

1 Scope

- 1.1 These General Terms and Conditions ("T&Cs") apply to any contractual relationship, including future ones, with regard to the supply of raw materials, materials and semi-finished or finished products, as well as developed systems and customer-specific development projects ("Contract Products") by K|LENS GmbH ("K|LENS").
- 1.2 General terms and conditions of the customer or third parties shall not form part of the contractual relationship between K|LENS and the customer (collectively, the "Parties"), even if K|LENS does not specifically contest its validity in individual cases or refer to a letter containing or referring to general terms and conditions of the customer or a third party. General terms and conditions of the customer or a third party shall only apply if this is expressly agreed in writing between the parties.

2 Conclusion of Contract, Scope of Services, Amendments

- 2.1 Offers from K|LENS are subject to change and non-binding. This also applies if offers from K|LENS contain information on the type, quantity or price of the contract products or the offers contain technical documentation (e.g. drawings, plans, calculations, etc.).
- 2.2 The customer's order is considered a binding contract offer. K|LENS is entitled to accept this contract offer within 10 (ten) working days (Monday to Friday) of receipt by K|LENS.
- 2.3 The acceptance of K|LENS is carried out exclusively by letter, fax, e-mail, in writing or by delivery of the contract products to the customer.
- 2.4 Any change in the supply of contract products requires the prior express written agreement between the parties. This applies in particular to changes requested by the customer with regard to the type, quantity and quality of the contract products as well as changes to the delivery time or delivery period.
- 2.5 The nature, scope and quality of the service to be provided are determined by the acceptance of the specific contractual offer from K|LENS. In addition, a contract offer for customer-specific development that has been accepted by K|LENS contains information on:
 - development goal → performance specification
 - project management → deadline / budget / progress
 - limitation of liability
 - payment plan
 - acceptance agreement
- 2.6 K|LENS carries out orders with the usual professional diligence to the best of its knowledge and conscience and on the basis of the current state of the art. Information and data provided by the customer or by third parties are only checked for plausibility. We do not give any guarantee for the advice given or the usability of the knowledge acquired.
- 2.7 Care and maintenance (service agreement) as well as the use of the technologies used (license agreement) are not included in the scope of services. This requires separate agreements between the parties.
- 2.8 K|LENS is entitled to provide partial services.

- 2.9 Unless otherwise agreed, the payment target is:
- For hardware systems, 14 days without deduction
 - Development projects
 - 30% on order acceptance without deduction
 - 60% on completion without deduction
 - 10% in case of acceptance without deduction, but no later than four weeks after completion.
- The start of the payment period is determined by the invoice date.
- 2.10 The schedule starts on the date specified in the offer acceptance. The planned processing time is determined by K|LENS to the best of our knowledge, provided that the customer cooperates as planned. In case K|LENS detects that there is not enough processing time to complete the task, K|LENS shall submit written proposals for changes to the client, stating the reasons. In this case, the parties will agree on an extension of the processing time.
- If an extension is unreasonable for the customer, he can hand in a proper notice of termination in accordance with the regulation in section 10. The customer commits himself to reimburse K|LENS for the expenses incurred up to that point.
- Adherence to estimated schedules requires the timely receipt of all documents to be delivered by the client as well as compliance with the agreed payment terms and other obligations by the client.
- If these conditions are not met, K|LENS is not responsible for the postponement of the dates. These will be postponed appropriately.
- 2.11 The deduction of discounts requires a special written agreement. Agreed discount deductions can only be claimed if there are no older receivables outstanding.
- 2.12 Payments must be made by the customer by bank transfer to the bank account stated by K|LENS. The place of performance for payment of the purchase price is the bank. The payment is deemed to have been completed when the amount to be paid has been credited to the account. Bank charges that are not incurred in Germany and credit charges, even if they are incurred in Germany, are paid by the client, unless otherwise agreed in writing.
- 2.13 The prices agreed between the parties are based on a calculation in euro. Where the parties have agreed to pay a price in a currency other than euro ("foreign currency") and have calculated the price to be paid in the foreign currency on the basis of a particular exchange rate, the underlying exchange rate shall be reviewed twice a year, on January 1st and July 1st of each year. If the current daily exchange rate established during the review exceeds the last exchange rate used by more than 3%, the price to be paid from that date (January 1st and/or July 1st of each year) will be automatically adjusted according to the increased exchange rate. If the parties did not use an exchange rate at the time of conclusion of the contract, the agreed price shall be deemed to be a fixed price.
- 2.14 If there arise additional costs for K|LENS due to collective bargaining agreements or material price increases after the conclusion of a contract, K|LENS is entitled to adjust the agreed prices in accordance with the increased costs and at its reasonable discretion. The customer has the right to have the implementation of such a price adjustment reviewed by a court with regard to its equity.
- 2.15 The customer is only entitled to offset or withhold payments if his claim is undisputed or legally established.

