

## **1. Scope**

1. These General Terms and Conditions of Purchase shall apply to all contracts, declarations of contract, goods and services provided to KERPEN DATACOM GmbH (hereinafter "KERPEN"), unless otherwise expressly agreed. The General Terms and Conditions of Purchase shall apply also to all future provision of goods and services or offers made to KERPEN even if no separate further agreement has been entered into in respect thereof. However, these General Terms and Conditions shall not apply to consumers within the meaning of § 13 of the German Civil Code (BGB).

2. Any general terms and conditions of the Supplier shall not apply even where KERPEN has not separately objected to them in any individual case. Even if KERPEN refers to any letter or writing containing or referring to the general terms and conditions of the Supplier or of a third party, this shall not constitute consent to the application of such general terms and conditions. The same shall apply correspondingly with respect to acceptance of goods or payments.

## **2. Contract Formation**

1. Contracts for the supply of goods (order and acceptance) shall only be valid if they are in writing. If, in any individual case, the Parties make other arrangements and agreements, such arrangements or agreements must be confirmed in writing in detail without delay. Offers by the Supplier must correspond to KERPEN's enquiry or must contain express references to any departures therefrom. Offers by Suppliers shall be free-of-charge to KERPEN.

2. KERPEN shall be bound by orders it places for the period of one week. Call-off orders for the supply of goods shall be binding if the Supplier has not objected thereto by the end of one week from the date of receipt thereof at the latest.

3. Prior to delivery of goods and services, KERPEN may demand changes in respect of the subject-matter of contract, quantities, and the design thereof, provided that this is not unreasonable to the Supplier. Insofar such changes impact on costs or deadlines, the Parties shall reach an appropriate agreement with respect thereto. Call-off orders for the supply of goods may also be transmitted by means of remote data transmission.

## **3. Prices and Terms and Conditions of Payment**

1. The prices stated in KERPEN's order shall be binding and in each case are stated net of the statutory amount of VAT. They shall be deemed to include all of the ancillary goods and services of the Supplier, in particular, they shall be deemed to include packaging and delivery free KERPEN's business offices/agreed point of delivery unless the Parties expressly agreed otherwise in writing.

2. Payment terms shall be the subject of separate agreements of the Parties. The payment period shall in each case begin to run as soon as the goods or services have been fully supplied and KERPEN has received a proper invoice for such. The invoice must correspond to the valid requirements as to invoices under the law of the countries whose VAT law applies to the goods/services invoiced. Payments are made subject to reservation of the right to review the invoice.

3. The Supplier shall only be entitled to exercise a right of set-off or retention if its counterclaims are undisputed or have been determined by the res judicata court decision. Any right of retention on the part of the Supplier shall be limited to claims arising out of the specific contract in question. Assignment or collection of receivables against or from KERPEN by third parties is prohibited, except if such claims arise out of deliveries of goods with an extended reservation of title.

## **4. Deliveries of Goods, Delivery Periods and Passage of the Risk**

1. Goods and services shall be provided in general at KERPEN's place of business by the Supplier itself/from the Supplier's own production. Partial deliveries of goods or services shall not be permissible without KERPEN's consent.

2. Delivery times indicated in the order are calculated from the date the order is placed and are binding. Delivery times are deemed completed upon KERPEN's receipt of the goods at KERPEN's or at such point of delivery as KERPEN has indicated, in the case of contracts for goods and services, they are deemed completed on the date of formal acceptance thereof. In cases of default, KERPEN shall be entitled to demand lump-sum liquidated damages equal to 25% of the contract sum for losses/additional expenses incurred as a result of any delay in providing the goods and services; KERPEN reserves the right to provide proof of higher amounts of damages. The Supplier shall be at liberty to provide evidence of the lack of damages or of a lesser amount of damages. KERPEN reserves the right to provide evidence of a greater amount of damages and to assert a claim for such.

