
Appendix 1) - General Terms and Conditions for the Purchase of Goods and Services

of

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(In the following referred to as "KPA")

§ 1 Scope of application; Form

- (1) The present General Terms and Conditions for the Purchase of Goods and Services ("terms and conditions of purchase") shall apply to all business relationships by and between KPA and its business partners, service providers and suppliers ("Vendor"). These terms and conditions of purchase shall only apply if the Vendor is an entrepreneur (Sec. 14 BGB (German Civil Code)), a legal entity under public law, or a public separate estate. These are not applicable to consumers (sec. 13 BGB).
- (2) These terms and conditions of purchase shall apply to agreements on the purchase and/or the delivery of movable objects ("goods"), without regard to whether the Vendor manufactures the goods itself or purchases from suppliers and furthermore for contracts for the purchase and/or the ordering of services and work (the delivery of goods as well as the performance of services or work is herein also referred to as the "Supply"). Unless agreed otherwise in writing, these terms and conditions of purchase shall be deemed a general framework agreement, also for similar future contracts in its valid version at the time of the order through KPA to the Vendor, or in the version most recently communicated to the Vendor in text form, without KPA having to refer back to it in every individual case.
- (3) These terms and conditions of purchase shall apply exclusively. Deviating, conflicting, or amending Vendor terms and conditions shall only be included in the agreement, if and insofar as KPA expressly agreed to their application in writing. This requirement for consent shall apply in any case, for instance also if KPA accepts the Vendor's Supply without reservations knowing its terms and conditions.
- (4) Agreements concluded with a Vendor in the individual case shall prevail over the present terms and conditions of purchase. For the content of such agreements, subject to evidence to the contrary, a written contract or the written confirmation from KPA shall be decisive.
- (5) Legally relevant declarations and notifications by the Vendor with regard to the agreement (e.g. setting of deadlines, warning, withdrawal) shall be made in writing (e.g. letter, email, fax). Statutory form requirements shall remain unaffected as well as additional proof regarding the legal authorization of the declaring party, in particular in the case of doubt.
- (6) References to the application of statutory provisions shall only have clarifying meaning. Therefore, statutory provisions apply even without such clarification, unless they are directly amended or explicitly excluded in these terms and conditions of purchase.

§ 2 Conclusion of contract

- (1) The order through KPA shall become binding at the earliest upon its written submission or by KPA's written confirmation. Prior to acceptance, the Vendor shall notify KPA of obvious errors (e.g. typos and calculation errors) and incompleteness of the order, including the order documents, for the purpose of correcting and/or completing the same; otherwise, the contract shall be deemed not concluded.
- (2) The Vendor shall confirm the order from KPA within a period of 5 (five) working days in writing or, as the case may be, by delivering the goods without reservations (acceptance).

§ 3 Delivery time and default

- (1) The delivery time stated by KPA in the order shall be binding. If the delivery time is not stated in the order and was not agreed otherwise, it shall amount to two weeks after the conclusion of the contract. The Vendor shall be obligated to immediately notify KPA in writing if it can presumably not adhere to agreed delivery times – irrespective of the reasons.
- (2) If the Vendor does not perform its contractual duties at all or not within the agreed delivery time, or if it is in default, the rights of KPA – in particular to withdrawing and payment of damages – shall be defined according to the statutory provisions. The regulations in para. 3 shall remain unaffected.
- (3) If the Vendor is in default, KPA may assert – aside from additional statutory claims – payment of a lump-sum compensation for the damage caused by the default in the amount of 1% of the net price per completed calendar week, however, no more than a total of 5% of the net price of the delivered goods in default. KPA reserves the right to provide evidence of damage in excess of such amount. The Vendor retains the right to prove that no damage or only significantly smaller damage was incurred.

