



# General Purchasing Terms and Conditions for Services for Companies of the Körber Group

(October 2018)

## 1. SPHERE OF VALIDITY

1.1. Services rendered by the Contractor (CR) for companies of the Körber Group as the Customer (CS) shall be rendered exclusively in accordance with these General Purchasing Terms and Conditions for Services (Purchasing Terms and Conditions) as well as any other written agreements between the parties.

1.2. Upon the submission of an offer, these Purchasing Terms and Conditions shall be considered to have been accepted by the CR.

1.3. The General Business Terms and Conditions of the CR shall themselves then not become a contractual component even if the CS does not expressly object to them.

1.4. These Purchasing Terms and Conditions shall be valid until their revocation by the CS, including for all future services rendered by the CR even if they have not once again been expressly agreed. Any agreed deviations shall be valid only for the services for which they have been confirmed in writing by the CS.

1.5. Services in accordance with these Purchasing Terms and Conditions shall be considered to be services of all kinds including, among others, consulting services, development work, transport services, cleaning work, maintenance work and installation work.

## 2. CONCLUSION OF THE CONTRACTUAL AGREEMENT

2.1. Services shall be rendered only based upon the orders issued by the CS. Orders issued by the CS shall be considered to be binding only if they have been issued by the CS in writing or electronically.

2.2. The acceptance of the order must be confirmed in writing by the CR within five working days.

2.3. Oral commitments, ancillary agreements, information, etc. shall be considered to be binding only if they have subsequently been confirmed in writing by the CS or if the CS has waived the written form requirement in writing.

2.4. The CS's order number must be stated on all written correspondence including on the invoices.

## 3. IMPLEMENTATION OF THE SERVICES

3.1. The scope of services shall be determined based upon the order issued by the CS.

3.2. The CR shall render the services personally and shall not be permitted to obligate the CS vis-à-vis third parties. The involvement of third parties shall require the CS's prior written consent.

3.3. The CR shall implement the services and his assigned work duties independently and at his own responsibility. Only the CR shall be authorized to issue instructions to his employees.

3.4. During the rendering of his services, the CR shall deploy only carefully-selected and qualified employees. In this regard, he shall safeguard particularly the CS's interest in continuity. Upon the CS's request, the CR shall replace the employees who do not possess the required technical expertise or otherwise restrict the fulfilment of the contractual agreement. The CR shall assume the additional expenditures incurred in this regard.

3.5. The CR shall be responsible for the fulfilment of the contractual obligations by his employees (particularly confidentiality and data protection). The CR must refer all deployed employees to the relevant provisions and control the adherence thereto.

3.6. In the event that services are rendered on the CS's premises, the CR must fulfil the safety and information guidelines that are valid there which the CS has provided to the CR.

3.7. The CR shall be obliged to notify the CS upon a regular basis of the work progress attained during the rendering of the services and to promptly notify the CS in writing of all sets of circumstances which (could) restrict the contractual fulfilment. After services have been rendered in full, the CR shall do the accounting work for his services and hand over to the CS everything which he has obtained as the result of the rendering of services for any reason.

3.8. The CS may, at any time, demand changes to the contractual services. The CR may object to the changes insofar as the implementation of the changes is unreasonable for him. The CR shall submit a written offer to the CS for supplemental or more extensive services. Clause 3.1 shall be valid analogously.

3.9. Insofar as this is possible, both economically and technically, the CR shall be obliged to use environmentally-friendly products and processes.

## 4. RIGHTS TO WORK RESULTS

4.1. The work results, which are created by the CR or, at his mandate, by third parties for the CS, in any form, all models or other materials as well as all rights including any patent and intellectual property rights for them shall be transferred upon their creation solely and irrevocably into the unrestricted ownership of the CS. Furthermore, the CR shall irrevocably grant to the CS the usage and exploitation rights, which are transferable, sub-licensable as well as unrestricted by territory, content and time, in all usage and exploitation forms for the contractually-agreed purposes or the purpose prescribed in the contractual agreement for all of the aforementioned work products which are protectable by copyright. Moreover, the aforementioned usage and exploitation rights shall be exclusively granted for work results that are individually created for the CS. Insofar as the CR provides a work result to the CS which contains existing rights before the rendering of services, the CR shall irrevocably grant to the CS a usage and exploitation right to it which is non-exclusive, transferable, sub-



licensable and unrestricted by territory, content and time.

4.2. The CR shall ensure that his personnel or auxiliary personnel who are participating in the rendering of services or his commissioned third parties shall assert no rights derivable from personal copyrights or other intellectual property rights. Upon the initial request from the CS, the CR must ensure that the relevant employees have granted any required approval for the registration of intellectual property rights and/or a Declaration of Assignment of the rights to the work results.

