

## § 1 Scope of Application

(1) These General Terms and Conditions of Purchase (hereinafter: "Terms") shall apply to all deliveries and services including ancillary services under a contract of sale, a contract for work, a contract for work and materials or a contract for services or else (hereinafter: "Deliveries") to KTR Systems GmbH, Carl-Zeiss-Straße 25, 48432 Rheine (hereinafter: "KTR"). They apply exclusively in business transactions with entrepreneurs in the meaning of Sec. 14 German Civil Code [*Bürgerliches Gesetzbuch – BGB*], legal entities under public law and special funds under public law (hereinafter: "Supplier").

(2) 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 KTR has expressly agreed to their validity in writing. This also applies if KTR has not expressly objected to them or accepted Deliveries without reservation or made payments without reservation.

(3) Within the scope of an ongoing business relationship, these Terms also apply to all future transactions concerning Deliveries of the Supplier without KTR having to refer to these Terms again in each individual case.

## § 2 Conclusion of Contract

(1) If the Supplier does not accept the order in writing or text form within five (5) working days after receipt, KTR is entitled to revoke it. An order in the meaning of these Terms is any request in text form by KTR to the Supplier to provide a Delivery. As far as the Supplier's order confirmation deviates from the order in terms of content, the Supplier has to highlight this in the order confirmation; such deviations only become part of the contract as far as KTR accepts them in text form.

(2) Unless otherwise agreed, only orders placed in text form are legally binding. Orders placed orally or by telephone require subsequent confirmation in text form to be legally valid. The same applies to verbal subsidiary agreements and amendments to the contract. Orders, delivery call-offs and their amendments and supplements can also be made by remote data transmission after prior agreement.

(3) Remuneration for visits, the preparation of offers, project work or similar shall not be granted unless remuneration has been expressly agreed or there is an indispensable legal entitlement to it.

## § 3 Delivery according to Sample, Deviation from the Sample, Involvement of Third Parties

(1) If the delivery of a sample has been agreed, the contract shall be subject to the condition precedent of the approval of the sample in the absence of any agreement to the contrary (purchase on trial, Sec 454 German Civil Code [*Bürgerliches Gesetzbuch – BGB*]).

(2) Any deviation from an approved sample requires KTR's prior consent in text form, which the Supplier has to apply for in text form and by sending the new sample. The same applies to deviations from release protocols. A release or

approval of a sample declared by KTR does not mean a waiver of defect rights.

(3) The involvement of third parties as subcontractors is only permissible with KTR's prior consent in text form. A third party engaged by the Supplier is generally considered to be the Supplier's vicarious agent, even if KTR has agreed to his involvement.

## § 4 Prices, Payment

(1) The agreed prices are fixed prices and represent the total price for the manufacture and Delivery of the goods or the services including all ancillary services. They are exclusive of the statutory value added tax applicable at the time of delivery, if any.

(2) The purchase price is payable within thirty (30) days after receipt of the Delivery and receipt of a proper and verifiable invoice. If payment is made within fourteen (14) days, KTR is entitled to a 3% discount of.

(3) Any agreed advance payments are not due until KTR has received a directly enforceable guarantee of a credit institution or credit insurer authorised in the European Union for the amount of the advance payment (advance payment guarantee) free of charge and for an unlimited period of time, which has to be returned after the final payment is due or after the refund of a possible overpayment.

(4) If the Supplier performs earlier than agreed and if KTR accepts the Delivery nevertheless, the due date as well as the beginning of the discount period according to clause 3.2 will not occur before the agreed delivery date.

(5) The receipt of a transfer order by KTR's bank is sufficient for the timeliness of the transfer. Payments made by KTR neither constitute an acceptance of the Delivery nor the recognition of the invoice or the Delivery as being free of defects or in time.

(6) Without prejudice to the other legal requirements, the occurrence of KTR's default in payment shall require a reminder from the Supplier, which shall be issued after the due date. In case of default of payment KTR owes default interest in the amount of 5 percentage points above the respective base interest rate of the European Central Bank.

## § 5 Offsetting, Retention

(1) KTR is entitled to rights of set-off and retention to the full extent of the law.