§ 4 Performance; delivery; passing of the risk; acceptance delay

- (1) Without the prior written consent of KPA, the Vendor shall not be entitled to have third parties (e.g. subcontractors) render the performance owed by it. The Vendor shall bear the procurement risk for its performance, unless otherwise agreed in writing.
- (2) Delivery will be made DDP (Delivery Duty Paid – Incoterms 2020) to the location designated in the order. Should the destination not be designated and nothing else has been agreed in writing, delivery shall be made at the company seat of KPA in Echternach/Luxembourg. The respective destination shall also constitute the place of performance for the delivery and a potential supplementary performance.
- (3) Each delivery must contain a delivery note with a date (issuance and shipping), delivery content (item number and quantity), as well as the KPA order ID (date and number). Additionally, the Vendor shall state the corresponding customs tariff number. If the delivery note is missing or incomplete, processing and payment delays resulting therefrom shall not be the responsibility of KPA. Separately from the delivery note, an according shipping notification with the same content is to be sent to KPA.
- (4) The risk of accidental loss or deterioration of the goods shall pass to KPA upon handover at the place of performance. If a formal acceptance is agreed, the same shall be decisive for the passing of the risk.
- (5) If the Supply owed by the Vendor is a service or work, the place of performance shall be the place specified in the order. If such place is not specified and nothing else is otherwise agreed in writing then the place of performance shall be the main office of KPA in Echternach/Luxembourg. Otherwise the statutory provisions apply.
- (6) Whether KPA is in default with regard to taking resp. accepting the Supply shall be determined in accordance with the statutory provisions. The Vendor shall expressly offer KPA the performance owed by it also in cases where a particular or determinable calendar time has been agreed for an action or cooperation on the part of KPA (e.g. providing material). If the contract concerns goods to be specifically manufactured by the Vendor for KPA, the Vendor shall only have additional rights if KPA were obligated to cooperate and intentionally or in a grossly negligent manner failed to do so.

§ 5 Prices and terms of payment

- (1) The price stated in the order shall be binding. All prices include statutory sales tax, unless such sales tax is posted as an additional item.
- (2) Unless agreed otherwise in writing, the price includes all services and ancillary services by the Vendor (e.g. assembly, installation, etc.) as well as all ancillary costs (e.g. proper packaging, transportation costs, including potential transportation and liability insurance, etc.).
- (3) The agreed price shall be due for payment within 30 calendar days as of complete delivery and service (including a potentially agreed acceptance) as well as receipt of a proper invoice. If KPA makes payment within 14 calendar days, the Vendor shall grant KPA a 3% discount on the net amount of the invoice. In the case of a bank transfer, payment shall be deemed to be made on time if KPA's transfer order is submitted to its bank prior to the end of the payment period; KPA shall not be at fault for delays in the banks participating in the transaction.
- (4) KPA shall not owe any interest payable after the due date. The statutory provisions shall apply to cases of payment default.
- (5) KPA is entitled to the rights to offset and retention as well as the plea of the unfulfilled contract within the scope of statutory provisions. KPA is in particular entitled to retain payments which are due if we still have claims resulting from incomplete or deficient performance against the Vendor.
- (6) The Vendor shall only have a right to offset and retention in the event of legally established or undisputed counterclaims or such claims, which are based on the same contractual relationship.

§ 6 Non-disclosure; Copyright; and transfer of title

- (1) KPA reserves all proprietary rights and intellectual property rights to illustrations, plans, drawings, calculations, instructions, product specifications, and other documents. Such documents shall exclusively be used for contractual purposes and are to be returned to KPA upon fulfillment of the contract. The documents shall be kept secret vis-à-vis third parties, including after the contract ended. The non-disclosure obligation shall only cease to exist if and to the extent that the knowledge contained in such documents has become public, at the earliest however 5 years after fulfillment of the contract.
- (2) The above-mentioned provision shall apply to materials, respectively, as well as to tools, templates, prototypes, and other objects which KPA provides to the Vendor for manufacture. Such objects shall be stored separately – as long as they are not being processed – at the Vendor's cost and be insured adequately against destruction and loss.

