

Contract covering Tools Provided on Loan

between

**Company
Name
Street / Road
Town / City & post-code**

- hereinafter known as the SUPPLIER -

and

**Leopold KOSTAL
GmbH & Co. KG
Wiesenstr. 47
58507 Lüdenscheid
Germany**

- hereinafter known as KOSTAL -

Preamble

The following agreements have been concluded in order to determine the rights and obligations associated with the supply on loan of tools for the manufacture of production materials under contract for KOSTAL. These also cover tools made by the SUPPLIER under contract from KOSTAL. The rights and obligations arising from this contract apply also in favour of and to the charge of other organisations in the KOSTAL Group.

1. Object of the Contract

The object of this contract are the conditions governing the supply on loan of tools, models, jigs and gauges – hereinafter referred to as tools on loan - by KOSTAL to the SUPPLIER for the manufacture or processing and supply of parts to KOSTAL, which KOSTAL order from the SUPPLIER by reference to this contract. Tools on loan covered by this contract are listed in Appendix 1 and / or in the delivery notes to tools which are transferred hereafter.

2. Ownership of the Tools on Loan

2.1 A loan relationship is agreed between KOSTAL and the SUPPLIER. The owner of the tools provided on loan by KOSTAL to the SUPPLIER (the Borrower) is KOSTAL (the Lender).

2.2 In the event that the SUPPLIER creates the tool himself, or the SUPPLIER or KOSTAL obtains it from an outside tool-maker and such a tool is delivered direct to the SUPPLIER, the SUPPLIER transfers ownership of such tools to KOSTAL by the terms of this agreement covering the loan relationship. By these terms, KOSTAL automatically acquires ownership of the tool, if it is wholly available to the SUPPLIER and KOSTAL has paid for it under the terms of the contract.

Insofar as a customer has paid KOSTAL in full for the tool, this customer becomes the owner of the tool in question instead of KOSTAL. However, in terms of the legal relationship with the SUPPLIER, KOSTAL remains the party which is lending the tool.

2.3 The tools on loan must be marked and identified by the SUPPLIER with the specified tool and / or part numbers, as well as the KOSTAL company name. This marking must be durable and in a visible location, so that the tools may be recognized at all times as being the property of KOSTAL. If a plate is provided KOSTAL with the production item number and a note regarding ownership, this must be attached to the tool on loan. The same shall apply as appropriate in favour of the customer, if he is the owner in place of KOSTAL.

2.4 Tools on loan replaced under the terms of Section 4.1 become the property of KOSTAL when they are completed and / or when they are received by the SUPPLIER. Transfer of tools on loan in such cases occurs in that the SUPPLIER takes receipt of the tool for KOSTAL and exercises control over it for KOSTAL. At the same time, the tools on loan are included in the terms of this present loan contract.

2.5 If the SUPPLIER modifies, processes or associates the tools on loan which have been supplied, or if he re-constructs them, this shall be carried out for KOSTAL and only with KOSTAL's explicit instructions. KOSTAL becomes the sole owner of items arising from the modification, processing, association or re-construction.

3. Custody and Use

3.1 The SUPPLIER must maintain custody of the tools on loan with the care of an orderly tradesman, without payment.

3.2 The tools on loan must be used by the SUPPLIER exclusively for the execution of orders from KOSTAL, unless KOSTAL issues a written agreement that other procedures may apply. In particular, the SUPPLIER must not produce parts on his own account and bring these to the market-place.

3.3 The transfer of tools on loan by the SUPPLIER to third parties, or their reconstruction without the prior written agreement of KOSTAL is not permitted.

4. Maintenance and Repair

4.1 As a general principle, maintenance, inspection, overhauls and repairs must be carried out by the SUPPLIER and / or initiated at his cost. Following repairs which might result in changes to the part produced, the parts must be submitted to KOSTAL, complete with an Initial Sample Inspection Report.

4.2 For each tool, a "life-history record" must be maintained, which can be called up at any time and in which all maintenance and inspection timings, overhauls, repairs and changes in issue level must be entered.

4.3 During the life of the tools, the SUPPLIER is obliged to ensure the maintenance of the tools on loan, at no cost and in accordance with DIN 31051 (Overhaul, Inspection and Maintenance). He must carry out the maintenance at the appropriate time and must advise KOSTAL at the appropriate time of the need for a tool on loan to be replaced, so that defects with regard to the parts to be produced or non-compliance with the delivery dates agreed in respect of the orders for the said parts shall not occur.

4.4 The following rulings apply to tools provided by KOSTAL :

4.4.1 The tools provided are those which the SUPPLIER has not manufactured or obtained himself. In addition, the terms of Item 4.3 apply, taking due account of the regulation in favour of the SUPPLIER set out in Item 4.4.2.

4.4.2 The following applies to essential repairs to tools supplied on loan : as a general principle, the SUPPLIER shares the costs of all repairs up to a figure of € 1000 per event. Costs in excess of this sum will be accepted by KOSTAL, provided the SUPPLIER obtains approval from KOSTAL before the repair is carried out and provided that the repair has not been caused by negligence or intentionally by employees or others authorised to act for the SUPPLIER.

