

## **KSG Austria GmbH**

### **GENERAL TERMS AND CONDITIONS** Status: 06.05.2021

#### **1. Scope of these General Terms and Conditions (GTC)**

##### 1.1.

We (KSG Austria GmbH, Zitternberg 100, A-3571 Gars am Kamp) enter into contractual relationships solely on the basis of our General Terms and Conditions. These become an integral part of any contract.

##### 1.2.

These GTC apply to the purchase of goods, the delivery of goods and, analogously, to the rendering of services. Our buyers or purchasers or customers are hereinafter mostly referred to as the “contracting partner”. We only enter into contracts with entrepreneurs (natural persons or legal entities who are not consumers as defined in the Austrian Consumer Protection Act (Konsumentenschutzgesetz, KSchG)).

##### 1.3.

These General Terms and Conditions also apply to all future business dealings even if no explicit reference is made to them in individual cases, for example in the case of future supplementary or follow-on orders. The version of our General Terms and Conditions as amended at the time the contract, supplementary order or follow-on order is entered into applies. This can be obtained from our website at <https://www.ksg-pcb.com/agb-ksgaustria>.

##### 1.4.

Any terms and conditions of the contracting partner along with any amendments or supplements to these GTC must be expressly approved by us in writing first in order to be valid.

##### 1.5.

Any actions taken by us to perform a contract do not constitute our approval to conditions deviating from our GTC. Our contracting partner agrees that, in the event that our contracting partner uses their own GTC, the GTC of our contracting partner shall not apply, even if the GTC of the contracting partner remain unchallenged.

#### **2. Offer / formation of contract**

##### 2.1.

Our offers are subject to confirmation.

##### 2.2.

A contract is only deemed to have been formed once we have sent a written order confirmation or dispatched the delivery after the order has been placed or after the order has been issued.

##### 2.3.

No warranty claims or any other form of liability may be derived from information contained in catalogues, brochures or advertising material and/or written or verbal statements that have not been expressly included in the contract.

### **3. Protection of plans and documents / confidentiality**

#### 3.1.

All plans, sketches, cost estimates and other documents such as brochures, catalogues, samples, presentations and other such documentation remain our intellectual property. Any use or exploitation thereof, in particular passing them on to other parties, duplication, publication and making them available, including copying even of extracts thereof, must be expressly approved by us.

#### 3.2.

We may ask for any of the above-mentioned documentation to be returned at any time; it must be returned to us without undue delay and without being requested if the contract does not ultimately come to fruition. This also applies to implementation documents.

#### 3.3.

At our request, any and all documents provided and implementation documents must be destroyed and proof of destruction supplied upon request.

#### 3.4.

Our contracting partner also undertakes to maintain full confidentiality vis-à-vis third parties with regard to the knowledge gained from the business relationship. This does not affect the validity of any non-disclosure agreements (NDA) that may have been signed.

### **4. Delivery**

#### 4.1.

Our delivery period begins at one of the following times, whichever is the latest:

- a) Date of order confirmation
- b) Date of fulfilment of all technical, commercial and other requirements incumbent upon our contracting partner
- c) Date on which we receive a deposit or security to be paid before delivery of the goods.

#### 4.2.

Official permits and any third-party approval required to install equipment must be obtained by the contracting partner. If such approvals are not obtained in time, the delivery period will be extended accordingly.

#### 4.3.

We are entitled to carry out and invoice partial or advance deliveries. If call-off delivery has been arranged, the goods are deemed to have been called off at the latest three months after the delivery date following the order.

#### 4.4.

In the event of unforeseeable circumstances or those independent of the will of the parties occurring, such as all cases of force majeure, which prevent compliance with the agreed delivery period, this will be extended in line with the duration of these circumstances; these include in particular armed conflicts, official

interventions and bans, transport and customs clearance delays, transport damage, energy and raw material shortages, labour disputes, hacker attacks, cybercriminal attacks, the loss of essential suppliers who are difficult to replace, and pandemics. These above-mentioned circumstances are also deemed reasons for extending the delivery period if they affect sub-suppliers.

4.5.

If a contractual penalty for late delivery was agreed upon at the time the contract was formed, it must be paid in accordance with the following provision. Any deviation herefrom in individual points does not affect its application in other respects:

Any delay in performance demonstrably and exclusively attributable to us (the contracting partner must provide proof that we are at fault) entitles the contracting partner to claim a contractual penalty of not more than 0.5%, capped at a maximum of 5% in total, of the value of that part of the total delivery in question which cannot be used as a result of the untimely delivery of an essential part, provided that the contracting partner has suffered damage in this amount.

