

# General Conditions of Sale of Kontron eSystems GmbH

## 1. Scope of Application; German Law

- 1.1. We contract exclusively on the basis of our General Conditions of Sale. They will apply to all contracts of Kontron eSystems GmbH and its affiliated companies acc. to Section 15 German Stock Companies Act (AktG). They will also apply to all future business relations, even if not expressly agreed again. We do not recognise any contradictory conditions or conditions differing from our own, unless we have expressly agreed to the application of the same in text form.
- 1.2. Our General Conditions of Sale shall also apply if we supply the customer without reservation despite knowledge of customer conditions of sale contrary to or differing from our own.
- 1.3. The law of the Federal Republic of Germany is agreed to apply. Application of the UN Convention on Contracts for the International Sale of Goods is excluded in relation to contracts with foreign customers.
- 1.4. These general terms and conditions only apply vis-à-vis entrepreneurs, legal entities under public law or a special fund under public law within the meaning of Section 310 para. 1 German Civil Code ("BGB").

## 2. Conclusion and Contents of the Contract

- 2.1. Catalogues, printed materials and price lists do not constitute an offer.
- 2.2. Our offers remain revocable until accepted by the customer. However, purchasing orders placed by our customers are binding on them for four weeks from the date of dispatch.
- 2.3. In determining the content and scope of the agreements reached, the purchase contract and subordinated our order confirmation in text form shall prevail.
- 2.4. Transactions entered into by our representatives must be confirmed by the acting company.

## 3. Price

- 3.1. If no special terms have been agreed, our prices are in Euro quoted as net prices, to which statutory value-added tax will be added at the rate currently applicable. Unless otherwise agreed, prices apply "ex works" and do not include packaging, transport and incidental costs.

3.2. We are entitled to adjust prices if there are any changes in material prices, wages, freights or other cost factors, provided a period of at least four months has elapsed between the date on which the contract was made and the date of delivery unless the delay was caused by us. Contrary to the above ruling, an agreed fixed price cannot be adjusted.

#### **4. Payment**

- 4.1. The customer undertakes to pay the remuneration that has been contractually agreed within fourteen days of receipt of the invoice without any deductions. Payment shall be made by remittance to one of our bank accounts given below. Any differing methods of payment or differing payment dates are subject to special agreement.
- 4.2. The customer shall be in default if it fails to make payment by the agreed date, without any reminder being required. In such a case, we have the right - without prejudice to other statutory claims – to require default interest at a rate of 9% above the then applicable basis interest rate of the European Central Bank p.a., without any reminder being required. Upon entry of the delay, we are entitled to claim a lump sum of 40 EUR. Insofar as we can provide evidence of higher damages due to default, we have the right to claim them accordingly while taking into account the lump sum.
- 4.3. The customer may only offset against our claims for payment or exercise a right of retention if its claim is recognised by us or it is res judicata. The customer may also offset counter-claims which are ready for judgement or relate to the same contractual relationship.
- 4.4. In the event of default on payment, the claims arising out of all our business relations with the customer will become due and payable unless the customer has any valid objection to such claims; in such event, we are also entitled to request cash in advance.
- 4.5. Our written authority is necessary in all cases for collection of payment.

#### **5. Delivery**

- 5.1. The delivery period we have quoted will not start until all technical issues have been settled, the documents to be obtained by the customer have been received in due time, such as public-authority approvals and licences, any agreed advance payment has been made in due time or an agreed letter of credit has been opened. Any delay in performance of payment obligations by the customer will lead to an equivalent extension of the delivery period.
- 5.2. If an export licence is required for the delivery and this has not been issued by the scheduled delivery date despite being duly applied for in good time, said delivery date shall be extended until said licence has been issued. No damages claims can be based on such a delay.

