



## **GENERAL TERMS AND CONDITIONS**

**of KRAL GmbH (registry number 75759k)**

(as amended in October 2019)

### **1. VALIDITY OF TERMS AND CONDITIONS:**

1.1. All our business relationships are subject to the following Terms and Conditions - hereinafter the "Terms". These Terms are applicable to all - also future - transactions with customers of KRAL (hereinafter also referred to as "Ordering Party" or "Suppliers"). Once the Ordering Party accepts and executes our order, it shall be deemed to have unconditionally acknowledged our Terms.

1.2. Oral side agreements and derogations from our Terms are valid only if we have confirmed these in writing. Any express agreements to the contrary agreed in writing and signed by both parties by way of exception will be valid only for that particular transaction.

1.3. We hereby expressly object to an Ordering Party's deviating terms and conditions. No further objection is necessary in a particular case. Under no circumstances shall our behaviour, including but not limited to any action we take in performance of a contract, our absence of communication, the unconditional transmission of a confirmation of an order, an order or the like, constitute any approval of such terms and conditions.

1.4. The Ordering Party agrees that we will rely on KRAL's terms and conditions in case of doubt (hereinafter the "Supplier"), even if the Ordering Party uses its own terms and conditions and even if we do not object to customer's terms and conditions.

### **2. ORDER - CONCLUSION OF CONTRACT**

2.1. All orders are non-binding and do not require the Supplier to provide services. Agreed target dates and time limits shall be binding upon the Supplier only if the Ordering Party has signed and returned to the Supplier the order confirmation and these Terms sent by the Supplier. These documents shall be returned within two weeks after the date of the order confirmation; actual receipt of these documents by the Supplier shall be relevant. The same applies to oral collateral agreements and to subsequent changes of contract.

2.2. The Ordering Party cannot argue that all executed contracts, agreements etc. will be binding upon the Supplier only when confirmed in writing. Contracts, orders and offers of the Ordering Party are irrevocable and binding upon the Ordering Party. In case of a breach of these provisions, the Supplier is entitled to recover all expenses as well as a cancellation fee equal to 30% of the net order value. If orders were placed over the phone, the Ordering Party will have to accept the consequences of incorrect deliveries due to errors or misunderstandings on the phone.

2.3. The Supplier may refuse to accept an order without stating any reasons and hereby expressly disclaims any entitlement to liability arising therefrom.



### **3. COST QUOTE:**

3.1. Supplier's cost quotes represent non-binding invitations to the Ordering Party to submit a quote, but do not require the Supplier to accept the order or to carry out the service stated in the cost quote. The order which the Ordering Party places on the basis of a cost quote represents an offer to the Supplier. Supplier does not warrant for the correctness of a cost quote.

3.2. Unless a separate period of validity was agreed, a cost quote shall be valid one month after the issue date. Upon expiration of that validity, a new cost quote shall be obtained, unless the contractor extends its validity in writing for a certain period of time.

### **4. PRICES/PAYMENTS:**

4.1. Unless expressly agreed otherwise in writing, the agreed prices shall always be ex works Lustenau (EXW).

4.2. Unless otherwise agreed, payments shall be made without any deduction to KRAL's bank account, payable as advance payment immediately after the date of the prepayment bill.

### **5. DELIVERY PERIOD, DELAY IN DELIVERY**

5.1. The delivery period is subject to an agreement between the parties (according article 2.1.). A delivery period can be observed by the Supplier only if the parties have clarified all commercial and technical issues and if the Ordering Party has fulfilled all its obligations, such as the obligation to provide the necessary regulatory permits or consents or to make a down payment. If this is not the case or in case of any subsequent changes of any kind, the time for delivery will be reasonably extended. Upon request, Supplier will either disclose a new delivery period or issue a new acknowledgment of order.

5.2. An agreed delivery period can be observed only subject to correct and timely self-delivery.

5.3. The delivery period shall be deemed to have been observed if the deliverable has left the Supplier's factory or readiness for shipment has been notified until the expiry of that delivery period. The same applies in respect of acceptance, if any.

5.4. If there is any delay in shipment or acceptance of the deliverable for reasons within the Ordering Party's control, the costs incurred due to such delay will be charged to the Ordering Party commencing ten days after the notice of readiness of shipment or acceptance was given.

### **6. FORCE MAJEURE:**

6.1. Whenever the delivery period cannot be observed due to force majeure, labour disputes or other events beyond the Supplier's control, it will be extended accordingly. The Supplier will notify the Ordering Party as soon as possible of the commencement and end of such circumstances.



6.2. The Ordering Party may withdraw from the contract without notice, if it is impossible for the Supplier prior to the transfer of risk to provide the services in their entirety. If that impossibility arises during a delay in acceptance or if the Ordering Party is solely or predominantly responsible for those circumstances, the Ordering Party shall continue to be liable for counter-performance.

