



## Terms and Conditions of K2 Systems GmbH

### § 1 Scope

(1) Unless explicitly agreed otherwise in writing, these general conditions of service (General Conditions of Service) shall apply to all contracts regarding our deliveries and services concluded by us with a customer as well as pre-existing contractual obligations in this regard. Other terms and conditions or purchasing terms shall not become the content of the contract, even if we do not explicitly contradict them. This shall also apply if we perform our services to the customer without any reservation in awareness of contrary or deviating terms and conditions or these are referred to in individual correspondence.

(2) Even if not explicitly referred to once again when similar contracts are concluded in ongoing business relations, our General Conditions of Service shall apply exclusively in the same version as those which can be downloaded by the customer from (<http://www.k2-systems.de/english/gcs/>) when placing an order, unless explicitly agreed otherwise in writing between the contractual parties. The latest printed version of the General Conditions of Service will be sent to the customer free of charge upon request.

(3) These General Conditions of Service shall not apply in relation to consumers as defined by Section 13 of the German Civil Code [Bürgerliches Gesetzbuch (BGB)].

### § 2 Conclusion of Contract, Offer Documents

(1) Our offers are subject to confirmation and non-binding, unless the offer is declared in writing to be binding. The customer shall be bound by statements in connection with the conclusion of a contract (contractual offers) for two weeks.

(2) A legally binding relationship shall only come into existence through a contract signed by both contractual parties or through our written confirmation of the order, and moreover through commencement of the performance of contractual services by us. We may demand written confirmations of the customer's verbal declarations of willingness to enter into a contract.

(3) We reserve property rights and copyrights to illustrations, drawings, calculations, tools and other documents. This also applies to written documents which are designated as "confidential". The customer shall require our express written consent before passing these on to third parties or their use for third parties.

### § 3 Subject Matter of the Contract, Warranties, Modifications to Services

(1) The scope, type and quality of the deliveries and services shall be determined by the contract signed by both parties or by our confirmation of the order or otherwise by our offer. Other information or requirements shall only become an integral part of the contract if this is agreed in writing by the contractual parties or we have confirmed them in writing. Any subsequent modifications to the scope of services shall require written agreement or our express written confirmation.

(2) Product descriptions, illustrations and technical data are specifications of services, but do not constitute warranties. Any warranty must be explicitly stated as such in writing. Where warranties are mentioned in offers, these are exclusively our product warranties, which must be concluded directly with us. Drawings, illustrations, measures, weights or other service data shall only be binding if this is explicitly agreed in writing.

(3) We reserve the right to make minor modifications to services, insofar as these modifications are of a minor nature, which can be reasonably imposed on the customer. In particular, the customer must accept any commercially customary deviations in quality, quantity, weight or other deviations even if it refers to brochures, illustrations or pictures when placing an order, unless these are explicitly agreed upon as a binding property.

### § 4 Time of Performance, Delays, Partial Performances, Place of Performance

(1) Any information about times of delivery and performance shall be non-binding, unless referred to as binding by us in writing. All delivery and performance periods shall be conditional on correct and punctual availability of supplies and raw materials. Delivery periods shall commence upon the sending of the confirmation of the order by us, but not before all commercial and technical matters between the customer and ourselves have been clarified and the customer has fulfilled all duties

incumbent on it (e.g. provision of all necessary official authorisations or payment of agreed down payments).

(2) Delivery and performance periods shall be extended by the period in which the customer is in default of payment under the terms of the contract and by the period in which we are prevented from performing the delivery or service through circumstances for which we are not responsible, and by a reasonable run-up period after the end of the reason for the delay. These circumstances shall include force majeure, shortage of raw materials at relevant commodity markets, any delays caused by our suppliers and industrial disputes. Periods shall also be considered to be prolonged by any such time in which the customer breaches the contract by failing to meet its obligations to cooperate, e.g. by not providing information, supplies or staff.

(3) If the contractual parties subsequently agree to perform different or additional services affecting the agreed periods, these periods shall be prolonged by a reasonable period.

(4) If a postponement of delivery or performance dates is agreed at the customer's request, we shall be entitled to demand the remuneration at the time at which it would have been due without the postponement. The agreement on the postponement of such dates must be recorded in writing.