(2) The Supplier shall only be entitled to rights of set-off against claims of KTR to the extent that counterclaims against KTR have been established with legally binding effect or are undisputed, or in case the Supplier's claim which the Supplier intends to set-off is in a reciprocal relationship with KTR's claim against which the claim is to be set-off. The same applies to the assertion of a right of retention.

## § 6 Delivery Dates, Delay in Delivery, Force Majeure

(1) All delivery dates stated in the order or otherwise agreed are binding.

(2) For compliance with the delivery dates by the Supplier, it is decisive that the deliveries are handed over to KTR on the agreed delivery date. If the Deliveries require acceptance, the respective delivery date is met if the Supplier makes the Deliveries available to KTR on the delivery date ready for acceptance. The Supplier is not entitled to make a premature delivery.

(3) The Supplier is obliged to inform KTR immediately about any threatened or actual failure to meet a delivery date, its causes and the expected duration of the delay. The occurrence of the delay in delivery remains unaffected by this.

(3) Insofar as the Supplier is responsible for a delay in delivery, KTR is entitled to claim a contractual penalty of 0.5 % of the net price agreed with the Supplier according to the respective contract for each commenced week by which the Delivery is delayed beyond the delivery date, not to exceed, however, a total of 5 % of this net price. KTR explicitly reserves the right to claim further damages. However, any contractual penalties already paid shall be set off against any claims for damages of KTR. KTR may also claim the contractual penalty if the Delivery was accepted without reservation; however, after the final payment of the Delivery, KTR may only claim the contractual penalty if a respective reservation was declared upon final payment, KTR is entitled to all other legal claims in case of delay in delivery.

(4) Force majeure, in particular war, war-like conditions, natural disasters, accidents, arbitrary acts by public authorities or politicians, epidemics and pandemics, shall release the contracting parties from their obligations to perform for the duration of the disruption plus any necessary and reasonable restart period to the extent of its effect. In a reasonable extend, the contracting parties are obliged to provide the necessary information on the existence, nature and expected duration of the disruption without delay and to adapt their obligations to the changed circumstances in good faith. If such a disruption lasts longer than three (3) months, the respective other party shall be entitled - without prejudice to its other rights - to withdraw from the contract in whole or in part.

## **§ 7 Delivery, Shipping,**

(1) All deliveries are EXW (INCOTERMS 2020) Supplier, unless expressly agreed otherwise. If KTR bears packaging costs, the cost price is to be charged; reusable packaging is to be credited in full if it is returned to the Supplier carriage paid.

(2) Within the scope of a total delivery obligation (frame order) each individual call-off is binding for the Supplier according to quantity and delivery date if he does not object to the individual call-off in text form within two (2) working days. KTR is not obliged to accept quantities which the Supplier produces in stock before the binding individual call-off; a production in stock always takes place at the Supplier's risk.

(3) The Supplier can only refer to the absence of necessary documents or information to be provided by KTR if he has requested KTR in writing to provide the documents and has not received them within a reasonable period of time.

(4) Delivery notes, consignment notes, invoices and all correspondence have to contain KTR's order number. The first Delivery has to be accompanied by the customs declaration of origin without special request.

(5) Partial Deliveries are only permissible with KTR's explicit consent. KTR reserves the right to reject early Deliveries.

## **§ 8 Transfer of Risk, Transfer of Ownership, Acceptance**

(1) The Supplier bears the risk of accidental loss or accidental deterioration of the Deliveries until the acceptance of the Deliveries by KTR or its agents at the place to which the deliveries are to be delivered according to the order.

(2) The ownership of the Deliveries is transferred to KTR with the handover. A possible retention of title in favour of the Supplier has the effect of a simple retention of title. KTR rejects an extended or expanded retention of title of the Supplier. Ownership of the Deliveries is transferred from the Supplier to KTR at the latest by payment of the price. KTR is allowed to mix, process or blend Deliveries delivered under retention of title in the ordinary course of business with effect for KTR and also to resell them.

(3) Deliveries only require acceptance if this has been expressly agreed between KTR and the Supplier or if this results from legal provisions.