5. Transport, Packing and Insurance

5.1 KOSTAL accepts the costs of transport, packing and transport insurance in association with the delivery of tools on loan which KOSTAL make available. KOSTAL accepts these costs for all tools on loan, associated with their being issued (see Section 9 of this contract).

5.2 The SUPPLIER undertakes to insure the tools on loan to an adequate degree, at his own cost, in the event of any intermediate transport which he carries out; and to pack and transport the tools in such a way that damage to the tools on loan is avoided.

5.3 The SUPPLIER is obliged to advise KOSTAL in writing, without delay, of any damage to the tools on loan and to pursue any claims for damages against shippers, freight inspectors or other third parties, at the appropriate time and on behalf of KOSTAL.

5.4 From the moment the object on loan arrives in his factory to the moment the said object leaves his factory, the SUPPLIER bears the risk for any kind of deterioration or breakdown of the tool on loan. This does not include normal wear as a result of the correct use of the tool on loan.

5.5 The SUPPLIER shall take out an insurance for the tools on loan, covering the full replacement cost, against damage or breakdown as a result of fire, theft through burglary, vandalism or damage from mains water. This insurance shall be at the SUPPLIER's cost and in favour of KOSTAL and must be maintained for the duration of the contractual relationship.

The SUPPLIER is obliged to provide proof to KOSTAL at any time upon request, of the existence of this insurance cover.

6. Liability

6.1 The SUPPLIER is responsible for ensuring and guarantees that the tool on loan is ready for use at any time.

6.2 The SUPPLIER is responsible for ensuring that the tools on loan are always in a condition which complies with relevant legal requirements and regulations covering the prevention of accidents.

6.3 Claims which KOSTAL have against the tool manufacturer and tool supplier during the period of this contract are transferred by KOSTAL to the SUPPLIER. No liability exists through KOSTAL.

7. Recompense

No recompense is owed in respect of the object on loan. For this reason, the SUPPLIER shall not invoice KOSTAL any amortisation costs for the products.

8. Confidentiality / Patent Rights

8.1 The SUPPLIER undertakes that he will not, either for himself or for any third parties, investigate or provide to others information on the functionality and method of operation of the tools on loan, nor to do so with the parts which may be manufactured with the tools. The know-how contained in the tools on loan may be used only by KOSTAL. In particular, the right to apply for patents in respect of the tools on loan, the parts which can be produced with them and the associated processing procedures (including sub-sections) remains exclusively reserved by KOSTAL. The SUPPLIER shall not apply for any patent rights of his own arising therefrom, nor allow such applications to be made by third parties. In addition, the SUPPLIER undertakes to ensure that his employees maintain confidentiality in respect of the said know-how.

8.2 The obligation of confidentiality ends at the earliest, 5 (five) years after the transfer of each individual piece of information to be treated as confidential, or a minimum of 3 (three) years from the expiry of the contractual relationship.

9. Stock-taking and Release

9.1 When this contract is signed, the SUPPLIER shall provide a complete list of all the tools on loan from KOSTAL already at his premises, as shown in the attachment to this contract. This list must be continuously up-dated and must always be available. In addition, the stock held at the 31. December of each year shall be advised in writing to KOSTAL by the 15. January of the following year, in the form of a stock-take. This shall be provided without any request for it having to be made.

9.2 In addition, KOSTAL are entitled to carry out a stock-take of tools on loan at any time in the SUPPLIER's factories.

9.3 In principle, the tools on loan are provided to the SUPPLIER for an unspecified period. However, KOSTAL are entitled to demand any one or all the tools on loans, at any time and at one month's notice. In the case of tools on loan, for which no order for stock exists, KOSTAL are entitled to demand these tools immediately. In the case of any tooling costs which have not been amortised, or where current orders exist, KOSTAL and the SUPPLIER will reach a mutually acceptable agreement. The SUPPLIER waives any right of retention whatever in respect of KOSTAL.

9.4 The issuing of tools on loan must be accompanied by any existing maintenance documentation, tool drawings and all existing installation, assembly and auxiliary equipment, including spares and replacement parts, provided that the SUPPLIER does not need these in order to discharge his delivery obligations to KOSTAL.

9.5 Insofar as the tools on loan are not 100 % the property of KOSTAL, then KOSTAL and the SUPPLIER shall acquire joint ownership in accordance with the proportion of the participation. The proportion of the ownership is considered as a stock item for KOSTAL. As far as the share of ownership of property allocated to the SUPPLIER is concerned, it is agreed that a contractual right exists in terms of first sale in favour of KOSTAL.

KOSTAL are allocated the right to acquire by purchase the share of ownership which the SUPPLIER has in respect of the tools, by the payment of that proportion of the manufacturing and sourcing costs for the tools which has not been amortised by shipment of manufactured parts, in accordance with the latest balance statement. In this way, KOSTAL acquires the rights of disposal of the tools.

The above is based on the assumption that acceptable parts can be manufactured with the tools and that amortisation is linear. In the event of the purchase of the SUPPLIER's share of ownership, KOSTAL shall in any event pay 10 % of the manufacturing and sourcing costs which the SUPPLIER has incurred, where these costs have already been amortised by deliveries of parts.