(5) Any reminders or setting of deadlines on the part of the customer shall only be valid if recorded in writing. A period of grace must be reasonable. A period of less than two weeks shall only be reasonable in cases of urgent necessity.

(6) We are entitled to perform partial services, inasmuch as the delivered parts can be reasonably used by the customer. We reserve the right to deliver excess or short supplies of up to 5 % of the scope of delivery.

(7) Agreed delivery dates shall be considered as having been complied with as soon as the goods have been handed over to the transport company on the agreed delivery date or as soon as we have given notice of their actual readiness for shipment.

(8) If our component supplier (definitively) fails to supply to us although we have taken due care in selecting such supplier and the order satisfies the requirements applicable under our obligation to supply, we shall be entitled to full or partial withdrawal in relation to the customer, if we notify the customer of the failure of the supply to us and – where admissible – offer the assignment of the claims to which we are entitled against the component supplier to the customer. When selecting our supplier, we shall not be liable for slightly negligent fault in the selection (culpa in eligendo).

(9) Unless otherwise stated or agreed, the place of performance of the service shall be our registered office.

### § 5 Packaging, Shipment, Passing of Risk, Insurance

(1) The risk is transferred to the customer as soon as the product has left our factory or distribution centre. This also applies to partial deliveries, deliveries in connection with supplementary performance and if we undertake further services, such as especially any shipping charges or delivery. If a contract for work exists which requires acceptance, risk is transferred upon acceptance.

(2) We shall select the mode of shipment, the carrier and transport route, unless we have received other written specifications by the customer. With regard to this selection, we shall only be liable for intent or gross negligence.

(3) At the customer's express request, the goods delivered shall be insured against the risks identified by the customer at its expense, inasmuch as this is feasible with reasonable time and effort for us.

### § 6 Prices, Remuneration, Payment, Set-Off, Minimum order quantity

(1) Unless otherwise agreed upon by the contractual parties, all prices are valid ex works. All prices and remuneration are quoted in euros plus the applicable value added tax and other statutory charges applicable in the country of delivery, as well as plus transportation costs, expenses, packaging, shipment and, if applicable, insurance of goods in transit. The minimum order quantity is 45 Pound. Any additional services requested by the customer shall be invoiced on a time and material basis.

(2) Subject to para. 6, the contractually agreed prices in each case must be paid. Services shall be charged according to expenditure.

(3) Our goods shall in principle only be shipped against prepayment by



bank transfer.

The customer undertakes to pay the price for our deliveries and services immediately after conclusion of the contract, unless otherwise agreed. Unless, exceptionally, payment in advance is agreed and unless otherwise agreed by the contractual parties, payments are due without discount immediately after performance of the service and customer's receipt of the invoice and payable within 14 days.

(4) Unless specially agreed otherwise, we only accept non-cash payments, i.e. transfers to our bank account indicated in the contract documents. Bills of exchange and cheques shall in principle not be accepted, and if at all only in lieu of payment. The customer must pay the bill of exchange and cash discount charges incurred as well as the collection charges. These are due immediately. We shall not be liable for timely collection or timely protest if we are only responsible for slight negligence in this regard.

(5) If the customer is in default of payment, it shall be required to pay interest at the rate of eight percentage points above the relevant applicable base interest rate. This shall not affect the right to assert for further damage caused by the delay.

(6) If the customer is in default of payment for longer than 30 calendar days, bills of exchange or cheques are protested or if insolvency proceedings or comparable proceedings under other legal systems are filed against the customer's assets, we shall be entitled to immediately call all accounts receivable against the customer due and payable, withhold all deliveries and services, and assert all reservations of proprietary rights.

(7) The customer shall only be entitled to set off our claims against claims undisputed by us or recognised by declaratory judgment. Apart from Section 354 a HGB (German Commercial Code), the customer shall be entitled to assign rights to a third party only after our prior written confirmation. The customer shall only have a right of retention or the defence of non-performance within the respective contractual relationship.

(8) Circumstances which occur after conclusion of the contract and which influence the calculation basis unforeseeably to a significant extent and are beyond our sphere of control shall entitle us to adjust the agreed price in an amount exclusively taking into account these circumstances. This especially applies to legislative amendments, official measures, price increases of our primary suppliers and currency fluctuations. The price adjusted on this basis is based on the same calculation basis as the originally agreed price and may not be used to increase the profit.

