



General Terms and Conditions

General Terms and Conditions of the Khan Group

1 Applicability

- 1.1 The Contractor's products, services and quotations are provided solely on the basis of these Terms and Conditions. They shall therefore be also applicable to all future business transactions, whether or not they have again been explicitly agreed upon. These Terms and Conditions shall be deemed to have been accepted, at the very latest, upon receipt of our services. Counter-confirmations issued by the Client with reference to its own terms of business are hereby rejected.
- 1.2 All agreements entered into between the Contractor and the Client in relation to the performance of any contract shall be set down in writing and be signed.

2 Offer and conclusion of a contract

- 2.1 The Contractor's quotations are subject to change and remain non-binding. In order to be legally effective, declarations of acceptance and all purchase orders require the Contractor's confirmation in writing with a signature or by telex.
- 2.2 Drawings, images, dimensions, weights or other technical data shall only ever be binding if this has been explicitly agreed in writing and signed. Otherwise any weight or dimension-related information contained in our quotation documents (e.g. in plans, drawings, images) should be regarded only as approximations, unless this information has been designated as binding at the Client's request.
- 2.3 Our quotations, computations, plans, drawings, calculations, calculation reviews, cost estimates and other such documentation may not be reproduced, modified or made accessible to other third parties without our consent, and must be returned to us promptly in the event that no order is placed. Any copies made must be destroyed.
- 2.4 Our quotation is exclusively intended for the Client. Additional services not previously included in our estimate will be subsequently calculated at the request of the Client. We reserve the right to adjust the price in the event of modifications to the scope of the contract.
- 2.5 The Client is responsible for obtaining public authority and other such permits, and these shall be made available to us in good time. The Client shall provide us with the necessary documentation in this respect.
- 2.6 We reserve the right to implement technically necessary and expedient design changes at any time; we are not obliged however to implement changes of this type to products already delivered.
- 2.7 The Contractor's employees are not authorised to enter into additional verbal agreements or make verbal assurances over and beyond the content of the written agreement.
- 2.8 If cutting, welding, assembly and/or soldering works or the like are planned, the Client shall be obliged, prior to the commencement of work, to notify the Contractor of any risks of which it knows to be associated with the works (e.g. fire hazards, storage of valuable goods in adjoining rooms, building and other such materials susceptible to fire, risk to persons, etc.).

- 2.9 The Client must ensure there are no impediments to the commencement of assembly and, insofar as necessary, that energy, gas and water is supplied free of charge.

3 Prices

- 3.1 Unless specified otherwise, the Contractor agrees to be bound by the prices contained in its quotations for a period of 30 days from the date of issue. Otherwise the prices - plus the applicable statutory rate of VAT - specified in the Contractor's order confirmation shall apply. Additional supplies and services shall be separately invoiced.
- 3.2 The prices contained in our quotation are ex works. Costs incurred for postal and express consignments shall be charged. Delivery is made at the cost and risk of the Client. Packaging will be charged at cost price.

4 Period of supply and service

- 4.1 Delivery dates and periods, which may be agreed as binding or non-binding, must be defined in writing and be signed.
- 4.2 The Contractor shall not be liable for delays to supplies or services caused by force majeure or due to other such events, which materially hinder or frustrate the Contractor from making the delivery for a considerable period of time, (such events including strikes, lock-outs and governmental orders etc. including those affecting the Contractor's suppliers or their sub-suppliers) even with respect to bindingly agreed time periods and deadlines. Such circumstances entitle the Contractor to postpone the supply of goods or services for the period of the impediment plus a reasonable additional lead time, or to terminate the agreement, in whole or in part, in relation to the non-performed contractual element.
- 4.3 If the impediment lasts for longer than three months, the Client shall be entitled, after having granted a reasonable grace period, to terminate the agreement with respect to the non-performed part thereof. The Client shall not be able to file any claims for damages in the event that the delivery time is extended or the Contractor is released from its obligation. The Contractor may only rely on the aforementioned circumstances if it has notified the Client without delay.
- 4.4 The Contractor is entitled to make partial deliveries and render partial services at any time, unless the Client is not interested in partial deliveries or partial services.
- 4.5 The Contractor's fulfilment of its duties of supply and service is conditional on the timely and proper fulfilment of the Client's obligations.
- 4.6 If the Client is in default of acceptance, the Contractor shall be entitled to demand reimbursement of its losses resulting from this; the risk of accidental deterioration and accidental loss shall pass to the Client at the time a default of acceptance is established.

