



# Warranty Agreement

between

(hereinafter referred to as the Supplier)

and

**Leopold Kostal GmbH & Co. KG**  
**An der Bellmerlei 10**  
**58513 Lüdenscheid**  
and all other companies in the KOSTAL Group

(hereinafter referred to as KOSTAL)

the following agreement is concluded relating to the reimbursement of warranty costs:

## **1. Subject matter of the agreement**

- 1.1 This present warranty agreement is applicable to all products delivered by the Supplier designated for KOSTAL or only for the products which are listed in the appendix. If the warranty agreement is limited to the products listed in the appendix, the parties undertake to up-date the product list on an ongoing basis.
- 1.2. It is the objective of this warranty agreement to resolve complaints regarding quality in a manner which is speedy, unbureaucratic and cost-efficient for both parties.
- 1.3. Furthermore, this warranty agreement governs only the reimbursement by the supplier to KOSTAL of costs incurred in the remedy of defects. It does not govern general liability for damages for which the Supplier is responsible, in particular for late deliveries (arrears), personal injuries, pecuniary damages, legal deficiencies (e. g., infringements of industrial property rights), claims for compensation of expenses and material damages in the legal sense of product liability in respect of those injured, who are not contractual partners to this warranty agreement.

## **2. Extent of liability**

- 2.1 The Supplier is responsible in full for maintaining the agreed quality of the products. The Supplier is responsible for the unrestricted quality assurance of the products, including the comprehensive testing of the products. The Supplier guarantees that the products are free from faults and that they comply with the agreed specifications and recognized technical standards.

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- 2.2 Depending on agreement, the method of calculating warranty charges will be either a simplified process with specified lump sums for every product complained of and accepted as defective by the Supplier, or by the individual calculation of all costs incurred by KOSTAL and their customers associated with the defective product.
- 2.3 The two methods of calculation differ in that, with agreed lump-sum figures, the Supplier bears only the costs in the lump-sums. With individual calculations, the Supplier must reimburse all costs which are supported by receipts. This includes the internal and external costs incurred in certifying the defect and the expenses involved in detecting and eliminating the defect. If the individual billing method is applied, the Supplier is always liable without limitation in accordance with legal stipulations.
- 2.4 If the lump sum method is agreed in the application of the warranty agreement, Section XV Paras. 4 to 7 of KOSTAL's General Terms and Conditions of Purchase (dated November 2006) are replaced in full by the terms set out below. If the individual billing method is agreed, the Section and paragraphs continue to apply in full.

### 3. Reimbursement by lump sums

- 3.1 Depending on the time at which the fault is recognized, KOSTAL distinguishes between three types of returns. In general, the following lump sums cover all the necessary costs incurred in eliminating the defect. This does not include out-sorting and rework serial defects (in particular replacement operations in the factory or in the field, or unreported or public recall actions) and special freight costs. These will be charged in full on the basis of receipted costs, instead of the lump-sum or agreed separately in individual cases.

#### 3.1.1 Internal returns (failures on the line at KOSTAL)

Internal returns are defective products, in which the deficiencies are discovered at KOSTAL during assembly or by final testing before shipment to the customer.

- a) For a full production price of the Supplier's product of up to € 2.00 per unit, a lump sum of € 10.00 per unit shall be charged.
- b) If the full production price for the Supplier's product is more than € 2.00 per unit, the level of the lump sum shall be 5 (five) times the gross full production price of the Supplier's product.

#### 3.1.2 Factory returns (failures on the line at KOSTAL's customer's plant)

Factory returns are a justified advice of defects from KOSTAL's customer, where the Supplier is responsible for the failure and the products have not yet left the manufacturing plant of KOSTAL's customer.

- a) For a full production price of the Supplier's product of up to € 2.00 per unit, a lump sum of € 20.00 per unit shall be charged.
- b) For each individual factory return where the full production price for the Supplier's product is more than € 2.00 per unit, the level of the of the lump sum shall be 15 (fifteen) times the gross full production price of the Supplier's product.

#### 3.1.3 Field returns

Field returns are a justified advice of defects from KOSTAL's customer for products which have already left KOSTAL's customer's production plants; that is, where the end-product or spare part has been delivered to the distributor, dealer or ultimate buyer (the customer) and the Supplier is responsible for the defect.

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In case of field returns, the Supplier shall reimburse KOSTAL 10 (ten) times the cost of the KOSTAL product based on the factory transfer price which KOSTAL charges their customer. If the sum which KOSTAL must pay their customer is lower, the difference between the lump-sum and the lower figure will be repaid to the Supplier at the end of the settlement period.