Any further claims from the delay are excluded.

4.6.

If acceptance has been agreed, the goods are deemed accepted in full at the latest once they have started being processed or used within the scope of the recipient's business operations.

4.7.

We have the right to use subcontractors for all deliveries and service components. The contracting partner will be informed respectively thereof.

4.8.

If delivery cannot be made due to the fault of the contracting partner, the latter shall bear the costs incurred up to that point.

## 5. Transfer of risk and place of performance

5.1.

Unless otherwise agreed, the following provision applies to the transfer of risk and the price risk on the basis of the Incoterms® current at the time of entering into the contract (Incoterms® 2020 or the more recent subsequent version at the time of entering into the contract):

Deliveries to Austria and Germany: DAP

Deliveries to all other countries: FCA

5.2.

In the case of services, the place of performance is the place specified in the written order confirmation. The secondary place of performance is the place where the service is actually rendered by us.

5.3.

The risk for a service or an agreed partial service passes to the contracting partner upon its provision.

5.4.

If the dispatch, delivery, commencement, performance of installation or assembly, incorporation into operations or test operation is delayed for reasons attributable to the contracting partner or if the contracting partner is in default of acceptance for other reasons, the risk will pass to the contracting partner.

## 6. Payment

6.1.

If specific terms of payment have been agreed, these apply accordingly.

6.2.

Where this is not the case, one third of the price is due upon receipt of the order confirmation, one third at half delivery time and the remainder (remaining third) upon delivery. Notwithstanding the above, the VAT included in the invoice must be paid no later than 30 days following invoicing in each case.

6.3.

We are entitled to issue partial invoices for work performed at any time. In the case of partial invoices, the corresponding part payments are due upon receipt of the respective invoice. This also applies to settlement amounts arising due to subsequent deliveries or other agreements beyond the original final amount, notwithstanding the terms of payment agreed for the main delivery.

6.4.

Payments must be made without any deductions free of charge to our paying agent in the agreed currency. Any cheques or bills of exchange are only accepted as an undertaking to pay. Any associated interest and fees (such as direct debit and discount fees) must be borne by the contracting partner.

6.5.

The contracting partner is not entitled to withhold or offset payments on the basis of actual or alleged warranty claims or any other counterclaims.

6.6.

Payment is deemed to have been made upon actual receipt of the payment and once we are able to make free use of it.

6.7.

If the contracting partner is in default with an agreed payment or other performance arising from this or other legal transactions, we are entitled, without prejudice to our other rights,

- a) to postpone performance of our obligations under the contract until such payment or other performance has been effected and to claim a reasonable extension of the delivery period;
- b) to make all outstanding claims from this or other legal transactions due and payable and to charge the statutory interest on arrears plus VAT for these amounts from the respective due date, unless we can prove the existence of additional costs incurred (in which case the additional costs can be charged);
- c) in the event of qualified insolvency, i.e. after two instances of late payment, to perform other legal transactions only against cash in advance.

In any case, we are entitled to charge pre-litigation costs, in particular reminder fees and attorney's fees, in accordance with the legally applicable regulations in the event of default on the part of the contracting partner.

6.8.

We are entitled to send invoices electronically, in particular by e-mail.

## **7. Retention of title / assignment for security purposes**

7.1.

We retain ownership (title) of all goods delivered by us until full payment of the invoice amounts plus interest and costs.

7.2.

To secure our claim to the purchase price, the contracting partner hereby assigns to us its claim from a resale of goods subject to retention of title, even if these goods have already been processed, transformed or mixed.

7.3.

The contracting partner is only authorised to dispose of the goods subject to retention of title by way of reselling them and deferring the purchase price on condition that they also inform the second buyer of the assignment for security purposes at the time of reselling, or makes a note of the assignment in their company books.

7.4.

At our request, the contracting partner must inform us of the assigned claim together with its debtor and provide us with any and all information and documents required to recover the claim and notify the third-party debtor of the assignment.

7.5.

In the event of any seizure, distraint or other claims, the contracting partner is required to point out our ownership rights and to advise us thereof without undue delay.

7.6.

In the event of us having several claims, payments by the contracting partner will be allocated primarily to those claims which are not (or no longer) secured by a reservation of title or other means of security.

7.7.

In the event of default, we are entitled to assert our rights arising from the retention of title. It is agreed that asserting the reservation of title does not constitute rescission from the contract, unless we expressly so state.

## **8. Warranty**

8.1.

Subject to compliance with the agreed terms of payment, we are required, in accordance with the following provisions, to remedy any defect affecting the functionality which exists at the time of handover and which

is due to a defect in the material or manufacturing. No warranty claims may be derived from information contained in catalogues, brochures, or advertising material or from written or oral statements that have not been expressly included in the contract.