(9) If we receive unfavourable information about the customer's financial circumstances or credit standing, unless, exceptionally, payment in advance must be made anyway - we may make the processing and delivery dependent on a reasonable down payment by the customer or on the provision of security through a deposit or a bank guarantee.

#### § 7 Retention of Title

(1) Our services remain our property until full payment of all claims against the customer to which we are entitled from the business relationship. These claims shall also include drafts and bills of exchange receivable as well as current account receivables.

(2) The customer is obliged to treat the goods that are subject to retention of title carefully for the period of retention of title. It is also obliged to insure the goods sufficiently at the reinstatement value against damage caused by fire, water and theft at its own expense. The customer hereby assigns to us already any claims for damages arising from this insurance. We hereby accept the assignment. If the assignment is not permissible, the customer shall hereby irrevocably instruct its insurance company to effect any payments solely to us. This shall not affect any further claims that we may have. Upon our request, the customer must furnish documentary proof to us that it has taken out insurance.

(3) The customer is only permitted to sell the goods subject to retention of title in the regular course of business. The customer is not entitled to pledge the goods subject to retention of title, transfer them by way of security or make other arrangements that prejudice our ownership. In the event of seizures or other infringements by third parties, the customer is obliged to inform us immediately in writing and provide all necessary information, inform the third party about our ownership rights and assist us in our activities to protect the goods subject to retention of title. The customer shall bear any costs incurred by it, which may be due in order to cancel access to the goods or replace the goods, insofar as these costs cannot be recovered from a third party.

(4) The customer hereby assigns to us already all outstanding debts from resale of the goods and all ancillary rights, regardless of whether the goods subject to retention of title were resold without or after processing. We hereby accept this assignment already now. If an assignment is not admissible, the customer hereby irrevocably instructs the garnishee to effect any payments solely to us. The customer is revocably authorised to collect the debts assigned to us in a fiduciary capacity. The amount collected shall be paid to us immediately. We are entitled to revoke the customer's authorisation to collect the amounts due as well as the customer's authorisation to resell the goods, if the customer does not meet its payment obligations towards us in proper form, if it is in default of payment, if it ceases payment or if insolvency proceedings are filed regarding the customer's assets. A resale of claims shall require our prior consent. The customer's collection authorisation shall expire upon notice of the assignment to the garnishee. If the collection authorisation is withdrawn, we shall be entitled to demand from the customer to notify the assigned debts and their debtors, provide all information required, hand out the associated documents and inform the obligors of the assignment.

(5) In case the customer's debts from the re-sale are transferred to a current account, the customer hereby also assigns its claim against its customer from the current account already to us, and namely in the amount of the purchase price of the goods resold subject to retention of title including VAT.

(6) If we assert our claims in accordance with § 6 para. 6, the customer is immediately obliged to grant us access to the goods subject to retention of title, send us a detailed list of all the existing goods subject to retention of title, separate the goods for us and to return them to us upon request.

(7) The processing or remodelling of the goods subject to retention of title by the customer shall be carried out solely for us. The customer's expectant right to the goods subject to retention of title shall carry forward to the processed or remodelled item. If the item is irrevocably processed, combined or mixed with other items not owned by us, we shall thereby become co-owner of the new item, reflecting the proportion of the value of the delivered item relative to the other processed items at the time of processing. The customer shall keep the new item in safe custody for us. The item originating from the processing or remodelling is thereby subject to the same regulations as the goods subject to retention of title.

(8) At the customer's request, we are obliged to release the securities that it is legally entitled to, if the realisable value of the securities, taking into account the valuation haircuts customary in the banking sector, exceeds our claims resulting from the business relationship with the customer by more than 10 %. The valuation shall be based on the invoice value of the goods subject to retention of title and on the nominal value in relation to claims.

(9) If any goods are delivered to countries with a different legal system, in which the regulations regarding retention of title do not guarantee the same degree of security pursuant to this paragraph as in the Federal Republic of Germany, the customer hereby acknowledges the corresponding security interest. If further declarations or actions are necessary, the customer shall provide these declarations and take action accordingly. The customer shall participate in all steps necessary for and beneficial to the efficacy and enforceability of these security interests.

