

# Kontron AIS GmbH

## General Terms and Conditions of Purchase

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### Content

|    |   |   |
|----|---|---|
| 1  | Scope of Application .....  | 2 |
| 2  | Conclusion of Contract.....                                       | 2 |
| 3  | Prices; Terms of Payment .....                                    | 2 |
| 4  | Deliveries .....  | 3 |
| 5  | Delivery Dates; Delay in Delivery .....                           | 3 |
| 6  | Supplies; Drawings; Plans; Know-how .....                         | 4 |
| 7  | Quality Assurance.....  | 4 |
| 8  | Warranty for Material Defects .....                               | 4 |
| 9  | Defects of Title; Property Rights.....                            | 5 |
| 10 | Statute of Limitation.....  | 5 |
| 11 | Indemnification; Insurance .....                                  | 5 |
| 12 | Confidentiality.....  | 5 |
| 13 | Export Control .....  | 6 |
| 14 | General Provisions.....   | 6 |
| 15 | Place of Performance; Place of Jurisdiction; Applicable Law ..... | 6 |

## 1 Scope of Application

These General Terms and Conditions of Purchase (hereinafter "**Terms**") shall apply in business transactions with entrepreneurs within the meaning of Sec. 14 German Civil Code (Bürgerliches Gesetzbuch - "BGB"), legal entities under public law and special funds under public law (hereinafter together "**Suppliers**") both to the current contract and as a framework agreement for any and all future contracts for the provision of goods and services by and between Kontron AIS GmbH (hereinafter "**Purchaser**") and the Supplier. Any and all deliveries and services, including proposals, advice, and other ancillary services (hereinafter collectively referred to as "**Deliveries**") are provided on the basis of these Terms.

These Terms shall apply exclusively; any and all conflicting terms and conditions or terms and conditions deviating from these Terms or from statutory provisions shall not apply, unless we have expressly agreed to their validity in writing. This also applies if the Purchaser does not expressly object, accepts or pays for Deliveries without reservation.

## 2 Conclusion of Contract

Orders or call-offs as well as their amendments and supplements shall only be binding, if they have been issued by the Purchaser in writing. Verbal agreements of any kind must be confirmed in writing by the Purchaser in order to be effective and valid.

If the Purchaser does not receive the Supplier's order confirmation within five (5) banking days after receipt of an order by the Supplier, the Purchaser is entitled to cancel the order. The Supplier's silence does not constitute any trust in formation of contract. A contract is concluded at the latest when the Purchaser accepts a Delivery without reservation.

Call-offs under existing quantity contracts or delivery framework agreements become binding, if the Purchaser does not receive a written objection from the Supplier within two (2) banking days after receipt of the call-off by the Supplier.

Unless expressly agreed otherwise, cost estimates, preparation of offers, and the delivery of associated plans, samples, and models are binding and shall not be remunerated by the Purchaser.

Any changes to an order or the terms and conditions of the contract must be confirmed in writing by the responsible department of the Purchaser in order to become valid.

## 3 Prices; Terms of Payment

The agreed prices are binding and are to be understood as DDP, excluding the value added tax applicable at the time of invoicing, and including any and all ancillary costs, such as packaging, transport, release, unloading, and insurance. If the parties have exceptionally agreed to a delivery on the basis of EXW or FCA, the Supplier shall, at the request of the Purchaser, offer the transport of the Deliveries on the basis of the previous cost calculation, but at least on normal market conditions.

Without waiving any further legal requirements, the Supplier's claim for payment shall only become due for payment within 30 days after complete receipt of the Deliveries by the Purchaser and after receipt of a proper and verifiable invoice. If payment is made within 14 days, the Purchaser is entitled to a 3% discount. The receipt of a transfer order by the Purchaser's bank is sufficient for the timeliness of the transfer. The Supplier shall bear the bank charges and expenses.

All invoices must contain the following information in addition to the legal requirements: Order reference, order and material number, documents concerning the performance of services (handover certificate, delivery note, etc.), statement of statutory charges such as taxes, fees, customs duties, etc., indication of whether it concerns partial, sample, or remaining Deliveries, and the country of origin of each item of goods.

Payments made by the Purchaser shall not constitute acceptance of the Deliveries as being in accordance with the contract.

Without prejudice to the other legal requirements, the occurrence of the Purchaser's default in payment shall require a reminder from the Supplier, which shall be issued after the due date.