- 2.16 In addition, all receivables, even if a payment term has been granted, become due immediately if the payment terms are not complied with or K|LENS learns about circumstances that are likely to reduce the customer's creditworthiness. This is the case, for example, if the customer stops making payments or applies for the opening of insolvency proceedings against his assets or is rejected due to lack of assets.

3 Reservation of Ownership

- 3.1 K|LENS reserves the right of ownership of the delivered goods until all claims, including future claims against the customer arising from the business relationship, have been fulfilled within the scope of the reservation of the balance to which he is entitled. Machining and processing is carried out for K|LENS, without obliging them and without losing ownership as a result. If the customer combines the goods subject to retention of title with other goods, the customer is obliged to transfer co-ownership of the new property to K|LENS in proportion to the invoice value of all related goods, in so far as the main property belongs to him. In this respect, the new item shall be deemed to be goods subject to retention of title within the meaning of these terms and conditions.
- 3.2 The client is entitled to sell the goods subject to retention of title in the ordinary course of business. Other dispositions beyond the client's performance claims are prohibited. Goods subject to retention of title may not be used by the client as a means of security for his creditors. This also applies in the context of the client's financing such as factoring or forfeiting.
- 3.3 The client shall convey all claims arising from the use of the goods subject to retention of title including all ancillary rights to K|LENS in advance, until the full repayment of his claims specified in clause 1. If the goods subject to retention of title are combined with other objects not belonging to K|LENS, or if they are used as material in the execution of contracts, the claims shall cover the share of the proceeds corresponding to the co-ownership.
- 3.4 The client is only authorized to collect the assigned receivables in the ordinary course of business. The client must inform K|LENS about access by third parties to the goods subject to retention of title or to assigned receivables without undue delay. The costs of interventions are borne by the client.
- 3.5 For justified reasons and at the request of K|LENS, the client must notify the third-party purchasers of the co-ownership transfer and must provide K|LENS with the information necessary to assert its rights, must separate the objects and, if necessary, label the goods and hand over the relevant documents.
- 3.6 The client's authorization to have the goods subject to retention of title to his command and to collect the assigned receivables expires in the event of non-compliance with the terms of payment. In this case, K|LENS is entitled to take possession of the goods subject to retention of title. The resulting costs shall be borne by the client.
- 3.7 K|LENS will release the collateral held by it to the extent that their value exceeds the receivables to be secured by more than a total of 20%.

4 Terms of Delivery

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- 4.1 Orders and delivery schedules are based on the specifically agreed logistical agreements.
- 4.2 Unless the parties agree otherwise, the delivery of the contract products Ex Works (EXW) Incoterms 2010, production site K|LENS.
- 4.3 Unless the parties agree otherwise, the deadline for delivery for K|LENS is 12 weeks from the acceptance of the contract offer by K|LENS.
In cases where the production of the contract products is carried out in accordance with the client's specifications, the start of the processing period implies the clarification of all technical issues, in particular the complete and correct working drawings, information on the function, weight and dimensions of the contract products and results from the project management schedule.
- 4.4 In the event that the parties agree to amend or supplement the contract, the delivery period or delivery date to be obeyed shall be extended by an extent appropriate to the circumstances. The same shall apply if the client fails to fulfil his obligations under a contract properly or on time, or if the failure to comply with a delivery deadline is due to a circumstance that constitutes an exemption in accordance with Section 12 of these GTC.
- 4.5 The occurrence of a delay in delivery by K|LENS as well as the liability for such a case are determined in accordance with the statutory provisions. In any case, for the occurrence of a default of K|LENS a written reminder from the client is required.

