

§ 1 Conclusion of contract

- 1.1 All legal transactions shall be based exclusively on the following terms of Kontron Austria. These terms shall be considered as agreed for all current and future transactions, coming into effect as soon as an order confirmation is issued, or at the latest on acceptance of the delivery or the service by the customer.
- 1.2 Business terms or counter-provision by the customer, which deviate from Kontron Austria's own terms as well as any verbal secondary agreements shall require the explicit written consent of Kontron Austria for each individual transaction in order to be effective.

§ 2 Bids

- 2.1 Bids by Kontron Austria shall always be considered subject to change without notice. Kontron Austria reserves the right to make structural changes and formal changes until the time of delivery as long as such changes do not have a negative effect on the usage value and as long as this is acceptable to the customer.
- 2.2 Orders received by Kontron Austria shall become binding without prior notice when the final written order confirmation has been sent or the production of the order has been started. If an order confirmation is issued, the content of the order confirmation overrides the content of the customer's order.
- 2.3 Kontron Austria shall be entitled to withdraw from the contract without being held liable thereof if, after confirmation of an order, credit information to be verified by the customer on the request of Kontron Austria appears to put the fulfillment of the transaction at serious risk, or if circumstances which appear to cast doubt on the customer's credit rating become known in any other way.
- 2.4 Cost estimates, drawings and other bid documents shall remain the property of Kontron Austria and must not be made available to any third party or used in a way exceeding the intent of the contract without the explicit consent of Kontron Austria. The customer shall be allowed to copy such documents only to the extent required for organisational reasons to allow the customer to review the bid. All usage rights to the above-mentioned documents shall remain exclusively with Kontron Austria as the originator of the documents.

§ 3 Prices

- 3.1 All prices shall be understood as being in Euros (E) without a discount or any other rebate, ex-works (EXW, Incoterm 2000) from Kontron Austria, plus exclusively the value-added tax in effect at the time of invoicing plus exclusively the cost of packaging, taxes, fees or customs.
- 3.2 If, in individual cases, a fixed price is not stipulated explicitly and in writing, the price in effect on the date of delivery shall be charged.
- 3.3 In all cases the customer shall be liable for any increased costs due to subsequent changes requested by the customer if Kontron Austria complies with the requested change.

§ 4 Delivery and delivery deadlines

- 4.1 Delivery deadlines shall require explicit written agreement. Agreed delivery periods shall only commence on the date of written agreement between Kontron Austria and the customer regarding the object and the scope of the order. If in accordance with the contract, execution of the order is dependent on submission of the customer's own documents, any delivery deadline can only commence when Kontron Austria has received the complete execution documents.
- 4.2 If changes to the contract are subsequently agreed, an appropriate delivery period shall again be agreed. In the absence of an agreement thereof, this period shall be automatically renewed for a fair and reasonable period.
- 4.3 Any operating disruptions, including at Kontron Austria's subcontractors as well as any Acts of God which have the effect of delaying delivery shall cause the stipulated delivery period to be extended by a period of time at least equal to the duration of the disruption.
- 4.4 If Kontron Austria exceeds an agreed delivery period, the customer shall remain obliged to accept the delivery until an appropriate extension period to be set by the customer has elapsed without result. The extension period in the sense of section 1 shall be three weeks in the case of delivery periods of up to three months, four weeks in the case of delivery periods of up to six months and five weeks in the case of delivery periods of more than six months. The extension period shall begin only on receipt of the customer's letter by Kontron Austria.
- 4.5 On expiry of the extension period, the customer shall be exclusively entitled to withdraw from the contract, unless damages can be claimed according to point 8.8. because the extension period has been exceeded deliberately or as a result of gross negligence.
- 4.6 Paragraph 4 clause 5 shall apply accordingly in the event of an impossible situation for which Kontron Austria is responsible.
- 4.7 Agreeing on a date of delivery or service shall not constitute a futures deal.
- 4.8 If acceptance by the customer is delayed, then after fruitless expiry of an extension period of two weeks, to be stipulated in writing by Kontron Austria, a contractual penalty irrespective of fault amounting to 10% of the net order value shall be payable to Kontron Austria by the customer. Application of the judicial right to moderation with regard to the amount of the penalty shall be explicitly waived. The right of Kontron Austria to enforce actual damages, i.e., in excess of the penalty, shall not be affected.
- 4.9 Kontron Austria shall reserve the explicit right to render partial services in the form of partial deliveries.