5 Transfer of risk

Risk shall pass to the Client as soon as the consignment has been handed over to the shipper or once it has been removed from the Contractor's warehouse for the purposes of dispatch. If delivery of the goods is delayed at the request of the Client, the risk passes to the Client when the Client is notified of the readiness for shipment.

6 Acceptance

- 6.1 The Contractor's work shall be formally accepted no later than 12 days following the notice of completion. The work shall be deemed accepted if the Client fails to perform the formal acceptance procedure despite a deadline having been set.
- 6.2 If the Client is in default of its obligation of acceptance, risk shall pass at the time default is established. Risk shall also pass if assembly is interrupted for reasons for which the Client is responsible and it is agreed that the Contractor will transfer the services performed to date into the safekeeping of the Client.
- 6.3 Commissioning by way of a trial run is deemed to constitute acceptance. Acceptance may not be refused on the ground of insignificant defects.

7 Client's rights in the case of defects

- 7.1 The products will be delivered with no manufacturing or material faults; the time limit for raising claims for defects is one year from the time of delivery of the products.
- 7.2 Any claims for defects shall be extinguished if the Contractor's operating or maintenance instructions are not followed, if parts are exchanged or consumables are used and these do not correspond to the original specifications, unless the Client is able to refute a substantiated allegation that it was one of these circumstances that actually resulted in the defect.
- 7.3 The Client is required to report any defects in writing and signed to the Contractor's customer services without delay, but in any case no later than within one week of receiving the object of the delivery. Defects that remain undetected within this time limit - even following a careful inspection - must be reported in writing to the Contractor without delay following their discovery.
- 7.4 In the event of the Client's notification indicating a defect in the products, the Contractor shall demand either demand - at its discretion and costs - that:
 - a) the defective part or device is sent for repair with a subsequent return consignment to the Contractor;
 - b) the Client shall keep the defective part or device available and a service technician of the Contractor will be dispatched to perform the repair.

If the Client demands that the subsequent improvement works are performed at a location designated by the Client, the Contractor can fulfil this demand in which case the replaced parts will not be invoiced, but labour and travel costs will be charged at the Contractor's standard rates.

- 7.5 If the subsequent improvement fails after a reasonable period of time, the Client may demand a reduction of payment or terminate the agreement, at the discretion of the Client.
- 7.6 The Contractor is not liable for ordinary wear and tear.
- 7.7 Only the direct Client may assert claims for defects against the Contractor; such claims are not assignable.
- 7.8 The Contractor shall in any case be entitled to undertake subsequent improvement. The Contractor is not liable for ordinary wear and tear.

8 Retention of title

- 8.1 Until the time of settlement of all current or future receivables (including the settlement of all outstanding current account balances) to which the Contractor is entitled against the Client regardless of legal basis, the Contractor shall retain ownership in and the right of disposal over the items delivered until all payments under the agreement has been received.
- 8.2 The goods shall remain the property of the Contractor. Any processing or transformation shall always be performed on behalf of the Contractor as the manufacturer, but without creating any obligation on its part. If the Contractor's (co)ownership is extinguished through a combination of goods, it is here and now agreed that the Customer's (co)ownership in the combined article shall be proportionally (invoice value) assigned to the Contractor. The Client shall protect the Contractor's (co)ownership at no charge. Goods in which the Contractor has (co)ownership are henceforth known as "goods subject to retention of title".
- 8.3 The Client is entitled to process and sell the goods subject to retention of title as part of its normal business dealings provided it is not in default of its obligations. These goods may not be made the subject of a lien (pledge) or used as collateral. By way of precaution, the Client here and now fully assigns to the Contractor the receivables established (including the settlement of all outstanding current account balances) due to the resale or other such legal basis (insurance, tort) concerning the goods subject to retention of title. The Contractor empowers the Client (revocably) to collect the assigned receivables for its own account and in its own name. This collection authorisation may only be revoked if the Client fails to properly fulfil its payment obligations.
- 8.4 The Client shall disclose the Contractor's ownership in the event of any third party interference (especially attachments) with the goods subject to retention of title, and it shall notify the Contractor without delay to enable it to uphold its rights of ownership. The Client will be liable to the Contractor in the event that the third party is unable to reimburse the court costs or out-of-court costs incurred in this connection.
- 8.5 If the Client is in violation of the agreement – particularly in the case of a default of payment – the Contractor shall be entitled to rescind the agreement and demand the surrender of the goods subject to retention of title.