6.3. If the Supplier is in default and the Ordering Party thereby suffers any damage, it may request a lump-sum compensation for such default equal to 0.5% for each full week of delay, but not exceeding a total of 5% of the value of that part of the total delivery which, due to the delay, could not be used in time or according to the terms of the contract. Whenever the Ordering Party grants the defaulting Supplier a reasonable time limit within which to perform, in consideration of the exceptions prescribed by law, and if he does not perform within that time limit, the Ordering Party may withdraw from the contract pursuant to the statutory provisions. No other claims may be asserted based on a delay in delivery.

## **7. TRANSFER OF RISK / ACCEPTANCE:**

7.1. The risk will transfer to the Ordering Party once the deliverable has left the factory, even if partial deliveries are made or the Supplier has accepted other services such as shipment costs or delivery and installation. An agreed acceptance, if any, must take place promptly at the acceptance date, or alternatively after the Supplier has given notice that the deliverable is ready for acceptance. The Ordering Party may not refuse to accept a deliverable due to an insignificant deficiency.

7.2. Whenever shipment or acceptance is delayed or omitted due to circumstances not attributable to the Supplier, the risk shall transfer to the Ordering Party on the date on which readiness for shipment or acceptance was notified. The Supplier undertakes to purchase any insurance requested by the Ordering Party at the Ordering Party's cost and expense. Any costs the Supplier incurs shall be borne by the Ordering Party.

7.3. Partial deliveries of finished products are permitted.

## **8. RESERVATION OF TITLE**

8.1. The Supplier reserves title to the deliverable pending receipt of all payments under the supply contract. If additional assembly and/or commissioning services must be provided, title to the deliverable will transfer to the Ordering Party only after receipt of the additional compensation for assembly/commissioning.

8.2. Supplier may insure the deliverable against theft, breakage, fire, water and other damage at the Ordering Party's cost and expense, unless the Ordering Party itself verifiably maintains any such insurance.

8.3. The Ordering Party may sell, pledge or transfer the deliverable for security purpose only with the Supplier's prior written consent. The Ordering Party shall promptly notify the Supplier of any pledge, seizure or other dispositions of third parties.

8.4. If the Ordering Party breaches the terms of the contract, including but not limited to a delay in payment, the Supplier may recover the deliverable after a reminder and the Ordering Party shall be required to surrender



it. The Supplier shall not be deemed to withdraw from the contract if he asserts his reservation of title to or pledges the deliverable.

8.5. Should the Ordering Party resell the deliverable in the ordinary course of business, the Ordering Party assigns already at this point in time all claims equal to the final invoice amount (including VAT), which he incurs from such resale towards its customers or third parties, whether or not the deliverable was resold without or after processing. The Ordering Party may collect that claim also after assignment. This shall not affect the Supplier's right to independently collect the claim. However, the Supplier undertakes not to collect the claim as long as the Ordering Party meets its payment obligations using the proceeds received, is not in default with payment, does not make petition to initiate insolvency proceedings and does not withhold payments. However, should this be the case, the Supplier may insist that the Ordering Party disclose to Supplier the assigned claims and the relevant debtors, provide any information which is necessary to collect those claims, surrender the pertinent documents and notify the debtors (third parties) of the assignment.

8.6. The deliverable will be installed, processed and converted by the Ordering Party always for the Supplier. If the deliverable is installed, processed or converted along with other items not belonging to the Supplier, the Supplier will retain title to the new item in proportion of the deliverable's value compared to the other items. The item created by processing shall be subject to the same provisions as those applicable to the deliverable delivered subject to a reservation of title.

8.7. To secure the Supplier's claim, the Ordering Party assigns to Supplier the claims arising towards a third party from combining the deliverable with a plot of land.

8.8. Supplier undertakes to release the securities to which he is entitled at the Ordering Party's request, provided that the value of the securities exceeds the claims to be secured by more than 20%. The Supplier is free to select the securities to be released.

8.9. The Supplier may withdraw from the contract and insist on immediate return of the deliverable if a petition for the initiation of insolvency proceedings is filed.

## **9. WARRANTY - COMPLAINTS:**

9.1. To the exclusion of any other claims and subject to Sections 9. and 10. hereof, Supplier's only warranty in respect of defects in quality and defects in title shall be for the conforming condition of its deliverable pursuant to the legal provisions.

9.2. The Ordering Party shall promptly inspect the deliverable and notify any defects by written notice no later than within 10 work days after delivery of the deliverable; otherwise the Ordering Party shall not have any rights, especially no rights to warranty, damages and avoidance on the grounds of error, notwithstanding Section 10. hereof. Notwithstanding any notice of defects, invoice amounts or portions thereof may not be withheld. Once a notice of defects was given in due time, the Supplier may either exchange or improve the deliverable, supply another deliverable, reduce the purchase price or rescind from the contract, regardless of the legal requirements.



9.3. The Ordering Party shall always prove the flawed nature of a deliverable on the delivery date; the application of Section 924 of the Austrian Civil Code shall be expressly excluded.

9.4. No warranty is accepted in particular in the following cases: unsuitable or improper use, incorrect installation or commissioning and incorrect operation by the Ordering Party or third parties, incorrect settings, operation and use of hardware and software components by the Ordering Party or third parties, normal wear and tear, wear parts, incorrect or negligent treatment, improper maintenance, unsuitable resources, faulty construction work, inappropriate building site, chemical, electro-chemical or electrical impact and use of unsuitable medium.