(4) Unless otherwise agreed, KTR can declare the acceptance up to two (2) weeks after notification of completion of the Delivery by the Supplier. Acceptances require an explicit written declaration by KTR. Partial acceptances are generally excluded.

## **§ 9 Quality Assurance, Incoming Goods Inspection**

(1) The Supplier has to carry out a quality assurance which is suitable with regard to type and extent and which corresponds to the state of the art and has to prove this to KTR upon request. The Supplier will conclude a corresponding quality assurance agreement or a comparable agreement with KTR as far as KTR considers it necessary.

(2) KTR is entitled to carry out audits at the Supplier's premises or to have them carried out by third parties after prior notification and during usual business hours.

(3) The Supplier has to keep all documents in connection with the Delivery, in particular quality data/records, test certificates, analyses, process data and all information necessary for process tracing for the duration of the series delivery and for parts requiring documentation in accordance with statutory and other legal requirements, but at least ten (10) years from the last delivery of a

delivery item to KTR, and to make them available to KTR for inspection on request.

(4) KTR's legal obligation to inspect and give notice of defects (Sec. 377 German Commercial Code [*Handelsgesetzbuch* - "HGB"]) is limited to an inspection of the quantity and identity of the delivery item as well as an inspection for externally visible damages. KTR has to notify the Supplier of any defects found during this inspection. The notification is in time if it reaches the Supplier within a period of five (5) days, calculated from the delivery of the goods or in case of hidden defects within a period of ten (10) days, calculated from their discovery. KTR has no further obligations to examine or give notice of defects.

## § 10 Liability for Material Defects, Warranty

(1) The Supplier warrants that its Deliveries comply in all respects with the contractually agreed quality, the relevant statutory regulations, safety regulations, ordinances and provisions of authorities and trade associations as well as the latest state of the art of science and technology, are of high quality in terms of type and grade and are suitable for the intended and for the customary use, are of the quality customary in the market and are otherwise free from defects. Insofar as the Supplier is responsible for the construction, he additionally guarantees that the construction is free of defects and that Deliveries are suitable for the specific purpose for which they were purchased.

(2) KTR is entitled to statutory warranty rights without restrictions. KTR is - without prejudice to its further rights for defects - in particular entitled to demand, at its choice, removal of the defect or delivery of an item free of defects.

(3) Compliance with test specifications as well as any releases by KTR and/or its customers do not release the Supplier from its obligation to deliver defect-free goods.

(4) If the Supplier does not fulfil his obligation of subsequent performance within a reasonable period of time set by KTR, KTR is entitled to remedy the defects itself at the Supplier's expense or to have them remedied by a third party and to demand reimbursement of the necessary expenses or an appropriate advance payment from the Supplier. If the supplementary performance by the Supplier has failed or is unreasonable for KTR (e.g., due to special urgency, endangerment of the operational safety or imminent occurrence of disproportionate damages), it is not necessary to set a deadline. KTR will inform the Supplier immediately about circumstances which justify the unreasonableness, if possible before the removal of the defect by KTR.

(5) The liability for defects shall commence with the complete delivery of the scope of delivery and performance (transfer of risk). If acceptance of the scope of delivery and performance has been agreed, the liability for defects shall commence upon acceptance.

(6) Claims for defects shall become statute-barred thirty-six (36) months after the statutory commencement of the

limitation period, unless otherwise agreed with the Supplier or unless a longer limitation period applies by law.

(7) If the goods have already been installed and delivered to a customer of KTR, the Supplier will receive parts for findings as far as KTR receives them from its customers. KTR proves defects of the goods according to the processes agreed between KTR and its customers, as a rule on the basis of extrapolations of the examinations of submitted products with the same defect pattern from defined reference markets. As far as the customer makes products available to the Supplier for examination, this is done at the Supplier's risk and expense.

## § 11 Industrial Property Rights, Rights of Use and Exploitation

(1) The Supplier warrants that no rights of third parties are infringed in connection with the Deliveries and that third parties cannot assert any rights, in particular rights in rem and intellectual property rights including all industrial property rights such as, in particular, patent rights, trademark rights, utility models, design rights as well as copyrights (hereinafter: "property rights") in relation to the Deliveries.