9 Payment

- 9.1 Unless otherwise agreed, the Contractor's invoices are payable without deduction 30 days following the date of issue.

Regardless of the Client's contrary terms, the Contractor shall be entitled to offset payments against antecedent debts first; it shall notify the Client of the method of offset applied. If costs and interest have already been accrued, the Contractor shall be entitled to initially apply the payment to the costs, then to the accrued interest and finally to the principle debt.

- 9.2 A payment is deemed made once the Contractor can dispose of the funds. In the case of cheques, the payment is only deemed made at the time the cheque is honoured.
- 9.3 If the Client is in default of payment, the Contractor shall be entitled to demand liquidated damages in the form of interest at the rate of 9 percentage points above the base interest rate starting from the applicable point in time. The damages will be reduced if the Client can prove a lower amount of loss; the Contractor reserves the right to demonstrate that the actual losses are higher.
- 9.4 The Contractor may declare the total remaining debt to be due and payable - including where it has accepted payment by cheque - if it becomes aware of circumstances casting doubt on the Client's credit-worthiness, especially in the event that a cheque is not honoured or if the Client ceases making payments or if the Contractor becomes aware of any other such relevant circumstances. In such a case the Contractor may also demand advance payments or the payment of a deposit.
- 9.5 The Client shall only be entitled to exercise an offset, a retention or a diminution of price - including where defect claims or counter-claims have been asserted - if these counter-claims have been confirmed by a final legal judgement (res judicata) or are not in dispute.

10 Patents

- 10.1 Unless the object of the delivery was designed by the Client, the Contractor shall indemnify the Client and its customers in respect of all claims arising from the violation of copyright, trademarks or patents. The Contractor's duty to indemnify is limited to the amount of foreseeable damage.

Indemnity is likewise conditional on the Contractor being assigned the authority to conduct the applicable legal disputes and that the alleged rights infringement is attributable solely to the method of design of the delivered items without connection to or use in conjunction with other products.

10.2 The Contractor may opt to release itself from the obligations assumed under (1) above by either

a) obtaining the requisite licences for the patents that have been allegedly infringed

or

b) providing the Client with a modified object of delivery or parts thereof, which, when substituted for the infringing object of the delivery or its parts, eliminate the allegation of a violation made against it.

11 Confidentiality

Unless explicitly agreed in writing to the contrary, the information provided to the Contractor in connection with purchase orders is not deemed to be confidential. The Client is duty bound to treat as strictly confidential the content of any quotations issued by the Contractor. The Contractor's prior written consent is required before any third party disclosures, including partial.

12 Liability

- 12.1 Regardless of the nature of the infringement - including tort - all claims for damages against the Contractor shall be excluded unless the Contractor acted with intent or with gross negligence.
- 12.2 In the event of an infringement of material contractual obligations the Contractor shall be liable regardless of the degree of negligence, but only up to the extent of the foreseeable damage. Claims for lost profit or savings in expenditure, those connected with third party claims for damages or other such indirect and consequential damage are all excluded, unless based on a characteristic guaranteed by the Contractor and intended to protect the Client in the event of such claims.
- 12.3 The disclaimers and limitations of liability set out in (1) and (2) above do not apply to claims based on the Contractor's fraudulent conduct, or to liability for guaranteed characteristics, or to claims made pursuant to the German Product Liability Act [Produkthaftungsgesetz] or to claims based on death or personal injury.
- 12.4 To the extent that the Contractor's liability is excluded or limited, this applies equally to its employees, representatives and vicarious agents.

13 Applicable law, legal venue, severability

- 13.1 These General Terms and Conditions and the entire legal relationship between the Contractor and the Client shall be governed by the law of the Federal Republic of Germany. The provisions of United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 13.2 If the Client is a registered trader, a legal person under public law or a public law special fund, all disputes arising directly or indirectly out of this contractual relationship shall be heard solely before the court in Münster.
- 13.3 If any of the provisions of these Terms and Conditions or any provision of any other relevant agreements is or becomes ineffective, this shall not affect the effectiveness of the remaining provisions or agreements.