§ 5 Transportation and Shipping

- 5.1 All deliveries shall be effected ex works A-4209 Engerwitzdorf (seat of the company Kontron Austria, Incoterm 2010) or A-6341 Ebbs. The customer undertakes and agrees to indemnify and hold Kontron Austria harmless against all actions, proceedings, costs, claims, expenses, demands, liabilities, losses or damages occurring while assisting with loading. Any assistance with loading or any other kind of organisation regarding the transportation does not mean an abandonment or waiver of the delivery condition "ex work".
- 5.2 Shipping shall be essentially at the expense and at the risk of the customer. The risk shall be transferred to the customer as soon as the delivery has been prepared for shipping at the Kontron Austria works or warehouse.
- 5.3 Shipping insurance shall be taken out only at the explicit request of the customer and at the expense of the customer.
- 5.4 The customer shall have shipping damages of any type confirmed by the shipping company immediately on receipt and shall notify Kontron Austria of this immediately on submission of the confirmation (establishment of the facts) without Kontron Austria being held liable thereof.

§ 6 Guaranteed properties

- 6.1 The only properties guaranteed shall be those identified explicitly and in writing as such in the written order confirmation by Kontron Austria.
- 6.2 Properties of a product that are not explicitly identified and mentioned in the data sheets or other technical documents are in no case considered to be usual or specially guaranteed properties.
- 6.3 Some of the units offered may not be available any more when it comes to the performance of the contract; then Kontron Austria is entitled to use and deliver the appropriate succeeding model without being held liable thereof, even if such a succeeding model differs from the original units regarding not explicitly guaranteed properties. Kontron Austria only guarantees that the succeeding models do at least have the properties explicitly identified and mentioned in the data sheets of the relevant unit, but does warrant any properties besides.
- 6.4 Samples forwarded for testing may differ from effectively delivered products. In particular, testing results are not to be considered as specially guaranteed properties.

§ 7 Complaints

- 7.1 The customer shall review and inspect the delivered article for defects immediately on receipt. A written complaint shall be filed by the customer regarding any defects at the latest three days after delivery of the delivered article at the customer's address. If the complaint is not filed promptly, the customer shall not be entitled to enforce any warranty claims with Kontron Austria or any other claims based on an alleged defect.
- 7.2 Complaints shall no longer be allowed if the product is no longer with the customer.
- 7.3 In the case of a complaint, the object of the complaint shall be made available to Kontron Austria for inspection or be sent back to Kontron Austria on their demand. If Kontron Austria takes measures to reduce damages or enters into negotiations because of a claimed shortcoming, this shall not be considered as an acknowledgment of a defect or waiver of the objection that the complaint was not filed promptly. In case of unjustified complaint, the shipping and transportation costs incurred for the return transport as well as other costs arising are to be carried by the customer.
- 7.4 The obligation of the customer to pay the purchase price/remuneration for work agreed upon within the stipulated period of time shall not be affected by any filed complaints, unless Kontron Austria has acknowledged the defect in writing. If Kontron Austria has acknowledged expressly in writing the defect constituting the subject matter of the complaint, the customer may withhold payment only to an extent that is appropriately related to the acknowledged defects.