The assignment of any claims of the Supplier against the Purchaser arising from or in connection with the contractual relationship shall be excluded.

The Supplier shall only be entitled to rights of set-off and retention against claims of the Purchaser to the extent that counterclaims against the Purchaser established with legally binding effect or undisputed, or in case the Supplier's claim which the Supplier intends to set-off is in a reciprocal relationship with the Purchaser's claim against which the claim is to be set-off.

## 4 Deliveries

Unless expressly agreed otherwise in individual cases, delivery shall be performed DDP to the destination defined in each case, at the risk and expense of the Supplier. The Supplier is obliged to pack the Deliveries for safe transport. If software is delivered by making the software available for download on a download server, the risk shall pass to the Purchaser upon successful download. In the case of delivery of software by electronic dispatch via remote data transmission, the risk is also transferred with the successful download or upload by the Purchaser. The commissioning or use of the software does not replace the Supplier's declaration of acceptance.

Each Delivery must be accompanied by a packing slip and two delivery notes stating the order and order number.

The Supplier is obliged to notify the Purchaser in writing if the Deliveries are not unrestrictedly suitable for the use stipulated in the contract, if special safety regulations have to be observed for the handling of the Deliveries, if the Deliveries are subject to export and/or import restrictions under German law, EU or US law, or if the Deliveries may involve particular health, safety or environmental risks.

Any modification of the Deliveries in relation to the agreed specifications, partial, excess or short Deliveries shall only be permissible with the prior written consent of the Purchaser.

Where necessary, the Deliveries shall bear the CE marking or be accompanied by an EU declaration of conformity or a declaration of incorporation. The Supplier shall provide proofs of origin containing any and all necessary information and make them available to the Purchaser duly signed.

The Supplier warrants that it will not supply the Purchaser with materials, substances, components or other products which violate existing substance bans, in particular in Germany, the European Union (or the European Economic Area), Switzerland, the USA, and/or China.

If and to the extent Deliveries are or include software products, the complete systematic user documentation must be handed over with the delivery. If the software is specially created for the Purchaser, the source code of the program must also be delivered.

If and to the extent Deliveries are or include software products, the Supplier warrants that no open source software is contained therein unless the Supplier has provided the Purchaser with the specific license conditions in German or English for the specific open source software prior to conclusion of the contract and the Purchaser has given its written consent to the delivery after having taken note of the license conditions.

## 5 Delivery Dates; Delay in Delivery

Agreed delivery dates and periods (hereinafter "**Delivery Dates**") are binding. Compliance with the agreed Delivery Dates shall be determined by the timely provision of the Deliveries by the Supplier at the agreed place of destination in accordance with Section 4.1. If the agreed destination deviates from the agreed place of delivery in individual cases, the place of delivery shall be decisive. Delivery before the agreed time is only permitted with the written consent of the Purchaser.

The Supplier must inform the Purchaser in writing immediately of any foreseeable delays in delivery, stating the reason and expected duration of the delay; the Purchaser's claims due to the delay in delivery remain unaffected by this.

Insofar as the Supplier is responsible for a delay in delivery, the Purchaser shall be entitled to claim a contractual penalty of 0.5% of the net price agreed for the Delivery for each commenced a week, by which the Delivery is delayed beyond the delivery date, not to exceed, however, a total of 5% of the net price agreed for the Delivery. The assertion of further damage caused by delay remains unaffected. However, any contractual penalties already paid shall be set off against any claims for damages of the Purchaser. The Purchaser may also claim the contractual penalty if the Deliveries were accepted without reservation; however, after the final payment of the Deliveries, the Purchaser may only claim the contractual penalty if a respective reservation was declared upon final payment. Other rights of the Purchaser remain unaffected.

## 6 Supplies; Drawings; Plans; Know-how

Materials, substances, tools, and other means of production or objects, such as containers or special packaging (hereinafter referred to as "**Supplies**"), made available by the Purchaser to the Supplier, shall remain the property of the Purchaser. They may only be used as intended and exclusively for the Purchaser's orders. In case Supplies are passed on to third parties with the prior written consent of the Purchaser, the third party must be notified in writing of the property of the Purchaser. Any and all Supplies must be returned to the Purchaser immediately after termination of the relevant contract or supply relationship.

