

1. General information – scope

1.1 All deliveries, services and offers from k3 works GmbH (in the following referred to as "k3 works") are made exclusively on the basis of these general terms and conditions. These are an integral part of all contracts, which k3 works concludes with the customer concerning the services or supplies offered by k3 works. They shall also apply to all future services, deliveries or offers to k3 works, even if they are not specifically agreed once again.

1.2 Terms and conditions of the customer or third parties shall not apply even if k3 works does not contradict their validity in the individual case. Even if k3 works makes reference to a letter, which contains terms and conditions of the customer or a third party, or refers to such terms and conditions, this shall not constitute consent to the validity of those terms and conditions.

1.3 For framework agreements and continuing obligations, changes to the general terms and conditions shall be disclosed to the customer in writing. They shall be deemed approved unless the customer raises opposition in writing within one month of receipt of the notification. K3 works shall indicate this specifically when making the disclosure.

2. Offer – offer documents

2.1 The offer of k3 works is subject to change and not binding, unless otherwise specified in the letter of the offer. A contract shall be created after receipt of the order only with the written order confirmation by k3 works or through unmodified acceptance of binding offers from k3 works by the customer.

2.2 The written order confirmations and binding offers from k3 works are the contractual basis and decisive for the scope of delivery and performance. Orders issued by the customer are always binding for the customer.

2.3 k3 works reserves ownership rights and intellectual property rights and other rights to offers, illustrations, drawings, calculations and other documents received by the customer works from k3 works. Disclosure to third parties requires the prior express written consent of k3 works.

2.4 Obvious errors, printing errors, computing errors, typos and obvious calculation errors are not binding for k3 works and do not give the customer any right to claim damages.

3. Prices and terms of payment

3.1 Unless otherwise stated in the confirmation of order, the prices are quoted in euros and are "ex works", excluding packaging; this will be charged separately. k3 works reserves the right to change the prices accordingly if there are cost reductions or cost increases after conclusion of the contract, especially due to collective wage agreements or material price changes. This will prove k3 works to the customer on request.

3.2 The statutory value added tax is included in the price. It is shown separately in the invoice at the statutory rate on the date of the invoice.

3.3 Deliveries, partial deliveries and/or services are payable without deduction within 14 days after the invoice date, unless otherwise agreed.

3.4 Subsequent changes of the order agreed shall entitle k3 works to charge the additional costs actually incurred or to reimburse for reduced costs. If a service or delivery is not completed for reasons for which the customer is responsible, the customer shall owe the full agreed remuneration minus expenses saved on the part of k3 works.

Further statutory claims on the part of k3 works remain unaffected.

3.5 The customer shall only be entitled to offset rights if his counterclaims are legally established, uncontested or acknowledged by k3 works. In addition, the customer is only authorised to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

4. Execution of the order

4.1 The orders accepted by k3 works shall be carried out according to the rules of technology recognised at the time of acceptance of the order. In the context of testing engagements, k3 works does not owe any success beyond the testing, especially not instructions for amending the test specimens/testing materials.

4.2 The scope of work necessary for the implementation of the order is to be specified in the order. k3 works shall perform the testing in its sole discretion. As far as it is necessary for the proper implementation of the order, k3 works is entitled to extend or shorten the testing. k3 works shall inform the customer of this immediately.

4.3 Order deadlines specified by k3 works are non-binding. The beginning of the delivery period specified by k3 works requires the clarification of all technical questions. This may be changed where a creation or a delivery period is agreed with the customer. If such a deadline is agreed, it shall start on the date of the order confirmation by k3 works, but not before the nature and scope of the performance have been clearly established and k3 works has been given all documents, test specimens and test materials by the customer, which are required for the performance of the order. The deadline is observed by k3 works if the report of results is delivered to the customer or sent to him before the expiry of the contractually agreed creation or delivery deadline. In the case a delivery by post, the date of postmark is decisive, in the case of a delivery by fax or email, the date of the respective transmission protocol shall be decisive. Sending the result report shall be considered the performance of the services by k3 works.

