download/vertragsdokumente> ).

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### VI DELIVERY DATES, DEADLINES, DELAY IN DELIVERY

1. Agreed dates and deadlines are binding.
2. Delays in delivery shall - as soon as recognizable - be reported to the customer immediately, stating the reasons and the expected duration.
3. The Supplier shall be obliged to compensate the Purchaser for any damage caused by the delay. This includes, in particular, additional costs for freight, production (additional set-up costs, overtime surcharges, etc.), covering purchases, etc. as well as recourse for claims for damages by the customer's customers.

### VII SUSTAINABILITY (ENVIRONMENTAL PROTECTION, ENERGY EFFICIENCY, OCCUPATIONAL HEALTH AND SAFETY)

1. Any business relationship is based on the KOSTAL Group's key principles of conduct in accordance with the KOSTAL Code of Conduct (see <https://www.kostal.com/de-en/download/contract-documents>).
2. The supplier must comply with the statutory environmental protection regulations as well as DIN ISO EN 14001. Appropriate proof of certification must be provided on request.
3. In the case of hazardous substances or substances hazardous to health as defined by law or substances subject to registration in accordance with Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH Regulation), the Supplier shall provide a safety data sheet before the first delivery without being requested to do so and shall update it in due time (at the latest every three (3) years). If delivered products contain SVHC (Substance of Very High Concern) substances, the supplier is obliged to inform the purchaser of this in writing prior to placing the order.
4. The supplier guarantees that the delivered products do not contain any legally prohibited substances or exceed permissible substance concentrations.
5. The Supplier shall be responsible for the disposal of the components/materials supplied by it in accordance with the statutory provisions applicable to its scope of delivery. At the request of the Purchaser, the Supplier shall submit a conclusive concept for the dismantling, recycling and safe disposal of its scope of delivery.
6. The supplier undertakes to introduce and operate a certified occupational health and safety management system in accordance with DIN ISO 45001 or a recognized and certified occupational health and safety management system derived therefrom and to provide evidence of this by submitting a corresponding certificate. Deviations from the requirements may be agreed jointly and in writing.
7. The supplier undertakes to manage its processes in an energy-efficient manner in accordance with the principles of DIN ISO 50001. Certification in accordance with DIN ISO 50001 or a comparable recognized management system is to be sought in the interests of economic benefits and sustainable business relationships.  
When procuring products, facilities or services, energy efficiency is a criterion for awarding contracts.

### VIII QUALITY, DOCUMENTATION OBLIGATION

1. The supplier is fully responsible for the quality of its scope of delivery in every respect. He must maintain a system of batch traceability and provide evidence of this on request.
2. The Supplier shall be obliged to provide special documentation if the Purchaser so requires or if the need to document critical characteristics arises from a statutory provision or due to significant risks of personal injury, property damage or financial loss. The supplier must document the critical characteristics in the drawing and documents with the marking "D" and to mark these documents at least

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fifteen (15) years after completion of the last delivery. Upon request, the Supplier shall grant the Purchaser access to these D-obligatory documents at any time or send corresponding copies. In the event of a legal dispute, the Supplier shall support the Purchaser with its expertise and, if necessary, provide the original D-obligatory documents for evidence purposes.

### **IX DUTY TO INSPECT AND GIVE NOTICE OF DEFECTS**

The purchaser is only obliged to inspect incoming goods to the extent that obvious defects such as e.g. transport damage, quantity deviations, non-compliance of order and accompanying documents. The Buyer shall notify the Supplier of any defects as soon as they are discovered in the ordinary course of business. In this respect, the Supplier waives the objection of delayed notification of defects.

### **X FREE AND OPEN SOURCE SOFTWARE**

The supplier guarantees that the contractual products do not contain any free and open source software, unless this has been expressly agreed otherwise in writing in an individual agreement.

### **XI WARRANTY**

1. The supplier guarantees the absence of defects in accordance with the agreed specifications (according to drawing, data sheet, specification sheet or other specified data) and the suitability for the known use, as well as the fulfillment of the update obligations. If the Supplier is not aware of the intended use, it must inform the Purchaser of this and request the information. Furthermore, the supplier guarantees the conformity of its delivery with the statutory provisions and the recognized rules of technology.
2. The warranty agreement concluded with the supplier shall apply. Otherwise, the following provisions shall take its place:
3. The customer shall be entitled to all statutory warranty claims, including compensation for damages, in full.
4. The Supplier shall bear all costs incurred due to the rectification of defects, including consequential costs arising from third-party claims, or shall reimburse the Purchaser for such costs. This applies in particular to costs for removal and installation, transportation, fault analysis, reimbursement of expenses, additional costs for covering purchases, material, scrapping, etc. as well as claims for damages by third parties.
5. The warranty ends 24 months after receipt of the goods.
6. If a complaint arises that cannot be clarified within the warranty period, the supplier shall not invoke the statute of limitations in this respect.