### 3.2 Costs deviating from and additional to the lump sums

3.2.1 As a general principle, where quality deficiencies are detected in products, materials and/or in services supplied, the following lump-sums will be charged within the framework of reimbursement of the costs of the work involved :

- a) A charge of € 50 will be made for each inspection report which is needed.
- b) Where defects are reported and KOSTAL's analysis personnel determine the cause of the breakdown in further processing, the Supplier will be charged a minimum lump sum of € 100. If additional costs arise for KOSTAL in producing evidence for the defect because the Supplier denies without justification the existence of the defect or his responsibility, these costs shall also be charged to the Supplier.
- c) The Supplier must bear in full the invoiced cost of transport where special transport is required to prevent breaks in operations at KOSTAL or at KOSTAL's customer's premises.

### 3.2.2 Costs for replacement deliveries, sorting and rework

Instead of the lump-sums covered by Paras. 3.1.1 to 3.1.3, the following regulations apply under (a) to (c) :

- a) If goods received are rejected during incoming inspection or before they are used on assembly, the Supplier shall, at his own cost and at KOSTAL's choice, out-sort out the defective products and either replace them with new fault-free products, or repair them.
- b) Where immediate action is required to avoid a break in production and the Supplier himself cannot sort and/or repair the defective goods or declines to do so or is clearly not in a position to do so, then KOSTAL will remedy the defects themselves or have the defects remedied by a third party. The costs arising shall be charged to the Supplier, covering the employment of personnel, the work involved, the hourly rates and including the company's overheads and a surcharge for profit. KOSTAL are further entitled to charge the Supplier in full, in addition to the costs mentioned above, for the working, storage and placement areas, in the sum of the costs actually incurred.
- c) In urgent cases in order to meet their own delivery obligations, KOSTAL can obtain fault-free products from a third party in the necessary quantities. The additional costs arising from the covering purchase will be charged to the Supplier.
- d) In addition, the Supplier shall reimburse KOSTAL any additional costs incurred as a result of repairs or providing replacement products or claims for compensation by third parties, provided these costs are not covered by the lump sums. These additional costs include, inter alia, sorting, test and inspection costs, mileage, labour and material costs, transport costs (including freight and packaging), as well as dismantling and fitting costs and third-party damages. The lump-sums shown in Paras. 3.2.1 (a) and (b) remain unaffected and are therefore invoiced in addition.

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### 3.2.3 Serial damages

Serial damages are repeatedly occurring warranty damages with the same cause of failure. A case of serial damages occurs where, in a single batch or for the whole of the goods in a shipment, the agreed maximum ppm figure is exceeded by a factor of 15 (fifteen).

In the case of serial damages, all costs required to eliminate the defect will be invoiced to the Supplier.

### 3.2.4 Recall actions

Recall actions are carried out to avert a danger to the health to persons and damage to property. Recall actions are intended to protect the companies responsible for the product and their employees from much more costly claims for damages or criminal proceedings. Recall actions can take place as the result of a legal obligation on the part of any company involved in the manufacturing process of the end-product, or as the result of an official directive. The Supplier will generally accept recall actions by KOSTAL's customers, provided the recall action is not carried out unreasonably. The recall action may be carried out as a public or unreported recall action. In the latter case, only KOSTAL's customers' contracted repair shops and authorized dealers are informed of the recall action by internal memoranda.

- a) In the evaluation phase of a possible recall action and where an unreported recall action is carried out, the Supplier undertakes to maintain strict confidentiality. If damages arise from a breach of confidentiality by the employees, the Supplier will reimburse in full the damages incurred by the injured party.
- b) In the event of a recall action, KOSTAL are entitled to claim from the Supplier all the costs which they have necessarily incurred, including charges issued by KOSTAL's customers. Where the recall action is carried out because of a serial damage (see 3.2.3 above) the Supplier agrees in principle that products which may in the event be free from defects can also be replaced at his cost. The Supplier is obliged to accept the costs for replacing defect-free products only if the replacement of the defect-free products is justified. This will be the case where to determine at the exchange location whether or not the product is defect-free would be either technically impossible without unreasonable efforts or would not be economically justifiable.

### 3.2.5 Cost agreement for serial damages and recall actions

If the Supplier has accepted the lump-sum method of settlement method for the product in question, then on conclusion of the actions to eliminate the defects, KOSTAL will at their discretion reduce level of charges in favour of the Supplier, provided that no other restriction on liability has been agreed with the Supplier, which would otherwise apply. In determining the level of damages to be paid by the Supplier, consideration shall be given to the Supplier's economic circumstances, the nature, scope and duration of the business relationship, any possible contribution to the cause and/or blame of the customer according to legal terms and any particularly disadvantageous installation point for the part supplied, as well as the reasonableness of the relationship between the Supplier's price for the product and the costs to be charged.