4.4 Compliance with the delivery obligation on the part of k3 works further requires the timely and proper fulfilment of the obligation of the customer. We reserve the right to a defence by reason of non-fulfilment of contract.

4.5 If the customer is in default of acceptance or culpably violates other duties to cooperate, k3 works is entitled to demand compensation for damages it sustains in this regard, including any additional expenses. We reserve the right to assert further claims.

4.6 Where the requirements of section 4.5 are met, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer at the time at which the customer is in default of acceptance or debtor's delay.

4.7 If k3 works exceeds the agreed period, the customer is only entitled to claim damages in the event of delay or by impossibility for which k3 works is responsible.

4.8 k3 works shall only be in default if it is responsible for the delay of the order fulfilment. If the order fulfilment is delayed through events that cannot be averted even with reasonable care, such as force majeure, strike, lock-out, malfunction, sabotage, breakage, fire, water damage, intervention by higher authorities, failure of testing machines without fault, delays in the delivery of essential parts, etc., the deadline shall be extended by the duration of the obstruction with a reasonable run-up time. k3 works shall inform the customer immediately upon the occurrence of such an event and provide information about the expected delay.

5. Materials supplied by the customer

5.1 If it is agreed between k3 works and the customer that materials, in particular testing equipment, are to be provided by the customer, the customer must deliver to k3 works on time and with a reasonable surcharge of at least 5% in perfect condition at his own expense and risk.

5.2 If the customer does not properly comply with its obligation according to paragraph 5.1, any delivery deadlines shall not start to run. In addition, the customer is to bear any additional costs incurred as a result of the delay, e.g. due to production interruptions.

5.3 k3 works is entitled to destroy the unused materials, as well as the samples for the investigations, after a period of 6 months, unless a different period is agreed. The customer shall bear the costs of proper disposal. During the retention period, k3 works shall only have to vouch for the diligence which it has to apply it in own affairs. If the customer desires the return of the material including the packaging, it has must inform k3 works of this in writing on conclusion of the contract. The goods shall be returned at the expense and risk of the customer.

5.4 The customer shall be liable for all damage attributable to the dangerous nature of the materials. The customer is liable for all damages occurring due to the material, especially during transport and waste disposal. There is no transfer of ownership to k3 works upon receipt of materials for inspection purposes. The customer remains the owner of the material even after completion of authorised tests and is the producer of the waste in a legal sense.

5.5 Duties, taxes, fees and the like resulting from the transport of materials shall be borne by the customer

6. Transfer of risk – packaging

Unless otherwise stated in the confirmation of order, delivery "ex works" has been agreed. Special arrangements apply to the taking back of packaging.

7. Liability for defects

7.1 Warranty claims on the part of the customer require that the customer has properly fulfilled its obligations of inspection and notification according to § 377 of the German Commercial Code (HGB).

7.2. If there is a defect in supply, k3 works is required at their discretion to provide subsequent performance in the form of a defect rectification or to supply a new defect-free object.

7.3 If the customer asserts claims for damages instead of the performance or self-remedy, a failure of the subsequent improvement shall only be present after the second unsuccessful attempt at subsequent improvement by k3 works. The legal cases of dispensability of the deadline shall remain unaffected.

7.4 If the subsequent rectification or replacement is only possible at disproportionate costs or unreasonable for k3 works or if it fails, k3 works can refuse the subsequent performance. This shall not affect the statutory rights of the customer to a reduction, rescission or damages.

7.5 The limitation period for claims based on defects is 12 months.

7.6 The limitation period in the case of a delivery recourse under §§ 478, 479 of the German Civil Code (BGB) shall remain unaffected. It is five years, counting from the delivery of the defective goods.