§ 8 Warranty

- 8.1 For the defects for which a complaint is filed promptly pursuant to paragraph 7, Kontron Austria shall be responsible for the warranty by either repairing or replacing damaged parts, the choice being up to Kontron Austria. Repair and replacement of damaged parts shall be performed at the Kontron Austria's plants in Engerwitzdorf or Ebbs/Austria, the choice being up to Kontron Austria.
- 8.2 A warranty period of twenty-four months shall be agreed for all contractual services. If statutory provisions provide for longer warranty periods, they shall be considered as being shortened to twenty-four months (the shortening of the statutory warranty period does not apply to the area of validity of the Consumer Act).
- 8.3 Kontron Austria shall not be responsible if the desired purpose or success is not achieved with the use of the supplied software intended by the customer unless Kontron Austria has explicitly guaranteed the suitability of the software for an intended application at the customer's request. Nor shall Kontron Austria be responsible for errors, defaults or defects of the standard software included in the delivery, even if it has been adapted by Kontron Austria. The same shall be valid for the software provided by the customer. Kontron Austria shall not be responsible or liable for any hardware components that customers have defined, nor does Kontron Austria take any warranty for any such hardware components; Kontron Austria will however assign warranty claims against the supplier of such hardware components to the customer on his/her request.
- 8.4 Defects due to faulty or negligent handling, excessive loading, unsuitable operating means and chemical, electrical and mechanical influences which are not set out in the contract shall be excluded from the warranty. The same shall also apply if the customer or a third party has made any changes to or has performed any maintenance or repair work on the article.
- 8.5 Kontron Austria's technical documents (such as operating instructions, wiring diagrams or data sheets, etc.) supplied with the delivered articles shall not be guaranteed.
- 8.6 The customer shall comply with building and safety requirements of all types (such as the ÖVE [Austrian Association of Electrical Engineers], VDE [Association of German Engineers], TÜV [Technical Supervisory Association], the Employer's Liability Insurance Company, etc.), unless compliance with these requirements is expressly accepted by Kontron Austria in writing.
- 8.7 If the repair or replacement delivery fails (see paragraph 8.1), the customer may only demand a reduced price (reduction) when defects are minor, otherwise he may demand cancellation of the contract (redhibition). The customer shall also have the same rights if a repair or replacement delivery is impossible, given the nature of the situation, or if it would require a disproportionately great expenditure and Kontron Austria refuses to implement the repair or replacement delivery for this reason. Kontron Austria shall be entitled to perform replacement delivery or repair within an appropriate period of time acceptable to both parties. Replacement deliveries or repair shall only be considered failed if Kontron Austria is unable to remove the defect in spite of several replacement deliveries or repair attempts. Parts exchanged in the course of replacement delivery or repair shall become the property of Kontron Austria.
- 8.8 Damage compensation claims of any type against Kontron Austria shall be precluded, unless the damage has occurred due to deliberate or grossly negligent behaviour on the part of Kontron Austria. Damage compensation claims are however limited to foreseeable damages. However, Kontron Austria shall not be liable for consequential damages, pure property damage and lost profit. In particular, Kontron Austria shall not be liable for reacquisition of data. The customer has to ensure that this data from data material which is retained in a machine-readable form can be reconstructed with reasonable effort.
- 8.8.1 If an outside party enforces preventative injunctions and/or damage compensation claims because of a claimed infringement of third party commercial patent rights by the product supplied by Kontron Austria, Kontron Austria shall according to point 8.8. be liable vis-à-vis this party only for gross negligence and limited to the actual expenses incurred - assuming a legally binding finding of such claims at the cost of the customer - but Kontron Austria shall not be liable for lost profits or future expected gains.
- 8.8.2 Any liability of Kontron Austria for the damages incurred due to infringement of patent rights shall be precluded if the infringement has occurred due to a change in the subject matter of contracts, due to a merging of the subject matter of contracts with additives not ordered from Kontron Austria or due to the use of contractual objects or parts thereof in carrying out a process used by the customer and it is only the change, the combination or the process application that has led to the patent infringement. The same thing shall also be true if the infringement action by the customer has been preceded by a warning by a third party regarding an alleged patent violation or if the customer learned of the possible patent violation in some other way, unless the customer has given Kontron Austria written notice thereof and Kontron Austria has explicitly and in writing exempted the customer from any claims on the part of a third party. In all cases of an imminent claim on the part of a third party because of alleged patent infringement, the customer shall give Kontron Austria written notice thereof without delay and shall provide Kontron Austria with all the information and documents necessary to defend against such claims on an ongoing basis.
- 8.8.3 In the case of patent infringement by the contractual object which has been found to be legally valid, if Kontron Austria is liable for this infringement with respect to the customer under the given conditions, Kontron Austria may elect at its own expense to either ensure unhindered further use of the contractual object by the customer or to replace the contractual object with another equivalent object which is not affected by the patent infringement or to modify the contractual object in such a way that there is no risk of a further infringement for the future, or Kontron Austria may accept return of the contractual object from the customer and compensate the customer for the purchase price paid, deducting the loss of value that has occurred, taking into account principles of depreciation. The customer shall not have the right to withdraw from the contract, unless Kontron Austria does not declare within an appropriate period of time, in response to the notice by the customer, how it will comply with the obligation described above and then also fails to fulfil this obligation within an appropriate period of time.

