

General Terms and Conditions of SHD KPS Nordic ApS "General GTC" (Status 2023-01-01)

I. Scope of application, additional terms of contract

(1) The General Terms and Conditions ("General GTC") of SHD KPS Nordic ApS, Niels Bohrs Vej 6, DK-6700 Esbjerg ("KPS") are applicable to all contractual relationships with customers arising from or associated with deliveries and services supplied by KPS and shall be deemed to be an integral element of the contract insofar as nothing to the contrary has been individually agreed in writing between KPS and the customer. In the version up to date at the relevant time, the GTC shall apply also to future business relations with the same customer without its being necessary for KPS to indicate their applicability to the customer at the time of the conclusion of each individual contract. The customer may at all times require KPS to supply it with the latest version of the GTC.

(2) These General GTC are applicable exclusively. Any GTC of a customer which deviate from, contradict or complement these General GTC shall only be or become an integral element of any contract insofar as KPS has agreed to them expressly and in writing. This requirement of agreement shall apply in all cases and, in particular, when KPS, knowing the customer's GTC, supplies deliveries or services to or for a customer without any reservation.

(3) The General GTC shall supplement further terms and conditions of business of KPS, in particular the General Terms and Conditions for Transfer / Licensing of Software ("Software GTC"), by the General Terms and Conditions for Software Maintenance ("Maintenance GTC"), by the General Terms and Conditions for Supply of Services ("Services GTC"), and by the General Terms and Conditions for Rental of Software ("Software Rental GTC"). Clause I. (1) and (2) hereof shall apply mutatis mutandis to the additional GTC listed in clause I. (3) hereof.

(4) References to the applicability of statutory provisions shall be for clarification purposes only. Even without such clarification, the statutory provisions shall apply insofar as they are not waived by the GTC or the further contractual conditions of KPS.

II. Quotations, conclusion of contract

(1) Quotations made by KPS shall be binding if they expressly contain a commitment period. In any other case, quotations made by KPS are non-binding and are subject to alteration. The same shall apply if KPS has provided the customer with information, product descriptions or documentation.

(2) Any order or commissioning by the customer shall be deemed to be a binding offer of a contract, unless otherwise stated. KPS shall be entitled to accept this offer of contract within 4 weeks of receipt by KPS. Acceptance may be declared expressly or by delivery of the software/licences or provision of the services to the customer.

(3) The customer is aware that software is subject to constant development. Insofar as such is reasonable for the customer, KPS may therefore supply and/or produce modified or adapted software, or provide other services in deviation from what has been agreed. It shall, in particular, be seen as reasonable for the customer if such modification in no way impairs the content and scope of the functions agreed.

III Deliveries, services, shipment, transfer of risk

(1) Deliveries and services shall be provided ex KPS's registered office. KPS shall be entitled to supply the customer with documentation in electronic form. There shall be no entitlement to a printed version. Unless collection by the customer or by a third party has been agreed and the customer has given no special instructions, KPS shall be entitled to determine the method of dispatch itself.

(2) The risk of accidental loss and accidental deterioration shall in principle pass to the customer on handover. The handover shall be deemed to have been effected even if the customer is in default of acceptance. In the case of agreed shipment, the risk of accidental loss and accidental deterioration shall already pass to the customer upon handover to the person designated to carry out the shipment.

(3) Deadlines for deliveries and services shall only be binding if they have been expressly confirmed in writing by KPS as binding. KPS shall not be in default without a written reminder from the customer, even if the date for the delivery or service is determined or determinable by calendar.

(4) A precondition of the meeting of deadlines for deliveries or services shall be that the customer provides KPS with all information necessary for delivery or service in due time, and particularly that the customer fulfils its duty of cooperation in due time. If this precondition is not fulfilled, the deadlines shall be extended appropriately. This shall not apply if the delay is the fault of KPS.

(5) If the failure to meet deadlines is due to force majeure, e.g. war, riot, strike, lockout, natural disasters, pandemics, not timely delivery by a supplier or similar events, the deadlines shall be extended accordingly.