3. If the Supplier fails to provide the goods or services within the agreed delivery period, KERPEN shall be entitled to set a 14-day grace period for the Supplier's performance. In such cases, if such period has elapsed to no avail KERPEN shall be entitled to withdraw by written declaration from the contract, and to demand compensatory damages in lieu of specific performance. KERPEN is entitled to assert claims for compensatory damages in a lump-sum amount. Such lump-sum compensatory damages shall in such case equal 35% of the contract sum, against which any compensatory damages previously claimed pursuant to section 4.3 hereof shall be credited. The Supplier shall be at liberty to provide evidence of the lack of any losses or of a lower amount of losses. KERPEN reserves the right to provide evidence of a greater amount of losses and to assert a claim for the same.

4. The rights to goods and services shall be vested exclusively in KERPEN.

5. If KERPEN does not itself carry out shipping, the risk shall pass – irrespective of the mode of shipping – at such time as the goods are handed over to KERPEN at its place of business or agreed point of delivery.

## **5. Reservation of Title, Provision of Tools and Means of Production**

1. If KERPEN provides the Supplier with tools, models, patterns or other means of manufacturing and production, title thereto shall be vested in KERPEN and KERPEN expressly reserves its rights therein. The Supplier shall label the property of KERPEN as such. Such items shall be exclusively for use in performing the contract with KERPEN. The Supplier shall perform processing or conversion for and on behalf of KERPEN. In cases of processing or use thereof, KERPEN shall acquire co-ownership in the new item of property on a pro rata basis, in the same ratio as the value of the item of property provided has to the other items processed at the time of such processing. The Supplier shall safeguard the item of property in which KERPEN has co-ownership for KERPEN free-of-charge.

2. In the event of a deterioration in the financial circumstances of the Supplier or in the event of a breach of the Supplier's obligations arising out of the reservation of title for which the Supplier bears fault, in particular in the event of use of the reservation of title goods in breach of contract and in the event of termination of contract, KERPEN shall be entitled to demand surrender of the means of manufacturing and production provided to the Supplier.

3. For the term of the reservation of title, the Supplier shall not be entitled, only with KERPEN's prior written consent, to alienate, pledge, pledge by way of security, rent or in any other manner to grant a right of use in means of production provided by KERPEN or other means of production owned by KERPEN, or to modify the same in such a way that any of these actions could impair KERPEN's security interests. If third parties interfere with means of manufacturing and production constituting the property of KERPEN (in particular: if third parties attach such property or assert an entrepreneurial lien), the Supplier shall point out to such third parties KERPEN's status as owner thereof and inform KERPEN thereof without delay. The Supplier shall bear the costs of eliminating the third-party interference and of procuring replacements for the means of manufacturing and production.

## **6. Confidentiality, Information Security and Supply Chain Security**

1. The Supplier hereby undertakes to treat as business secrets all commercial and technical details which are not publicly known, and which come to its knowledge as a result of its business relationship with KERPEN. Any documents, information, samples, pre-printed material, drawings, models, tools and other means of production the Supplier receives from KERPEN's sphere shall remain KERPEN's property. To the extent that they are labelled as "confidential" or, based on other circumstances, are discernibly KERPEN's business or trade secrets, the Supplier shall preserve confidentiality therein, including beyond the end of the specific supply relationship and shall neither record them, use them nor disclose them to third parties without KERPEN's consent, unless this is necessary in order to achieve the purposes of the Parties' contract. The foregoing shall also apply in respect of works undertaken by means of remote data transmission and to goods manufactured in accordance with such documentation. The Supplier shall likewise impose the corresponding obligations on its staff, vicarious agents and sub-suppliers, as well.

2. Models, matrices, patterns, samples, tools, other means of production and confidential information KERPEN provides to the Supplier or for which KERPEN has paid may only be used for goods and services delivered to third parties with KERPEN's prior written consent.

3. The Supplier has to take appropriate information security measures that at least comply with the requirements of the VDA ISA catalog or ISO / IEC 27001. KERPEN is entitled to assure itself of the extent and condition of these security measures at any time, unless there is appropriate evidence from the Supplier (e.g. TISAX).