- (3) Processing, mixing, or compounding (subsequent processing) of objects provided is performed for KPA by the Vendor. The same shall apply to subsequent processing of the delivered goods by KPA so that KPA is deemed manufacturer and acquire ownership of the product at the latest during subsequent processing pursuant to the statutory provisions.
- (4) The title to the goods shall pass to KPA upon delivery without taking into account the payment of the purchase price. However, in the individual case, if KPA accepts an offer by the Vendor, according to which the transfer of title shall be conditional upon payment of the purchase price, this reservation of title shall cease to exist at the latest upon payment of the purchase for the delivered goods. During ordinary course of business, KPA shall always remain authorized to the resale of the goods prior to payment of the purchase price subject to our assignment in advance of receivables resulting herefrom to the Vendor. In any case excluded shall be all other forms of reservation of title.

§ 7 Defective Supply; Warranty

- (1) Unless otherwise agreed hereinafter, the statutory provisions shall apply to the rights of KPA in terms of material defects and deficiencies in title of the delivered goods (including wrong and short delivery as well as improper assembly, deficient assembly or operating instructions) and to other violations of obligations owed by the Vendor.
- (2) Pursuant to the statutory provisions, the Vendor shall in particular be liable for the goods having the agreed quality upon the passing of the risk to KPA. The agreed quality shall in any case comprise such product specifications which are – in particular by designation or reference in the order of KPA – part of the respective agreement or were included in the agreement in the same manner as the present terms and conditions of purchase . It does not make a difference whether the product specification comes from KPA, the Vendor, or the manufacturer.
- (3) In deviation from Sec. 442 para. 1 sentence 2 BGB (German Civil Code), KPA shall have unlimited warranty claims even if KPA was not aware of the defect at the conclusion of the contract due to gross negligence.
- (4) The statutory provisions regarding the duty of KPA to examine the goods and notify the Vendor of any defects shall apply subject to the following stipulation: The duty to examine shall be limited to defects which are clearly noticeable during the incoming goods inspection and the inspection of the shipping documents (e.g. damage due to transportation, wrong and short delivery) or which become obvious when taking samples under a quality assurance process. If an acceptance is agreed, there shall be no obligation to examine. Apart from that, it depends to what extent an examination in consideration of the circumstances of each individual case is practical under the proper course of business. the duty of KPA to notify the Vendor of a defect discovered at a later time shall remain unaffected. Regardless of the duty to examine, a notification from KPA shall be deemed in due time if it is sent within 14 working days as of the discovery, or in the case of obvious defects, as of the delivery.
- (5) Subsequent performance also includes disassembly of the defective goods and a new installation, insofar as the goods were installed into a different object in accordance with their intended purpose. The costs incurred by the Vendor for the purpose of examination and subsequent performance (including potential disassembly and installation costs) shall also be borne by it if it becomes obvious that actuality, there was no defect. The liability of KPA for damages in the event of unjustified warranty claims shall remain unaffected; insofar, KPA shall only be liable if KPA discovered or did not discover due to gross negligence that there was no defect.
- (6) Should the Vendor fail to fulfill its obligation of subsequent performance – by means of remediation of the defect (subsequent improvement) or delivery of goods free of defects (replacement delivery), as KPA may choose – within a reasonable period set by KPA, KPA may select to remedy the defect themselves and demand compensation from the Vendor for the expenditures required or an according advance payment. If the subsequent performance by the Vendor failed or is unreasonable for KPA (e.g. due to urgency, endangerment of operational safety or impending occurrence of unreasonably dangerous damage), determining a time period will not be necessary; KPA will immediately notify the Vendor of such circumstances, if possible, even before the occurrence.
- (7) Incidentally, KPA shall be entitled to purchase price reduction or termination of the contract in the event of a material defect or deficiency in title pursuant to the statutory provisions. Moreover, KPA has a claim for damages and reimbursement of expenditures pursuant to the statutory provisions.
- (8) If the Vendor owes performance of a service or work, the statutory provisions will apply in the event of non-performance or defective performance, in particular the statutory provisions on service contracts (Dienstverträge) and contracts for work (Werkverträge) of the German Civil Code (BGB).
- (9) If the Vendor contractually undertakes to provide a service or work, he guarantees vis-a- vis KPA that for the adequate fulfillment of the contract it has all the required skills, knowledge, accreditations, certificates or the like. The Vendor will provide to KPA proof of the corresponding skills, knowledge, accreditations, certificates and the like upon request by presenting the appropriate supporting documents. The Vendor will inquire upon its own responsibility which professional and other requirements for the fulfilment of the contract are required.