5 Packaging and Transfer of Risk

- 5.1 K|LENS packs the contract products in industrially and commercially available packaging. If the customer requests a different packaging, an agreement will be made on the feasibility. In any case, the client shall bear the additional expenses necessary for this. If the delivery is made by means of packaging, pallets, transport containers or other reusable transport aids, these must be returned by the client in a usable condition within a reasonable period of time, carriage paid.

6 Warranty

- 6.1 The rights of the client in the event of defects in the contract products are governed by the statutory provisions, unless otherwise stipulated below.
- 6.2 Basis of a liability of defects of K|LENS is exclusively the quality of the contract products agreed between the parties in the form of agreed specifications / functional specifications, drawings or other (technical) documents.
- 6.3 As far as K|LENS has developed and/or manufactured contract products on the basis of certain specifications of the client, K|LENS shall not be liable for defects that have arisen as a result of such specifications by the client.
- 6.4 The limitation period for claims for defects by the client is 12 (twelve) months and begins with the delivery of the contract products.

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- 6.5 If contract products are defective, K|LENS can choose first, whether K|LENS provides subsequent performance by remedying the defects (rectification) or by delivering defect-free contract products (replacement delivery).
- 6.6 The client has to grant K|LENS the time and opportunity necessary for the subsequent performance owed, in particular to hand over the disputed contractual products for examination purposes. In the event of a replacement, the client must return the defective contract products in accordance with the statutory provisions.
- 6.7 In urgent cases, the client shall, in consultation with K|LENS, have the right to remedy the defect himself or through a third party on behalf of the client and to demand reimbursement of the costs necessary for the remedy of the defect and actually incurred as well as proven. Urgent cases are those in which, in order to avert acute dangers and avoid significant (higher) damage (e.g. due to a production or delivery stop in the further supply chain), it cannot reasonably be expected that the client gives K|LENS the opportunity to rectify the situation, taking into account a reasonable period of time.
- 6.8 If the subsequent performance by K|LENS has failed or a reasonable period of time to be set by the client for subsequent performance has expired unsuccessfully or is dispensable according to the statutory provisions, the client may withdraw from the contract or reduce the purchase price within the scope of its statutory rights. In the event of an insignificant defect, there is no right of withdrawal.

7 Liability

- 7.1 Unless otherwise stipulated in these GTC, including the following provisions, K|LENS is liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.
- 7.2 K|LENS is liable for damages – regardless of the legal basis – within the scope of fault liability only in the case of intent and gross negligence. In the event of simple negligence, K|LENS in accordance with the legal requirements is only liable
- for damages resulting from injury to life, limb or health, and
 - for damages resulting from the not insignificant breach of an essential contractual obligation (obligation, for which the fulfilment makes the proper performance of the contract possible in the first place and on which the contractual partner regularly relies and may rely); in this case, the liability of K|LENS, however, is limited to the compensation of the foreseeable, typically occurring damage to a maximum of 2 million.
- 7.3 The limitations of liability resulting from paragraph 7.2 shall also apply in the event of breaches of duty by or for the benefit of persons for whose faults K|LENS is responsible in accordance with the statutory provisions. However, they do not apply to the extent that K|LENS has fraudulently concealed a defect or assumed a guarantee for the quality of the contract products as well as for claims of the customer under the Product Liability Act.