### **XII LIABILITY**

1. Unless a different liability provision has been agreed elsewhere, the customer shall be entitled to compensation for all costs for which the supplier is responsible due to defective delivery or other conduct in breach of contract. This shall include, among other things, costs of damage defense, precautionary measures, etc..
2. In the event of damage or precautionary measures to prevent damage, the Purchaser shall inform the Supplier to the extent possible and notify the Supplier of the measures to be taken and coordinate these to the extent possible for the Purchaser.

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3. If others than just the supplier are responsible for the damage, the supplier shall be liable proportionately up to the amount to which he himself or persons commissioned by him and his subcontractors have contributed to the damage.
4. The Supplier shall indemnify the Purchaser upon first request against any claims of third parties, in particular in the event of product liability or infringements of industrial property rights, against all costs including the necessary expenses for legal action.
5. At the Purchaser's request, the Supplier shall enter into the legal dispute with the third party at its own expense. In all legal disputes in connection with his deliveries as well as official orders and investigations, the supplier shall actively support the purchaser at his own expense and provide him with all necessary documents, witness statements, etc.

### **XIII CONFIDENTIALITY, INFORMATION SECURITY**

Unless otherwise agreed, the Supplier undertakes to maintain confidentiality and to ensure information security as follows:

1. All technical and commercial details that become known through the business relationship shall be treated as business secrets. This includes models, drawings, templates, samples, data sheets, calculations, software and factory standards. They may only be passed on within the scope of the contractually intended purposes. Reproduction and disclosure to third parties is prohibited without the express written consent of the customer.
2. No license, reproduction, usage or other rights can be derived by the supplier from the disclosure of information of any kind by the purchaser. All rights, in particular for the registration of property rights (e.g. patents), are reserved by the purchaser.
3. The Supplier shall oblige its employees and subcontractors to maintain confidentiality.
4. The Purchaser and its authorized representatives undertake to maintain confidentiality vis-à-vis the Supplier during visits or audits in the same way.
5. The Supplier is obliged to immediately and effectively secure all information and data of the Customer against unauthorized access, modification, destruction or loss, unauthorized transmission, other unauthorized processing and other misuse in accordance with the latest state of the art. In addition, the Information Security Policy for Contractors (see <https://www.kostal.com/de-de/download/vertragsdokumente>) or individually concluded agreements on information security shall apply.
6. The Supplier shall inform the Purchaser immediately in the event of serious disruptions to operations, suspected breaches of data protection, information security or other irregularities in the handling of the Purchaser's information and data.

### **XIV DATA PROTECTION**

1. The Supplier shall comply with the provisions of the General Data Protection Regulation when processing personal data.
1. The parties shall ensure that all persons entrusted by them with the processing or fulfillment of the contract comply with the statutory provisions on data protection.

### **XV COMPLIANCE**

1. The Supplier undertakes not to offer, grant, demand or accept any benefits within the business relationship with the Purchaser, neither in business dealings nor in dealings with public officials, which violate applicable anti-corruption regulations.
2. The supplier undertakes not to enter into any agreements or concerted practices with other companies within the business relationship with the customer
3. that have as their object or effect the prevention, restriction or distortion of competition in accordance with the applicable antitrust laws.
4. The Supplier warrants that it will comply with the applicable laws governing the general minimum wage and that it will obligate its subcontractors to the same extent. Upon request, the supplier shall provide evidence of compliance with the above assurance. In the event of a breach of the above assurance, the supplier shall indemnify us against third-party claims and shall be obliged to reimburse any fines imposed on us in this connection.
5. The supplier assures to fulfill its corporate social responsibility and to establish a CSR (Corporate Social Responsibility) management.
6. In the event of any suspicion of a breach of the obligations under the immediately preceding clauses 1 to 4, the Supplier shall immediately clarify possible breaches and inform the Purchaser

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of the clarification measures taken and, in justified cases, disclose the affected supply chain. If the suspicion proves to be well-founded, the Supplier must inform the Purchaser within a reasonable period of time of the internal measures it has taken to prevent future violations. If the supplier does not these obligations within a reasonable period of time, the purchaser reserves the right to withdraw from contracts with the supplier or to terminate them with immediate effect.

