

# General Terms of Services and Delivery of Kranservice Rheinberg GmbH

## 1. General Provisions

**1.1** Any agreement - in particular those modifying these Terms - shall only become binding by our confirmation in writing.

**1.2** Any and all supplies and services to be furnished by us at any time, including proposals, technical advice and assistance as well as any other supplementary services (referred to as supplies or deliveries hereafter), shall be based, in a business-to-business relation, exclusively on the present General Terms. Any other terms and conditions are not accepted as part of the contract, even if we do not expressly reject them or accept payments without reservation.

**1.3** Our offers are generally not binding. However, if it should be binding, it shall be revised and adapted taking into account the interests of both parties, if, after the submitting of the offer, modifications of the contractual obligations are necessary to meet new or modified legal requirements or new requirements of public authorities and inspection boards. This shall apply respectively after the acceptance of the offer. If Purchaser's subsequent confirmation deviates from our confirmation, he will draw our attention to these divergencies.

**1.4** Purchaser is entitled to non-exclusive use of standard software with the agreed properties in unmodified form on the agreed equipment. Unless agreed or indicated otherwise, e.g. on the data media or in the software documentation, Purchaser is entitled to create two back-up copies.

## 2. Prices, Payment, Securities

**2.1** If not agreed upon otherwise in writing, prices shall be FCA, our premises (Incoterms 2010) and exclude accessory charges (such as packing, freight, insurance, storage, inspection by third parties and any other additional charges). If we agreed to render installation or erection services and no other agreement has been concluded, Purchaser shall bear all necessary additional costs such as travel expenses, costs for transportation of tools or the cost of electricity, water or compressed air in addition to the agreed prices.

The due statutory turnover (value added) tax (VAT) will be added to the prices agreed (at present 19% in Germany). In the case of export deliveries, any and all taxes, customs duties and other public charges payable by us abroad shall be reimbursed by Purchaser. The minimum order value is €40.00 (net).

**2.2** Free and net payment to our banking account(s) must be made by the dates agreed.

**2.3** Purchaser shall only have a right of retention and be entitled to set off counterclaims to the extent that such counterclaims are undisputed or have been validly decided. If this is not the case, retention shall only be possible if the counterclaim results from the same contractual relation as our claim and is in proportion to our claim.

**2.4** Only if expressly agreed, we shall accept discountable and properly taxed bills of exchange for payment. When accepting bills of exchange, debts shall only be redeemed after these have been hon-

oured. When accepting cheques, debts shall only be redeemed when the amount is irrevocably credited on our bank account. Discount costs and any costs resulting from honouring the bill of exchange or cheque amount shall be borne by Purchaser.

**2.5** Should Purchaser be in arrears with payment, interest in accordance with the average corresponding bank rates for overdraft facilities of business accounts, however no less than the statutory interest rate, will be charged from the day following the payment date and without any further reminder.

**2.6** In the event of a delay in payment or danger to our claims due to a significantly impaired creditworthiness of Purchaser, we shall be entitled to make due immediately all claims we have regardless of the terms of any bills of exchange or to demand securities. We shall also be entitled to effect any outstanding supplies against prepayment only or against the provision of securities.

## 3. Packing

Unless otherwise agreed, packing will be invoiced separately to Purchaser. Instead, we may request the packing material to be returned charging user and pledge fees.

## 4. Deadlines, Obstacles to Compliance

**4.1** The deadlines shall apply only on condition that all details of the order have been clarified in due time, that all necessary documents and approvals to be obtained by Purchaser have been procured in due time, that all drawings have been approved, that, if applicable, any amount agreed upon as downpayment has been received by us in due time and that, if applicable, any securities agreed upon have been provided in due time. A further condition is the completion in due time of preparatory services for construction and erection to be provided by Purchaser, in particular provision free of charge for us of electrical power, gas, water and any required auxiliary workers.

**4.2** The agreed delivery dates shall be considered as fulfilled with the notice of readiness for dispatch, especially if the goods to be supplied cannot be dispatched on time for reasons for which we cannot be held responsible.