8.2.

The warranty period for our deliveries and services is one year. The warranty period commences at the time of the transfer of risk in accordance with Item 5 of these General Terms and Conditions.

8.3.

If delivery or performance is delayed for reasons beyond our control, the warranty period will commence two weeks after our readiness to deliver or perform.

8.4.

A warranty claim requires the contracting partner to have notified us in writing without undue delay of the defects that have occurred and that we have received said notification.

8.5.

Defects that the contracting partner has discovered or should have discovered by way of inspection in the normal course of business upon delivery or handover must be notified to us in writing without undue delay, no later than within a period of five working days after handover, and proof thereof must be supplied. Hidden defects must also be reported and proven within this reasonable period of ten days from the time of discovery. The contracting partner must in particular provide us with the documents or data available to them.

8.6.

Remediating a defect alleged by the contracting partner does not constitute acknowledgement of this defect alleged by the contracting partner.

8.7.

If the contracting partner's allegations of defects are unjustified, the contracting partner will be required to reimburse us for the expenses incurred in determining that the goods are free of defects or in remediating the defects.

8.8.

The contracting partner must allow us at least two attempts to remedy the defect within a reasonable period of time.

8.9.

If there is a defect subject to warranty as per Item 8.1 of these General Terms and Conditions, it will be at our discretion whether to repair the defective goods or the defective part at the place of performance, to have them sent to us by the contracting partner for the purpose of repair, or to reduce the price to an appropriate extent.

8.10.

For warranty work performed at the contracting partner's premises, the latter must provide the support staff and incidentals needed to remedying the defect quickly in the interests of both parties. No costs will be reimbursed for this. Any replaced parts become our property (for analysis or research purposes).

8.11.

If goods are manufactured by us on the basis of design data, drawings, models or other specifications originally attributable to the contracting partner or provided by the latter for manufacturing purposes, our liability only extends to execution as per the conditions.

8.12.

Unless expressly agreed otherwise in writing, excluded from the warranty are any defects arising from instructions and assembly not issued and carried out by us, improper set-up, failure to comply with the installation requirements and conditions of use, subjecting the parts to stress levels exceeding those specified by us, negligent or incorrect handling, and use of unsuitable operating materials; this also applies to defects attributable to materials provided by the contracting partner.

8.13.

We are not liable for damage caused by the actions of third parties, atmospheric discharges, overvoltage and chemical influences. The warranty does not cover the replacement of parts that are subject to natural wear.

8.14.

The warranty or any right to assert warranty claims expires immediately if the contracting partner themselves or a third party not expressly authorised by us makes changes or repairs of any kind to the delivered items or the work without our written consent.

## 9. Responsibility for defects on legal grounds other than warranty

The provisions of Items 8.1. to 8.14. apply analogously to any liability for defects on other legal grounds.

## 10. Liability

10.1.

We are liable for damages within the scope of the statutory provisions, with said liability being limited to intent or blatant gross negligence with the exception of personal injury. This degree of fault must be proven to us in each case.

10.2.

Unless otherwise agreed, liability for simple gross and slight negligence, in each case with the exception of personal injury, is excluded.

10.3.

Our total liability in cases of blatant gross negligence is limited to the net order value or to EUR 200,000, whichever is lower. Per case of damage our liability is limited to 25% of the net order value or EUR 75,000, whichever is lower.

10.4.

Furthermore, any compensation for consequential damages, consequential damages caused by a defect, purely economic losses, indirect damages, loss of production, financing costs, costs for replacement energy, loss of energy, data or information, loss of earnings, unrealised savings, loss of interest and damages from third party claims vis-à-vis the contracting partner are excluded in their entirety.

10.5.

Unless otherwise agreed, any compensation for damages is excluded where there is any non-compliance (even partially) with any conditions or instructions for use (such as contained in operating instructions) as well as where there is any non-compliance (even partially) with conditions for official or any other such approval.

10.6.

Any further claims of the contracting partner under the respective title are excluded where a contractual penalty has been agreed.

10.7.

The definitive provisions of Items 10.1 to 10.6 apply to all claims of the contracting partner against us, irrespective of the legal basis and title, and also apply to all our employees, subcontractors and sub-suppliers.

10.8.

Any claims for regress asserted against us by the contracting partner or third parties on the basis of product liability as defined by the Product Liability Act (Produkthaftungsgesetz, PHG) are excluded unless the party asserting such a claim for regress can establish that the error was caused by us or was at least the result of blatant gross negligence.