(6) KPS shall have the right to supply partial deliveries or partial services. This shall not apply if such supply of partial deliveries or partial services is unreasonable for the customer.

(7) If KPS is in default, the customer may only withdraw from the contract within the framework of the statutory provisions if KPS is responsible for the default. The customer shall be obliged, at KPS's request, to declare within a reasonable period whether it is withdrawing from the contract on account of the default or if it insists on delivery or service.

(8) If delivery or service is impossible, the customer shall be entitled to claim damages under the statutory conditions if KPS is responsible for the impossibility. However, the customer's claim for damages shall be limited to 25 % of the net order value of that part of the delivery or service which cannot be put into operation or used because of impossibility. The customer's right to withdraw from the contract shall remain unaffected.

(9) Claims for damages by the customer due to default and due to impossibility of supplying delivery or service, as well as claims for damages in lieu of performance exceeding the limits specified in clause III. (8) shall be excluded in all cases of default and impossibility. However, the limitations of liability in clauses III. (7) and III. (8) shall not apply to personal injury, to damage caused intentionally or by gross negligence and to damage caused by the breach of an essential contractual obligation. An essential contractual obligation shall be an obligation the fulfilment of which is essential to the proper performance of the contract and the observance of which the other party may regularly rely on. In the event of negligent breach of an essential contractual obligation, KPS's liability shall be limited to the foreseeable damage typical of the contract.

IV. Remuneration and payment terms

(1) Insofar as no fixed prices have been expressly agreed, the price for the relevant delivery and/or service shall be the amount given in the KPS pricelist applicable at the time of the conclusion of the contract. Prices shall be understood as net ex-registered office of KPS with no deductions plus the statutory value added tax applicable at the time.

(2) KPS expressly reserves the right to refuse checks or bills of exchange. Acceptance of such by KPS shall be only for purposes of fulfilment of contract. Any discount and bill of exchange charges and expenses shall be borne by the customer and will be due immediately.

(3) The receipt of the complete claim by KPS shall be decisive for compliance with payment deadlines.

(4) The customer shall only have a right to offset anything against payment if its counterclaims have been legally established or have been acknowledged in writing by KPS. In addition, the customer shall only have the right to withhold any payment if the claim on which he or she bases the withholding relates to the same contractual relationship and has either been legally established or formally acknowledged by KPS.

(5) If the customer is in arrears with payment, KPS shall have the right to temporarily interrupt performance under the same contractual relationship and to regard all open accounts within this relationship as being immediately due. In such a situation, any dates or deadlines set for KPS for supply of outstanding deliveries or service shall no longer apply and there shall be no requirement on KPS to indicate this specifically.

V. Retention of title and rights

(1) KPS shall retain all rights to the deliveries or services not yet paid for until all claims due have been paid in full. This shall apply in particular to intellectual property rights (e.g. rights of use to software) and to ownership of the items to be delivered in question.

(2) KPS's deliveries or services must not be pledged to third parties, assigned or transferred by way of security until the claim has been paid in full. The customer shall inform KPS in writing without delay if and insofar as third parties have or are expected to have access.

(3) If the customer acts in breach of contract, in particular if it fails to pay the remuneration due, KPS shall be entitled to withdraw from the contract and to revoke the rights of use granted to the customer (e.g. rights of use to software) and to demand the surrender of the items supplied (e.g. data carriers, documentation, etc.).

(4) Insofar as the customer is entitled to resell the deliveries received from KPS in the ordinary course of business, it shall already now assign to KPS its claims accruing to it from the resale against his customers or third parties in the amount of KPS's claims. The customer shall remain authorized to collect the claims even after assignment. This shall not affect KPS's right to collect the claim itself. However, KPS undertakes not to collect the claim as long as the customer meets its payment obligations, does not fall into arrears and, in particular, as long as no application is made for the institution of insolvency proceedings against the customer's assets or the customer ceases to make payments. If one of the aforementioned

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cases occurs, KPS may demand that the customer inform KPS of the assigned claims and their debtors, provide all the information necessary for collection, hand over the relevant documents and inform the debtors of the assignment. KPS undertakes to release the existing securities at the customer's request insofar as the realizable value of the securities exceeds the claim to be secured by more than 10%. The choice of the securities to be released shall be incumbent on KPS.