4. The Supplier shall ensure supply chain security and complies with all applicable laws and regulations.

## **7. Quality and Documentation**

1. The Supplier shall deliver the goods or perform the services, while continuing to comply with all laws and regulations applicable to its performance. In particular, the Supplier shall ensure that its goods or services conform to the current applicable statutory and regulatory requirements of the country of receipt, the country of shipment and the customer-identified country of destination.

2. The Supplier shall comply with the current acknowledged rules of technology, safety rules and the agreed technical data in each case with respect to its goods and services. Changes and modifications to the contract goods and services shall require KERPEN's prior written consent.

3. With respect to the inspection of initial samples, the VDA Volume 2 - "Quality Assurance of Supplies", Frankfurt am Main, 5th Edition, November 2012 or the AIAG PPAP Manual, 4th Edition 2006 shall control. Independent of this, the Supplier shall verify the quality of the contract goods and services on an ongoing basis. The Parties shall mutually inform one another regarding the potential for improvements of quality.

4. The Supplier shall retain the inspection and testing documentation for a period of fifteen (15) years following completion of the production run or, in cases in which the Parties have contracted for the supply of spare parts, for a period of 15 years from the expiry of the duty to supply spare parts, and shall produce the same to KERPEN whenever necessary. The Supplier shall impose an obligation of the same scope and extent on any sub-contractors and sub-suppliers to the best of its legal abilities

5. The Supplier shall maintain a certified quality management system according to DIN EN ISO 9001, which it must retain during the entire supply relationship with KERPEN. If according to a quality assurance agreement the Supplier is obliged to adhere to further quality management standards (e.g. IATF 16949) or is certified according to such further quality management standards, Supplier shall ensure its compliance with such standards. The Supplier shall promptly report any loss, disruption, change or repeal of its certification to KERPEN. The Supplier shall warrant that its entire processes meet the requirements of the abovementioned quality standards, which form an integral part of the supply contract with KERPEN. Furthermore, the Supplier is obliged to undertake an outgoing goods inspection of the goods before delivery.

6. KERPEN and third parties designated by KERPEN (e.g. customers, consultants and public authorities) are entitled to obtain information on the Supplier's production and quality assurance measures and, following prior notice and agreement, to carry out system, process or product audits. The Supplier shall grant access to the Supplier's operational facilities to KERPEN and third parties designated by KERPEN (who shall be subject to a duty of confidentiality), and shall allow them to inspect the documents and records relating to the supplier-client relationship or the goods to be supplied. This right of access and inspection shall be limited to the areas necessary and shall be exercised in a manner which preserves the Supplier's business secrets and entails the least adverse impact on the Supplier's business operations during normal business hours. The Supplier undertakes to ensure that KERPEN and, to the extent necessary, such third parties as KERPEN shall designate, will be able to obtain such information and carry out such audits at the Supplier's sub-suppliers, as well. KERPEN's contractual and statutory rights shall not be affected by the performance of audits.

## **8. Competitiveness**

In respect of the technical requirements, the quality of the goods and services and reliability of supplies as well as price, the contract goods and services must be capable of facing objective competitive comparisons throughout the term of this agreement. To such extent, KERPEN shall be entitled to review and verify the competitiveness of the goods and services on the market and, in respect of this, to refer to documentation from the Supplier for purposes of the comparison.

## **9. Intellectual Property Rights**

1. The Supplier warrants that the goods and services neither infringe any intellectual property rights of third parties nor any published applications of such rights.

2. The Supplier shall indemnify KERPEN and its customers and hold them harmless against all claims arising from the use of such intellectual property rights.

3. The foregoing shall not apply wherever the Supplier has manufactured the contract goods pursuant to drawings, models or other equivalent descriptions or details provided by KERPEN and does not know or, in connection with the goods developed by the Supplier, could not have known that this would result in infringements of intellectual property rights.

4. The Parties hereby undertake to advise each other without delay of any risks of infringement and alleged instances of infringement of which they become aware, and shall cooperate in defending such claims.