10.9.

If we provide a service on the basis of design information, drawings, models or other specifications provided by the contracting partner, the latter shall indemnify and hold us harmless in the event of any infringement of industrial property rights.

## **11. Exclusion of laesio enormis, error and frustration of contract**

Any assertion of claims by the contracting partner due to laesio enormis, error and frustration of contract shall be excluded.

## **12. Rescission of the contract**

12.1.

The contracting partner may – unless a more specific provision has been made – only rescind the contract if there is a delay in delivery which is attributable to serious fault on our part and the reasonable period of grace set by the contracting partner has subsequently expired to no avail. Rescission must be declared by means of a registered letter.



12.2.

Irrespective of our other rights, we are entitled to rescind the contract

- a) if it becomes impossible to perform the delivery or start or continue rendering the service for reasons attributable to the contracting partner or if this remains the case despite an appropriate grace period being set,
- b) if doubts have arisen regarding the solvency of the contracting partner and the contracting partner fails to make an advance payment at our request or to provide suitable collateral prior to delivery or performance,
- c) if the delivery period extended for circumstances listed in Item 4.4. of these GTC amounts to more than half of the originally agreed delivery or performance period, but at least six months, or
- d) if the contracting partner does not (properly) fulfil the obligations incumbent on them under Item 14 of these GTC (compliance with export regulations).

12.3.

Rescission may also be declared with regard to an outstanding part of the delivery or service for the above reasons.

12.4.

If insolvency proceedings are instituted against the assets of the contracting partner or if an application for the institution of insolvency proceedings is rejected for lack of sufficient assets, we are entitled to withdraw from the contract without setting a grace period. If such rescission is declared, it will become effective immediately once the decision is made not to continue the company. If the company is continued, rescission will only become effective six months after the insolvency proceedings have been instituted or after the application has been rejected for lack of assets. In any case, the contract will be terminated with immediate effect, unless this is precluded by the insolvency law to which the contracting partner is subject or if cancellation of the contract is indispensable to prevent us from suffering serious economic disadvantages.

12.5.

Without prejudice to our claims for damages and other claims, including the claim to pre-litigation costs, any services or partial services already rendered must be settled and paid as stipulated in the contract in the event of rescission. This also applies insofar as possession of the delivery or service has not yet been taken by the contracting partner as well as where we have made preparations. In lieu thereof, we are also entitled to demand the return of items already delivered. This also applies analogously to individual parts of the delivery or service.

12.6.

Other consequences of the rescission are excluded.

### **13. Assertion of claims**

Any and all claims of the contracting partner vis-à-vis us must be asserted in court within three years of the performance of the services at the latest, unless shorter periods are agreed in these General Terms and Conditions or in the contract, failing which the claim will be forfeited, unless other periods are stipulated in mandatory statutory provisions.

#### **14. Compliance with export regulations**

##### 14.1.

The contracting partner must comply with the applicable provisions of national and international (re-)export regulations when forwarding the goods delivered by us and the associated documentation to third parties, irrespective of the manner in which they are made available or the services provided by us, including technical support of any kind. The contracting partner must always observe and comply with the respective (re-)export regulations when passing on the goods or services to third parties.

##### 14.2.

Insofar as required for export control inspections, the contracting partner shall, upon request, immediately provide us with all the relevant information, including about the final recipient, final destination and intended use of the goods or services.

#### **15. Applicable law**

These General Terms and Conditions and the entire legal relationship between us and the contracting partner are governed by Austrian law, to the exclusion of the UN Sales Convention and to the exclusion of referral norms. The application of the UN Convention on Contracts for the International Sale of Goods of the United Nations Commission on International Trade Law (UNCITRAL) is also excluded.

#### **16. Place of jurisdiction**

The court with subject-matter jurisdiction for our registered office in the district of the Regional Court of Krems an der Donau is exclusively competent to decide on any and all disputes arising from the contract including the GTC, including those about the existence or non-existence of the contract or parts thereof.

#### **17. Priority of the German language version of these GTC**

Where these GTC are translated into other languages, the German language version of these GTC are deemed to be the authentic version of the GTC, meaning that only the German language version may be used when interpreting the contract.

#### **18. Severability clause**

If individual provisions of these GTC are or become void or ineffective, this shall not affect the validity of the remaining provisions. Any such void or unenforceable provisions will be replaced by provisions which come closest to the original intent and result of the provision to be replaced.



## **19. Reservations clause**

The fulfilment of the contract by us is subject to the proviso that no obstacles due to national or international (re-)export regulations, in particular no embargoes and/or other sanctions, stand in the way of contract performance.