#### § 8 Contractual Obligations and Termination of Contract

(1) The customer may only terminate the exchange of services prematurely in case of a breach of duty on our part, for whatever legal reason (e.g. in the case of withdrawal, claim for damages in lieu of the service, termination for cause) in addition to the statutory requirements subject to the following requirements:

- The breach of contract shall be specifically notified. The remedy of the fault shall be requested within a stipulated time period. In addition, the threat shall be issued that after expiry of this period without results, no further services concerning the notified fault will be accepted and therefore the partial or complete exchange of services will be terminated.
- The period for remedying the fault must be adequate. A period of less than two weeks is only appropriate in cases of urgent necessity. In case of serious and final refusal of performance or subject to the other statutory requirements (Section 323, para. 2 BGB) the setting of a deadline may be dispensed with.
- The termination of the exchange of services (partially or completely)



due to the inability

to remedy the fault may only be declared within three weeks after end of this period. The period is delayed for the duration of negotiations.

(2) The customer may only demand the rescission of the contract due to a delay in performance if we are exclusively or predominantly responsible for the delay, unless after assessing the different interests, the adherence to the contract cannot be reasonably imposed on the customer due to the delay.

(3) Any declarations made in this context shall only be valid if recorded in writing.

(4) Notice of termination in accordance with Section 649 BGB shall remain valid in accordance with the legal regulations.

(5) We are entitled to cancel the contractual relationship with immediate effect for the following reasons: if the customer has provided incorrect information regarding its credit worthiness or definitively discontinued payments or if proceedings have been filed against it for affirmation in lieu of an oath, if insolvency proceedings have been filed regarding the customer's assets or comparable proceedings under different legal systems have been commenced or if an application to do so has been filed, unless the customer pays in advance without delay. Furthermore, we may cancel the contractual relationship without delay if the customer has to pay in advance and it is at least 14 days in default in this regard.

#### § 9 Customer's General Duties

(1) The customer is obliged to have all of our deliveries and services checked by a competent employee either immediately after delivery, or on receipt according to § 1, para. 1, or upon accessibility in accordance with the commercial law regulations (Section 377 of the German Civil Code (HGB)), and send notification of recognizable and/or recognized defects immediately and in writing, including a detailed description of the defect.

(2) The customer acknowledges that we are dependent on its comprehensive support in order to provide the deliveries and services owed by us successfully and in a timely manner. The customer therefore undertakes to provide all required information in full in a timely manner for the service to be performed properly.

(3) The customer undertakes to test our services thoroughly for usability in the specific application and to subject these to a functional test before assembly, any subsequent delivery etc. This also applies to delivery items which the customer receives free of charge within the terms of the warranty.

(4) The customer shall secure data that can be affected, negatively influenced or endangered by our services at appropriate intervals, but at least once daily, in a machine-readable form and shall thereby guarantee that this data will be retrievable with reasonable effort.

(5) The customer shall take adequate precautions in case we partially or completely fail to provide our deliveries and services appropriately (e.g. by securing data, fault diagnosis, checking the results regularly, emergency planning).

#### § 10 Limitation of Use, Indemnity

(1) Unless otherwise explicitly agreed in writing, our services are not intended for use in life-sustaining or life-supporting devices and systems, nuclear power plants, for military purposes, application in aerospace or other purposes where malfunction of the product can, within reasonable assessment, lead to life-threatening situations or cause catastrophic consequential damage.

(2) If the customer breaches para. 1, this shall occur at the customer's own risk and sole responsibility. The customer hereby indemnifies and holds harmless both ourselves and the respective producer to the full extent at first request from any liability resulting from the use of goods in the above-mentioned contexts, including the cost of an appropriate legal defence.

#### § 11 Material Defects

(1) Our services have the stipulated properties and condition, and are suitable for the contractually agreed use, or if no agreement is reached, are fit for normal use. Without explicit further agreement, it is solely guaranteed that our services will be free from defects in accordance with the current state of the art. It is the customer's sole responsibility

to guarantee the fitness and security of our services for an application provided by the customer. A negligible reduction in quality shall not be taken into account.

