

GENERAL TERMS AND CONDITIONS

of koenig-pa GmbH
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§ 1 Applicability

koenig-pa GmbH (hereinafter the “Contractor”) will prepare offers and perform services for any contracting partner (hereinafter the “Client”) solely on the basis of the following General Terms and Conditions. Any General Terms and Conditions of the Client providing to the contrary do not apply. This also applies to cases in which there is no further explicit refusal of the Client’s General Terms and Conditions.

§ 2 Inclusion

The Contractor’s General Terms and Conditions are available for examination at its offices, but will also be sent to the Client in writing upon request. Additionally, they may be downloaded online from the Contractor’s Web site.

By signing the contract, the Client indicates that it consents to the application of the following Terms and Conditions, and that it has had an opportunity to take cognizance of their content. If the Contractor’s General Terms and Conditions are amended, the Client will be sent the amended terms.

The Client will have the option of either acknowledging the amended terms by signing and returning the originally signed Terms and Conditions, or terminating the contract on one month’s notice.

In the latter case, the original Terms and Conditions will apply until the notice period expires.

§ 3 Offer and Formation of Contract

3.1 The Contractor shall be bound by its offer for a term of 6 weeks. The offer may be accepted only in unaltered form, within 6 weeks of its delivery.

The content of the contract shall be defined by the written order confirmation or the commercial letter of confirmation.

Oral agreements may be reached only with the Contractor’s Managing Director.

§ 4 Goods and Services – Delivery Deadlines

4.1 The written order confirmation shall govern the scope of the obligation to provide goods or services.

4.2 The Contractor shall be entitled to perform partial deliveries if the Client can reasonably be expected to accept them.

4.3 The Client is aware that the Contractor outsources some services to third parties. The Client agrees thereto.

4.4 If delivery periods are agreed upon, a prerequisite for compliance is that the Client must comply promptly and in full with its obligations to cooperate. If this is not the case, and necessary information or documents to be provided by the Client are not received by the Contractor within 1 week after being requested, the delivery period shall be extended by

the amount of time that elapses between the expiration of that week and the actual delivery of the documents.

Should any of the Client's specifications be technically unfeasible, the Contractor will notify the Client without delay. The Client must cooperate in amending the specifications in such a way as to make technical implementation feasible.

In that case, the delivery period shall be extended by the amount of time that elapses between the Contractor's notification and the joint arrival at a result in discussions on technical implementation.

In addition, the Contractor's performance period shall also be extended if meeting the deadline becomes impossible for a reason for which the Contractor is not at fault, including but not limited to strikes, lockouts, force majeure, etc. The same shall apply if performance is delayed by changes in the laws or government regulations.

4.5 If the impediment lasts for more than 3 months, the Client shall be entitled, after setting a fair and reasonable grace period, to withdraw from the contract in whole or in part.

4.6 If shipping is necessary, the Contractor's performance has been performed and is concluded upon surrender to the shipping agent. The Client shall assume the costs and risk of transport.

4.7 The Client agrees to inform the Contractor in a timely manner which shipping agent to release the goods to. If the Client does not provide this information, or is otherwise dilatory in performing acceptance, the Contractor shall be liable only in cases of willful misconduct or gross negligence.

§ 5 Ownership and Intellectual Property Rights

5.1 The goods to be supplied by the Contractor shall remain the Contractor's property until they have been paid for in full.

5.2 Software, including but not limited to source and object programs, the associated data storage media, organizational, documentary and instructional documentation, shall remain the property of the Contractor, unless explicitly agreed otherwise in the software agreement, and are covered by copyright.

5.3 The Client shall use the software solely within the bounds indicated at the signing of the contract. Further release or multiple use by the Client is prohibited.

5.4 The Client is entitled to use the programs solely for their intended purpose, and agrees not to make them available to any third party. No further rights are assigned. The Client is not permitted to rent out, lease, lend or otherwise distribute the object code of the programs to third parties.

5.5 The Contractor is entitled to use the programs elsewhere as well, unless this would constitute a breach of confidentiality.

§ 6 Acceptance/Defects

6.1 The Client agrees to perform formal acceptance of the Contractor's performance by sending a written confirmation of acceptance, which the Client is obligated to provide as long as the work presents no defects or only minor defects.

6.2 The declaration of acceptance must be made no later than 5 weeks after the goods are received by the Client, unless the Client is entitled to refuse acceptance.

If the Client wrongfully refuses acceptance, or does not declare acceptance, the equivalent of acceptance shall be deemed to have occurred if the Client fails, despite the obligation to do so, to accept the work within a fair and reasonable period set for the Client by the Contractor (§ 640 (1) Sentence 2 German Civil Code [BGB]).

6.3 It shall be the Client's affair to put the programs to their first use. This use shall include the Client's checking the programs under its operating conditions before putting the programs into production.

In particular, the Client will also check programs and parts of programs that are to be used only occasionally.

6.4 If the Client has complaints about defects, these complaints must be made without delay, in conformity with § 377 of the German Commercial Code [HGB].

The Client shall be entitled to claims arising from reported defects only if these defects are reproducible or can be revealed by machine-generated outputs.

The complaint about defects must be submitted in writing, in logically comprehensible form, stating the useful information for tracing the defect.

So far as can reasonably be expected, the Client must support the Contractor in correcting defects, and especially, at the Contractor's request, must transmit the program as it was being used at the time when the defect occurred, and must make the operating environment available; the Client must furthermore install and test corrective measures provided by the Contractor.

