



# General Terms and Conditions for Deliveries of K-Businesscom AG

## (General Delivery Terms)

### 1. Scope of application

**1.1** The sale of systems and system components to the customer shall be performed by K-Businesscom AG (hereinafter shortly referred to as „KBC“) subject to the present General Delivery Terms (as amended from time to time). With regard to software the General Software Conditions of K-Businesscom AG shall prevail.

**1.2** Deviations from the terms and conditions stated in item 1.1 shall only be effective if they have been accepted in writing by a representative authorized by KBC (see also item 22.2). Legal conditions and/or general terms and conditions of business of the customer of any kind, even if they are attached for example to offer requests, orders or acceptance declarations, shall not apply and are conjointly excluded, even if they are not contradicted by KBC. Acts of performance by KBC shall in no case be deemed to constitute consent to contractual terms and conditions deviating from KBC's terms and conditions.

### 2. Offer

**2.1** Offers made by KBC shall, subject to a credit assessment concluded with a positive result, have a binding effect for a period of 14 calendar days.

**2.2** Any and all offer- and project documents may neither be reproduced nor made available to third parties without the consent of KBC. See also item 18.

**2.3** Information contained in sales documents, catalogues, brochures etc, particularly standards, dimensions and output data shall only be relevant if explicitly referred to in the specification of the offer. Otherwise such information shall anyhow be non-binding.

### 3. Contract conclusion

**3.1** Delivery contracts between KBC and the customer shall be concluded by legally valid signing of the offer made by KBC. Subject-matter shall be the offer



inclusive of all attachments as well as any and all printable and storeable conditions published on the website of K-Businesscom AG, insofar as these are applicable on the offered subject-matter.

**3.2** Modifications and amendments of the contract shall be made in writing in order to be legally valid. No oral subsidiary agreements exist.

## **4. Prices**

**4.1** The fees and prices stated in the offers of KBC shall be in EURO unless another currency is explicitly referred to and shall be based on the actual costs of KBC at the time of offering. The prices for assemblings resp. for installations as well as for scheduled work shall be based on the charge rates of the KBC customer service and shall change accordingly.

**4.2** The offer of KBC is based on the currently valid EUR/USD exchange rate, which is stated in the respective offer. KBC reserves the right to adapt the prices of USD-dependent positions proportionately in the event of fluctuations in the dollar exchange rate of +/- 1%.

**4.3** Statutory Value Added Tax is not included in any of the stated prices.

**4.4** Unless agreed otherwise prices shall be ex works resp. ex stock of KBC exclusive of packing, shipment, dismantling, redemption and disposal of waste equipment.

**4.5** KBC is expressly entitled to invoice in installments if the service is rendered by KBC in parts.

## **5. Delivery**

**5.1** Delivery of the systems resp. the system components shall be made to the agreed delivery address at the agreed resp. at the date announced by KBC. KBC shall also be entitled to perform partial deliveries. In any event, the customer shall accept minor delays in delivery without being entitled to claim damages or to withdraw from the contract.

**5.2** Unless agreed otherwise, the system resp. the system components shall be deemed sold EXW according to INCOTERMS 2020.



**5.3** Binding deadlines are to be expressly agreed as such in writing.

**5.4** If delays of the delivery date should be caused by the customer, KBC reserves the right to separately charge the costs caused by such a delay in addition to default interest, irrespective of a possible fault of the customer. In addition, the customer shall in any case reimburse KBC for any expenses for work already performed and for goods ordered by KBC as well as for lost profit.

**5.5** If the customer is in default of acceptance, KBC shall be entitled to store the goods at its premises, for which purpose KBC shall charge a storage fee of EUR 5.00 per pallet location per commenced calendar week. In addition, KBC shall charge EUR 40,- per hour for storage, transfer or removal from storage on a time and material basis. Any transport costs will be charged separately in case of an event.

**5.6** In all other cases, or if one party does not exercise its right to withdraw, the agreed dates shall be postponed in a reasonable manner.