8. Liability

8.1 The liability of k3 works for any legal reason is limited to intent and gross negligence. This limitation of liability does not apply in the case of injury to life, limb or health and in cases of mandatory statutory liability (e.g. product liability). In the case of a slightly negligent breach of essential contractual obligations, the liability of k3 works is limited to the foreseeable damages, unless there is damage in accordance with sentence 2. An essential contractual obligation is an obligation that is of significant importance for the achievement of the contractual purpose, the fulfilment of which therefore makes the proper performance of the contract possible in the first place and on compliance with which the supplier relies and may rely.

8.3 k3 works assumes no liability for materials, accessories and packaging supplied as damaged or incomplete.

9 Rights of reservation of ownership

9.1 k3 works reserves the ownership of its goods/services until receipt of all payments from the underlying contract. The same is true for goods and services, which are to be paid via a partial amortisation. In the case of payment default, k3 works is entitled to take back the delivery/service. The withdrawal of the goods or services is a withdrawal from the contract. k3 works is entitled to exploit the goods or services following their return. The proceeds from the exploitation are to be offset against the liabilities of the customer – minus reasonable costs of exploitation.

9.2 The customer is required to handle the goods or services with care. In particular, the customer is obligated to insure them at his own expense against fire, water and theft at replacement value. If maintenance and inspection work is required, the customer must perform the work in good time and at its own expense.

9.3 In the event of attachments or other interventions third parties the customer has to notify k3 works immediately in writing. If the third party is unable to reimburse any judicial and extrajudicial costs of an action under § 771 of the Code of Civil Procedure (ZPO), the customer shall be liable to k3 works for the resulting losses.

9.4 The customer is entitled to resell the delivery in the ordinary course of business. However, the customer hereby assigns to k3 works all claims amounting to the final invoice amount (including VAT) of the claim by k3 works, which accrue to the customer from the resale against its buyers or third parties, irrespective of whether the delivery/service has been sold without or after processing. The customer remains entitled to collect this claim even after the assignment. The right of k3 works to collect the claim itself remains unaffected. k3 works undertakes not to collect the claim as long as the customer meets its payment obligations from the proceeds, is not in default of payment and in particular there is no request to opening settlement or insolvency proceedings or payment default. If this is the case, k3 works may demand that the customer discloses the assigned claims and their debtors, provides all of the necessary information, issues the corresponding documents and notifies the debtors (third parties) of the assignment.

9.5 The processing or transformation of the goods or services by the customer is always carried out for k3 works. If the goods or services are processed with other items not belonging by k3 works, k3 works shall acquire the co-ownership of the new item in proportion to the value of the goods or services (billing amount, including VAT) to the other processed objects at the time of processing. The same shall apply for the object resulting from the processing as for the goods or services subject to reservation.

9.6 If the delivery/service is inseparably combined with other items not belonging to k3 works, k3 works shall acquire co-ownership of the new item in proportion to the value of the goods or services (invoice amount, including VAT) to the other combined objects at the time of mixing. If the combination takes place in the way that the object of the customer is to be regarded as the main object, it shall be deemed agreed that the customer transfers co-ownership to k3 works on a pro rata basis. The customer shall keep the sole ownership or co-ownership created in this way for k3 works.

9.7 The customer shall also assign k3 works claims to secure the claims of k3 works against it to, which arise through the combination of the goods or services with a plot of land against a third party.

9.8 k3 works is required to release the collateral due to it at the request of the customer insofar as the realisable value of the collateral exceeds the claims to be secured by more than 10%; the selection of the securities to be released is the responsibility of k3 works.

10 Devices and copyright

Devices, tools, and other templates for the implementation of the order, which have been developed and manufactured by k3 works, shall remain the property of k3 works, even if proportionate costs were charged to the customer.

11. Rights of third parties

11.1 k3 works is not liable insofar as it produces goods and services according to drawings, models or equivalent other descriptions or information provided by the customer. The customer has to vouch for the fact that by executing its order there are no rights of third parties, in particular to the materials made available to the k3 works, such as ownership, lien, copyright, patent and/or other rights, in particular intellectual property rights, which prevent the contractual use by k3 works.