9.5 The Supplier does not accept any warranty for any error, malfunction or damage caused by incorrect installation, non-compliance with installation requirements, incorrect operation or settings, especially of hardware and software components, system infection due to computer viruses, use of unsuitable organizational means and data mediums.

9.6. If the Ordering Party or a third Party rectifies a deliverable improperly, the Supplier shall not be liable for the resulting consequences. The same shall apply to any changes of the deliverable without the Supplier's prior consent.

9.7. The contract may not be avoided on the grounds of error or shortfall exceeding fifty percent.

## **10. LIABILITY:**

10.1. Outside the scope of the Product Liability Act, the Supplier is liable only in case of proven intent and gross negligence. The Supplier shall not be liable for property damage and financial loss caused by slight negligence.

10.2. Furthermore, to the extent permitted by law, the Supplier is liable only for foreseeable typical damage up to the amount of the order value. The Supplier is not liable for consequential damage, including but not limited to lost profit or recall costs.

10.3. The Supplier is not liable for any defect that was caused because the products supplied were fitted into the products of the Ordering Party or into those of his customers. Furthermore, the Supplier is not liable in case of the defective manufacture, storage or delivery of the supplied goods due to the Ordering Party's instructions (e.g. design details, specifications, blueprints, models or storage or transport regulations).

10.4. The Supplier does not accept any liability for defective settings, operation and use by the Ordering Party or third parties of hardware and software components, including but not limited to any resulting consequential damage.

10.5. Except with the Supplier's explicit written consent, it is strictly prohibited to use the products for specialized applications, and the Supplier does not assume any risk in this context. The exclusive risk and responsibility for using the products for specialized applications lies exclusively with the Ordering Party who will fully hold harmless and indemnify the Supplier in this respect.



10.5. This shall not affect our liability for culpable injury to life, body or health in connection with guaranteed characteristics, as well as liability according to the Product Liability Act.

10.6. If the Supplier is in default and the Ordering Party incurs any damage due to that default, the Ordering Party may demand a flat-rate compensation equal to 1 % of the value of that part of the entire delivery and/or entire service which the customer cannot timely or contractually use due to the delay. Should the Ordering Party allow us to provide the services within a reasonable deadline - in consideration of the legal exemptions - and if we do not meet the deadline, the Ordering Party may withdraw from the contract in accordance with the legal provisions.

10.7. We do not assume any liability, unless the preceding paragraphs explicitly provide otherwise.

#### **11. STATUTE OF LIMITATION:**

11.1. All claims of the Ordering Party based on any legal grounds whatsoever shall become statute-barred after 12 months. Intent or malicious action as well as claims pursuant to the Product Liability Act shall be subject to the time limits prescribed by law.

#### **12. PROPERTY RIGHTS:**

12.1. Whenever a deliverable contains property rights, the Ordering Party will be granted a non-exclusive right to use the delivered item and its documentation, which will be made available for use in respect of the intended deliverable.

12.2. The Ordering Party may reproduce, edit, translate or convert the property rights only to the extent permitted by law. The Ordering Party undertakes not to remove or change without the Supplier's express prior consent any manufacturer's information, including but not limited to copyright notices.

12.3. The Supplier shall retain any other rights to the property rights and the documentations, including the copies thereof.

12.4. Should the Ordering Party apply for an industrial property right with respect to which the delivered KRAL Products form part thereof, the Ordering Party shall obtain KRAL's prior written consent. KRAL expressly prohibits any independent application for a property right by the Ordering Party without KRAL's consent. Once a property right was granted, KRAL shall have a free, non-exclusive right to use the registered property right as a whole. The Ordering Party undertakes to transfer and assign that obligation to its legal successors.

#### **13. NO ASSIGNMENT:**

13.1. In the absence of an express written consent, claims against KRAL may not be assigned.

#### **14. FORFEITURE:**



14.1. If it turns out that it would be unreasonable to repair items the Ordering Party has sent to the Supplier for repair subject to reservation of title, these shall be deemed irrevocably forfeited one month after the Supplier has announced the uneconomic viability of a repair.



**15. PLACE OF PERFORMANCE - JURISDICTION - GOVERNING LAW:**

15.1. Place of performance in respect of deliveries and payments shall be our registered offices at Lustenau. The same applies even if goods are delivered at another place pursuant to an agreement.

15.2. Jurisdiction for all disputes arising from the contractual relationship shall exclusively lie with the court having subject-matter jurisdiction for Lustenau.

15.3. This Agreement shall be governed by and construed in accordance with Austrian law.

**16. SEVERABILITY:**

16.1. Should any term hereof be or become invalid, this shall not affect the validity of the remaining terms hereof. In this case and in case the contract should contain a gap, the invalid or unenforceable or missing term shall be replaced by a reasonable term that closest reflects legally the parties' intent or what the parties had intended in view of the economic purpose of the contract, had they considered that issue when concluding the contract.