## **6. Assembly / Installation**

**6.1** Given a respective commissioning KBC shall assemble the system resp. the system components at the agreed installation site against payment of a separate fee. Unless agreed otherwise, the services connected to the assembly/installation shall be invoiced at actual cost with regard to material and working hours in accordance with the prices valid at the time. The respective prices for assembly/installation resp. the hourly rates are based on the charge rates of the KBC customer service and shall be amended in accordance with these.

## **7. Prerequisites and preparation works for performance**

**7.1** The prerequisites and preparation works for performance stated in the offer shall be provided by the customer in their entirety in order to warrant a proper performance by KBC. If these prerequisites should not or not sufficiently be satisfied by the customer, all additional services and expenses which are necessary as a result thereof, shall be charged to the customer.



## **8. Acceptance**

**8.1** An acceptance protocol for the system and the system components included in the delivery offer shall be drawn up and signed by the customer and by KBC.

**8.2** The system shall be deemed accepted and KBC entitled to invoice with the drawing up of the transfer record or the acceptance protocol, if contractually agreed, otherwise with the handover to the customer, but at the latest with the use of the systems and system components delivered by KBC. The customer shall not be entitled, not even in part, to retain payments, unless defects are given which materially impair the use of the delivered system. Justified complaints shall in any case not entitle the customer to withhold the entire invoice amount, but only a reasonable part thereof.

**8.3** More detailed regulations on acceptance (formal or informal) are set out in the offer.

## **9. Payment conditions**

**9.1** Invoices shall be due for payment without any deductions within 14 days after billing. In case of an order value of more than EUR 12.000,00 one third of this value shall be due upon ordering as an advance payment. With regard to the rest, payment shall be made according to the respective invoices. These shall be issued to the extent of delivery progress resp. in case of a delivery date according to the supply of the systems and the system components.

**9.2** Even in case of payment default through no fault of the customer, the customer shall have to pay default interest in the amount of 1% per month. In case of payment default of the customer KBC shall anyhow be entitled to claim additional damages or to charge pre-trial costs, particularly dunning costs, collection expenses and lawyers fees.

**9.3** The customer shall not be entitled to retain or set-off payments due to warranty claims or other counterclaims.

**9.4** If insolvency proceedings should be instituted on the assets of the customer or such request should be dismissed due to lack of assets, deliveries by KBC shall hence only be made against cash in advance.



## **10. Electronic invoicing**

**10.1** Invoices can be delivered at the discretion of KBC in electronic form by e-mail or in paper form. In the case of electronic invoices, the customer must ensure that they can be retrieved. The Customer undertakes to provide KBC with its own e-mail address, which is set up exclusively for the receipt of electronic invoices. The KBC e-mail address is merely a dispatch address for sending electronic invoices, the receipt of e-mails is not possible.

**10.2** Electronic invoices are created in "portable document format" (pdf) and are not signed. It is not possible to receive electronic invoices and paper invoices at the same time. One pdf file is created per invoice. Each invoice is sent individually by e-mail.

**10.3** The electronic invoice shall be deemed to have been received as soon as it can be retrieved or taken note of under normal circumstances.

**10.4** Reminders will be sent in paper form to the billing address provided.

**10.5** In the event that an electronic invoice cannot be delivered, KBC reserves the right to send the invoice in paper form to the postal address of the customer last notified to KBC.

**10.6** The customer can revoke the electronic sending of invoices at any time in writing and with a legally valid signature (by post or scanned by e-mail or fax). Thereafter, the customer shall receive invoices in the future by post to the postal address last notified to KBC. KBC reserves the right, for good cause, to independently change the delivery of invoices to the postal address last notified to KBC.

## **11. Retention of title**

**11.1** Any and all systems and system components shall in their entirety remain the property of KBC until payment is completed.

**11.2** KBC reserves the right to retract the delivered systems resp. system components maintaining the contract however, if upon maturity and despite reminder no complete payment is effected.



## **12. Warranty**

**12.1** In accordance with the following provisions KBC shall remedy any defect existing at the time of delivery which impairs the functionality and which is caused by a fault in construction, material or implementation.