(2) Warranty is excluded:

a) if our products are not stored, installed, operated or used properly by the customer or a third party,

b) in case of natural wear and tear,

c) if the product is not maintained properly,

d) if the product is used in connection with unsuitable equipment,

e) in case of defects caused by repairs or other work carried out by third parties, which were not explicitly approved by us. It is the customer's responsibility to prove that these exclusion criteria do not apply. In addition, the customer's right to claim defects requires that it has properly attended to its obligations to inspect and give notice of non-conformity in accordance with § 9 para. 1 and has given notice of hidden defects in writing immediately after their discovery.

(3) In case of material defects, we may firstly provide supplementary performance. The supplementary performance shall be carried out according to our choice by remedying the defect, by delivering goods and/or services that do not have the defect, or by pointing out a possible way to avoid the effects of the defect. At least two attempts to remedy a defect have to be accepted. The customer shall accept an equivalent new or earlier product version without defect as supplementary performance, if this can be reasonably imposed on it.

(4) The customer shall support us in connection with the analysis of errors and remedy of the defect by precisely describing any problems occurring, by informing us comprehensively and giving us the necessary time and opportunity to remedy the defect.

(5) We may demand payment if additional costs are incurred by us due to our products or services being modified or incorrectly operated. We may demand reimbursement of expenses if no defect is found. The burden of proof shall lie with the customer. Section 254 BGB shall apply accordingly. If expenses, including cost of transport, travel, work and material increase during the attempt to remedy the defect, we are not obliged to bear these costs if expenses increase due to the fact that the delivery item was subsequently transported by the customer to a different place than the place of delivery, unless the transport complies with its contractual and intended use. Staff and material costs that the customer claims due to defects of our services must be charged based on net costs.

(6) Defective goods may only be returned to us for the purpose of the supplementary performance with the prior written consent in accordance with the rules existing in our company. The risk of accidental loss or deterioration of the goods shall only pass at the time of the acceptance by us at our business premises.

(7) If we definitively refuse to remedy the defects, or if the remedy definitively fails or is unreasonable for the customer, the customer is allowed either to terminate the contract in accordance with the legal regulations in compliance with § 9, or reduce payment appropriately and, if we are responsible, additionally claim damages and reimbursement of expenses in accordance with § 13. The claims shall lapse in accordance with § 14. This shall not affect the regulations of Sections 478, 479 BGB, unless United Nations Convention on Contracts for the International Sale of Goods (CISG) is applicable.

#### § 12 Defects of Title

(1) Unless otherwise agreed, we are obliged to perform our services free from industrial property rights and third-party copyrights (hereinafter referred to as property rights) solely in the country of the place of delivery. If a third party asserts a justified claim against the customer owing to the infringement of property rights caused by services provided by us based on the contract, we shall be liable to our customer within the period defined in § 14 as follows:

(2) We will either obtain a right of use for the services in question, change them accordingly to avoid the infringement of the property right or replace them according to our choice and at our expense. If we are not able to do so under reasonable conditions, the customer shall be entitled to statutory rights of withdrawal or reduction. The customer may not claim damages for futile expenses.

(3) Our obligation to pay damages is based on the legal stipulation in accordance with § 13.



(4) Our duties mentioned above shall only exist if the customer informs us immediately in writing regarding claims asserted by third parties, if it does not recognise an infringement and we reserve the right to carry out all defence mechanisms and all negotiations to reach a compromise. If the customer terminates use of the delivery in order to minimise damage or for other important reasons, it shall be obliged to point out to the third party that the termination of use does not involve any acknowledgement of an infringement of property rights.

(5) Claims asserted by the customer are excluded if the customer is responsible for the infringement of property rights. Claims asserted by the customer are also excluded if the infringement of property rights has been caused by the customer's particular specifications, by an application that was not foreseeable by us, or as a result of a change in delivery caused by the customer, or if used together with products not delivered by us.

(6) In all other cases, the regulations of § 11 shall apply accordingly.

(7) Any further claims or the customer's claims other than those mentioned here, either against us or our vicarious agents, due to a defect of title, are excluded.