§ 9 Payment, default and offsetting

- 9.1 Unless otherwise agreed, all charges of company Kontron Austria have to be paid by prepayment. If a payment target is allowed, bills are payable within the allowed deadline without any discount. The same shall apply to partial deliveries as well as additional equipment delivered subsequently. If the delivery is delayed because of the customer or because of inadequate spatial or technical prerequisites at the customer's, the invoice shall be issued at the time of readiness for delivery.
- 9.2 Cheques and bills of exchange shall be accepted only by special agreement against separate billing of all collection charges and discount charges exclusively in fulfilment but in no case instead of fulfilment.
- 9.3 Offsetting against the Kontron Austria purchase price shall be allowed only if and to the extent that the counterclaim is found to be undisputed or legally binding. The customer shall have the right to withhold payment only because of claims arising from the same contractual relationship.
- 9.4 If the customer is in complete or partial default with regard to the payment of a bill that is due or if cheques or bills of exchange issued or accepted by the customer are not paid on presentation or if a third party opens court-ordered reorganisation or bankruptcy proceedings involving the customer's assets, Kontron Austria shall be entitled to require immediate payment of all its unpaid purchase price demands, including those from other contractual relationships or orders, regardless of any subsequent maturity or fixing of the value, or to demand adequate security from the customer which is consistent with the service rendered.
- 9.5 In the event of payment default, Kontron Austria shall be entitled to charge a penal interest amounting to 9,2 percentage points p.a. above the corresponding base interest rate.
- 9.6 If no payment is received within two weeks after default and setting a date with a threat of recession, then Kontron Austria shall be entitled to withdraw from the contract, regardless of the rights pursuant to § 10 of these terms and to repossess the objects, asserting all expenses and a suitable settlement for value reduction. If Kontron Austria exercises its right of return, the customer shall have the products packed and ready for transportation or have them shipped to Kontron Austria, the choice being up to Kontron Austria.
- 9.7 Any more extensive claims on the part of Kontron Austria arising from default, in particular damage compensation claims, shall remain unaffected by these provisions.

§ 10 Vendor's lien

- 10.1 Ownership of the delivered articles shall be reserved explicitly until complete settlement of all outstanding claims by Kontron Austria against the customer.
- 10.2 During the term of the vendor's lien on the part of Kontron Austria, the customer shall notify Kontron Austria immediately of any mortgaging, pawning or other access on the part of a third party to the object of the vendor's lien and of any damage to or destruction of same and shall compensate Kontron Austria for or shall bear any cost incurred in enforcing its ownership rights. The customer shall be liable to Kontron Austria for any damages due to failure to give notice or delay in giving such notice.
- 10.3 Only upon explicit approval of Kontron Austria in writing shall the customer be entitled to resell the delivered articles which are subject to the vendor's lien to third parties in the scope of his business activities. The customer shall not be entitled to pawn delivered articles which are subject to the vendor's lien of Kontron Austria or to transfer the ownership of them as security. If Kontron Austria approves the reselling of delivered articles which are subject to the vendor's lien, the sales revenues shall be considered assigned to Kontron Austria until the unsettled claims of Kontron Austria are paid. The customer shall be obliged to inform the purchasing party of this assignment of claims and to make sure that the purchasing party will make the payment directly to Kontron Austria.
- 10.4 At the request of Kontron Austria, the customer shall be required to provide Kontron Austria with information regarding existing inventories of delivered products, any processing or connection of these products with outside products and any outstanding or collected claims based on a resale. However, Kontron Austria shall make use of this information right only if the customer does not properly comply with its payment obligations with respect to Kontron Austria.
- 10.5 Exercising the vendor's lien shall not constitute a rescission. The customer shall have a claim only to the credit from the proceeds of private utilisation of the goods. All costs incurred by Kontron Austria due to repossession (shipping costs, etc.) shall be debited to the customer.
- 10.6 In the event of payment default, the right of the customer to possession and use of the goods delivered shall be forfeited.

§ 11 Place of implementation and jurisdiction

- 11.1 The place of implementation for all mutual claims arising from the contract shall be Linz [Austria].
- 11.2 The exclusive jurisdiction of the court which technically has jurisdiction for the business address of Kontron Austria, i.e., either the Regional Court of Kufstein or the District Court of Innsbruck, shall be stipulated for all disputes between Kontron Austria and the customer based on the legal relationship to which these Terms of Sale and Delivery are applicable, including disputes regarding how a delivery contract has come about per se, on the validity of these Terms of Sale and Delivery as well as for lawsuits based on bills of exchange and cheques. However, Kontron Austria shall be entitled to file an appeal with any domestic or foreign court that has jurisdiction for the customer locally and factually. It should be pointed out that the above jurisdictional agreement does not apply to consumers or to consumer transactions.

§ 12 General

- 12.1 Agreements made between the parties concerned which deviate from orders or order confirmations have to be submitted in writing in one single document in order to be considered legally valid. This formal writing requirement may only be waived in writing. Oral side agreements shall not be considered binding. The Terms of Sale and Delivery at hand shall be considered contractual contents in each case. The signature of the customer is not required.
- 12.2 The legal relationships between Kontron Austria and the customer shall be subject solely to substantive Austrian law, without giving effect to the Uniform Sales Law (CISG).
- 12.3 If individual terms of the present Terms of Sale and Delivery are or become partially or entirely null and void, this shall not affect the validity of the other terms of this agreement. In such a case, the parties shall attempt to reinterpret the clause or replace it in such a manner as to achieve the intended economic effect. The same shall also apply if there is a loophole in the terms, which must be closed.