**12.2** The warranty period for bought systems and system components shall be 6 months from acceptance or from the date of use (acc. to item 8.).

**12.3** The prerequisite for warranty claims is that the customer fulfils his obligations according to § 377 UGB. The customer shall immediately notify KBC in writing of any defects that have occurred and comply with the storage, assembly and operating conditions prescribed by KBC. Only in this case shall the obligation to give notice of defects pursuant to § 377 UGB be deemed to have been complied with. Any conflicting provisions of the customer in this regard shall not apply under any circumstances (see item 1.2.). The customer shall bear the additional expenditure incurred by a delayed notification in the correction of the error.

**12.4** If within the scope of warranty, system components are being replaced, the original warranty period of the entire system shall not be extended.

**12.5** In case of a defect subject to warranty, KBC shall at their choice either remedy the defective system resp. the defective system component at the place of delivery or have it shipped to them for the purpose of remedying or perform an adequate reduction of price.

**12.6** Any and all additional expenses caused in connection with the remedying of defects, e.g. for mounting and dismantling, transport, trip and travel time, shall be at the expense of the customer.

**12.7** Defects which do not result from an arrangement and assembly performed by KBC, or which result from a non-observance by the customer of installation requirements and usage conditions, shall be excluded from warranty. KBC shall neither warrant for defects nor damages caused by acts of third parties, by atmospheric discharges or excess voltage. Further excluded from any warranty shall be parts which are subject to natural wear and tear.

**12.8** The warranty obligation shall lapse immediately if the customer himself or a third party not authorized by KBC performs modifications or corrective maintenance of the delivered components without written consent of KBC.



### **13. Withdrawal from the contract**

**13.1** A withdrawal from the contract by the customer shall - unless a specific arrangement has been agreed - be subject to a delivery delay caused by serious fault of KBC as well as the unsuccessful expiry of an adequate set grace period. A withdrawal shall be made in writing by registered letter.

**13.2** Without prejudice to their other rights KBC shall be entitled to withdraw from the contract,

**13.3** if performance of delivery is further delayed due to reasons which the customer is responsible for or despite the setting of an adequate grace period,

**13.4** if concerns with regard to the financial solvency of the customer have formed and the customer despite a request of KBC neither effects an advance payment nor provides suitable securities before delivery.

**13.5** Withdrawal may also be declared with regard to an open part of delivery for the reasons mentioned above.

**13.6** If insolvency proceedings are instituted on the assets of the customer or a request for institution of insolvency proceedings is rejected due to lack of assets, KBC shall be entitled to withdraw from the contract without the setting of a grace period. In such case the withdrawal shall become effective immediately together with the decision that the company will not be continued. If the company is continued, a withdrawal shall become effective only 6 months after the institution of insolvency proceedings or after rejection of the request for institution due to lack of assets. The cancellation of the contract shall however have immediate effect, unless barred by the insolvency law which the customer is subject to, or if the cancellation is indispensable for the prevention of serious economic disadvantages of KBC.

**13.7** Irrespective of the damage claims of KBC inclusive of pre-trial costs, performances or partially performed services shall be settled and paid as agreed in the contract in case of withdrawal. The same shall apply insofar as the delivery has not yet been accepted by the customer as well as for preparation works performed by KBC. KBC shall instead also be entitled to demand restitution of already delivered objects.



## **14. Liability / Damages**

**14.1** KBC or their vicarious agents shall be liable for personal or material damages only insofar as statutory provisions, e.g. due to intent or gross negligence or provisions of the Product Liability Law, provide a compulsory liability which may not be excluded by contract. Otherwise KBC excludes any liability whatsoever, such as in particular the liability for slight negligence, for claims resulting from damages due to interruptions of operation, loss of data and/or information, breakdown of data processing institutions, software damages, lost profits, not earned savings, loss of interest, secondary damages and pecuniary losses as well as damages resulting from claims of third parties against the customer. The reversal of the burden of proof for gross negligence shall be excluded.