2. We reserve the right to withdraw from existing contracts or to terminate them without notice in the event of serious violations of the law by the supplier and in the event of violations of the provisions in the immediately preceding clauses 1 to 4.

### **XVI FORCE MAJEURE**

1. Labor disputes, civil unrest, official measures and other unforeseeable and serious events of force majeure shall release the contractual partners from their performance obligations for the duration of the disruption to the extent of its effect. This shall also apply if these events occur at a time when the affected contractual partner is in default. The contractual partners are obliged to provide the necessary information without delay within the scope of what is reasonable and to adapt their obligations to the changed circumstances in good faith.
2. If the supplier invokes a circumstance referred to in paragraph 1, the burden of proof shall be on the supplier. Furthermore, the supplier must demonstrate that it is keeping the damage caused by the event to a minimum. This also includes preventive measures in the event of imminent events.
3. If it is foreseeable that the disruption will last longer than four (4) weeks due to force majeure at the Supplier, the Customer shall be entitled to withdraw from the respective individual agreement in whole or in part. The same shall apply if it would be unreasonable for the Customer to wait.

### **XVII TRANSFER OF RIGHTS**

1. Liabilities of one of the respective companies of the KOSTAL Group or of sub-suppliers shall be borne exclusively by the company which has entered into this obligation towards the Supplier.
2. The Purchaser has the right to assign existing orders to companies of the KOSTAL Group or subcontractors under unchanged conditions.
3. The Supplier is not authorized to have the order carried out by third parties or to relocate the production site unless it has received written approval from the Purchaser to do so. The prerequisites for a release are a reasonable period of time until the relocation and the assumption of all associated costs by the supplier.

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4. The Supplier shall not be entitled to assign its claim against the Purchaser or have it collected by third parties without the Purchaser's prior written consent, which may not be unreasonably withheld. In the event of extended retention of title, consent shall be deemed to have been granted.
5. The Supplier may not advertise that it is a contractual partner of the Purchaser or its customers without the prior written consent of the Purchaser. In particular, he may not use names, brands, logos, product designations, product representations etc. without the Purchaser's permission.
6. The Supplier is prohibited from selling products that have been specially set up by the Purchaser at the Supplier's premises to other customers without the Purchaser's approval.

### **XVIII SUPPLIER MANAGEMENT**

1. The Supplier recognizes the KOSTAL Code of Conduct for Suppliers & Business Partners (see <https://www.kostal.com/de-de/download/vertragsdokumente>), complies with the principles described therein and makes every effort to implement them with its suppliers, subcontractors and affiliated companies.
2. The supplier shall to prevent the direct or indirect financing of armed groups. In this context, it observes the applicable legal requirements relating to "conflict minerals" and complies with them accordingly. In addition, it will subject its supply chains to regular due diligence and carry out a comparison with the regularly updated list of conflict-affected and high-risk areas (CAHRAs) and inform the customer immediately in the event of justified suspicions of the financing of conflicts and human rights violations and change the supply chain immediately. In addition, the KOSTAL Conflict Minerals policy applies (<https://www.kostal.com/de-de/download/vertragsdokumente>).
3. The Supplier shall be independently responsible for its subcontractors and compliance with all requirements arising from the contractual relationship with the Customer.
4. If the Supplier delivers products or services to KOSTAL that have an influence on KOSTAL's product quality, the Supplier is subject to regular supplier evaluation.

### **XIX APPLICABLE LAW, PLACE OF JURISDICTION**

1. The law of the Federal Republic of Germany shall apply without the conflict of law rules of private international law and excluding the applicability of the provisions of the UN Convention on Contracts for the International Sale of Goods.
2. The exclusive place of jurisdiction for all disputes arising from the contractual relationship is Lüdenscheid, Germany.
3. If the supplier and the purchaser have their registered office in the same country, the law of that country shall apply and the place of jurisdiction of the place where the purchaser has its registered office shall apply exclusively.

### **XX SEVERABILITY CLAUSE**

Should a provision of these KOSTAL Terms and Conditions of Purchase be or become invalid, the parties undertake to agree a legally valid provision in its place which comes closest to the recognizable intention of the parties. If it is not possible to determine such a provision, it shall be replaced by the relevant provision of the respective contract in accordance with clause XXV applicable law. However, the overall validity of the remaining provisions shall remain unaffected by the invalidity of any individual provision.