

## GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF PARTS (GTC-PARTS)

### I. GENERAL

1. The following terms and conditions shall apply to all deliveries of parts by KHS GmbH (KHS) to Customer unless expressly agreed otherwise in writing by the parties. If the Customer issues and submits a purchase order based on a non-binding offer of KHS, a binding contract is concluded only, if, when and to the extent such purchase order is confirmed by KHS in writing (by letter, fax, E-Mail) ("Order Confirmation"). General Terms and Conditions of the Customer referred to in a purchase order do not apply even if not expressly objected by KHS. In case KHS submits an offer expressly nominated as binding, such binding offer must be signed and returned to KHS ("Acceptance") within 6 weeks from the offer date ("Acceptance Period") and will also be confirmed by an Order Confirmation. KHS is entitled to reject any Acceptance received by KHS after the expiry of such Acceptance Period and issue a new offer containing any adjustments which KHS, at its discretion, deems required, including price adjustments due to an actual or envisaged increase of the cost for labour and/or material prices.
2. The Acceptance by the Customer and the Order Confirmation by KHS shall hereinafter be referred to as "Concluding Document". The contractual relation as determined by the Concluding Document, any document expressly referred to therein and these terms and conditions is hereinafter referred to as "Contract".

### II. SCOPE OF SUPPLY

1. The scope of the supply to be provided by KHS under a Contract ("Scope of Supply") shall exclusively be as defined in the Concluding Document. Changes to the Scope of Supply shall be effective only if and to the extent confirmed in a written document signed by both parties, such as additional agreements, amendments to the Concluding Document and/or any other document forming part of the Contract.
2. Should either Party proposes a material change to the Scope of Supply including costs, delivery dates or installation timelines or a change in circumstances of a Party necessitate a change in the Scope of Supply including shipping, costs, delivery dates or installation timelines, in a way that impacts upon way the Scope of Supply is delivered, that Party must notify the other in writing. The Party receiving the Change Request will consider within 10 working days the proposed Change Request and revert to the proposing Party either accepting or rejecting it or requesting amendments. The Parties will discuss the proposed Change Request in good faith with a view to agreeing amendments. The Customer's acceptance shall not be withheld in case the change was necessitated by reasonable economic circumstances.

### III. PRICE AND PAYMENT

1. The sum of all prices, indicated in the Concluding Document as the price for the entire Scope of Supply shall hereinafter be referred to as "Contract Price".
2. The Contract Price is net, exclusive of value added tax which is to be added to such prices at the respective statutory rate prevailing at the date of invoice. Moreover, any and all cost and expenses arising after the delivery in accordance with item IV below due to statutory regulations, specific requirements of the Customer or for any other reason, including, but not limited to, customs duties, taxes and/or fees, during shipment, at customs clearance in the Customer's country, for examinations/approvals or otherwise, are at the Customer's account and are to be paid by the Customer in addition to the Contract Price.

3. KHS is made explicitly aware of the situation regarding the Red Sea passage. The London Joint War Committee has extended its list of high-risk waters to the Red Sea region and adjacent shores. Until further notice a delivery in or through this area cannot be ensured and all reputable shipping companies are taking alternative routes to avoid these high-risk waters. The Contract Price shall be fixed regarding the Equipment costs only. In case of a change of transportation costs of more than 10 % compared to the costs indicated, the KHS shall charge transportation costs on an as is basis plus 4 % handling fee.
4. Payment of the Contract Price shall be made by bank-to-bank transfer in Euros without deduction, free of charge to KHS' bank account as indicated in the invoice and in the instalments set out in the Concluding Document. Any payment shall be deemed made only if and when the corresponding amount has been received in KHS' bank account at KHS' free disposal without any reservation.
5. The Customer shall be deemed to be in default of payment upon expiration of the time for payment allowed as set out in the Concluding Documents without the requirement of any prior notice. In the event of default in payment, KHS shall accordingly be entitled to suspend the Delivery and adjust the project schedule, taking into account the capacity of KHS. Interest shall be charged on amounts due at a rate of nine percentage points above the basic rate of interest as issued from time to time by the European Central Bank.
6. The withholding or set-off of any payments due under the Contract with any amounts allegedly due payable by KHS to the Customer is excluded, unless and to the extent such amounts are accepted by KHS in writing or finally sustained by a competent court of justice.
7. In case the payment default of the Customer exceeds the duration of 30 days and payment by the Customer has not been made on or before the expiry of an ultimate deadline notified by KHS to the Customer in writing, KHS shall be entitled to terminate the Contract, in which case item X, 4, b shall apply.

