

# General Terms and Conditions of Sale of KDX Europe Composites R&D Center GmbH

## I. General Provisions

### 1. General, Scope of Application

- 1.1 These General Terms and Conditions of Sale ("Terms") exclusively apply to any and all services which we render vis-à-vis our contractual partners ("Buyer") under a contract ("Services"). This includes contracts regarding the sale and/or delivery of movable objects or rights ("Result"), without taking into account whether we produce or develop the Result ourselves or whether we acquire it from suppliers (Secs. 433, 651 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*), as well as contracts for the performance of work and contracts for the performance of services. Any diverging, contrary or complementary general terms and conditions of the Buyer shall only become a part of the contract if and to the extent we have expressly accepted their application.
- 1.2 The Terms, as amended from time to time, shall apply as a framework agreement also to any future business with the same Buyer, even if they were not explicitly agreed upon again.
- 1.3 The Terms shall only apply if the Buyer is an entrepreneur (Sec. 14 BGB), a legal person under public law or a fund under public law.
- 1.4 Individual agreements made with the Buyer in the individual case (including side agreements, supplements and changes) shall always take precedence over these Terms. A written contract and/or our written confirmation shall be decisive with respect to the content of such agreements.
- 1.5 All statements and notifications of legal relevance required to be made by the Buyer vis-à-vis us after conclusion of the contract (e.g. setting deadlines, notification of defects, declarations of withdrawal or reductions) must be made in writing to be effective pursuant to Sec. 126 BGB.
- 1.6 Any references to the applicability of statutory provisions are for clarification purposes only. The statutory provisions thus also apply without such clarification insofar as they are not directly changed or expressly excluded in these Terms.

### 2. Conclusion of Contract

- 2.1 Our offers shall be subject to change and non-binding, unless explicitly stated otherwise in our offers. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, estimates, references to DIN standards), other product or service descriptions or documents - also in electronic form.
- 2.2 Declarations of acceptance and any orders which are made on the basis of our non-binding offers subject to change ("Offer of Contract") shall constitute binding Offers of Contract and require our written confirmation which constitutes the acceptance of the contract. Alternatively, we can also accept the contract conclusively by delivering the Result or performing the service. We are entitled to accept the Offer of Contract within ten days from the date on which we receive it.
- 2.3 The Buyer shall inform us of any obvious errors (e.g. typing and calculation errors) and incomplete information in the order including the order documents prior to the acceptance to enable us to correct and/or complete the order.

### 3. Delivery and Performance

- 3.1 Unless explicitly agreed otherwise in writing,

delivery dates and deadlines as well as times of performance shall be non-binding.

- 3.2 Delivery deadlines shall commence upon the conclusion of the contract. Delivery and performance deadlines require the timely receipt of any and all documents to be provided by the Buyer, all necessary permits, approvals, the timely clarification and approval of the plans, compliance with the agreed payment terms and fulfilment of any other obligations under the contract.
- 3.3 Should subsequent amendments be made to the contract which not only insignificantly affect the scope or type of the service to be performed by us, the delivery dates and deadlines and/or performance deadlines originally agreed upon shall be extended accordingly.
- 3.4 Should delivery dates or delivery or performance deadlines not be agreed upon bindingly, the Buyer may set a reasonable deadline for delivery. Such period shall last four weeks as a minimum (if the deadline is set in writing: starting from the date of dispatch), unless, as an exception, a shorter period is reasonable in view of the purpose of the contract. The Buyer's right to issue a warning in case of binding delivery dates and performance deadlines shall remain unaffected.
- 3.5 We are entitled to involve third parties in the performance of services and to subcontract the order in whole or in part, unless interests of the Buyer which are worthy of protection are impaired thereby.

### 4. Prices and Payment Terms

- 4.1 Any and all prices agreed upon constitute net prices "ex works", exclusive of VAT, discounts for prompt payment, delivery costs, customs duties and insurance. Payment shall be effected in euros, unless otherwise agreed.
- 4.2 Invoiced amounts shall be paid within 30 days from the invoice date without any deductions.
- 4.3 Should invoices not be paid in cash, payment shall only be deemed made when the total invoice amount is unconditionally credited to one of our accounts.
- 4.4 Money orders, cheques and bills of exchange are only accepted upon special agreement and in lieu of performance of contract, taking into consideration any financing costs, collection expenses and discount charges. We shall not be liable for the timely provision, protest, notification and return of these means of payment, unless we, our legal representatives or vicarious agents acted intentionally or grossly negligently. Bills of exchange and securities provided shall also serve the purpose of satisfying claims from any winding-up process possibly arising.
- 4.5 Default interest shall be determined pursuant to the statutory interest rates. We reserve the right to assert further damages for default.
- 4.6 Irrespective of and also by derogation from any provisions of the Buyer, we furthermore reserve the right to always set off payments first of all against any costs incurred, then against any interest, then against the oldest debts and finally against the contractually agreed price. The Buyer will be informed of any set-off performed.
- 4.7 If part payments were agreed upon, the total remaining debt, including any interest accrued until the due date, shall - without taking into consideration any bills of exchange becoming due -