VI. Customer's duty of cooperation

(1) In order to avoid damage caused by loss of data, the customer shall be obliged to ensure that its data is backed up daily, updated daily and in accordance with the current state of the art.
(2) The customer shall perform the acts of cooperation free of charge within the framework of the performance owed by KPS. This shall include in particular that the customer shall provide KPS in good time with all the information necessary for KPS to fulfil the contract without being asked to do so. Furthermore, the customer shall in good time create the conditions and provide the facilities necessary for the use of the deliveries or services.

VII. Receipt and acceptance of deliveries and services

1) After each supply of deliveries or services the customer shall, at KPS's request, declare in writing without delay whether the delivery or service is correct, complete and free from defects (statement of due fulfilment of contract) or whether there are any defects and, if so, which ones.
(2) In the case of deliveries and services supplied in part, the declaration of acceptance shall not extend to features which can only be tested in connection with deliveries and services to be supplied later.
(3) Deliveries, partial deliveries, services and partial services by KPS shall be deemed to have been accepted no later than seven days after handover or after notification of completion by KPS if the customer does not notify KPS of any defects within this period.
(4) If a notice of defects proves to be unjustified, the customer shall reimburse KPS for all expenses incurred as a result.

VIII. Liability

(1) KPS shall be liable for personal injury, for damage caused intentionally or by gross negligence and for damage caused by the breach of essential contractual obligations, in accordance with the statutory provisions.
(2) In all other respects KPS's liability shall be excluded.
(3) In the event of a breach of an essential contractual obligation, KPS's liability shall be limited to the foreseeable damage typical of the contract. An essential contractual obligation shall be an obligation the fulfilment of which is essential to the proper performance of the contract and the observance of which the contractual partner may regularly rely on.
(4) KPS shall not be liable for the loss of data if the damage would not have occurred if data had been properly backed up in the customer's area of responsibility. Data shall be deemed to have been properly backed up if the customer demonstrably backs up its data files daily, updates them daily, in machine-readable form in accordance with the current state of the art and thus ensures that this data can be restored with reasonable effort. KPS's liability for loss of data - unless caused intentionally or by gross negligence on KPS's part - shall be limited to the typical cost of restoration which would have been incurred if data had been properly backed up.
(5) KPS shall likewise not be liable if defects occur after changes to the conditions of use or operation or the system environment, after operating errors, after interventions in the services (e.g. in the software), such as changes, modifications, adaptations, connections with other programs or after use contrary to the terms of the contract, unless the customer proves that the defects were already present at the time of handover of the delivery or service and have no causal connection with the events mentioned above.
(6) Insofar as KPS's liability is excluded or limited, this shall also apply to the personal liability of KPS's staff and employees and to third parties acting on KPS's behalf.
(7) Insofar as claims for damages are excluded or limited in accordance with the preceding paragraphs, this exclusion or limitation shall also extend in each case to damages in addition to performance and damages in lieu of performance, on whatever legal grounds, in particular on account of competing claims arising from defects, breach of duties arising from the obligation, tort and claims for reimbursement of expenses. Liability for default shall, in addition, be governed by the provisions of clause III. (7), liability for impossibility by the provisions of clause III. (8).
(8) Liability under the German Product Liability Act shall remain unaffected.

IX. Limitation

Any claims on the part of the customer for compensation for whatever legal reason shall lapse within one year of transfer of risk or else of the time the claim arose. Should statutory provisions set shorter periods of time, the foregoing shall not apply. The statutory period for lapse of claims shall however apply in the following cases:

- cases of claims for defects if KPS has intentionally failed to declare them or has given a guarantee for the characteristics;
- cases of claims for personal injury;
- cases of claims for compensation based on intended or grossly negligent breach of duty;
- cases of claims under the German Product Liability Act.