**4.3** Should we be hindered in fulfilling our obligations due to the event of unforeseen circumstances affecting us or our sub-suppliers and/or sub-contractors and which we could not avoid with due care based on the circumstances of the specific case, e.g. war, intervention by a higher authority, internal unrest, natural forces, accidents, strikes and lockouts, other interruptions and delays in the supply of major operating material or pre-materials, the delivery deadlines shall be extended by the duration of the interruption and a reasonable start-up time. Should the fulfilment of our obligations become impossible for us due to the obstacle or become unacceptable, we may terminate the contract; Purchaser shall also be entitled to do so if he cannot be reasonably asked to receive or accept the goods or services due to the delay.

**4.4** Should Purchaser credibly demonstrate that he has sustained any loss due to a delay through our

fault, he shall be entitled to claim compensation. Compensation for delayed delivery for each full week of delay is 1/2 per cent, however no more than 5 per cent of the value of the parts of the deliveries which cannot be used appropriately due to the delayed delivery. Both claims for damages due to delays in delivery as well as claims for damages instead of the services rendered which exceed the given limits are excluded in all cases of delayed delivery, even after a delivery deadline has expired that may have been given to us. This does not apply in cases of wilful damage, gross negligence or cases in which liability is obligatory, especially due to death, injury or detriment of health. Purchaser may only withdraw from the contract in the scope of the legal provisions insofar as the delay in our deliveries is our responsibility. The above provisions imply no change in the burden of proof to the detriment of Purchaser.

**4.5** At our request, Purchaser is obliged to declare within a reasonable period of time whether he continues to insist on the delivery and/or whether he wants to assert any claims rights he may be entitled to due to a delay in delivery.

**4.6** Any right of rescission to which Purchaser or we are entitled shall apply exclusively to the part of the contract not yet fulfilled. Insofar as any partial deliveries effected cannot be reasonably used by Purchaser, he shall also have the right of rescission regarding these partial deliveries.

#### **5. Acceptance**

**5.1** If an acceptance test has been agreed, it must be carried out immediately upon notification of readiness for acceptance. Purchaser bears the costs of the acceptance.

**5.2** An acceptance test is also carried out upon our request or if specific properties of the goods to be delivered have been agreed. This shall also apply to completed partial deliveries.

**5.3** Purchaser must ensure the conditions required for carrying out an acceptance test. With the exception of our labour costs, Purchaser shall bear all costs arising in conjunction with the acceptance test.

**5.4** Rights pursuant to Section 8 notwithstanding, Purchaser shall not be entitled to withhold an acceptance due to insignificant defects.

**5.5** Should the acceptance test not – or not completely – be carried out in due time for reasons for which we are not responsible, the goods to be delivered shall be deemed accepted following our written demand and after expiry of a reasonable period allotted by us when this consequence has been indicated by us explicitly.

**5.6** The delivered goods shall be deemed accepted if they are put into operation without our prior consent.

#### **6. Passage of Risk, Dispatch**

**6.1** Unless otherwise agreed upon in writing, risk of loss to the Goods shall pass to Purchaser upon delivery FCA, our premises (Incoterms 2010).

**6.2** If shipping, delivery, the commencement, the implementation of erection or assembly, receipt in own facility or acceptance are delayed for reasons imputable to Purchaser or in case of Purchaser's default of acceptance, risk shall pass to Purchaser.

**6.3** In case we are in charge of transportation of the Goods pursuant to the agreed delivery terms, means and route of transportation shall be at our discretion. The same shall apply to the selection of the forwarding agent or carrier.

**6.4** Goods to be delivered which have been notified as ready for dispatch must be called immediately, otherwise we shall be entitled, at our discretion, to store them at the cost and risk of Purchaser and to invoice them as if delivered.