8 Copyright and Industrial Property Rights

- 8.1 Unless otherwise agreed in writing, all copyrights and other industrial property rights as well as know-how relating to the contract products or the associated documents (e.g. instructions for use, drawings, models and other technical documents) are exclusively owned by K|LENS. The client may not duplicate, copy or reproduce the contract products and related documents and may use them only as part of the construction for which the contract products are intended.
- 8.2 As far as K|LENS has developed and/or manufactured contract products on the basis of certain specifications of the customer and these specifications are the subject of the assertion of infringements of intellectual property rights by third parties against K|LENS, the client is obliged to indemnify K|LENS from such claims upon first request. This indemnification obligation of the client relates to all costs and expenses that arise for K|LENS from or in connection with the use of a third party.
- 8.3 K|LENS will apply for a property right in its own name and at its own expense for any invention created during the cooperation within the framework of the service contract.
- 8.4 For the application on which his order is based, the client receives the exclusive, fee-based rights of use to the results protected by industrial property rights, which have arisen on the occasion of the research and development carried out on his behalf, in accordance with point 8.2. In this respect, K|LENS reserves a non-exclusive right of use for the use case on which the order is based for our own scientific research and development purposes. K|LENS is permitted to freely dispose of the industrial property rights even outside the application case, i.e. to grant rights of use in the context of research and development contracts with third parties and also outside of research and development contracts with third parties, without obtaining the consent for the grant of rights of use from the original client in whose service contract the industrial property rights arose.
- 8.5 If the know-how, copyrights and industrial property rights (inventions, applications, granted property rights) are required for the fulfilment of the order and/or for the exploitation of the research and development results, the client shall receive a non-exclusive, sub-licensable, non-transferable, paid right of use.
- 8.6 The conditions for the granting of rights of use in accordance with the above provisions shall, if necessary, be set out in a separate agreement between the contract parties.

9 Force Majeure

- 9.1 Force majeure, in particular but not limited to natural disasters, fire, flood, industrial disputes (strikes and lockouts), riots, war, blockades, import and export bans, from impediments to the supply of raw materials, machinery or materials for which K|LENS is not responsible, energy shortages, official measures and other unforeseeable and serious events that are unavoidable and serious for a contract party, as well as faltering supply chains, release the contract parties from their performance obligations for the duration of the disruption and to the extent of their effect. This shall also apply if these events occur at a time when the contract party concerned is in default.

- 9.2 The contract parties are obliged to provide the necessary information without delay within the scope of what is reasonable and to adapt their obligations to the changed circumstances in good faith. They will inform each other immediately when the reason for the impediment to performance has ended. K|LENS shall be entitled to a reasonable period of time to resume production. If the obstruction lasts longer than six months, each contract party is entitled to withdraw from the contract, to the exclusion of all claims for damages. Claims for reimbursement of services and reimbursement of futile expenses as well as for services rendered remain unaffected. § 206 BGB does not apply.

10 Secrecy

- 10.1 The parties undertake to maintain the confidentiality of all knowledge, information, in particular technical details, as well as all documents obtained in the course of the cooperation. The obligation applies regardless of whether the information has been communicated orally or in writing. The knowledge and information entrusted may only be used within the framework of the cooperation of the parties and may only be made available to those employees who have necessarily been involved and equally bound to secrecy. Exceptions to this require the prior express written consent.
- 10.2 The confidentiality obligations under this section do not apply if and to the extent that the information in question is demonstrably generally known, or becomes generally known through no fault of the respective party obliged to secrecy, or was or will be lawfully obtained from a third party, or is already available to the receiving party, or must be disclosed due to mandatory regulations.
- 10.3 The confidentiality obligations contained in this section shall continue to apply even after the expiry or termination of a contract or an order.
- 10.4 Upon termination of the contractual relationship, all documents referred to in this provision shall be returned or destroyed at the request of the entitled party. Subcontractors must be obliged accordingly.
- 10.5 The contracting parties may only advertise their business relationship with prior written consent.

11 Termination

- 11.1 Both parties are entitled to terminate the contractual relationship by the end of a calendar month in compliance with the notice period of 1 month if no significant progress has been made after the expiry of 6 months from the start of the work.
- 11.2 After effective termination, K|LENS will hand over the result achieved up to that point to the client within 4 weeks. The client is obliged to reimburse K|LENS for the expenses incurred up to that point.
- 11.3 The right to terminate the contract for good cause remains unaffected.

12 General Provisions

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General Terms & Conditions of K|Lens GmbH

As of 2024



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- 12.1 Should any provision of these terms and conditions and the other agreements made be or become invalid, this shall not affect the validity of the remainder of the contract. The contract parties are obliged to replace the invalid provision with a provision that is as close as possible to it in terms of legal and economic success.
 - 12.2 Changes and additions to these terms and conditions of sale as well as individual contracts are only effective in writing. The same applies to this written form requirement.
 - 12.3 The law of the Federal Republic of Germany shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.
 - 12.4 The exclusive place of jurisdiction for all disputes is Saarbrücken.