X. Setting deadlines, lodging claims for compensation, withdrawal and termination

(1) Insofar as the customer is has the right to require compensation in lieu of performance or compensation for costs after it has set a reasonable deadline and such deadline has elapsed fruitlessly, the communication setting the deadline must also specify that the customer will assert the claim on expiration of the deadline.
(2) The clause above shall apply mutatis mutandis if the customer has the right to withdraw from the contract or to terminate it for good reason after a reasonable time deadline set by the customer has elapsed fruitlessly.

XI. Rights of third parties

KPS shall indemnify the customer against all legally established claims which third parties may have against it on account of the infringement of industrial property rights or copyrights by its contractual and lawful use of the services provided by KPS, provided that the customer has informed KPS immediately in writing of these claims, has not made and will not make any concessions, acknowledgements or declarations equivalent to these and has defended itself to the best of its ability against the claims asserted. The customer shall not be entitled to claim indemnity in particular if and insofar as the customer is responsible for the infringements of industrial property rights.

XII. Secrecy, confidentiality

(1) Insofar as the contractual partners exchange confidential information of a commercial or technical nature or one contractual partner becomes aware of information from the area of the other contractual partner which is marked as "confidential" or "secret" or which constitutes business secrets within the meaning of the German Business Secrets Act, they undertake to treat such information as strictly confidential and not to make it available to third parties or to use it in any way outside the performance of this contract without the consent of the respective other contractual partner. Excluded from the mutual obligation of secrecy is such information which is demonstrably

- a) general public knowledge or becomes public knowledge without the intervention of a contractual partner or
- b) becomes known to a contractual partner from another source which is not obliged to maintain secrecy towards the other contractual partner or
- c) must be disclosed by a contractual partner due to mandatory statutory provisions (in particular to courts, law enforcement agencies and authorities).

In the case of mandatory disclosure pursuant to section XII. (1) lit. c), such disclosure shall be limited to the qualitatively and quantitatively lowest possible extent.

(2) Employees and authorized third parties of the contracting parties who may or must become aware of the confidential information shall be obligated, in advance and in a suitable manner, to maintain secrecy.

(3) Each contractual partner shall inform the other contractual partner without delay if confidential information is or is expected to be disclosed to third parties so that the contracting parties can prevent or limit such disclosure and avert imminent damage.

(4) Each contractual partner undertakes to hand over to the other contractual partner at any time, after being requested to do so, all confidential information provided to it by the other contractual partner, or to destroy such information at the other contractual partner's discretion, without retaining any copies or records. Own records, compilations and evaluations containing confidential information shall be destroyed immediately upon request of the other contractual partner; electronically transmitted and/or stored confidential information shall be deleted. The destruction/deletion carried out shall be confirmed in writing to the other contractual partner upon request.

(5) Confidential information whose storage is required by law may be stored securely and protected from access by third parties for the legally required storage period and must then be destroyed without delay.

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(6) Confidential information which forms the basis or evidence for claims of one contractual partner against the other contractual partner may be stored securely and protected from access by third parties within the limitation period of the respective claims and must then be destroyed without delay.

(7) The term of this non-disclosure agreement shall continue to apply after termination of the contracts existing between the contractual partners.

XIII. Miscellaneous provisions

(1) Place of performance for deliveries and services as well as place of payment is Esbjerg. The place of jurisdiction is – to the extent legally permissible – Esbjerg (Denmark). The same shall apply in the event that the customer has no general place of jurisdiction in Denmark. However, KPS shall also be entitled to bring an action at the customer's place of business.

(2) The Danish law shall apply exclusively. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

(3) Subsidiary agreements and amendments to the contracts and to the General GTC must be in writing. This also applies to the waiver of the written form requirement. Electronic documents, such as e-mail with sender identification, shall be deemed to be in writing for the purposes of these General GTC.

(4) If individual provisions are not legally effective or lose their legal effectiveness as a result of a later circumstance, or if a loophole is discovered, this shall not affect the legal effectiveness of the remaining provisions. The customer and KPS shall replace invalid provisions and loopholes immediately after they are discovered with provisions which correspond or come as close as possible to the economic purpose of the contract. Otherwise the legal provisions of the Federal Republic of Germany shall apply in their place.