

General Conditions of Purchase of the company ‚Kraftwerk Living Technologies GmbH‘



Rev.1 - 10/2016

1. Scope of applicability

1.1. These general conditions of purchase are applicable to businesses with Kraftwerk Living Technologies GmbH (hereafter referred to as „Kraftwerk LT“) as principal. These conditions of purchase are an essential and integrated part of every order and each contract of Kraftwerk LT.

1.2. Our conditions of purchase are exclusively applicable. Contradictory conditions or conditions of the supplier deviating from our conditions are not acknowledged, even if we do not expressly object to them. Silence on part of Kraftwerk LT is not deemed as acknowledgement. If our order is not confirmed by the supplier within 4 (four) work days, our conditions of purchase are applicable at any rate. AÖSp, ADSp and similar conditions are not applicable.

1.3. The contract partner of Kraftwerk LT (hereafter referred to as „supplier“) agrees that in case of him applying his general terms of business, Kraftwerk LT general conditions of purchase are superior. The conditions of purchase are deemed as framework agreements also for all further legal transactions between the contract partners.

1.4. These general conditions of purchase become valid as of the 1st of October 2016 and are applicable for transactions concluded as of this date.

2. Offer, order, contract

2.1. Offer: In the offer, the supplier shall adhere strictly to our inquiry regarding the quantity and conditions of the goods to be delivered, and shall make special reference in writing in case of deviations. If the supplier fails to provide this written reference, he has no entitlement to higher remuneration in case of deviations. The supplier shall inform himself about the operating conditions at the place of installation where his product(s) is (are) to be used. Upon inquiry, Kraftwerk LT will provide all relevant information. All offers must be binding and made free of charge. The supplier is bound to his offer to us for 6 (six) months as of receipt.

2.2. Order, contract: Only written orders are valid; verbal agreements or agreements made via telephone require written confirmation in order to be binding for us. If the order confirmation deviates from the order, the supplier shall refer to this clearly, and explain the respective deviations. Kraftwerk LT is only bound to a deviation if Kraftwerk LT expressly agreed to this deviation. The unconditional acceptance of goods is not deemed as such an agreement. Samples, drawings, tender documents or other notices provided by Kraftwerk LT remain property of Kraftwerk LT and may only be used to fulfil the orders, and only be made accessible to third parties after written consent. In absence of a different agreement, they are to be returned free of charge after performance of the order.

3. Prices

3.1. The agreed prices are net prices, including packaging, delivered to the destination and unloaded, and are fixed prices that cannot be increased for any reason.

3.2. Transport is done at the cost and risk of the supplier. Additional costs that occur due to a delay of the supplier, therefore requiring an accelerated transportation method in order to adhere to the schedule, shall be paid by the supplier.

4. Delivery times and deadlines

4.1. The agreed delivery dates are regarded as fixed dates. Delivery must be made on the delivery day agreed upon in the purchase contract or in the order. As soon as the supplier understands that timely delivery will not be possible or only in part, he must inform Kraftwerk LT immediately of this in writing, including an explanation of reasons and the probable duration of the delay. In case of delay, a contractual penalty is agreed upon that is not to be regarded as damage compensation, independently of the culpability of the supplier. It amounts to 0.75 % [zero point seventy-five percent] of the entire order sum for each commenced calendar day. The contractual penalty is limited to 10 % [ten percent] of the order sum. Direct or indirect damage exceeding the contractual penalty shall be reimbursed by the supplier. Judicial restraint regarding the amount of the contractual penalty is expressly excluded.

4.2. The supplier may only invoke necessary documents to be delivered by us if he has requested the documents in writing and has not received the documents within 7 (seven) calendar days.

4.3. Non-adherence to delivery dates is regarded as culpable non-fulfilment and obliges the supplier to reimburse Kraftwerk LT for the total of the resulting damage. We reserve the rights to legal entitlements beyond that, in particular the right to withdraw from the contact.

5. Invoice and payment

5.1. Invoices must correspond to the sales tax law, shall be sent to us after completed dispatch, and may not be included in the delivery. They must include the complete order number and the order date. If partial payments were agreed, the invoices shall be marked „Down payment invoice“, „1st partial payment“, „2nd partial payment“, „Final invoice“.