**14.2** Damage claims shall become time-barred 12 months after the date when the customer knew of the damage and the party at-fault.

## **15. Force majeure**

**15.1** Force majeure according to the present General Terms and Conditions shall mean any and all non-foreseeable events or events which, even if they had been foreseeable, are beyond the scope of influence of the parties and the effects on the performance of the agreement cannot be prevented by reasonable efforts of the contracting parties, also if they are happening with suppliers. Included herein shall be war, riot, strike, revolution, military or civil coups, epidemics or widespread viral diseases (e.g. in the form of epidemics or pandemics) and the associated (protective) measures decreed by state authorities, fire, flooding, storm, earthquake, lightning stroke, blackout, industrial dispute.

**15.2** If a case of force majeure happens the party concerned shall immediately notify the other in writing. The party concerned shall not be liable for a delay or the impossibility of contract performance caused by force majeure. The agreed delivery- and performance period shall by all means be extended by the duration of the effects of force majeure.

## **16. Software licenses**

**16.1** KBC shall apply for possible software licenses with the licensor using the



customer data present at the time of contract conclusion (company name, company address, legal form and VAT- number) and these data may afterwards only be modified upon licensor's consent. Provided that the licensor gives his consent, additional expenses connected to such a modification of the software license shall be invoiced to the customer according to actual expenses.

**16.2** License- and copyright related provisions of the producer and/or the supplier shall be complied with by the customer.

**16.3** In case of a possible contribution of the customer to the production/development and/or adaptation of the software to the requirements of the customer no rights of any kind beyond the contractually agreed right of use shall be obtained.

**16.4** Otherwise the General Software Conditions of KBC shall apply additionally and primarily.

## **17. Export limitations**

**17.1** Any transfer of contractual objects, documents and other material, in particular each re-exportation may be subject to authorization according to the export laws of the USA, the European Union and possible other states. In such case the customer shall be obliged to obtain the respective authorizations from the competent authorities before the transfer. This obligation shall be imposed by contract in case of each new transfer to the respective purchaser resp. the person entitled to dispose.

**17.2** If after contract conclusion it should turn out that the delivery of the contractual components is subject to an export limitation of the United States of America or the laws of the European Union or that it is subject to the "Arab Boycott", KBC shall be entitled to withdraw from the contract. If the customer at the time of contract conclusion has failed to inform KBC on such circumstances, the customer shall fully compensate KBC the expenses and damages resulting from such failure.

**17.3** For dual-use items, the following applies specifically: An export license is required for the export of certain goods. The licence requirement results from certain technical product characteristics and applies to deliveries to all countries outside the EU, but in rare cases also to shipments within the EU. A distinction is made between military equipment and dual-use goods, which can be used for both military and civil



purposes. The goods concerned are included in lists of goods. In addition to goods, software and technology are also included in the definition of goods. The customer undertakes, in accordance with Article 22 (10) of the EC Dual-Use Regulation, to clearly mark goods subject to approval on his business documents (e.g. purchase contracts, invoices, etc.), even in the case of intra-Community deliveries, e.g. by stating the list item.

## **18. Intellectual Property rights, copyright and confidentiality**

**18.1** Production specifications such as plans, sketches and other technical documents, as well as the offer itself, shall together with samples, catalogues, brochures, illustrations and the like always remain the intellectual property of KBC and shall be subject to the relevant statutory provisions with regard to reproduction, imitation etc. In addition, any use, in particular forwarding, copying, publication and making available, including copying even in extracts, requires the express written consent of KBC.

**18.2** Except for the exception in item 18.1., the customer is in any case prohibited from distributing or reproducing all the above-mentioned documents in any form whatsoever. The customer shall keep them carefully, protect them from unauthorized access and return them to KBC upon request or in the event of termination of the contractual negotiations or upon termination of the contract without being requested to do so. The right of retention of the customer is excluded. In the event of infringement of KBC's copyrights or the provisions set forth in this item 18.1 and 18.2, the customer shall pay KBC a contractual penalty in the amount of 100% of the agreed remuneration. This shall not affect any further claims for damages or injunctive relief.