- become payable if the Buyer is, in whole or in part, in default with at least two consecutive part payments from the same contractual relationship or, if the default does not concern two consecutive part payments, if the Buyer is, in whole or in part, in default with a part payment for the third time. The total remaining debt shall furthermore become payable if a cheque is not cashed or if the Buyer discontinues payments in general.
- 4.8 Should we become aware of any circumstances concerning the financial situation of the Buyer after the conclusion of the contract which give rise to the assumption that, upon a reasonable commercial assessment, our claims do not seem to be sufficiently secured, we are entitled to make our further performance of the contract dependent on an advance payment or the provision of an adequate security.
- 4.9 The Buyer may only set off counterclaims against our claims that are undisputed or have been established with final legal effect. A right of retention shall only exist with regard to claims under the same contractual relationship.
- 4.10 Only with our written approval may the Buyer assign claims against us to third parties, unless this concerns claims for money.
- 5. Liability**
- 5.1 Unless otherwise stipulated in these Terms including the following provisions, we shall be liable for breaches of contractual and non-contractual obligations as set forth in the applicable statutory provisions.
- 5.2 We can be held liable for damages – irrespective of their legal grounds – in cases of intent and gross negligence. In cases of slight negligence, we shall only be liable
- for damage resulting from injuries to life, body or health,
  - for damage resulting from a breach of an essential contractual obligation (an obligation which must be fulfilled to enable a due performance of the contract and on whose fulfilment the contractual partner generally relies and may rely); however, in this case our liability shall be limited to compensation for the foreseeable, typically occurring damage.
- 5.3 The limitations of liability pursuant to Sec. I.5.2 shall not apply where we fraudulently concealed a defect or issued a guarantee regarding the service. The same shall apply to any claims of the Buyer pursuant to the German Product Liability Act (*Produkthaftungsgesetz, ProdHaftG*).
- 5.4 Our liability is limited to the respective contract volume or an amount of EUR 500,000.00, whichever is lower, unless there is an injury to life, body or health, gross negligence or intent.
- 6. Intellectual Property Rights**
- 6.1 Unless otherwise contractually agreed, any intellectual property rights which we provided to the Buyer and/or which possibly come into existence within the framework of the performance of the Services shall remain our property. We furthermore reserve our ownership rights and copyrights in any offers, illustrations, drawings, plans, calculations, application specifications, product specifications and other records, materials and documents or prototypes.
- 6.2 If the Buyer provides us with any records, documents, prototypes or the like within the framework of the contract, the Buyer grants us a simple free-of-charge right and/or licence to use the protective rights existing in the materials provided for the duration of the cooperation regarding the Services to be performed.
- 7. Third-party Rights**
- In case we perform the Services pursuant to the Buyers instructions, the Buyer shall be responsible for ensuring that we do not infringe any third-party rights. Should a third party assert claims against us due to an infringement of its rights, the Buyer is obliged to indemnify us against such claims. This obligation to indemnify shall also apply to any expenses (in particular legal costs) which are reasonably incurred by us in connection with claims asserted by third parties.
- 8. Confidentiality**
- 8.1 The Buyer undertakes to treat any non-public business and technical knowledge and information which become known to it through the business relationship as business secrets and not to make such knowledge or information available to third parties. This obligation shall continue to apply for a period of twelve months after the termination of the underlying contract.
- 8.2 The obligation in Sec. I.8.1 shall not apply if and insofar as the Buyer passes the information exclusively on to those of its employees who must know the information to carry out the order ("Authorised Persons"). However, this exception to the obligation in para. 9.1 shall only apply if these employees are obliged to comply with the secrecy obligation to the same extent as the Buyer and to the extent legally possible, also after the end of the legal relationship by which the employee is bound to the Buyer.
- 8.3 The obligations in Sec. I.8.1 shall not apply to information
- which becomes or has become publicly known without a breach of duty by the Buyer or an Authorised Person;
  - which the Buyer legally receives or has received from a third party if the third party or the person from whom the third party received the information does not have a secrecy obligation towards us;
  - which the Buyer is obliged to disclose due to official or court orders, provided that the Buyer informs us of such obligation immediately when it arises;
  - which is already known to the Buyer without us contributing to such knowledge and without use of the information at the time this secrecy agreement was concluded. This exception to the secrecy obligation shall only apply if the Buyer objects to its secrecy obligation immediately after we disclose the information.
- 8.4 The Buyer undertakes to exercise at least the same care regarding the secrecy of the information that it exercises in its own matters; in any case, however, at least the standard of care required in business.
- 9. Limitation of Claims**
- Unless otherwise agreed below, any reciprocal claims between the contractual parties shall become statute-barred pursuant to the statutory provisions.
- 10. Choice of Law, Place of Jurisdiction and Place of Performance**
- 10.1 These Terms and all legal relationships between us and the Buyer shall be governed by the laws of the Federal Republic of Germany; the international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods shall not apply.
- 10.2 If the Buyer is a merchant within the meaning of the German Commercial Code (*Handelsgesetzbuch, HGB*), a legal person under public law or a fund under