5.2. In the absence of separate agreements, the following payment conditions are applicable:

- 14 days with 3% discount deduction or
- 90 days net

each after receipt of an invoice corresponding to the above conditions. All prices are stated including incidental expenses, in particular including costs for packaging, shipping, and transport in absence of other written agreements.

5.3. If partial payments are agreed, Kraftwerk LT is authorized to retain a coverage retention from each partial payment amount amounting to 5% [five percent] until authorization of the final invoice.

5.4. Possible payment does not constitute an acknowledgement of the correctness of the delivery and no waiver of the claims we are entitled to from the lack of fulfilment, the warranty and/or damage compensation. The supplier is not allowed to transfer demands towards us to third parties.

5.5. No cancellation fees or other charges may be enforced upon order cancellation.

5.6. The supplier agrees to indicate the country of origin of the goods he delivers in order confirmations and invoices, and declares that all goods he delivers were produced in the country that he indicates as country of origin, and that he is aware of the legal regulations regarding the issuing of a certificate of origin and that he adhered to them. In case of goods subject to the issue of an export permit, the invoice must include all necessary identifications.

6. Shipping, acceptance, warranty and notices of defects

6.1. All goods purchased from Kraftwerk LT are deemed as debt to be charged at the creditor's domicile, delivery is done DDP [according to Incoterms 2010] including transport, shipping, packaging and unloading. Thus, the supplier carries the costs and the risk – also for accidental loss – of the transport to the place of fulfilment (destination). The goods shall be handed over in unloaded condition.

6.2. The supplier shall fulfil the respectively applicable requirements of national and international export, customs, and foreign trade laws for all goods to be delivered and services to be provided, and to procure the necessary export licenses, unless not the supplier but Kraftwerk LT or a third party is responsible for applying for the export licences due to applicable foreign trade law.

6.3. As soon as possible, at the latest however before the delivery date, the supplier shall give Kraftwerk LT all information and data in writing (by item on order confirmation, delivery note and invoice) that Kraftwerk LT requires to adhere to the applicable foreign trade law during import and export, as well as in case of resale, for re-export of the goods and services, in particular for each individual good/service the following „Export control and foreign trade data“: (i) the „Export Control Classification Number“ pursuant to the „U.S. Commerce Control List“ (ECCN), and insofar the product is subject to the „U.S. Export Administration Regulations“, all applicable export list numbers; (ii) the statistical goods number according to the current goods classification of the foreign trade statistics and the HS [“Harmonized System“] Code; (iii) the country of origin (non-referential origin) and (iv) if requested by Kraftwerk LT: supplier declarations about preferential origin (for European suppliers) or certificates about preferences (for non-European suppliers). In case of changes of origin or the characteristics of the goods or services, or the applicable foreign trade law, the supplier shall update the export control and foreign trade data as soon as possible, at the latest however before the delivery date, and to state them in writing. The supplier carries all expenses and damages that occur to Kraftwerk LT based on the lack or inaccuracy of export control and foreign trade data.

6.4. Retentions of titles by the supplier, of whatever type, are not valid.

6.5. The risk of loss or damage of the goods is only transferred to Kraftwerk LT upon acceptance of the goods.

6.6. In all cases, the obligations for investigation and notice of defects only starts when the goods have reached the agreed destination and a proper dispatch note is given, even if the delivered goods have been transferred to our property or were handed over to our forwarder, carrier, or other agents.

6.7. The notice of apparent defects is on time in any case, if it was dispatched within 6 (six) months after the above stated point in time by us in writing to the last known address of the supplier. In case of non-visible or hidden defects, the 6-month term of notice only starts with the time of discovery of the respective defect. The contradictory clauses of §§ 377, 378 UGB [Commercial Code] are expressly excluded. The supplier expressly waives the objection of late notice of defects.

6.8. The supplier assumes the obligation to only deliver goods whose characteristics correspond to state of the art technology and science, the relevant legal regulations and technical standards, in particular Austrian standards, and if such do not exist, the DIN standards. Further, the supplier guarantees that the deliveries and services are free of faults, and correspond to the requirements of Kraftwerk LT.