5. The Supplier, upon KERPEN's request, shall notify KERPEN in writing of the use of published and unpublished intellectual property rights of its own or licensed from third parties and of intellectual property rights applications with respect to the contract goods and services.

#### **10. Incoming Goods Inspection**

1. KERPEN shall inspect the goods for any obvious defects without undue delay following delivery. This inspection should consist of a random visual check, an inspection whether the goods correspond to the ordered quantity and type, as well as an external inspection of the packaging for any noticeable damage occurred during shipment.

2. Provided the Supplier has committed itself to undertaking an outgoing goods inspection, KERPEN shall, on receipt of the goods, only examine the goods for any apparent damage occurred during shipment, and verify the correctness of the quantities and types of the items on the basis of the shipping documents.

3. Any defects discovered during the inspections pursuant to sections 10.1 and 10.2 shall be reported without undue delay. If this refers to a defect which was not noticeable at the abovementioned incoming goods inspection, the defect must be reported within two weeks following its discovery. Beyond the obligation indicated in sections 10.1 to 10.3, KERPEN shall have no further obligations towards Supplier concerning checking the goods at delivery and any notification resulting therefrom. In this respect, the Supplier hereby waives its objection in the event of late notification of defects.

#### **11. Liability for Defects**

1. Unless otherwise agreed, the following shall apply: Claims for defects shall be deemed prescribed 36 months from the date of handing over pursuant to section 4.6. In the case of defects which are discovered prior to commencement of production (processing or fitting/installation), the Supplier shall also be given the opportunity to remediate defects, except if this is unreasonable to KERPEN. If the Supplier is unable to perform such remediation or fails to do so without delay, KERPEN may then withdraw to such extent from the contract without the need to set any further grace periods, and return the goods to the Supplier at the Supplier's risk. In urgent cases, KERPEN shall be entitled, following consultation with the Supplier, to remediate the defects itself at the Supplier's expense or to instruct a third party do so on its behalf. KERPEN's right to claim damages shall be unaffected hereby. If the same goods are found repeatedly to be defective, after giving a written warning upon receipt of goods which are once again found to be defective, KERPEN shall also be entitled to withdraw from further contracts which have not yet been performed, and to demand compensatory damages for breach in respect thereof. KERPEN's right to assert further claims shall remain unaffected hereby.

2. If the Supplier, in discharging its duty to remediate defects, remediates a good or supplies a replacement, the periods referenced in section 11.1 shall begin to run anew in respect of such defect.

3. The Supplier shall support KERPEN free-of-charge in defending against any and all claims for product or manufacturer liability and shall indemnify and hold KERPEN harmless against such claims and against any and all costs of defending against them, wherever the legal action is based on a good or good component of the Supplier. To the extent that causation is only partial, such indemnification shall be made pro rata in proportion to the ratio of causation.

4. The Supplier shall have no claims for compensatory damages except if the losses are due to injury to life, limb or health, for which KERPEN is responsible, or other losses based on a grossly negligent or intentional breach by KERPEN of its obligations, or by its statutory agents or vicarious agents or if they are caused by fraudulent acts of any of the foregoing. In cases of slight negligence resulting in a breach of a contractual duty, the performance of which is a sine qua non of the performance of the contract and on which the Parties would ordinarily be entitled to rely, any claims for damages shall be limited to such losses as are typical for the contract and foreseeable.

5. In respect of mitigation action by KERPEN (e.g. product recalls), the Supplier shall be liable in proportion to its share of causation.

#### **12. Subcontractors and sub-suppliers**

1. The Supplier shall in general manufacture the goods itself. The involvement of subcontractors and sub-suppliers shall not be permissible without KERPEN's consent.

2. In case the Supplier procures deliverables or services for the manufacturing of the goods from third parties ("subcontractors") or in case the Supplier procures the goods from third parties ("sub-suppliers"), the Supplier shall continuously monitor that these deliveries or services are free from defects.