(2) If a third party asserts claims against KTR because of the infringement of property rights with regard to a delivery of the Supplier, the Supplier - without prejudice to the further rights of KTR - has to either obtain a right of use, to modify his delivery in such a way that the property right is not infringed or to replace the Delivery, at his choice and at his expense.

(3) Further legal rights of KTR due to defects of title in the Deliveries of the Supplier remain unaffected.

(4) As far as the Deliveries or the documents and information connected with the deliveries contain industrial property rights of the Supplier or third parties, the Supplier transfers to KTR irrevocably, unconditionally and for an unlimited period of time all industrial property rights of the Supplier or the third party required for the contractually presupposed and the usual use of the deliveries in a temporally and spatially unlimited, completely or partly transferable and sub-licensable way.

(5) As far as a transfer of the industrial property rights is not possible for the Supplier due to mandatory legal provisions, the Supplier grants KTR all relevant rights of use and exploitation, including the right to publish, distribute, copy and process, to the extent mentioned above, so that KTR can use, exploit and process the deliveries in the way stipulated in the contract and according to their usual use. If the Supplier provides deliveries exclusively for KTR, he grants KTR the related rights of use, exploitation and processing in an exclusive way. The rights of use and exploitation granted refer to all types of use and exploitation known and unknown at the time of delivery and entitle KTR in particular to transfer the deliveries to third parties.

(6) The transfer of rights or the granting of rights shall be compensated with the respective agreed remuneration.

(7) KTR is the sole owner of all industrial property rights to any work results resulting from the use of the Deliveries (hereinafter: "Work Results"). In this respect the Supplier undertakes to transfer to KTR any industrial property rights to Work Results to which he is entitled without separate remuneration immediately after they have become known. If a transfer of property rights to Work Results should not be possible due to mandatory legal provisions, the Supplier undertakes to grant KTR all rights of use and exploitation in this respect without separate remuneration immediately after becoming aware of them in an exclusive, content-related, spatially and temporally unlimited, irrevocable, unconditional, fully or partly transferable and sub-licensable way.

## § 12 Liability, Product Liability, Recall

(1) The Supplier shall be liable in accordance with the statutory provisions, unless otherwise stipulated in these Terms.

(2) In case a claim is made against KTR on the basis of product or producer liability, the Supplier is obliged to indemnify KTR from such claims, if and as far as the damage has been caused by a defect of the deliveries or a violation of the Supplier's duty to observe the product. In cases of fault-based liability, however, this only applies if the Supplier is at fault. If the cause of the damage lies within the Supplier's area of responsibility, the Supplier must prove that it is not at fault.

(3) If a claim is made against KTR due to a violation of regulatory safety regulations or due to domestic or foreign product liability regulations or - laws because of a defectiveness of the product or a violation of the product monitoring obligation which is attributable to the Supplier's goods, then KTR is entitled to claim compensation for this damage from the Supplier as far as it is caused by the goods delivered by him.

(4) The Supplier is liable for measures to avert danger or damage (e.g. recall actions, customer service measures or other field measures) by KTR, by customers of KTR or by other third parties as far as these measures are based on a defect of the goods delivered by the Supplier or on another breach of duty by the Supplier.

(5) The Supplier will participate appropriately in good faith in voluntary customer service measures or other field measures by KTR, by customers of KTR or by other third parties.

## § 13 Provisions / Tools

(1) If KTR provides the Supplier with material, parts, tools or other means of production (hereinafter: "Provisions"), these remain the property of KTR. The same applies to means of production and testing which are provided by KTR or which paid by KTR (directly or by amortisation), including accessories and documents. Any processing, mixing or combination by the Supplier will be carried out for KTR as manufacturer in the sense of Sec. 950 German Civil Code [*Bürgerliches Gesetzbuch – BGB*]. If in the case of processing, mixing or combination with objects of third parties their right of ownership remains, KTR acquires co-

ownership of the new object in the ratio of the value of the materials provided to the other objects at the time of processing, mixing or combination.

(2) Provisions are to be stored and kept separately by the Supplier free of charge and to be marked as KTR's property.

(3) Provisions shall be made available to the Supplier on loan and may be reclaimed at any time.