9.6 KOSTAL shall acquire the right to manufacture in an emergency, if the SUPPLIER is not able to supply. In this case, KOSTAL shall acquire the transferable, cost-free, exclusive and irrevocable right to use the patent rights and know-how belonging to the SUPPLIER, which are essential for manufacturing in an emergency.

9.7 Once the parts are no longer required for full production purposes, the tools on loan must be maintained by the SUPPLIER in a usable condition for at least 15 years, or transferred to KOSTAL upon request. Scrapping is permitted only by agreement in writing.

9.8 On the expiry of this contract or the underlying order, the terms of Section 9.3 shall apply.

9.9 At KOSTAL's request, the tools on loan, with accessories, must be handed over with immediate effect (without delay), where the terms relating to emergency manufacturing rights (see Item 9.6) or to cancellation in extraordinary circumstances (see Item 13.3 or 13.4) apply.

10. Restrictions on Ownership and Duty of Information

10.1 In the event of a seizure or a warrant relating to the tools on loan, or any other dealings by third parties affecting KOSTAL's rights of ownership, the SUPPLIER must do everything necessary to inform KOSTAL without delay and in writing, and to protect KOSTAL'S rights. The same shall apply where such dealings are threatened.

10.2 Costs arising from actions to defend against such dealings shall be borne by the SUPPLIER or repaid to KOSTAL.

11. Security Services

11.1 Before the transfer of tools on loan, KOSTAL can determine whether and to what degree, for what period and in what way the SUPPLIER should provide security for the tools on loan which are issued to him. The amount of the security may be covered by a directly answerable bank surety which is recognized by KOSTAL.

11.2 If security is to be provided, KOSTAL will not transfer the tools on loan until the security has been provided. KOSTAL do not need to release the security until the SUPPLIER has complied with all his contractual obligations.

11.3 The SUPPLIER does not acquire any right of distraint and shall not apply for any right of distraint on the tools on loan. He is not entitled to pledge or pawn the tools on loan in any way.

12. General Purchasing Conditions

Except where this present contract contains regulations to the contrary, KOSTAL's General Purchasing Conditions apply to orders relating to tools on loan and the parts produced from them.

13. Duration of the Contract

13.1 This contract is concluded for an unspecified period. The parties may cancel the contract at any time, with a period of 3 (three) months' notice from the end of the month, issued by registered letter.

13.2 As a general rule, the tools on loan are covered by a period of one month for them to be released, provided that KOSTAL are not entitled by the terms of Section 13.3 or 13.4 to demand the immediate release of the item on loan.

13.3 Notwithstanding the above condition, the contract covering tools on loan can be cancelled with immediate effect by either party at any time, should any of the following circumstances occur :

- if one of the parties goes into liquidation or bankruptcy, or attempts to avoid insolvency by the reduction or deferment of payments, or as a result of such circumstances makes legal insolvency arrangements or such arrangements out of court with the creditors;
- if the circumstances of one of the parties at the time the contract is signed, in terms of ownership arrangements, changes in a significant manner, or if control of one of the parties or a significant degree of the shareholding is transferred to other physical or legal persons and this change cannot reasonably be accepted by the other party.

13.4 In addition, KOSTAL can cancel the contract in extraordinary circumstances :

- if the SUPPLIER, despite warnings and dates being set for compliance, with the threat of cancellation, falls into arrears in terms of his contractual obligations relating to parts, for the manufacture of which the tools on loan are required.

In particular, this applies in respect of the following :

The quality of the parts delivered does not meet KOSTAL's delivery requirements of the quality of the off-tool samples approved by KOSTAL.

Otherwise, the right to cancellation in extraordinary circumstances remains unrestricted.

14. Modifications and Additions

No supplementary or subsidiary agreements have been made. Any modifications or additions to this contract, including this present Clause, must be made in writing.

15. Binding Nature of the Contract

If any one of the stipulations of this contract is or becomes without effect in terms of law, the validity of the other contractual stipulations remains unaffected. A non-effective stipulation shall be replaced by an effective Clause which meets as closely as possible the purpose of the non-effective Clause. The same shall apply in the event of a loophole in the contract. In such circumstances, the parties to the contract agree to complete the item as appropriate.

16. Court of Jurisdiction; Applicable Law

German law shall apply to the contract. The court of jurisdiction is the official court of Lüdenscheid or the Regional Court in Hagen.

Place & Date

Place & Date

Supplier company & signature

LEOPOLD KOSTAL GmbH & Co. KG

Attachment 1 : List of Tools on Loan, which have been loaned by Leopold KOSTAL GmbH & Co. KG to the Supplier : _____

Place where the tools are held : _____

Item No.				
Tool No.				
Drawing No.				
Part Description				
Tool type and layout				
Tool capacity per production hour				
Agreed life				
Machine type and size required				
Last active				
Procurement value				
LK share of ownership				
Tool identification				
Comments				

Date of List : _____ Drawn up by : _____ Signed : _____

Leihwerkzeugvertrag Form C, Stand 02/2002