- 5.3. Meeting a delivery date is dependent on proper and timely receiving subsupplies if we are not liable and we have concluded a corresponding covering transaction. We shall notify the customer immediately about any delays.
- 5.4. The delivery deadline shall be deemed to have been met if the goods have left the factory or notice has been given that they are ready for delivery before expiry of the deadline. Deliveries in part are permissible if not expressly excluded and reasonable.
- 5.5. The delivery deadlines specified in the contract will be reasonably extended in the event of strikes, operational stoppages (including a lack of raw materials), lockouts, war, embargo and other cases of force majeure. In such cases we are also entitled to withdraw from the contract without this giving the customer a claim against us for damages.
- 5.6. Should we fail to deliver by an agreed original or extended delivery deadline, the customer shall have the right to rescind the contract after the expiry of a reasonable extended deadline of at least 60 days. The customer must, however, give notice of the commencement of this period by registered letter.
- 5.7. Claims for damages in respect of delayed delivery are subject to paragraph 10.
- 5.8. Should the dispatch be delayed at the request of or through the fault of the customer, the latter will be charged for storage costs - which, in the case of storage at the supplier's site, will consist of a minimum of 0.5 % of the invoice amount for each month - with effect from one month after notification of readiness to deliver. The customer is free to show that no storage costs have been incurred or that the storage costs were substantially lower.
- 5.9. If payments owed by the customer are delayed by more than three months, we have the right to rescind the contract. We will offset any payments already made against the costs we have incurred.
- 5.10. If, after the contract has been made, it becomes clear that the customer's financial standing has deteriorated significantly, we have the right to discontinue further performance of the contract until the customer has fulfilled its payment obligations in full or has furnished a bank guarantee or comparable security at our discretion. The same applies insofar as the customer defaults repeatedly and/or significantly on payment. If the customer fails to meet such a request, we can rescind the contract.

## **6. Dispatch, Transfer of Risk and Insurance**

- 6.1. Incidental costs will be invoiced separately.
- 6.2. If no ruling conforming with INCOTERMS has been made, the risk shall pass to the customer at the time and to the extent that the product or parts of the same leave our factory site or that the customer is notified of readiness for dispatch. This also applies to deliveries made by our employees, to deliveries sent freight prepaid and packaging prepaid and in cases in which we are responsible for installation or other services.
- 6.3. If a part of the product cannot be delivered due to a delay in acceptance by the customer after completion and notification of readiness for dispatch, we shall be deemed to have rendered due performance by storing the product. In such a case, the customer must pay all costs which we incur after sending the invoices. We will notify the customer of storage of the product immediately in writing. Statutory compensation claims shall not be prejudiced hereby. In such a case, the risk of accidental loss or accidental deterioration of the product shall pass to the customer at the time at which said customer defaults on acceptance.
- 6.4. At the request and expense of the customer, the goods will be insured by us against the risks specified by the customer. We shall be entitled to take out transportation insurance at the customer's expense.
- 6.5. The customer hereby assigns to us all claims it may have against the insurance company in the event of a loss. The customer shall do everything necessary to uphold the insurance claim, in particular provide us and the insurers with the necessary notices and documents in good time.

## **7. Copyright and Ownership of Documents**

We reserve our copyrights even after fulfilment of the contract. Software and documents provided (drawings, explanations, cost estimates, etc.) shall not be made available to third parties and will be returned to us at our request. They remain our property. The right of use is restricted to the contract purpose and the customer or the contractually agreed user. The copyright is not affected thereby.

## **8. Retention of Title**

- 8.1. The goods delivered by us shall remain our property until the customer has paid all sums due to us, whether under this contract or under any prior or subsequent contract with the customer.
- 8.2. If the customer breaches the contract, in particular by default, we have the right to rescind the contract and require return of the goods supplied.

- 8.3. The customer must treat the supplied goods with due care and insure them at its own expense at their reinstatement value. The customer must perform necessary maintenance and servicing work in due time at its own expense.
- 8.4. On a revocable basis, the customer is entitled at any time to process the supplied goods in the due course of business or combine them with other systems. There is no longer deemed to be "due" course of business if the customer's operations are encumbered by security assignments, liquidity bottlenecks, attachments or protested cheques or bills of exchange.
- 8.5. The customer shall be entitled to resell goods supplied by us in the ordinary course of business. In this case, however, said customer hereby already assigns its claims from resale to us as follows:
  - 8.5.1. If the goods belong to us alone, the full claim will be assigned to us.
  - 8.5.2. If we only have co-ownership of the goods, the customer will assign to us the part of the claim equivalent to our co-ownership share. The customer is entitled to collect the assigned claims for as long as it meets its payment obligations.
- 8.6. After assignment, the customer is entitled to collect the claims from its end customers. We reserve the right to collect the claims ourselves as soon as the customer fails to duly meet its payment obligations to us and defaults. In such a case, the customer must also notify the end customer of assignment.
- 8.7. The customer must notify us immediately in writing if items supplied by us are attached.
- 8.8. At the customer's request, we undertake to release securities held by us to the extent that their realisable value exceeds the claims to be secured by more than 10 %. The choice of the securities to be released shall be at our discretion.