(4) The Provisions may only be used for the production of goods for KTR and have to be kept in good condition at the Supplier's expense.

(5) In all other respects, the Provisions shall, if necessary, be replaced at the Supplier's expense if the agreed output quantity or the output quantity to be expected in good faith is undershot.

(6) The Supplier shall bear the risk for the Provisions as long as they are in his custody and shall provide adequate insurance cover against theft, breakage, fire and water damage. A right of retention of the Supplier to the Provisions is excluded.

## § 14 Spare Parts

(1) For production material, the Supplier ensures KTR's spare parts requirements during the series delivery. The Supplier is also obliged to deliver spare parts after the end of the series delivery, namely for a period of fifteen (15) years after the end of the series delivery, unless the Supplier claims and proves that there is a trade custom in the industry concerned which provides for a shorter period of spare parts delivery after the end of a series delivery. In this case, the Supplier shall remain obliged to supply spare parts for this period, but at least for a period of ten (10) years after the end of the series delivery.

(2) In due time before the expiry of the period mentioned in paragraph 1, the Supplier will inform KTR about the imminent expiry and provide a summarised replacement demand as residual cover quantity upon KTR's request.

## § 15 Insurance

The Supplier is obliged to ensure an adequate product liability insurance cover with an adequate sum insured at his own expense and to prove this to KTR at any time upon request.

## § 16 Laws, Regulations

(1) At the time of delivery, the Deliveries (including packaging) have to comply in every respect with the legal provisions applicable at the place of performance as well as with the relevant regulations and guidelines of authorities and professional associations. In particular, the Supplier ensures that the Deliveries do not cause any harmful effects on the environment or other dangers, considerable disadvantages or considerable nuisances for the environment and/or the staff of KTR, and that the Deliveries are properly labelled, if necessary, with regard to substances or preparations which are subject to the respectively valid legal provisions on dangerous working



substances and that the EC safety data sheet to be provided to KTR, if necessary, is complete and correct. The Deliveries have to comply with the regulations on CE marking. The Supplier will provide KTR with a corresponding declaration of conformity without being asked to do so.

(2) If deviations from these regulations are necessary in individual cases, the Supplier must obtain written consent for this. The Supplier's warranty obligation shall not be limited by such consent.

(3) If the Supplier has doubts about the type of execution requested by KTR or if he discovers errors or contradictions in drawings, calculations or specifications or other requirements of KTR, the Supplier has to inform KTR immediately in writing.

## **§ 17 Requirements for Deliveries (Material Compliance)**

(1) In addition to compliance with the regulations from the agreements made, in particular the specifications, the Supplier guarantees compliance with all applicable legal regulations with regard to the products, their manufacture and packaging.

(2) The Supplier guarantees in particular strict compliance with the following standards: Regulation (EC) No. 1907/2006 (REACH Regulation), Chemicals Prohibition Regulation [*Chemikalien-Verbotsverordnung ChemVerbotsV*], EU Directive 2011/65/EU (RoHS - Restriction of Hazardous Substances) [*ElektroStoffV*], EU POP Regulation (EU) 2019/1021 (Persistent Organic Pollutants - POP).

(3) As a globally active company it is important for KTR that the deliveries are marketable worldwide. The Supplier will ensure that his Deliveries meet all relevant requirements for placing on the market worldwide. In particular, the Supplier must also comply with the following regulations: Toxic Substances Control Act (TSCA), Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

(4) The Supplier undertakes to declare the conformity of the Deliveries according to the legal regulations and to provide KTR with corresponding information/declarations on the deliveries free of charge in the course of the initial sampling or on request within five (5) working days.

(5) As an international partner of its customers, KTR has ethical and legal obligations regarding the sources of raw materials (resources), especially conflict resources. The Supplier undertakes to provide information on the sources of supply of the respective conflict resources and to transmit this information electronically (e.g. by means of the CMRT or EMRT template). The Supplier shall ensure that this duty to provide information also includes the Supplier's sub-Suppliers.