6.9. The supplier shall indicate all risks that may be expected when using the product. We have unrestricted entitlement to the legal warranty claims and legal warranty terms.

6.10. During the entire warranty term, the supplier carries the burden of proof that the fault was non-existent upon transfer.

6.11. In case of the delivery of individual parts, the supplier is also liable for such

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faults and damages that are caused by the spare part to other parts or material in the framework of the title of warranty.

6.12. In case of warranty, we reserve the choice of demanding the elimination of the fault by replacement, improvement, price reduction or transformation. In case of replacement or improvement, the supplier is obliged to carry all expenses (in particular material, transport and labour costs) necessary for the purpose of fault elimination or replacement delivery. The supplier carries all costs in association with the fulfilment of the transformation right. He is also obligated to compensate direct or indirect damage.

6.13. After the elimination of reported faults, the warranty term for the replaced delivery or service object starts anew.

6.14. In case of imminent danger or tardiness of the supplier in the elimination of faults we are entitled to eliminate the faults ourselves or have them eliminated at his costs.

6.15. If there are faults of any kind, we are authorized to retain the entire outstanding purchase price or compensation for work to complete elimination of the faults.

6.16. Kraftwerk LT is authorized to retain a security amounting to 5 % (five percent) of the order value from the final invoice (total price plus sales tax) for the duration of the warranty period plus 3 (three) months beyond that for possible fulfilment, warranty and damage compensation claims. The supplier may substitute the security by a corresponding bank warranty.

6.17. Deviating from the legal regulations, the supplier assumes the obligation for full satisfaction for every degree of culpability. He is liable for product faults or in every damage case he is responsible for, also for pecuniary damages to third parties. The supplier agrees to complete indemnification.

6.18. The costs for the transport insurance are included in the agreed prices. Apart from that, all additional costs associated with the order fulfilment that are not expressly agreed upon in the contract shall be paid by the supplier. The supplier is obligated to take out sufficient insurance for possible damages and risks, and to promptly prove this insurance coverage to Kraftwerk LT on occasion and upon prompt, to name the insurance company including the policy and the location of the insurance company.

7. Product liability

7.1. The supplier shall include instruction manuals and warning notices in German/English language in his delivery. Insofar this is objectively possible, such notices shall be applied to the delivered goods themselves.

7.2. If the faultiness of the delivered goods should appear or become apparent to us after the acceptance of the delivery pursuant to § 5 Product Liability Law (PHG) in the sense that the characteristics of the product no longer correspond to the status of science and technology pursuant to § 8 PHG, the supplier agrees to take back such goods and refund the purchase price immediately.

7.3. Should we be sued according to the product liability law due to goods delivered by the supplier, the supplier agrees to the immediate issuance of all evidence we request at his costs, like in particular quality and investigation protocols, certificates and the like. Furthermore, he agrees to complete reimbursement of the damages occurring to us through the liability, as well as related court and attorney fees. The supplier agrees to take out a respective insurance pursuant to § 16 PHG, whereas we reserve the right to demand evidence of corresponding coverage from the supplier. If the supplier does not fulfil this demand within 14 days, we have the right to withdraw from the contract and may demand damage compensation including lost profit.

8. Place of fulfilment, choice of law and place of jurisdiction

8.1. Place of fulfilment for all rights and obligations resulting from legal businesses conducted with us for both parts is the location of our company in Wels/Austria. This is particularly applicable for the supplier regarding the delivery and payment, independently from each individual agreement about the delivery and/or payment location and/or the acceptance of possible transport costs by us.

8.2. Place of jurisdiction for all legal disputes arising from the contract relationship on hand is the court responsible for Wels/Austria, whereas we are also authorized to enforce lawsuits in other courts, if a different place of jurisdiction is given.

8.3. The exclusive application of Austrian law under the exclusion of the conflict-of-law rules of international private law and the UN sales law are deemed as agreed between the supplier and us in the framework of our contractual relationships, their handling, termination or arising disputes.

8.4. If some clauses are void, the effectiveness of the other clauses of these purchase conditions remains unaffected. A regulation is then deemed as agreed that is as similar to the desired economic purpose as possible.