The Supplier is obliged to carry out any and all necessary maintenance and inspection work as well as servicing and repair work on the Supplies in good time and at its own expense. The Supplier must notify the Purchaser immediately of any malfunctions.

The Supplier shall bear the risk of loss, destruction or damage to the Supplies. The Supplier is obliged to insure the Supplies at replacement value at its own expense against the usual risks such as theft, fire, water, breakage, and other damage. At the same time, the Supplier hereby authorises the Purchaser to pursue any and all indemnity claims under these insurance policies.

Unless the purpose of the contract entitles the Supplier to do so, the Supplier is only entitled to process, combine, and mix the Supplies after having obtained the prior written consent of the Purchaser. The processing of the Supplies by the Supplier takes place, at all times, free of charge for the Purchaser in the latter's capacity as manufacturer within the meaning of Sec. 950 BGB. In the case the Supplier combines or mixes the Supplies with other goods, the Purchaser will acquire co-ownership of the newly manufactured article in the ratio of the value of the current market value of the Deliveries to the current market value of the other used goods. In case the Purchaser's ownership of the Supplies expires due to combination, the Supplier assigns to the Purchaser, with immediate effect, any and all ownership rights accruing to the Supplier concerning the new inventory or the new item in the amount of the current market value of the Supplies and will safeguard it for the Purchaser free of charge. The (co-)ownership rights arising from this shall be deemed to be Supplies within the meaning of these Terms.

Any and all rights to plans, drawings, business or technical documents, software, other know-how, or other records and documents which the Purchaser provides to the Supplier within the framework of the cooperation shall remain with the Purchaser. The Supplier may only use these documents and any and all related information for the intended purpose.

## 7 Quality Assurance

The Supplier shall inspect any and all drawings, calculations, specifications and other documents of the Purchaser for any errors or contradictions within the framework of its general and specific expert knowledge. The Supplier shall immediately notify the Purchaser of any concerns, including those regarding the suitability for use stipulated in the contract or intended by the Purchaser, so that, thereafter, the parties can jointly clear any concerns.

The Supplier must maintain a quality assurance system which complies with the latest standards of the relevant supplier industry. The Supplier shall execute the quality assurance measures including the necessary documentation at its own responsibility. The Supplier shall make this documentation available to the Purchaser upon request. The documentation must be stored by the Supplier in accordance with statutory and other legal requirements, but for at least 10 years.

Prior to delivery, the Supplier shall carry out an outgoing goods inspection with due care. Deliveries which have not passed such an inspection may not be shipped.

For a period of 10 years as of the provision of the Deliveries to the Purchaser, the Supplier shall keep spare parts of identical construction in stock.

## 8 Warranty for Material Defects

The Deliveries must comply in every respect with the contractually agreed quality, including but not limited to, the technical specifications, the product and environmental protection laws, the relevant safety regulations, ordinances and regulations of authorities and professional associations, and the latest state-of-the-art of science and technology; furthermore, the type and quality must be of high quality and must be suitable for the use stipulated in the contract, but at least for the common use.

If the Deliveries have a material defect, the Purchaser shall be entitled to the full scope of statutory warranty claims and rights. In particular, the Purchaser shall be entitled, at the Purchaser's option, to request from the Supplier either the remedy of defects or the delivery of a product free of defects within a reasonable period of time.

Any release of product samples, drawings or other technical documents declared by the Purchaser shall not affect the Purchaser's warranty rights.

If the Purchaser is legally obliged to examine the Deliveries and to give notice of defects (Sec. 377 German Commercial Code - Handelsgesetzbuch - "HGB"), this obligation is limited to externally visible damages and deviations in identity and quantity as well as to other obvious defects. The Purchaser shall notify the Supplier of obvious defects within one week after delivery, and of any other defects within one week after their discovery. There are no further obligations to examine or give notice of defects.

Place of supplementary performance is the location of the respective Deliveries.

## 9 Defects of Title; Property Rights

The Supplier warrants that no rights of third parties are infringed in connection with the Deliveries and that no property rights, industrial property rights, copyrights, know-how rights or secret protection rights (hereinafter referred to as "**Property Rights**") of third parties concerning the Deliveries can be asserted.

In case a third party asserts a claim against the Purchaser on grounds of an infringement of a Property Right, the Supplier shall be obliged, at the Purchaser's option, either to obtain a right of use for the Deliveries, to modify them in such a way that the Property Rights are not infringed, or to replace the Deliveries, without prejudice to other rights of the Purchaser.