**6.5** We are entitled to supply partial deliveries and to invoice them correspondingly.

#### **7. Reservation of Ownership, Nondisclosure and Data Protection**

**7.1** Title to all Goods shall not pass to Purchaser until full satisfaction of any of our claims out of the business relationship with Purchaser existing at the present or in the future (hereinafter referred to as "Reserved Goods"). Purchaser has the right to use the Reserved Goods or sell the Reserved Goods to a third party provided the use or sale is made in the ordinary course of business. Purchaser already assigns to us at the time of the formation of the agreement any claims arising from the sale of the Reserved Goods to a third party. If the Reserved Goods are sold together with other items which are not our property, the assignment of the claim arising from the sale of the Reserved Goods is limited to the invoice value of the Reserved Goods. Purchaser has the right to collect the claims arising from the sale of the Reserved Goods. We are entitled to revoke the authorization to sell the Reserved Goods and / or to collect claims arising from the sale of the Reserved Goods if Purchaser is in delay in payment or disposes of the Reserved Goods outside the ordinary course of business, or if, following the formation of the agreement, a significant deterioration of Purchaser's financial circumstances becomes apparent which jeopardizes a claim of ours, in particular in case of a suspension of payments of Purchaser or a petition for insolvency proceedings against the assets of Purchaser. In these events, we are entitled to request Purchaser to inform us immediately about the assigned claims and to name the third party, provide any and all information necessary to collect the claims, hand out the corresponding documents, and inform the third party about the assignment. If Purchaser pledges or otherwise encumbers the Reserved Goods all monies owed by Purchaser to us shall become due and payable immediately.

**7.2** Purchaser is obliged (i) to properly secure the Reserved Goods and to store them separately from other belongings of Purchaser or of third parties, (ii) to insure the Reserved against theft, breakage, fire, water and other usual damage in the amount of the replacement value and to prove this to us at our request. Purchaser authorizes us to assert all compensation claims under these insurance agreements. If Purchaser infringes its obligations of this sub-clause, we are entitled to rescind the agreement with Purchaser, without prejudice to clause 7.3 and any other rights.

**7.3** If Purchaser infringes its contractual obligations, in particular in case of a delay in payment of Purchas-

er, we are entitled, without prejudice to any other rights, to take possession of the Reserved Goods and to remove them from their location and dispose of the Reserved Goods. We are entitled to enter the premises of Purchaser for this purpose. The removal of the Reserved Goods from their location does not constitute a rescission from this Contract by us, unless we explicitly declares to rescind the agreement in writing. The earnings from the disposal - minus reasonable disposal costs - shall be credited against our open claims against Purchaser. If the value of existing security exceeds our security claims by more than 10% in total, we shall be obliged at Purchaser's demand to release security to this extent.

**7.4** We retain the ownership, copyrights and all other rights concerning models, estimations of costs, drawings and other material.

**7.5** Purchaser will keep secret all information obtained from us in hardcopy or electronic version containing drawings, models, estimations, business secrets and other confidential documents. They may be revealed only to third parties if necessary and with our written consent. This obligation persists after termination of this contract until the information has ceased to be of confidential nature.

**7.6** We may, for the execution of this contract, store and treat the obtained individual-related data or confer this task to a third person. We will ensure the respect of the applicable laws on privacy and data protection.

## **8. Liability for Defects**

We assume liability for defects as follows:

**8.1** All deliveries are to be rectified, replaced by new parts or rendered again free of charge at our discretion which display a defect within the warranty period – regardless of the period of service – provided the cause of the defect already existed at the time of the passage of risk.

**8.2** In the case of software with source code that we are able to modify ourselves ("Class A"), we shall rectify defects in the software at our discretion by provision of an update to the software in which only the defects are rectified or by provision of an upgrade in which the defects are also rectified.

In the case of software with source code that we are unable to modify ourselves ("Class C"), this presupposes that such an update or upgrade is made available to us or can be procured by us at appropriate cost.

**8.3** Claims for defects become time-barred twenty-four months after commissioning, however, no later than 30 months after the prescription's starting point stated by the law. This does not apply if the liability is obligatory according to section 10.4 or if legislation prescribes longer claim periods according to §§ 438 Abs. 1 Nr. 2 (building structures and items for building structures), 479 Abs. 1 (right of recourse) and 634a Abs. 1 Nr. 2 (building defects) BGB (German legal code). The provisions concerning process stoppage, stoppage or restart of claim periods remain unaffected.