**18.3** The customer also undertakes to maintain secrecy towards third parties with regard to the knowledge received from the business relationship.

**18.4** KBC shall support the customer in the defense of all claims based on the fact that software used in accordance with the agreement violates an industrial property right or copyright effective under the Austrian legal system. The customer shall immediately notify KBC in writing and, in the event of a legal dispute, make a third party notice in accordance with § 21 ZPO (Code of Civil Procedure) if such claims are asserted against the customer. If claims are asserted due to infringement of industrial



property rights for which KBC is responsible, KBC may modify or exchange the software or obtain a right of use at its own expense. If this is not possible at reasonable expense, the customer shall return the original and all copies of the software, including any documents provided, without delay upon request by KBC.

**18.5** All claims of the customer regarding the infringement of industrial property rights and copyright are hereby conclusively regulated, excluding any further obligation of KBC.

## **19. Audit**

**19.1** KBC and the manufacturer have the right to check compliance with the contractual regulations and the contractual performance once a year and/or if there is an important reason to do so. The auditing shall be performed in each case in accordance with the applicable technical standards of KBC or the manufacturer. The customer undertakes to provide KBC with the information necessary to control compliance with the obligations set out in this agreement. This right of control shall also include the possibility for KBC and the manufacturer to inspect the performance at any time at the business premises of the customer during normal working hours and without disturbing the operational processes. This inspection must be announced in writing at least one month in advance and may not exceed three working days.

**19.2** If defects are discovered in the course of an inspection or audit, the customer shall remedy such defects immediately at its own expense, at the latest within the period of time agreed between the customer and KBC or the manufacturer. The costs of the performance of an audit shall generally be borne by KBC or the manufacturer. This cost coverage shall not include personnel costs. Personnel costs shall be borne by each contracting party itself. If, however, defects are discovered in the course of the audit, the customer shall bear the costs of remedying the defect as well as the costs of the follow-up audits caused by the discovery and remedy of the defect.

## **20. References, Newsletter / Mail-Information, consent to data transfer**

**20.1** Upon ordering the customer allows KBC, until revocation which is possible at any time, to cite the company name of the customer vis-à-vis third parties as a



reference.

**20.2** Upon ordering the customer agrees, until revocation which is possible at any time, to be informed via Newsletter and E-Mail or by phone on product novelties.

**20.3** The customer gives his explicit consent that his (company) name, address and e-mail address are passed on to the respective manufacturer, as far as this is necessary for the fulfilment of the order.

## **21. Law and Forum**

**21.1** The contractual relationships are exclusively subject to Austrian Law excluding its conflict of laws rules. The application of the UNCITRAL treaty of the United Nations on contracts for the international sale of goods is hereby excluded.

**21.2** The court in Vienna having subject-matter jurisdiction shall have exclusive jurisdiction for the decision on all disputes arising out of the contractual relationships - inclusive of disputes on their existence or non-existence.

## **22. General / Final provisions**

**22.1** The rules of business-to-business transaction shall apply on the contractual relationships, even if one of the parties is not a trading company. The customer shall inform KBC upon contract conclusion, if the purchased system or the purchased system components are not intended for the operation of his enterprise; otherwise the customer acknowledges that the contract conclusion belongs to his enterprise and that he is an entrepreneur in the meaning of the Consumer Protection Act.

**22.2** Subsidiary agreements, amendments and supplements of contracts shall require written form in order to be legally valid, including the original signature or qualified electronic signature, and shall only be effective if they have been acknowledged in writing by a representative authorised by KBC. The same shall apply to a waiver of the written form clause. Oral side agreements do not exist.

**22.3** The contracting parties shall immediately inform each other in writing on changes of their name, company, address, legal form, company register number, paying office etc., otherwise deliveries and payments may validly be made to the address resp. the paying office last announced.



**22.4** If single provisions of these conditions or of the concluded contract should be ineffective, the efficiency of the remaining provisions shall not be affected. The ineffective provision shall be substituted by a valid one which meets the intended purpose most closely.