6.5 The Contractor shall provide reworking, at its own discretion, either by correcting defects or by supplying a replacement within a reasonable time.

In the case of defects that seriously impede the use of the program, if needed the Contractor will provide a work-around before the final correction of the defect, so that the defect no longer has serious effects.

6.6 If the Client alters the programs sent by the Contractor, the Contractor shall owe reworking only to the extent that the Client can prove that the defects are not connected with the alteration.

6.7 Otherwise, the Client shall have the rights regarding defects as provided under the 2002 Version of the German Civil Code, except as restricted under § 10 of this Agreement (Liability Limitation/Exclusion of Withdrawal).

§ 7 License Terms

Each license is granted exclusively for use on one unit of hardware, upon delivery of registration codes. Circumventing the registration codes is prohibited, as is the use of registration codes not provided by the Contractor.

§ 8 Prices

8.1 The prices stated in the order confirmation are the definitive prices. These prices are understood not to include costs of packaging and shipment. They also do not include value-added tax in the amount specified by law.

8.2 The list prices pursuant to the offer shall apply unless agreed otherwise.

8.3 Package discounts apply only for the purchase of the associated packages; no package discount will apply for the piecemeal acquisition of individual components.

8.4 Reimbursement of expenses will be claimed for necessary travel (to perform the order or to the Client's location). The amounts will be the current values applicable at the time of formation of the contract, as specified by the Federal Ministry of Finance in accordance with the Regulations on Travel Expenses [*Reisekostenverordnung*].

§ 9 Payment / Discounts

Payment shall be due on acceptance, pursuant to § 6 d hereof, or, if applicable, at the point in time equivalent to acceptance (see § 6 No. 2 Sentence 2 hereof).

9.1 Any deduction of discounts must be agreed upon explicitly in the contract.

9.2 As of the moment when payment falls into arrears, the Client shall pay late interest of 8 percentage points above the applicable base interest rate, on any amount still unpaid. The Contractor reserves the right to assert claims for further losses or damage.

9.3 If the Client is in arrears in payment, the Contractor shall be entitled to postpone any unperformed deliveries under the same order, or others, until the outstanding amount in arrears from the Client has been paid, and effective immediately, to perform future deliveries only on a cash-in-advance or cash-on-delivery basis.

§ 10 Reservation of Ownership

10.1

All goods supplied by the Contractor shall remain the Contractor's property until all amounts payable under the business association have been paid in full.

In the event that the Client falls into arrears in payment, the Contractor shall be entitled to withdraw from the contract and take back the objects, and the Client shall be required to surrender them.

The Client shall pay the resulting costs.

10.2

The Client may neither resell the goods subject to this reservation, nor assign them as collateral, nor allow them to be subjected to liens.

10.3

In the event of seizure by third parties, the Client must notify the Contractor without delay, sending the Contractor all documentation the Client has available.

§ 11 Liability Limitation / Exclusion of Withdrawal

11.1

The Parties agree that any claims resulting from injury to life, limb or health, and liability for other loss or damage resulting from a grossly negligent breach of duty on the part of the Contractor, or from a willful or grossly negligent breach of duty on the part of a legal representative or agent of the Contractor, shall apply without limitation in accordance with German law.

If liability for other loss or damage results from ordinary or slight negligence, damages shall be limited to the value of the order as the maximum amount.

11.2

The Contractor shall also not be liable for lost data or losses or damage resulting from incomplete or nonexistent data backup on the part of the Client. The Client's attention is drawn to the fact that the Client must back up data inventories prior to maintenance, servicing and installation work, in order to avoid possible loss or damage. Also excluded from liability are losses or damage caused by computer viruses, unauthorized access via the Internet or data lines (hackers), operating system errors, and so-called standard software (e.g., Microsoft Office).

11.3

Withdrawal by the Client in the event of a breach of duty for which the Contractor is not at fault is excluded.

§ 12 Time Bar

The time bar for the Client's defect claims against the Contractor shall be 12 months after acceptance or after expiration of the period under § 6 No. 2 Sentence 2 hereof, as the case may be.

Other contractual claims for damages shall be time barred 12 months after the claim arises and is brought to the Contractor's attention, unless shorter time bars are set by law.

§ 13 Confidentiality

The Contractor agrees to use only for the performance of the contract any knowledge it obtains, through the contractual relationship, in regard to business secrets or any of the Client's information identified in writing as confidential, and to treat such knowledge as confidential without limitation as to time.

The obligation of confidential treatment shall not apply for the ideas, designs, know-how and techniques relating to the production of the program, or for data already known to the Contractor or that was already known or becomes known outside the context of this Agreement.

§ 14 Choice of Law and Jurisdiction / Place of Performance

14.1

The Parties agree on the domicile of the Contractor's permanent establishment as the place of performance for all performances owed between the Parties. This place of performance shall also be deemed agreed as the place of performance within the meaning of Article 5 of the Regulation of the Council of the European Union on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters.

14.2

The Parties agree that German law shall apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

14.3

The Parties agree upon the domicile of the Contractor as the place of performance, and on the German court of competent jurisdiction for the obligation at issue as the jurisdiction.

§ 15 Severability Clause / Controlling Version

15.1

Should individual provisions of the contract be or become invalid, the remainder of the contract shall be unaffected thereby. A legally permissible provision under German law shall replace the invalid provision.

15.2

In any case of doubt as to interpretation in regard to a translation into another language, the German text shall prevail.