3. In case KERPEN raises claims against the Supplier due to defective goods and should these claims be subject to a fault (Verschulden) of the Supplier, the Supplier shall also be liable for fault (Verschulden) of sub-contractors and sub-suppliers to the same extent as for own fault (Verschulden).

#### **13. Substances and Material Data Management**

1. The Supplier shall ensure the traceability of all substances used in the delivered goods, in parts of these goods or in the manufacture of these goods or parts of these goods. Upon request, the Supplier has to provide KERPEN with the relevant documents and information in a suitably appropriate form.

2. For all goods supplied to KERPEN, the Supplier shall observe and comply with any national, European and international regulations governing declarable substances, materials or producer sources valid at the time of delivery and applicable to the goods. This applies for example to the requirements of the Regulation (EC) No. 1907/2006 (REACH), the Directives 2011/65/EU and 2015/863/EU (RoHS II) and the Regulation (EU) No. 528-2012 (BPR). If KERPEN and the Supplier separately agree to meet additional requirements, these shall also be part of the respective supply contract. If an ingredient used, material used or any Supplier source becomes subject to declaration duty or being banned, the Supplier shall notify KERPEN thereof immediately. The

Supplier is also obliged to disclose the use of conflict minerals in accordance with the requirements of Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act as well as the Regulation (EU) 2017/821 (3TG) and applicable regulations connected thereto and to provide KERPEN with the relevant documents and information in the form desired by KERPEN.

3. For goods intended for the use in the automotive industry, to the knowledge of the Supplier or following notification from KERPEN, the Supplier must keep the material data in the IMDS (International Material Data System, [www.mdssystem.com](http://www.mdssystem.com)) and make it available to KERPEN.

4. Unless otherwise complying with legal requirements, the delivered goods must not contain any components that are hazardous to health or harmful to the environment. If the goods contain dangerous substances or preparations, the Supplier must provide KERPEN with a fully completed safety data sheet in accordance with the applicable statutory provisions.

#### **14. Export Control, Customs and Origin**

1. The Supplier shall inform KERPEN of all export restrictions that apply in the country of manufacture and / or shipment of the goods. In addition, the Supplier shall inform KERPEN if the goods are subject to any export/re-export restriction under U.S. law. To the extent that the Supplier is located in the European Union, the Supplier shall inform KERPEN of any export restrictions on dual-use goods in accordance with the European export control restrictions (e.g. Regulation (EC) No. 428/2009 (Dual-Use)). The Supplier also shall inform KERPEN of the classification number to be specified (e.g. AL number, ECCN number for US products, etc.) and any existing exemptions on the respective invoices and/or delivery notes.

2. The Supplier shall support KERPEN to reduce or minimize its liability to pay customs duties. The Supplier shall –if applicable- provide a proof of preferential origin suitable to the respective supply of goods (e.g. EUR1, invoice declaration, etc.). Proof of origin is required with every such shipment. Upon request, the Supplier shall provide proof of non-preferential origin if required by the local import rules in the country of import (e.g. Certificate of Origin, exporter declaration, etc.). The Supplier shall inform KERPEN immediately in writing of any change of origin of the goods.

3. The Supplier shall inform KERPEN of the non-preferential and preferential origin of its goods on a yearly basis in form of a long-term supplier's declaration / supplier's affidavit. The Supplier shall submit the required information and documentation to KERPEN's respective import/export department.

4. The Supplier shall ensure proper labelling of the goods and provide KERPEN with any further documents and information (e.g. CE-Certificate, manufacturer information, country of origin etc.) being required for imports or exports of the goods supplied to KERPEN. The Supplier shall provide KERPEN with such documents and information immediately and at Supplier's cost.

#### **15. Social Responsibility**

1. It is of major importance to KERPEN that account is taken of social responsibility in connection with its supplier relationships and entrepreneurial activities. This applies likewise in respect of KERPEN's own staff, the staff of its contracting parties and suppliers and society at large.