### IV. DELIVERY TERM / DELIVERY TIME / DELAY IN DELIVERY

1. Unless otherwise stated in the Concluding Document, the Scope of Supply is to be delivered in accordance with FCA (KHS' factory or warehouse in Germany) as defined in the INCOTERMS 2020. Partial deliveries are permitted.
2. Notwithstanding the agreed delivery term, the date for delivery indicated in the Concluding Document ("Date for Delivery") shall be the date when the Scope of Supply is scheduled to be available in accordance with EXW (at KHS' factory or warehouse in Germany) as defined in the INCOTERMS 2020.
3. Unless otherwise set out in the Contract, the Date for Delivery is subject to the on-time occurrence of all of the following, if applicable: (i) a Concluding Document has become effective and (ii) agreed payments have been received by KHS as well as subject to the proviso that the performance of the obligations shall be physically and legally possible under reasonable and cost-effective circumstances and that the fulfillment is not hindered or prevented by any impediments, such as, but not limited to, those arising out of pandemics, shortages of personnel and raw materials, basic materials, energies and third-party services.
4. KHS is not obliged to check the availability of primary materials prior to conclusion of the contract. Compliance with the completion date is subject to the timely and correct supply of primary materials to KHS by its suppliers. KHS shall inform Customer of delays and their effects due to the lack of availability of primary materials as soon as the effects are known in the respective case. For the avoidance of doubt, KHS will propose reasonable alternative solutions as far as possible in order to reduce negative impacts on the project schedule.

If such solutions are available and both parties agree, potential additional costs are to be equally shared between the Parties.

5. In case the exportation of any or all parts of the Scope of Supply requires an export license or similar approval by any governmental authority, the agreed Date of Delivery is subject to the availability of such export license and/or approval to KHS. If and when the performance of the Contract by KHS would constitute a violation by KHS or by any of its affiliated companies and/or subcontractors of an embargo and/or similar sanction or restriction imposed by any national or multinational governmental authority on the Customer, on any of its officers, directors or affiliated companies, on the country of the Customer and/or on the country in which the Scope of Supply is intended to be used, KHS is entitled to suspend its performance of the Contract by written notice to the Customer and the parties shall proceed in accordance with the provisions set out in item XII, 5.
6. Only if, due to a delay in delivery of any part of the Scope of Supply, KHS is solely responsible which causes the Customer any loss or damage, the Customer is entitled to payment by KHS of a lump-sum compensation for Delay after expiry of a period of 1 (one) full week from the Date for Delivery ("Grace Period") in the amount equal to 0.3% of the Contract Price of the delayed part of the Scope of Supply for each full week of delay beyond such Grace Period, but in total no more than 3% of such part of the Contract Price. Subject to item 7 below, payment of the lump-sum compensation shall serve as full and final compensation of any and all loss or damage suffered by the Customer as a result of any Delay caused by KHS and all additional or alternative rights and remedies of the Customer, irrespective of their legal basis, shall be excluded.
7. In case the delay in delivery referred to in item 6 above exceeds 6 months from the Date for Delivery and delivery has still not been made on or before the expiry of an ultimate deadline notified by the Customer to KHS in writing, the Customer shall be entitled to terminate the Contract but solely with respect to the non-delivered parts of the Scope of Supply, in which case item X, 4, shall apply.
8. In case KHS is not responsible for a delay, the Date for Delivery be postponed appropriately. KHS is deemed not responsible, if (i) KHS did not contribute to the delay at least negligently, (ii) the delay is the result of an Event of Force Majeure as defined in item XI, or (iii) if the delay is caused by the Customer.
9. If the delivery is delayed for reasons for which the Customer is responsible, KHS shall be entitled to place the Scope of Supply into storage at the sole cost and risk of the Customer.