4.3. The CR shall be entitled to retain a copy of the work results in order to document the services which he has rendered. The CR shall be entitled to no additional rights, particularly a right of reproduction or dissemination.

4.4. All claims regarding the rights transferred or granted in accordance with this Clause 4 shall be considered to have been settled in full through the payment of the fee specified in Clause 10.

## **5. STATUTORY REQUIREMENTS AND QUALITY ASSURANCE**

5.1. The CR shall be obliged to follow the legal requirements which are valid for the services to be rendered at the place of performance as well as the delivery destination, particularly regarding accident prevention, workplace safety, machine safety and environmental protection.

5.2. The CR must implement a quality assurance system which, based upon the respective type and scope, is suitable and corresponds to the latest state of the technology and to document this to the CS upon request.

5.3. The CR shall conclude a corresponding Quality Assurance Agreement with the CS upon the CS's request.

5.4. If the CS has claims asserted against it owing to the violation of the statutory provisions, particularly regarding safety guidelines, the CR shall be obliged to indemnify the CS and the latter's customers from all claims insofar as they have been created by the services rendered by the CR.

## **6. CONFIDENTIALITY AND DATA PROTECTION**

6.1. The CR shall be obliged to treat all information, such as technical, commercial and organizational details which become known to him through the business relationship with the CS, as a business secret and to keep it confidential and not make it available to third parties for the duration as well as after the completion of the rendering of services. Excepted from this shall be information which is, or becomes, generally known without any violation of this provision.

6.2. The CR shall use the information and documents, which have been or are made available to him during the cooperation with the CS, only for the rendering of the services for the CS. The same shall be valid for the results, data and know-how created in conjunction with this contractual agreement.

6.3. The CR shall be obliged to protect all of the CS's business secrets against unauthorized third-party access in accordance with the current state of the technology standards. If the CR has indications that unauthorized third parties have possibly obtained knowledge of the CS's business secrets, then he must promptly notify the CS of this and, in consultation with the CS, introduce the required measures.

6.4. The CR shall be obliged, after the completion of the rendering of his services, to return to the CS all information, data, documents and storage media that have been received. Moreover, the CR shall remove this information from his data processing systems as well as, as the CS so chooses, return any physical documents to the CS or permanently delete the data. Upon the CS's request, the CR shall document, and confirm in writing, the complete return or destruction thereof.

6.5. The CR shall be obliged to follow all data protection law provisions as amended.

6.6. For each culpable violation of one of these obligations, the CR shall owe the CS a contractual penalty in the amount of 5% of the respective order value. Any damage compensation claims and the claim to the services being rendered by the CS shall remain unaffected by this contractual penalty.

## **7. DELIVERY TIMEFRAME, CONTRACTUAL PENALTY AND SUBSTITUTE PERFORMANCE**

7.1. Any agreed deadlines and timeframes shall be binding. The following shall be definitive for their fulfillment: The rendering of the complete services or, insofar as this has been agreed, the acceptance of the services by the CS at the specified destination.

Services must be rendered during customary business hours. The CS must be asked when its customary business hours are.

7.2. Any early rendering of services may be undertaken only subject to the CS's written consent and shall not affect the agreed payment date.

7.3. The CR must promptly notify the CS in writing of any foreseeable delays in meeting the agreed deadlines and timeframes while stating the reasons for this delay and the anticipated duration of the delay.

7.4. In the event that there is a delay in meeting the agreed deadlines and timeframes for which the CR is at fault, the CR shall, without any additional warning letter being required, be considered to be in delivery default and shall owe the CS the payment of a contractual penalty. The contractual penalty shall amount to 0.2% of the order value per work day begun of the delay, but nonetheless up to a total maximum amount of 5% of the order value which is applicable up to the point in time that the delivery default occurs. The CS may reserve the right to assert the contractual penalty until the final payment has been made. Damage compensation claims and the claim to services being rendered by the CS shall remain unaffected by this contractual penalty.

7.5. Furthermore, after the fruitless lapsing of a notice period which has been appropriately set by the CS, the



CS shall also be entitled to have the services rendered by a third party at the CR's expense.

7.6. The acceptance of belated services by the CS shall encompass no waiver of damage compensation claims.

## **8. SERVICE DISRUPTION AND RESCISSION**

8.1. If sets of circumstances, for which the CS is not responsible, result in a disruption or restriction of the operations of the CS or of a customer of the CS, for whom the services are intended, the right to render the ordered services shall be rendered invalid for the duration of the disruption or restriction of operations. In this regard, damage compensation claims upon the part of the CR against the CS shall be excluded.