#### § 13 Liability

(1) We shall pay damages or compensation for futile expenses, for whatever legal reason (e.g. obligation based on legal or similar transactions, material defects or defects of title, breach of duty or tortious act) only if we are at fault (intent or negligence) to the following extent:

a) Liability in case of intent and under a warranty shall be unlimited.

b) In case of gross negligence, we shall be liable to the extent of typical and foreseeable damage.

c) In other cases, we shall only be liable in case of the breach of a material contractual obligation, claims for defects and delay, namely for the reimbursement of typical and foreseeable damage.

Liability in this regard is limited to twice the amount of the agreed remuneration of the order/part of the contract affected by the damage per claim and to three times the order value for all claims under this contractual relationship. According to German court rulings, material contractual obligations (cardinal obligations) are obligations whose fulfilment is a prerequisite for enabling the proper fulfilment of the contract in the first place and in which the contractual party may normally trust.

(2) In case of injury to life, body and health and claims from the German Product Liability Act [Produkthaftungsgesetz], the statutory regulations shall apply exclusively.

(3) Our option to raise an objection of contributory negligence shall remain open.

#### § 14 Limitation of Actions.

The deadline for limitation of actions is:

a) one year from delivery of goods for claims for repayment of the purchase price and withdrawal or reduction; however, if these claims are based on a proper, not statutebarred notice of defects, no less than three months after presenting the valid notice of withdrawal or reduction.

b) one year, in case of other claims concerning material defects;

c) one year in case of claims concerning defects of title. If the defect of title is a right in rem of a third party, based on which the return of the item can be demanded, the statutory limitation periods shall apply.

d) in case of other claims for damages or reimbursement of futile expenses, one year, starting from the time at which the customer became aware of the circumstances the claims are based on, or had to become aware of without gross negligence. The limitation of actions shall begin at the end of the maximum statutory period at the latest (Section 199 para. 3, para. 4 BGB).

(2) In case of the reimbursement of damages and expenses, gross negligence, warranty, fraudulent intent as well as injuries to life, limb and health and claims under the German Product Liability Act, the statutory regulations shall always apply.

#### § 15 Confidentiality, Data Security, Naming the Customer as a Reference Customer

(1) The customer undertakes to treat as confidential all items (documents, information, software) that it becomes aware of or receives from the other contractual party either prior to or during the performance of the contract that are protected by law, or obviously contain business or company secrets or are identified as confidential, even after expiry of the contract, unless they are publicly known without a breach of the confidentiality obligation or if no legal interest worthy of protection regarding the contractual party exists. The customer agrees to store and secure these items in such a way as to prevent fraudulent use by third parties.

(2) The customer undertakes to make the objects subject to the confidentiality obligation according to paragraph 1 only accessible to employees or other third parties who require access in order to carry out their official duties and responsibilities. It shall instruct these persons on the need for confidentiality regarding these objects.

(3) We will process the necessary customer data relevant to business transactions with due regard for the data protection regulations. We may name the customer as a reference customer.

#### § 16 Social Clause

When determining the amount of any claim for compensation to be fulfilled by us or in connection with this contract, our economic situation, the type, extent and duration of the business relationship, any possible contribution to the cause and/or fault on the part of the customer and a particularly disadvantageous installation of the item shall be taken into account appropriately for our benefit. In particular, any compensation, cost and expenses that we are expected to bear shall be proportionate to the value of the delivered part.

#### § 17 Written Form Clause

All changes and amendments to the contract shall only be valid if recorded in writing. The contractual parties shall comply with this requirement by sending documents in written or electronic form, particularly by fax or e-mail, unless other requirements for individual declarations exist. The written form requirement itself may only be revoked in writing.

#### § 18 Severability Clause

Should one of the provisions of these General Conditions of Service be or become invalid, or should these General Conditions of Service be incomplete, this shall not affect the validity of the other provisions. The contractual parties shall substitute the invalid provision by a provision which approximates most closely to the sense and purpose of the invalid provision. The same applies to gaps in the contract.

#### § 19 Choice of Law

The law of the Federal Republic of Germany, excluding the provisions on the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) as part of German law, shall apply.

#### § 20 Legal Venue

The legal venue for all disputes arising from and in connection with this contract shall be Stuttgart (Germany), insofar as the customer is a businessperson, a public law entity or a special fund under public law, or treated as equivalent to such, or if its registered office or branch office is outside Germany. We are also entitled to bring a legal action at the customer's registered office as well as any other admissible legal venue.

Last revised: July 2014