#### **V. PASSING OF RISK / RETENTION OF TITLE / PAYMENT SECURITY**

1. The risk of loss or damage to any part of the Scope of Supply shall pass to the Customer upon its delivery in accordance with the Incoterms (2020) set out in the Contract, or, in case of placing the Scope of Supply into storage pursuant to item IV, 9, on the day mentioned in KHS's notification of readiness for dispatch.
2. Title to any part of the Scope of Supply shall remain with KHS until the Contract Price has been paid in full.
3. Until such time, the Customer shall
  - a. neither sell, pledge nor assign the Scope of Supply as security; and
  - b. inform KHS immediately in writing of any seizures, confiscations, or other dispositions by third parties.
4. In the event of a termination of the Contract, in particular pursuant to a default in payment, KHS is entitled to reclaim the Scope of Supply and the Customer shall be obliged to place it at KHS' disposal.

#### **VI. INSPECTION OF DELIVERED SCOPE OF SUPPLY AND ACCEPTANCE**

1. The Customer shall inspect the Scope of Supply immediately upon delivery and shall notify KHS without undue delay of any Defect (as

defined in item VII, 1) that appears during such inspection. If the Customer fails to either inspect the Scope of Supply or to so notify KHS, then the Scope of Supply is deemed free from Defects with the exception of any Defect which could not have been discovered as a result of a reasonable inspection and with respect to only those Defects the obligations of KHS as set out in item VII, 2 shall apply.

2. The Customer shall notify KHS in writing immediately if and when the Customer discovers a Defect. Otherwise, the Customer loses any entitlement under item VII (Warranty) in respect of such defect.

#### **VII. WARRANTY**

1. KHS warrants that, upon passing of risk, the Scope of Supply shall be free from Defects. The Scope of Supply is suffering from a Defect if any part of it is not as specified in the Contract, not safe, and/or is not design or manufactured (also including the use of inappropriate material) in a way to allow its unrestrained use for the intended purpose.
2. As a result of such warranty but subject to item 5 below, KHS shall rectify at its cost, by repair or replacement, any Defect notified in accordance with item VI and within a period of twelve (12) months from the delivery of the Scope of Supply ("Warranty Period").
3. In case such rectification fails, KHS is entitled to two additional attempts. In case the rectification finally fails or in urgent cases of endangerment of operational safety or to avoid disproportional damages, then, subject to a prior written notification to KHS, the Customer is entitled to rectify the Defect or to have it rectified by a third party itself and to reimbursement of all necessary and reasonable expenses at actual and subject to item X, 2.
4. In the event referred to in item 3 above as well as in case rectification of the Defect is technically impossible, the Customer may alternatively, but subject to a prior written notification to KHS, terminate the Contract but solely with respect to those parts of the Scope of Supply suffering from Defect, in which case item X, 4, shall apply.
5. No Warranty shall be granted in respect of used parts, if any, contained in the Scope of Supply. Moreover, the obligations of KHS set out in items 2 to 4 above shall cease if and when one or more of the following has occurred:
  - a. Unsuitable or improper use of the Scope of Supply, faulty installation or assembly, incorrect or negligent handling, improper maintenance, unsuitable operating resources, use of insufficient media qualities.
  - b. Noncompliance with the KHS standard regarding media and consumables, defective construction work, unsuitable subsoil, chemical, electrochemical, or electrical influences.
  - c. installation of motors being supplied as a part of the Scope of Supply was not performed by qualified electrician(s) according to the VDE regulations.

#### **VIII. INTELLECTUAL PROPERTY RIGHTS**

1. Any intellectual and industrial property rights in respect of the Scope of Supply shall remain at all times with KHS. This extends also over any intellectual property rights and all copyrights related to drawings, diagrams, and all other documents provided under or in connection with the Contract.
2. If and when any third party alleges that the use of any or all parts of the Scope of Supply by the Customer infringes such third party's intellectual property rights and provided the Customer informs KHS without delay thereof, KHS shall, at its expense, defend or provide the Customer with all reasonable support to defend such allegation. In the event the alleged infringement is finally sustained by a competent court of justice, or formally accepted by KHS and, as a result, the Customer is prevented from the use of any or all parts of the Scope of Supply, KHS shall, at its cost and discretion, either

- a. procure and provide the Customer with a license to further use the infringing part(s); or
- b. modify or replace such part(s) in a manner so that the infringement no longer exists.

If and when KHS notifies the Customer that neither of the above is possible within reasonable time and/or at reasonable cost, either Party may terminate the Contract but solely with respect to the infringing part(s), in which case item X, 4, a shall apply.