## 10 Statute of Limitation

The limitation period for claims for defects is thirty-six (36) months from the beginning of the statutory limitation period, unless a longer limitation period is provided for by law.

In the event of supplementary performance by way of a new delivery, new manufacture or rectification of defects, the limitation period shall begin to run anew once upon provision of the new delivery or manufacture or completion of the rectification work. If acceptance of the supplementary performance is required or agreed by law, the limitation period shall recommence once upon acceptance.

A notice of defect within the limitation period shall suspend its expiration until the parties have reached a mutual agreement regarding the remedy of the defect and its possible effects; however, such suspension shall end six months after the Supplier has definitely objected to the notice of defect. Claims for defects shall become statute-barred at the earliest three months after the end of the suspension, but in no case before the expiry of the limitation period pursuant to Section 10.1.

## 11 Indemnification; Insurance

Without prejudice to other claims, the Supplier shall indemnify the Purchaser against any and all claims for damages by third parties based on defective Deliveries provided by the Supplier and hold the Purchaser harmless, in particular against those arising from product and producer liability, or due to the infringement of Property Rights in connection with the Supplier's Deliveries, insofar as the Supplier is responsible for the defect of the Deliveries or the infringement of Property Rights. In this respect, the Supplier is also obliged to reimburse the Purchaser for the costs of any eventually necessary product recall. As far as possible and reasonable, the Purchaser shall inform the Supplier of the content and scope of recall measures.

Without prejudice to other claims of the Purchaser, the Supplier is obliged to maintain an extended product liability insurance with an appropriate sum insured, but at least EUR 5 million per claim.

## 12 Confidentiality

The Supplier is obliged to keep any and all information, in particular know-how and trade secrets, which the Supplier obtains from the Purchaser (hereinafter "**Information**"), secret from third parties and to oblige its employees accordingly. The Information may only be used for the purposes of the contract.

The obligation set forth in Section 12.1 shall not apply to Information which (a) was demonstrably already known to the Supplier at the time of disclosure or which subsequently becomes known to it by third parties without this violating any confidentiality agreement, statutory provisions or official orders, (b) is already generally known at the time of disclosure or subsequently becomes generally known, unless this is based on a violation of this contract, (c) was developed independently by the Supplier without access to the information of the Purchaser, or (d) which must be disclosed due to statutory obligations or due to the orders of a court or an authority.

The obligations under this Section 12 shall remain in effect beyond the end of the contract and the business relationship, irrespective of how the contract or the business relationship is terminated.

## **13 Export Control**

The parties are aware that the Deliveries may be subject to export and import restrictions. In particular, there might be obligations to obtain a permit and/or the use of Deliveries abroad may be subject to restrictions. The Supplier shall comply with any and all applicable export and import control regulations of Germany, the European Union, Switzerland, and the United States of America as well as all other relevant regulations and shall provide the Purchaser with any and all information required to comply with the relevant regulations as early as possible.

The fulfilment of the contract by the Purchaser is subject to the proviso that there are no obstacles to the fulfilment due to national and international export and import regulations or any other legal regulations.

## **14 General Provisions**

The standard trade terms shall be interpreted in accordance with the Incoterms 2010.

Any modifications of the contract require the written form.

Insofar as these Terms require the written form or in case a declaration must be made in writing, compliance with the text form within the meaning of Sec. 126b BGB (including Fax, e-mail or XML interface) shall suffice.

Should any provision of the contract be invalid, this shall not affect the validity of the other provisions. The invalid provision shall be replaced by a legally valid provision which comes as close as possible to the economic meaning and purpose of the invalid provision. The same shall apply in case of gaps or omissions in the provisions of the contract.

## **15 Place of Performance; Place of Jurisdiction; Applicable Law**

The place of performance and of fulfilment for any and all Deliveries and payments is the agreed place of destination in conformity with Section 4.1.

The exclusive place of jurisdiction for any and all legal disputes arising from or in connection with the contractual relationship is Dresden, Germany. However, the Purchaser shall also be entitled to take legal action against the Supplier at its general place of jurisdiction or at any other competent court. The contractual relationship between the Purchaser and the Supplier shall be governed and interpreted in accordance with the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).