public law, exclusive – and also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be München (Munich), Germany. We shall nevertheless have the right to file an action at the place of performance of the delivery.

- 10.3 Place of performance for deliveries and Services shall be Weyarn, Germany.

## **II. Special Provisions for Contracts for the Performance of Services**

### **1. Scope of Application**

In case of a contract for the provision of services, the following provisions of this Sec. II shall apply in addition and/or take precedence:

### **2. Warranty**

We do not assume any warranty that the services provided to the Buyer have the desired result.

### **3. Remuneration**

If the parties agreed upon an accounting on the basis of hours worked, we will issue an invoice to the Buyer at the end of each month specifying the activities and their duration and separately stating VAT.

### **4. Termination**

- 4.1 If, subject to a deviating agreement between the parties, the commissioning of us to carry out the services results in a continuing obligation not limited in time, both parties can terminate the service relationship observing a notice period of six months to the end of a month.
- 4.2 The right to a termination for cause (*außerordentlich*) shall remain unaffected.

## **III. Special Provisions for Contracts for the Sale and/or Delivery of Movable Objects**

### **1. Scope of Application**

In case of a contract for the sale and/or delivery of movable objects, the following provisions of this Sec. III shall apply in addition and/or take precedence:

### **2. Default in Delivery**

- 2.1 Whether we are in default in delivery shall be subject to the statutory provisions. In any case, however, a reminder issued by the Buyer shall be required.
- 2.2 The Buyer's rights pursuant to Sec. I.5 of these Terms and our statutory rights, in particular in case of an exclusion of the duty to perform (e.g. due to the impossibility or unreasonableness of the performance and/or subsequent performance), remain unaffected.

### **3. Delivery, Passing of Risk, Default in Acceptance**

- 3.1 The risk of accidental loss and accidental deterioration of the Result shall pass to the Buyer at the latest upon handover. In case of a sale by delivery, however, the risk of accidental loss and accidental deterioration of the Result as well as the risk of delays shall already pass when the Result is handed over to the forwarding agent, the carrier or such other person or entity commissioned with carrying out the shipment. Insofar as an acceptance inspection within the meaning of Sec. IV.1 has been agreed upon, this shall be decisive for the passing of risk. Also in all other respects, the statutory provisions governing the provision of works and services (*Werkvertragsrecht*) shall apply mutatis mutandis to an agreed acceptance inspection. Delivery and/or acceptance shall be deemed effected also if the Buyer is in default in acceptance.
- 3.2 If the Buyer is in default in acceptance or fails to carry out a cooperative action or if our delivery is delayed for other reasons within the Buyer's

responsibility, we are entitled to claim compensation for any resulting damage including additional expenses (e.g. storage costs). In this regard, we will charge a lump-sum compensation in the amount of 0.5% of the net price (delivery value) for each complete calendar week, however, in total no more than 5% of the delivery value in case of a final non-acceptance, commencing with the delivery deadline and/or - if no delivery deadline was agreed - with the notice of readiness for dispatch of the goods. The right to prove higher damage and our statutory rights (in particular reimbursement of additional expenses, appropriate compensation, termination) shall remain unaffected; the lump sum, however, shall be offset against any further payment claims. The Buyer may provide proof that we have suffered no damage at all or that the damage we suffered was significantly lower than the lump sum indicated above.

- 3.3 If it becomes apparent after the conclusion of the contract that our claim for payment of the purchase price is jeopardised by a lack of capacity to perform on the part of the Buyer, we are entitled, pursuant to the statutory provisions, to refuse performance and - after granting a period for performance where applicable - to withdraw from the contract (Sec. 321 BGB) and/or, if there are further deliveries to be effected, to demand an advance payment or the provision of a security. In case of contracts regarding the production of nonfungible goods (customised products), we are entitled to immediately declare a withdrawal; the statutory provisions regarding the dispensability of setting a deadline shall remain unaffected.