3. The obligations of KHS referred to in item 2 above constitute KHS' sole and exclusive obligation and liability and the Customer's sole remedies arising from and in connection with an alleged or actual infringement of third parties' intellectual property rights and are subject to compliance by the Customer with all of what is set out below:
  - a. the Customer informs KHS immediately of alleged infringements of intellectual property rights or copyrights,
  - b. the Customer supports KHS to an appropriate extent in the defence of the claims and provides KHS with the exclusive right, permissions and authorizations to take all defensive measures, including out-of-court regulations,
  - c. the Customer refrains at all times from any concession, acceptance and/or any other statement, declaration or other action that would adversely impact the defence,
  - d. the infringement is not the result of on an express instruction of the Customer and
  - e. the infringement is not the result of a modification of the Scope of Supply or parts thereof by the Customer or by the use of the Scope of Supply or parts thereof in a manner or for a different purpose unknown to KHS on the date of the Concluding Document.

#### **IX. SOFTWARE**

1. Software delivered or installed in KHS Scope of Supply or software used to perform the services remains the property of KHS. All other rights to the software and the documentation, including the copies, remain with KHS or the software supplier. The granting of licenses or sublicenses is not permitted.
2. in respect of software included in the Scope of Supply, the Customer shall have a non-exclusive, perpetual and royalty-free right to use such software, including related documentation, exclusively for the purpose of using the Scope of Supply and solely for the purpose set out in the Contract. Use of the software on an additional or alternative system is prohibited. Copying, passing on or interfering with this software is not permitted without KHS' express prior written consent. In no event shall the Customer be entitled to the disclosure of source codes. Any unauthorized intervention of any kind by the Customer in the software results in the immediate loss of (i) all entitlements of the Customer under warranty as set out in item VII above, as well as (ii) of the CE conformity of the Scope of Supply and the Customer shall immediately remove the CE declaration. The Customer shall not remove nor modify any manufacturer information - in particular any copyright notices - indicated on any part of the Scope of Supply.

#### **X. LIABILITY / CONSEQUENCES OF TERMINATION**

1. KHS shall not be liable for any indirect or consequential losses or damages nor for any loss of profit, loss business, loss of production or product, loss of use, business interruption, increased operating cost, nor for any other financial or economic loss or damage whatsoever.
2. Without prejudice to remedies of specific performance set out in the Contract related to warranty, infringement of third parties' intellectual property rights and termination of the Contract, the remaining

liability of KHS shall be limited to 20 % of the Contract Price of the part of the Scope of Supply giving rise to such liability.

3. The above exclusions and limitations shall apply notwithstanding anything to the contrary set out in the Contract and to any liability of the KHS under and/or in connection with the Contract, irrespective of its legal basis, whether under contract or at law, but shall not apply to the extent liability cannot be limited or excluded under the governing law nor in case of malevolent intent or gross negligence, product liability or injury to life, limb or health.
4. In case of a termination of the Contract, the parties' sole and exclusive liabilities shall be as follows:
  - a. In case only the Customer was entitled to such termination, KHS shall return to the Customer any amounts paid by the Customer for those parts of the Scope of Supply in respect of which the Contract has been terminated.
  - b. In case only KHS was entitled to such termination, the Customer shall pay to KHS the entire Contract Price deducted only by the cost saved by KHS due to the termination and the amounts realized by KHS through a re-sale of parts of the Scope of Supply to one or more other customers.
  - c. In case of either Party was entitled to such termination, neither Party shall be under any obligation or liability with respect to the Contract other than those already fulfilled at the time of termination.