**8.4** Notification of defects must be submitted immediately and in writing.

**8.5** Purchaser shall first give us the opportunity to rectify the defect within a reasonable period.

**8.6** Should we fail to rectify the defect, Purchaser shall be entitled – regardless of any other claims for damages according to Section 10 – to withdraw from the contract or to reduce the payment.

**8.7** Purchaser shall not be entitled to assert claims for defects in the case of only insignificant deviation from the agreed properties, nor in the case of only insignificant impairment of use, nor in the case of natural wear or damage following the passage of risk arising from incorrect or negligent treatment, incorrect, inappropriate, omitted or untimely maintenance, inappropriate storage, excessive loading or operation, unsuitable operating equipment, defective civil engineering or building work, unsuitable building site or due to special influences (e.g. chemical, electrochemical or electrical influences or exceptional temperature and atmospheric influences) not specified as requirements according to the contract, as well as non-reproducible software errors. Nor shall any claims for defects be accepted for inappropriate modifications or repairs carried out by Purchaser or third parties or any consequences resulting therefrom.

Claims for defects for software extended by Purchaser beyond an interface provided by us may only be asserted up to the interface.

**8.8** Section 10 shall otherwise apply for any claims for damages. Any further claims or claims other than those regulated in Section 8 asserted against us and any parties employed by us in fulfilling our obligations due to a defect are excluded.

## **9. Industrial Property Rights, Copyright; Defects of Title**

**9.1** Unless agreed otherwise, we undertake only to effect deliveries which are free of third-party industrial property rights and copyright (referred to hereafter as property rights) in the country of delivery. If a third party asserts a justifiable claim against Purchaser for the violation of property rights by deliveries furnished by us and used as laid forth in the contract, we shall be liable to Purchaser within the claim period (Section 8.3) as follows:

**9.1.1** At our discretion and at own cost, we shall either effect a right of use for the relevant deliveries, or change them in such a way that the property right is not violated or replace them. If this is not possible on economically appropriate conditions, the Purchaser shall be entitled to assert his statutory rights of withdrawal or price reduction.

**9.1.2** Section 10 shall otherwise apply for any claims for damages.

**9.1.3** The above obligations relevant to us shall apply only if Purchaser informs us in writing immediately of any claims made by third parties, a violation is not acknowledged and if all defensive measures and settlement negotiations are reserved for us. If Purchaser ceases to use our deliveries for reasons of limitation of damages or other significant reasons, he undertakes to inform the third party that the cessation of use implies no acknowledgement of the infringement of patent rights.

**9.2** Any claims by Purchaser are excluded, insofar as he is responsible for the infringement of patent rights.

**9.3** Any claims are also excluded, insofar as patent rights are infringed upon as a result of special requirements laid down by Purchaser or if Purchaser modifies our deliveries or uses them together with products not supplied by us.

**9.4** If patent rights are infringed upon, the provisions of Sections 8.3, 8.4 and 8.5 shall otherwise apply accordingly for the rights regulated in Section 9.1.1.

**9.5** The provisions of Section 8. shall apply accordingly in the event of other defects in title.

**9.6** Any further claims or claims other than those regulated in Section 9 asserted against us and any parties employed by us in fulfilling our obligations due to a defect in title are excluded.

#### **10. Other Claims for Damages**

**10.1** We shall be liable for damages and reimbursement of expenses solely based on the legal statutes, subject to the following provisions.

**10.2** Claims for damages and reimbursement of expenses (referred to in the following as claims for damages), regardless of the legal reason, in particular due to infringement of obligations resulting from the relationship under the law of obligations and from non-permitted activities, are excluded.

**10.3** Liability for indirect damages and consequential damages such as downtime, loss of profit, or financing costs are excluded.

**10.4** These restrictions (10.2 and 10.3) do not apply if liability is obligatory, e.g. according to product liability legislation, in cases of wilful damage or gross negligence, death, injury or detriment of health, or due to the acceptance of a guarantee for the properties of an item or due to the infringement of material contractual obligations. Material contractual duties are in particular those, which are required in order to achieve the purpose of the Agreement or the fulfilment of which enable the proper performance of the Agreement in the first place and on the observation of which Purchaser may rely, the liability is insofar limited to the compensation of the contractually typical and foreseeable loss, however, not to cases of wilful damage or gross negligence or cases in which liability is obligatory due to death, injury or detriment of health.