9. Property rights

9.1. The supplier ensures to be in possession of all necessary authorizations in order to prevent all copyright, property and patent violations. The supplier will indemnify and hold Kraftwerk LT fully harmless in this regard. The costs occurring to Kraftwerk LT based on the defence of third party claims shall be paid by the supplier in full.

9.2. All property rights, improvement suggestions, scientific works and other rights that are created and elaborated in the framework of the collaboration with the supplier, no matter when and by whom, belong exclusively to Kraftwerk LT. No rights, in particular of earlier priority are enforced towards Kraftwerk LT by the supplier with regards to protective rights applications.

10. Acts of God

10.1. In cases of Acts of God, like for example strike, lockout, war or elementary events and the like we have the right to withdraw from the contract in whole or in parts (see item 11. below) or to demand delivery or fulfilment of the service of an issued order at a later point in time without the supplier gaining entitlements hereof.

11. Contract withdrawal

11.1. We are entitled to withdraw from the contract at any time in case of delay of delivery, bankruptcy of the supplier or bankruptcy dismissal in default of assets, initiation of a rehabilitation procedure concerning the assets of the supplier, insolvency, cases of Acts of God (see above item 10.) or if the supplier persistently performs or performed acts that object to the conditions of the General Conditions of Purchase on hand. This type of withdrawal does not assign the supplier any claims towards us.

12. Confidentiality

12.1. All specifications, drawings and other technical documents that are handed over to the supplier by Kraftwerk LT in the framework of the offer or order process, including drawings and other technical documents created by the supplier according to our special specifications may not be used, reproduced and made accessible to third parties by the supplier for purposes other than for the production based on our order. The stated documents remain solely our property and shall be handed over to us immediately including copies and reproductions upon request. If an order/delivery is not made for whatever reasons, the supplier shall return all documents to us promptly without request. The orders and relating work shall be regarded as trade secret and be handled confidentially. The supplier is liable for all damages that arise to us due to the violation of one or more of the above obligations.

12.2. The supplier is only allowed to list or refer to the business relationship existing with us in advertisement material and publications no matter what kind with our express written authorization.

12.3. The above stated obligations are also applicable for a period of 5 (five) years after delivery or provision of services.

13. Anti-corruption clause, company ethics and human rights

13.1. Anti-corruption clause: The supplier declares and agrees not to offer third parties advantages of any kind directly or indirectly, nor to accept gifts or payments for himself or for others or to create, promise or have other advantages promised that are or could be regarded as illegal practice or bribery.

13.2. Company ethics: The supplier declares and agrees expressly to abide by the laws of the respectively applicable legal system, to refrain from corruption and bribery, to refrain from money laundering, respect basic rights of its staff, refrain from child labour and to ensure health and safety of his staff. Further, the supplier declares and agrees to adhere to consider environmental protection regarding the laws, standards, and national as well as international standards.

13.3. Human rights: Furthermore the supplier declares and agrees to adhere to the European Human Rights Convention (ECHR) dated 04/11/1950, enforced on 03/09/1958, including its respective protocol adaptations.

13.4. The supplier shall pass the above stated declarations and obligations according to item 13.1., 13.2. and 13.3. on to his subcontractors and suppliers.

13.5. In case of a violation of the supplier against item 13.1., 13.2., 13.3. or 13.4., Kraftwerk LT has the right to cancel the contract with immediate effect. Beyond that, the supplier shall hold Kraftwerk LT harmless to full extent.

14. Audit

14.1. Kraftwerk LT – as well as customer representatives together with Kraftwerk LT – are authorized to conduct a system, procedure, or product audit regarding the order or the object of the contract at the supplier's and his subcontractors' locations anytime and without prior notice within the framework of order handling or the duration of a contract. The supplier shall grant Kraftwerk LT unrestricted access to the company premises and the production sites, and is obligated to give out corresponding information. The supplier is not authorized to demand cost reimbursement for such audits.

15. Miscellaneous

15.1. Upon delivery or service provision, the supplier expressly agrees to adhere to all standards, in particular regarding those of labour laws, employee protection laws, alien employment acts, environmental protection laws, commercial laws and building regulations. He shall indemnify and hold Kraftwerk LT completely harmless against claims from third parties in this regard.

15.2. When referencing standards, delivery must be done according to the most recent version.

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