## **9. Liability for Defects**

- 9.1. To assert rights resulting from liability for defects, the customer must duly examine the goods and give notice of defects in compliance with Section 377 of the German Commercial Code. If the customer fails to give notice of an obvious defect within 3 working days, the goods shall be deemed to have been approved.
- 9.2. In case of a timely and justified notice of defects, we will at our discretion repair or replace all defective parts. The replaced parts shall be returned to us. If such repair or replacement of the parts is not possible or is refused or is delayed for more than a reasonable period or fails through any other fault of ours, the customer may at its discretion rescind the contract or require a reduction in the purchase price.

- 9.3. The customer shall allow us the necessary time and opportunity to carry out all repairs which we in our reasonable opinion consider necessary; otherwise we shall not be liable for the defects.
- 9.4. We give no warranty in respect of defects arising as a result of natural wear and tear, inappropriate or incorrect employment or handling, excessive use or faulty assembly or installation by the customer or third parties.
- 9.5. Any further claims of the customer, also against our representatives or vicarious agents, are subject to paragraph 10.
- 9.6. All claims for defects asserted by the customer, including the claims for compensation of damages and expenses pursuant to section 9.5, shall become time-barred one year after delivery of the goods to the customer.

## **10. Liability**

- 10.1. If the supplied goods cannot be used by the customer as contractually agreed for reasons for which we are responsible as a result of failure to perform or faulty performance of, recommendations made or advice given after the contract was made or breach of other subsidiary contractual obligations, in particular misleading instructions for installation, operation and servicing of the supplied goods, the terms of contractually agreed for reasons for which we are responsible as a result of failure to implement, or defective implementation of, proposals or recommendations made before or after the contract was concluded or as a result of a breach of other subsidiary contractual obligations – in particular misleading instructions for installation, operation and servicing of the supplied item – the provisions of Section 9 and of the following section 10.2 below shall apply with exclusion of all further claims by the customer. We are not responsible for any damage incurred if and insofar as the customer failed to comply with our instructions and warnings. The customer agrees to hold us harmless in relation to all claims, liability cases and damages claims that may possibly result from the above.
- 10.2. Claims for compensation, regardless of the legal grounds, are excluded, unless our liability is mandatory:
  - 10.2.1. in the event of intent;
  - 10.2.2. in the event of gross negligence on the part of the owner / organs or leading executives;
  - 10.2.3. in the event of defects which were intentionally concealed or which were guaranteed not to exist;
  - 10.2.4. in the event of defects to the supplied item, insofar as we have mandatory liability for privately used items under the Product Liability Act in relation to personal injury or property damage.

10.3. In the event of a culpable breach of major contractual obligations, we shall also be liable for gross negligence of non-managerial employees and for ordinary negligence, in the latter case restricted to the reasonably predictable damage typical of the contract. The aforementioned provisions do not constitute any change in the burden of proof to the disadvantage of the purchaser.

## 11. Final provisions

11.1. Should any provision of these General Conditions of Sale be or become ineffective, the effectiveness of the remaining provisions will not be prejudiced thereby.

11.2. The contract, any amendment or addition to the same and any other agreements must be recorded in text form in order to be effective. The customer may not assign claims and other contractual rights to third parties without our consent in text form.

11.3. Unless otherwise provided in our order confirmation, the place of performance for delivery and payment shall be the site of our selling company.

11.4. The sole legal venue for all disputes arising directly or indirectly from the contractual relationship is at the site of our selling company. However, we have the right to select the customer's legal venue.