§ 8 Vendor's liability; Indemnification; Insurance

- (1) The Vendor is liable for culpable breaches of contractual or other duties in accordance with the statutory provisions.
- (2) The Vendor shall indemnify KPA from any third-party claims, be it product safety, product liability or similar claims, if and insofar as the cause for such claims stems from its domain of authority and organization and it is liable itself in relation to third parties.
- (3) Within the context of its obligation to indemnify, the Vendor shall reimburse KPA for all expenditures which may arise from or in connection with claims brought by third parties. Additional statutory claims shall remain unaffected.
- (4) Unless otherwise agreed in writing, the Vendor of goods shall conclude and maintain product liability insurance and the Vendor of services or work public liability insurance respectively with a lump-sum coverage customary for that industry. Upon request, the Vendor will provide proof of insurance cover by presenting the suitable supporting documents.

§ 9 Statute of limitation

- (1) The mutual claims of the contractual parties shall expire and become time-barred according to the statutory provisions, unless stipulated otherwise below.
- (2) In deviation from Sec. 438 para. 1 No. 3 BGB (German Civil Code), the general statute of limitation for warranty claims shall be 3 years from the passing of the risk. Insofar as an acceptance is agreed, the period of limitation shall begin with the acceptance. The 3-year statute of limitation shall also apply accordingly to claims from deficiencies in title, whereby the statutory period of limitation for actio in rem regarding third parties (Sec. 438 para. 1 No. 1 BGB (German Civil Code)) shall remain unaffected; moreover, claims from deficiencies in title shall not lapse in any case as long as a third party can assert a right – in particular due to the lack of a statute of limitation – against KPA.
- (3) The periods of limitation of the sale of goods law, including the above-mentioned extension, shall apply – in the statutory scope – to all contractual warranty claims. Insofar as KPA has non-contractual claims for damages due to a defect, the regular statutory period of limitations shall apply provided the application of the periods of limitation of the sale of goods law does not result in a longer period of limitation in the individual case.

§ 10 Applicable law; place of jurisdiction; Severability

- (1) The Parties will endeavor to settle any disputes arising out of or in connection with the legal relationship between them promptly in a spirit of partnership and in good faith by negotiation.
- (2) If the parties fail to reach a negotiated settlement of their dispute within 30 days after each party has requested the other in writing to commence negotiations both parties have the right of due legal recourse. The courts in Trier, Germany shall have exclusive jurisdiction for all legal disputes arising out of or in connection with the existing legal relationship between the parties.
- (3) German law shall apply to the legal relationship between KPA and the Vendor, excluding the conflict of laws principles and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

§ 11 Final Provisions

- (1) There are no oral or written ancillary agreements.
- (2) Amendments and addenda to this terms and conditions of purchase by individual agreements in terms of Article 305b of the German Civil Code (BGB) do not require any particular form. In all other cases, amendments or addenda require text form.
- (3) Should a provision of these terms and conditions of purchase be or become partially or fully invalid, this shall not affect the validity of the remaining provisions of these terms and conditions. The parties hereby already agree at this point in time to replace any invalid provisions with effective provisions which come as close as possible to achieving the economic purpose intended by the parties. This also applies in the case of an unintentional regulatory gap.