8.2. The CS shall be entitled, in whole or in part, to cancel the order insofar as the services are no longer considered to be usable from an economical perspective based upon the sets of circumstances for which the CS is not responsible.

8.3. The CS shall be entitled, in whole or in part, to cancel an order insofar as an important reason exists to do so. An important reason shall be considered to be, among others, a case of natural catastrophes, importing and exporting restrictions, strikes, lockouts or other operational disruptions, both affecting the CS as well as the CR.

8.4. Furthermore, the CS shall be entitled to exercise the statutory rights of rescission.

8.5. If the CS, in whole or in part, withdraws from the contractual agreement, the payment claims of the CR shall be forfeited.

## **9. PLACE OF PERFORMANCE**

Unless agreed to the contrary in writing, the place of performance for all services shall be the CS's commercial residence.

## **10. FEE**

10.1. The fee shall be agreed in the order which the CS shall pay either based upon actual expenditures or in the form of a lump-sum fee.

10.2. Unless expressly prescribed in the order, no additional fees shall be owed and, through the payment of the agreed fee, all claims for expenditures and fees shall be considered to have been settled which are required for the contractual fulfilment—including for insurance, transport, travel and food costs.

10.3. If a lump-sum fee has been agreed, this shall cover all expenditures and fees of the CR for all services owed for the affected order.

10.4. Insofar as the services are invoiced based upon actual expenditures (time and materials), the CS may at any time demand a cost limit from the CR unless such a cost limit was already agreed in the order. The cost limit shall have the significance of a binding planning basis for the services to be rendered. If it turns out that the cost limit cannot be fulfilled, the CR shall promptly notify the CS of this in writing, but nonetheless by no later than when 75% of the cost limit has been

exhausted. The CS may undertake all measures which seem to it to be purposeful in order to avoid higher than expected cost expenditures, including an immediate cancellation without notice of the affected order. Any overruns of the cost limit must be renegotiated by the parties and shall be approved by means of a written order issued by the CS.

10.5. If a strict cost limit has been agreed in the order, this shall have the significance of a guaranteed maximum price for the services to be rendered. All additional costs arising from or in conjunction with the rendering of the services shall be assumed by the CR. Any additional costs for which the CS is responsible may result in an adjustment of the cost limit.

10.6. Services based upon actual expenditures shall be billed upon a monthly basis. The CR must document his services based upon actual expenditures incurred.

## **11. PAYMENT TERMS AND CONDITIONS**

11.1. The payment timeframe shall begin to run upon the receipt of a proper, VAT-compliant invoice.

11.2. A proper invoice must fulfil the statutory directives as well as correspond to the data specified in the order. Any improper invoices shall only then be considered to have been validly received by the CS after they have been corrected and resubmitted.

11.3. Unless agreed otherwise, invoices must be issued in EURO. Online invoices shall be permissible only subject to the CS's prior written consent.

11.4. Unless agreed to the contrary in writing, payments shall be rendered 30 days after the receipt of a proper invoice subject with a 3% discount, or 60 days net. Discount deduction shall also be permitted if the CS makes an offsetting or withholds payments owing to defects; the discount timeframe shall begin to run after the complete elimination of the defect.

11.5. In the event of payment default, the CR shall be entitled to charge interest of 2.5% per year on the payment claim.

11.6. Payments from the CS shall constitute no acknowledgment of the services as being contractual. Payments shall be rendered subject to the proviso of belated claims.

## **12. ASSIGNMENT**

12.1. The CR shall not be entitled to assign his payment claims against the CS or have them collected by third parties without the CS's consent.

## **13. WARRANTY**

13.1. The CR shall be liable for the careful, correct, timely and professional rendering of the agreed services.



13.2. The CR shall guarantee that the services are free of defects, correspond to the specifications, documentation and quality understandings agreed in the order, are suitable for the contractual usage as well as correspond to the current state of the technology and science as well as fulfil the applicable national and international legal directives, including the directives and guidelines issued by government agencies, trade associations and professional associations. If the CR has objections to the implementation method requested by the CS, then he must promptly notify the CS of this in writing.

13.3. The CS shall inspect the services within an appropriate timeframe for externally-recognizable quality and quantity devices. Any defects that are discovered shall be promptly reported to the CR.

13.4. Any quality and quantity discrepancies which are not externally-recognizable shall be reported to the CR as soon as they have been discovered during the course of ordinary business operations. The notification shall be considered to have been promptly rendered if it is rendered within a timeframe of 10 working days after the defect is discovered.