On conclusion of all actions to eliminate the defects, every effort will be made to reach a mutual agreement on costs between KOSTAL and the Supplier. As a general rule, the lump- sums in Sections 3.2.1 (a) and (b) will be charged.

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## 4. Individual billing

Individual billing will be carried out on the basis of KOSTAL's General Purchasing Conditions and statutory rights. KOSTAL are entitled to charge the Supplier for all the costs required in providing proofs, the calculation of charges or other necessary spending in the management of damages. These also include the lump-sums in Sections 3.2.1 (a) and (b) which are calculated in favour of the Supplier of any higher costs. The Supplier is permitted to demonstrate proof of lower costs. The Supplier accepts the invoices from the customer where a customer of KOSTAL levies charges. In the case of serial damages, field returns or other damages having the same cause and costs, the Supplier accepts a typical proof of costs as an example which will then be used as a basis for other defective products without further receipts.

## 5. Trouble-shooting

- 5.1 The incoming inspection at KOSTAL is limited to checking the identity of the products (category of goods) and checking for transport damage. If faults are ascertained within the scope of this incoming inspection or during a later check, these are notified to the Supplier immediately in writing. To this extent the Supplier waives the right to plead that the claim has been made too late.
- 5.2 If and as soon as any defective deliveries are ascertained and provided the goods are in KOSTAL's possession, KOSTAL will return the rejected parts or batch/shipment to the Supplier at the Supplier's costs.
- 5.3 In principle, the Supplier must process all complaints and rejects from KOSTAL free of charge and must provide proof that the complaint is unjustified, if he refuses to accept costs in full or in part. The Supplier shall examine the returned components or products and submit his findings to KOSTAL. The scope and detail of such investigations must be agreed with KOSTAL. The investigations must be conducted within four (4) weeks and the results conveyed to KOSTAL in writing, unless KOSTAL's customer demands a more speedy analysis. An extension to the period is possible in justified, individual cases and must be agreed in writing. Otherwise the complaint shall be regarded as accepted after the period has lapsed.
- 5.4 If the Supplier is not in a position to carry out the investigations himself, KOSTAL will carry out the investigations and charge the costs incurred to the Supplier.
- 5.5 In the case of field returns, the parties to the contract will for economic reasons reduce the number of defective products to be returned to the Supplier to a quantity required for statistical evidence. Even so, KOSTAL will endeavour to obtain all the defective parts which the Supplier requires. The Supplier shall repay KOSTAL in full the additional costs involved.
- 5.6 Warranty claims do not arise, if the defect is the result of any non-compliance with operating, maintenance or installation instructions, improper or undesignated use or storage, negligent or incorrect processing or the result of interference with the Supplier's product by KOSTAL or by a third party.

## 6. Insurance

The Supplier undertakes to maintain a liability insurance, in particular to cover the cost for dismantling and fitment costs, recall actions and serial damages in accordance with Sections XVIII (1) and (2) of KOSTAL's General Purchasing Conditions, during the entire life of the contract.

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## 7. Warranty Period

Unless otherwise agreed, the warranty periods set out in Section XV (8) of KOSTAL's General Purchasing Conditions shall apply.

## 8. Co-operation

By arrangement, normally annually, the parties to the contract shall hold discussions concerning the amount and extent of the warranty costs. It is the declared intention of both parties to this contract to keep warranty costs as low as possible by manufacturing products which are free from defects.

## 9. Validity and duration of the warranty agreement

The agreement shall become effective upon its signature by both parties to the contract. It shall be extended by one year unless it is terminated at 6 (six) months' notice before the end of a year. Any such notice must be served by registered post.

## 10. General provisions

10.1 Additional verbal agreements have not been made.

10.2 Amendments and additions to the agreement must be in writing.

10.3 Where any single provision of the contract is or becomes ineffective, this shall not affect the effectiveness of the remainder of the agreement. The parties to the contract shall endeavour to replace any such ineffective provision with another provision which fulfils the intention of the former or missing provision and of this agreement.

10.4 The law and place of jurisdiction agreed for the contractual supply relationship also applies to this warranty agreement. If no such agreement has been made, the regulations in Sections XXI (1) and (2) of KOSTAL's General Purchasing Conditions shall apply exclusively.

Lüdenscheid, .....  
(dated)

.....  
(Place, dated)

**Leopold Kostal GmbH & Co. KG**

**Supplier**

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