## **§ 18 Compliance**

The Supplier undertakes to comply with the legal provisions applicable to it in each case, in particular those relating to the treatment of employees, environmental

protection, occupational health and safety, data protection, competition law and anti-corruption and money laundering regulations. The Supplier further undertakes to comply with the principles of the UN Global Compact Initiative. These principles relate in particular to the protection of international human rights, the right to collective bargaining, the elimination of forced and child labour, the elimination of discrimination in respect of employment and occupation, environmental responsibility and the prevention of corruption. Further information on the UN Global Compact Initiative is available at [www.unglobalcompact.org](http://www.unglobalcompact.org).

## **§ 19 Confidentiality, Reservation of Rights**

(1) The Supplier undertakes to treat all documents and information, in particular know-how and trade secrets as well as commercial or technical details, which become known to him through the business relationship (hereinafter: "Confidential Information") confidentially, not to disclose them to third parties without KTR's permission and to use them only for the purpose on which the disclosure is based. The Supplier will oblige his employees and sub-Suppliers accordingly.

This does not apply to information which (a) was demonstrably already known to the Supplier at the time of the conclusion of the contract or subsequently becomes known to the Supplier from a third party without violating a confidentiality agreement, statutory provisions or official orders, (b) is already generally known at the time of the conclusion of the contract or subsequently becomes generally known, provided this is not based on a breach of this contract, (c) was developed independently by the Supplier without access to Confidential Information of KTR, or (d) must be disclosed due to statutory obligations or by order of a court or an authority.

(2) KTR reserves all property and industrial property rights such as patent rights, trademark rights, utility rights and design rights as well as copyrights to samples, drawings, sketches, moulds, models, templates, calculations and other information of a tangible and intangible nature provided by it. They are to be used exclusively for deliveries and services to KTR. The same applies to objects manufactured according to this information.

(3) The obligations of this clause 19 shall continue to exist beyond the end of the contract and the business relationship, irrespective of the manner in which the contract or the business relationship is terminated.

## **§ 20 Foreign Trade Law**

(1) KTR is entitled to refuse the performance of its contractual obligations if and to the extent that applicable national or international foreign trade law - in particular export control law or customs law regulations, including embargo regulations and sanctions lists - (hereinafter: "applicable Foreign Trade Law") prohibits or restricts the performance.

(2) The Supplier shall comply with the respective applicable Foreign Trade Law with regard to its contractual obligations. In particular, he shall obtain the permits

required for its performance if it is responsible for this under the applicable Foreign Trade Law.

(3) The Supplier will inform KTR in writing as early as possible - at the latest, however, before delivery - about all information and data which KTR needs in order to assess and comply with the applicable Foreign Trade Law. The Supplier will inform KTR separately in writing whether the goods to be delivered originate from a country (in particular produced there or exported from there) against which the Federal Republic of Germany, the European Union or the United States of America has imposed or has imposed an embargo (this applies in particular to Russia and Iran). This duty to inform has to be fulfilled immediately and already exists before the conclusion of a contract with KTR and lasts until the Supplier has completely fulfilled his duty to perform.

(4) The above obligations and/or rights shall apply only if and to the extent that they do not violate EU law (cf. in its current version: Council Regulation (EC) No. 2271/96 of 22 November 1996 on protection against the effects of the extraterritorial application of legislation adopted by a third country and of measures based thereon or resulting therefrom) and/or German law (cf. in its current version: Sec. 7 of the Foreign Trade and Payments Ordinance [Außenwirtschaftsordnung]).

## **§ 21 Applicable ILw, Place of Jurisdiction**

(1) The relationship between the Supplier and KTR is exclusively governed by the law of the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

(2) The exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship is KTR's place of business if the Supplier is a registered trader, a legal entity under public law or a special fund under public law. KTR is also entitled to sue the Supplier at any other competent court.

## **§ 22 Miscellaneous**

(1) Should individual parts of these Terms be legally invalid, this shall not affect the validity of the remaining provisions.

(2) Unless expressly agreed otherwise, the place of performance for all Deliveries is the shipping address or place of use requested by KTR. The place of performance for subsequent performance is the location of the respective Deliveries.

(3) The contractual language is German. Insofar as the contracting parties use multilingual documents with additional languages, the German wording shall take precedence.