13.5. In the event that defects arise within the statute of limitations period, the CS shall be entitled, in addition to the statutory warranty claims, to also demand a free-of-charge rectification of the defective services or to undertake a discount of the agreed fee whereby this discount corresponds to the reduced value.

13.6. The CR shall assume all expenditures created in conjunction with the identification and elimination of the defect.

13.7. If the CR does not fulfil the demand from the CS to eliminate the defect within an appropriate timeframe that has been set by the CS, the CS shall be entitled to undertake the required measures on its own, or have them undertaken by third parties, at the CR's expense. Insofar as the setting of a notice period is dispensable, the CS shall also be entitled to this right, even without the setting of a notice period.

13.8. Even without prior agreement, measures may be undertaken by the CS or by the CS's commissioned third party in order to eliminate small defects or in order to ward off disproportionately large damages or in order to avoid risks to the operational safety of the CS or of third parties at the CR's expense. The CS shall promptly notify the CR of the reason, type and scope of these measures. The CR's warranty obligation shall not be affected by this.

13.9. The statute of limitations period for warranty claims shall begin to run upon the complete fulfilment of all performances agreed in an order.

13.10. For rectified or replaced services or portions thereof, the statute of limitations period for warranty claims shall begin to run anew at the point in time when the defect is eliminated.

#### **14. THIRD-PARTY RIGHTS**

14.1. The CR shall guarantee that the services rendered do not violate any third-party rights. The CR shall be obliged to indemnify the CS and its own customers

from all damages and costs (including attorneys' fees) which the CS and its own customers incur as the result of a non-fulfilment of this guarantee promise.

14.2. The CR and the CS shall promptly notify each other of any discovered risks of a potential legal violation and ward off any corresponding claims by mutual agreement.

14.3. If third-party rights are violated by a contractual usage of the services, the CS shall be entitled, at the CR's expense, to acquire the required usage rights from the holder of the rights. The CR shall be obliged to support the CS in any out-of-court or court dispute with the holder of the rights.

14.4. Otherwise, in the event of legal defects, the CS's rights shall be determined in accordance with the statutory directives. The statute of limitations period for claims for legal defects shall amount to 10 years.

#### **15. PROVISIONS UNDER LABOR AND SOCIAL INSURANCE LAW**

15.1. The CR shall ensure that, during the rendering of services for the CS, all provisions of the German Minimum Wage Act and the German Act on Posting Workers are followed, particularly that the deployed employees receive the respectively-valid minimum wage and/or the respectively-prescribed industry minimum wage. Furthermore, the CR shall ensure that all social insurance contributions and dues owed to trade associations are properly remitted. Upon the CS's demand, the CR must document the fulfilment of the aforementioned provisions by submitting suitable documents in this regard.

15.2. The CR shall indemnify the CS from all claims and payment claims of third parties which are asserted against the CS owing to a violation of the obligations specified in Clause 15.1.

15.3. If, during the rendering of the services for the CS, the CR commissions subcontractors to render such services, the assurance and indemnification obligation in accordance with Clauses 15.1 and 15.2 shall also extend to these subcontractors. Clause 3.2 shall remain unaffected. Moreover, the CR shall be liable to the CS for any damages which the CS suffers as the result of the non-fulfilment of the obligations specified in Clause 15.1.

#### **16. ADVERTISING**

16.1. The CR may make reference to the business relationship with the CS only with the CS's consent. The CR shall not be entitled to use the CS's trademarks, logos, trading names or company names.

#### **17. PARTIAL INVALIDITY**

If a provision of these Purchasing Terms and Conditions or of the order, in whole or in part, should be or become invalid, this shall not affect the validity of the provisions as a whole. The CR and the CS shall endeavor to reach an agreement on a valid provision which most closely corresponds to the commercial intent of the invalid provision insofar as this is possible. If no agreement can be reached, the court shall render a ruling in this regard.



#### **18. PLACE OF JURISDICTION AND APPLICABLE LAW**

18.1. The exclusive place of jurisdiction shall be the place of jurisdiction which is valid for the CS's commercial residence. In addition, the CS shall also be entitled to assert its claims in the CR's general place of jurisdiction.

18.2. The law of the Federal Republic of Germany shall be valid for the legal relationships between the CR and the CS. The applicability of the conflict of laws provisions of International Private Law (IPL) as well as the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

#### Compliance Notice

We wish to point out that our employees have been instructed to strictly follow all valid statutory directives and the values and principles of the Körber Group. In particular, our employees may not demand any inappropriate advantages and benefits, allow these to be promised to them or accept them. You can find more details in this regard in our Code of Conduct at [www.koerber.de/compliance](http://www.koerber.de/compliance).