2. However, even independent of that charters, it must be an express aim both of KERPEN and of the Supplier to act in line with the guidelines in the UN Initiative Global Compact (Davos, January 99), available under [www.unglobalcompact.org](http://www.unglobalcompact.org), and to observe those principles. The following principles of the guidelines in the UN Initiative Global Compact (Davos, January 99) are of particular significance in this regard: Respect for human dignity and human rights, the prohibition of child labour, the prohibition of compulsory labour, the prohibition of discrimination, respect for the right of free association and of the relevant national standards on compensation, working time and health and safety at the workplace, environmental protection and anti-corruption measures. The Supplier hereby undertakes to accordingly see to it that the above-referenced principles are adhered to and implemented within its own organisation. In addition, KERPEN expects the Supplier to take like efforts to ensure that its sub-suppliers likewise comply with these requirements.

3. Any serious breach or repeated breaches of section 15.1 and/or 15.2 by the Supplier shall render the continuation of the Supplier relationship untenable to KERPEN. In such case, KERPEN shall be entitled to terminate the contract without notice for good cause, both with respect to individual agreements and with respect to master agreements with the Supplier.

#### **16. Right of Withdrawal**

The Supplier does not provide the goods and services it is obliged to provide, or fails to do so in line with the parties' contract, KERPEN shall be entitled, following the setting of a grace period with a demand for proper performance of the contract to no avail, to withdraw from the contract with respect to the portion not yet performed. However, it is in particular noted that no grace period will be required if (i) the Supplier refuses performance in a serious and final manner, (ii) the Supplier does not perform by the date specified in the Parties' agreement or within a period designated for its performance within the agreement, although timely performance by such date or within such period is material to KERPEN and this was apparent to the Supplier or (iii) material deterioration in the Supplier's financial circumstances has occurred which places its performance of the contract at risk, or (iv) an application for the opening of insolvency proceedings over the Supplier's assets has been made and the opening of any such proceedings has been refused due to a lack of assets in the estate. KERPEN's statutory rights and claims shall not be deemed limited by the provisions in section 16.

#### **17. Place of Performance, Jurisdiction and Venue, Arbitration Clause**

1. The place of performance, including for any liabilities arising out of bills of exchange, shall be KERPEN's place of business.

2. The exclusive jurisdiction and venue for all legal disputes arising out of the substance of any supply contract and with respect to the formation and validity thereof (including all actions for bills of exchange or cheques) shall be with the courts at the place of KERPEN's registered office. However, KERPEN shall also be entitled, at its own option, to assert claims against the Supplier at the courts at the location of the Supplier's place of business.

3. KERPEN is entitled to assert claims against the Supplier before an arbitral tribunal under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, in lieu of the ordinary courts; such arbitral tribunal shall be composed similarly at the location of the competent court. The number of arbitrators shall be three. Each party is entitled to appoint one arbitrator. The third arbitrator, who shall act as the chair of the arbitral tribunal and who must be a fully qualified lawyer, shall be selected by the other two arbitrators. The language of the tribunal shall be German. Applicable substantive law shall be German law. The decision of the arbitral tribunal shall be final and binding on the Parties.

#### **18. Choice of Law**

The law of the Federal Republic of Germany shall apply exclusively to the exclusion of any rules of the conflicts of law. The Parties hereby stipulate that the UN Convention on the International Sale of Goods of 11 April 1980 (CISG) shall not apply

#### **19. Miscellaneous**

1. Assignments and delegations of rights and duties of the Supplier under the contract made with KERPEN shall be valid only with KERPEN's written consent. If, contrary to the first sentence hereof, the Supplier assigns a receivable against KERPEN to a third party without KERPEN's consent, such assignment shall be nevertheless valid. However, KERPEN may, at its option, make payment with debt-discharging effect either to the Supplier or the third party.
2. The contractual language is German. The German version of the present Terms and Conditions shall have priority over the English version in case of contradictions in the content between the German and the English version.
3. In the event that any term of the present Terms and Conditions and the further agreements made hereunder should be or become void or invalid, the validity of the remaining provisions and the further agreements shall remain unaffected thereby.