### **4. Retention of Title**

If the Result constitutes a product, this Sec. III.4 shall apply:

- 4.1 The delivered goods (goods under retention) shall remain our property until all current and future claims we have vis-à-vis the Buyer, including all claims relating to the current account balance, are settled.
- 4.2 The Buyer is neither entitled to pledge the goods under retention of title to a third party nor to use them as a security before the secured claims have been paid in full. The Buyer must inform us immediately in writing if and insofar as third parties assert claims regarding goods owned by us and must inform the third parties of our property rights without delay.
- 4.3 If the realisable value of the securities exceeds our claims by more than 10%, we will release securities of our choice at the Buyer's request.

### **5. Warranty Claims of the Buyer**

- 5.1 The delivered Results ("Delivered Objects") are to be inspected carefully immediately after delivery to the Buyer or to a third party appointed by the Buyer. With regard to apparent defects or other defects which would have been recognised during an immediate and careful inspection, these objects are deemed accepted by the Buyer if we do not receive a written notification of defects within seven working days after delivery. With regard to any other defects, the Delivered Objects shall be deemed accepted by the Buyer if we do not receive the notification of defects within seven working days after the day on which the defect became apparent; however, if the defect was recognisable for the Buyer at an earlier point in time during the normal use, this earlier point in time shall be applicable with respect to the commencement of the period for the notification of defects. Upon our request, a faulty Delivered Object shall be returned to us free of freight. In case of a

justified notification of defects, we will reimburse the costs for the cheapest form of dispatch; this does not apply if the costs increase because the Delivered Object is located at another place than the place of intended use.

- 5.2 In case of material defects of the Delivered Objects, we are initially obliged and entitled to a subsequent improvement or a replacement delivery at our own choice within a reasonable period of time. In case of a failure, i.e. impossibility, unacceptability, refusal or unreasonable delay of the improvement or replacement delivery, the Buyer shall be entitled to withdraw from the contract or to reasonably reduce the purchase price.
- 5.3 If we are responsible for the defect, the Buyer shall be entitled to claim damages if the requirements set forth in Sec. I.5 are fulfilled.
- 5.4 Warranty does not apply if the Buyer changes the Delivered Object or commissions a third party to change it without our consent and if this unreasonably complicates the removal of defects or makes such removal impossible. In any case, the Buyer is obliged to bear the additional costs of the removal of defects incurred due to the change.
- 5.5 Warranty for material defects shall be excluded in individual cases where a delivery of used objects was agreed upon with the Buyer.
- 5.6 The Buyer is only entitled to a withdrawal or, if provided by law, a termination based on a breach of duty which is not based on a defect if we are responsible for the breach of duty. A right of the Buyer to terminate the contract for convenience (in particular pursuant to Secs. 651, 649 BGB) shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.

#### **6. Limitation of Claims**

- 6.1 The warranty period is one year from delivery or, if an acceptance within the meaning of Sec. IV.1 is required, from acceptance. This period shall not apply to any claims of the Buyer for damage resulting from injuries to life, body or health or from intentional or grossly negligent breaches of duty by us or our vicarious agents which become statute-barred pursuant to the statutory provisions.
- 6.2 The aforesaid limitation period under purchase law shall also apply to contractual and non-contractual claims of the Buyer for damages which are based on a defect of the goods, unless the application of the regular statutory limitation rules (Secs. 195, 199 BGB) would lead to a shorter limitation period in the individual case. The limitation periods of the ProdHaftG shall remain unaffected in any event.

#### **IV. Special Provisions for Contracts for Work and Services**

With respect to contracts for work and services, Sections I. and III. shall apply with the following modifications:

##### **1. Acceptance**

- 1.1. After the proper completion of the work and/or services commissioned, we will declare the readiness for acceptance. This can be implied by the delivery of the work results.
- 1.2. The Buyer shall immediately, however, at the latest within two weeks following receipt of the availability notice or delivery of the work results, declare acceptance in writing. The use of the work results by the Buyer or a third party replaces the formal acceptance.
- 1.3. If the Buyer fails to immediately declare acceptance or uses the work results, we can set an appropriate deadline for such declaration in writing. If the Buyer fails to provide the reasons for the refusal of

acceptance in writing within this period, acceptance shall be deemed effected.

##### **2. Warranty**

- 2.1 We will fulfil our warranty obligations at our choice either by subsequent improvement or a replacement delivery.
- 2.2 The warranty period shall commence upon acceptance.
- 2.3 The other provisions regarding warranty and liability shall remain unaffected.

##### **3. Termination**

Both parties are entitled to terminate the contract at any time prior to completion of the work. In case of a termination by the Buyer, we are entitled to request payment of the agreed remuneration on a pro rata basis depending on the progress of completion of the work. Any invoice amounts already paid will not be reimbursed, unless the Buyer provides proof that this prevented expenses on our part.

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