**10.5** The temporal limitation of liability according to this section 10 shall be determined by the liability for defects (clause 8.3).

**10.6** The above liability provisions involve no change in the burden of proof to the detriment of Purchaser.

#### **11. Impossibility; Contract Modification**

**11.1** Insofar as the performance of the agreed deliveries is impossible, the Purchaser shall be entitled to demand damages under the conditions stated in section 10 if we are responsible for the impossibility. However, the claim for damages by Purchaser shall be limited to 10% of the value of the part of the delivery which cannot be used appropriately due to the impossibility. This limitation does not apply in cases of wilful damage or gross negligence or cases in which liability is obligatory due to death, injury or detriment of health; this involves no change in the burden of proof to the detriment of Purchaser. The right of Purchaser to withdraw from the contract remains unaffected.

**11.2** Section 4 (delay) shall be applied in the event of temporary impossibility.

**11.3** Insofar as unforeseeable circumstances in the sense of Section 4.3 result in considerable changes to the economic significance or the contents of the deliveries or considerably influence our operation, the contract shall be modified appropriately taking into consideration good faith. Insofar as this is not economically acceptable, we shall be entitled to withdraw from the contract. If we intend to make use of this entitlement to withdraw from the contract, we undertake to inform Purchaser immediately on becoming aware of the consequences of the event, even if an extension to the delivery date had initially been agreed with Purchaser.

#### **12. Transfer of Contractual Rights and Obligations**

**12.1** We are entitled to transfer our rights and duties from this Contract to third parties. The transfer shall not become effective if Purchaser objects in writing within four weeks after receipt of corresponding notification; we shall refer to this in the notification.

#### **13. Anti-Corruption; Export Controls**

**13.1** Purchaser agrees that it shall, and that any party retained by the Purchaser shall, comply with all applicable laws including, but not limited to, laws prohibiting public corruption and commercial bribery. Purchaser further agrees that it shall, and that any party retained or paid by the Purchaser shall, comply with all applicable export controls, economic sanctions, embargoes and regulations regarding the export, re-export, distribution and sale of the Goods, including without limitation U.S. Export Control laws, regulations, policies and executive order as may be amended from time to time. Purchaser further agrees that it shall not, and any party retained or paid by Purchaser shall not, export or re-export the Goods, directly, or with its knowledge, indirectly, into Sudan, Cuba or Iran or to any other country for which the United States government (or agency thereof) may require an export license or other approval or any country, person or entity to which such export or re-export may be prohibited by applicable United States law, regulation, policy or executive order. Notwithstanding anything to the contrary contained in any agreement between us and Purchaser or in any other document (including purchase terms and conditions) or instrument relating to the Goods, we will not comply with requests related to the boycott of any country or other jurisdiction, except to the extent such boycott is required by or otherwise not inconsistent with United States law. Failure to comply strictly with this Clause and all applicable laws prohibiting public corruption or commercial bribery or relating to embargoes, sanctions, export or re-export shall be grounds for immediate termination of this Contract by us.

**14. Place of Delivery, Venue, Applicable Law**

**14.1** Place of delivery for our supplies is the location of the delivery plant. Should we also have to render services (e.g. erection), place of delivery shall be the location where the services are to be rendered. For the payment obligation of Purchaser, payment of debts shall be rendered at the bank quoted in our invoice.

**14.2** The exclusive venue for settlement of any legal disputes, including bills of exchange and cheque col-

lection by way of enforcement shall be Rheinberg in the Federal Republic of Germany. However, we are also entitled to elect to institute proceedings at the place of domicile of Purchaser or at the place of the censurable act.

**14.3** The legal relationship between Purchaser and us shall be governed only by the laws of the Federal Republic of Germany, excluding the UN Convention on the International Sale of Goods (CISG)