#### **XI. FORCE MAJEURE**

1. If and to the extent either Party is impeded or prevented from the due fulfilment of any of its obligations under the Contract as a direct or indirect consequence of an Event of Force Majeure, such party shall neither be liable for any delay nor for a failure in performing its obligations nor for any consequences thereof.
2. Events of Force Majeure shall mean, without limitation, the occurrence of (i) forces of nature e.g. fire, earthquakes, floods, epidemics; (ii) accidents e.g. explosions, shipwreck, car crash, contaminations, environmental pollution, (iii) man-made crises beyond the reasonable control of the parties e.g. wars, riots, civil unrest, terrorist attacks, strikes, disruption to the supply chain or to international container shipping, as well as (iv) governmental activity or administrative measures regardless of the time of their establishment such as embargoes, export control provisions, lock or close downs as well as (v) any other occurrences which are otherwise beyond the reasonable control of the parties, such occurrences also including their respective direct or indirect effects.
3. Notwithstanding the generality of the foregoing, effects of an Event of Force Majeure are in particular delays and/or other impediments arising from the non-availability to KHS of materials and/or components beyond its reasonable control, whether arising as a consequence of long-term effects of a pandemic, of a supply chain disruptions or raw material shortages, of an ongoing or future war or other armed conflict and/or of any other unpredictable event. KHS shall inform the Customer without delay if and when KHS becomes aware of such non-availability of KHS materials and/or components on the performance of the Contract. Notwithstanding item 4 below, for the duration of such delay so informed by KHS, neither Party shall be entitled to terminate the Contract.
4. As soon as either Party becomes aware that it will be impeded or prevented from the due fulfilment of any of its obligations under the Contract due to an Event of Force Majeure, such party shall inform the other party in writing thereof as well as of the expected duration of the impediment and the resulting effects on the performance of the Contract. With the aim to mitigate adverse impacts of an Event of Force Majeure on the performance of the Contract, KHS will endeavour to identify and propose to the Customer reasonable

measures and the parties shall, prior to their implementation, agree on the additional cost for such measures, if any.

- Without prejudice to item 3 above, If and when the effects of an Event of Force Majeure Event prevent the delivery of any part of the Scope of Supply beyond six (6) months from the initial Date for Delivery, the parties shall, within further thirty (30) days, discuss and agree how to proceed, failing which either Party may terminate the Contract but solely with respect to the non-delivered parts of the Scope of Supply in which case item X, 4, c shall apply.

## **XII. EU-REGULATION 833/2014**

Notwithstanding anything to the contrary set out in the Contract, the following shall apply:

- The Customer represents and warrants that it will not, at any point in time, whether directly or indirectly, whether by itself or through others, sell, rent out, lease, or otherwise grant, support or allow the transfer of the possession of and/or the title to any or all parts of the Machines for the purposes of
  - a re-exportation of such parts of the Machines into the territory of the Russian Federation; and/or
  - the use of such parts of the Machines within the territory of the Russian Federation.
- If and when the Customer is in breach of what is set out in item 1 above, KHS shall have the immediate right to terminate the Contract with immediate effect by written notice. Upon such termination, the Customer shall pay to KHS upon its first written demand the higher of
  - the full Contract Price, deducted only by any cost saved by KHS due to the termination or earnings realized by the use for other purposes of those parts of the Machines not yet delivered to the Customer at the time of termination; or
  - the sum of all cost and expenses incurred and/or committed by KHS under and/or in connection with any work performed or to be performed under the Contract.
- Without prejudice to KHS' entitlements under item 2 above and independent of whether the Contract has been terminated but as an additional, direct, and immediate consequence of the Customer being in breach of what is set out in item 1 above,
  - any license and/or right to use granted by KHS under the Contract in respect of the delivered parts Machines, any software provided along therewith and/or the Intellectual Property Rights of KHS and/or any third party embedded in the Machines shall immediately and irrevocably cease; and
  - the Customer shall indemnify and hold harmless KHS, its officers, directors, customers, shareholders and/or affiliates from and against any loss or damage, also including any fines, loss of business, loss of profit and/or any other immaterial or moral loss or damage, being the direct or indirect result of Customer's breach of what is set out in item 1 above.

## **XIII. CODE, LIMITATION PERIOD AND SEVERABILITY**

- The Contract is a code, which means that, to the extent permitted by the governing law, any additional or alternative obligations, liabilities, right and/or remedies arising therefrom and not expressly set out in the Contract shall be excluded.
- Any and all claims of the Customer against KHS under or in connection with the Contract, irrespective of the legal basis, shall expire upon completion of 18 months from Performance.
- Should any provision of the Contract be invalid or unenforceable, or should any provision have unintentionally been omitted, this shall

not result in the invalidity of the remaining provisions. The invalid or missing provision shall be replaced by a valid and enforceable provision which comes as close as possible to the legal and economic purpose intended by the parties.

## **XIV. APPLICABLE LAW, PLACE OF JURISDICTION**

- The Contract as well as the arbitration agreement set out below shall be governed by the substantive law of Switzerland without reference to its conflict of law provisions and excluding the United Nations Convention on the International Sale of Goods (CISG).
- Any dispute arising out of or in connection with the Contract shall exclusively and finally be settled in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators appointed in accordance with these Rules. The place of arbitration shall be Zurich Switzerland and the proceedings shall be conducted in English.