11.2 Should claims be asserted against k3 works on the basis of such rights, the customer k3 shall indemnify k3 works immediately from all claims from third parties and any legal costs upon first request. The customer undertakes to inform k3 works immediately about risks of injury and alleged infringement cases which become known.

11.3 Proposals from k3 works for changes to the reviewed materials are to be reviewed by the customer itself to verify that third-party rights, in particular intellectual property rights, are violated. k3 works shall not be liable for such breaches of the law. The customer shall also indemnify k3 works from third-party claims.

12. Intellectual property rights

12.1 Unless otherwise expressly agreed, all intellectual property rights and patent rights, in particular inventions, expertise, reference models, reports, test results and calculations remain with k3 works.

12.2 Insofar as tests, test results, calculations, etc. are created in the course of performance of the order, which are subject to the protection of the copyright law, k3 works grants the customer a simple, non-transferable right of use for these insofar as this is necessary according to the contractually stipulated purpose. Other rights are expressly not transferred along with these, in particular, the customer is not entitled to alter or edit test results, studies, reports of results, calculations, etc. or to use them outside the purpose of the agreement, in particular not to publish, reproduce, disseminate or to make them publicly available.

12.3 Drafts and design proposals from k3 works may be passed on to third parties only with permission from k3 works.

12.4 In the event that the customer proposes improvements or changes of the contractual services from k3 works, k3 works acquires all rights to the implementation or use of such proposals in the contractual services, in particular all exclusive rights of use and exploitation.

13. Storage, insurance

13.1 Models, drawings, raw materials, tools, and other objects used for reuse, as well as half-finished and finished products, which are not subject to mandatory retention, shall only be stored beyond the delivery date given prior agreement and in return for special compensation.

13.2 The objects described above shall be treated with care up to the delivery date insofar as they are placed by the customer's disposal.

13.3 Should the objects described above be insured, the customer has to obtain the insurance itself.

14 Confidentiality

14.1 The customer shall conclude a separate confidentiality agreement with k3 works. Should the customer not conclude a confidentiality agreement with k3 works, paragraphs 14.2 to 14.4 shall apply.

14.2 The customer undertakes to treat all information that it receives directly or indirectly, verbally, in writing or in any other form which in relation with the cooperation with k3 works, as strictly confidential during the term of the cooperation and thereafter and to use it only in connection with the performance of the contract. The customer warrants in particular not to pass this information on to third parties or to make it accessible to third parties in any other form and to take all reasonable precautions to avoid third party access to this information.

14.3 The obligation of confidentiality shall not apply if and as insofar as the confidential information in question is verifiably

- generally available, or
- generally known through no fault of the customer, or,
- lawfully obtained from a third party,
- already available to the customer on receipt of the information,
- developed by the customer independently without use of the confidential information,
- granted to a third party with the prior written consent of k3 works.

The same applies if the customer is obliged to disclose confidential information by order of a competent court or authority or other body or by law, wherein the customer must take all reasonable steps to prevent or to restrict the disclosure of confidential information to the maximum extent. The customer is required to inform k3 works as far as legally permissible in a timely manner so that k3 works can prevent the disclosure through legal measures prior to the disclosure. The customer shall only disclose the parts of the confidential information which must be disclosed.

14.4. The customer is only entitled to reveal the fact of the cooperation with k3 works to third parties, in particular to designate k3 works as a reference given the prior written consent of k3 works, unless there are compelling legal regulations opposing this.

14.5 This non-disclosure obligation applies during the business relationship with the customer and shall remain in effect in full for a period of 10 years from the date of termination of business relations.

15. Duty to take due care in the context of human rights

15.1 The Partner (Customer, Supplier or Other) is obligated to establish processes for his duty to take due care of the human rights in his company, provided Partner delivers products or provides services, where potential negative effects on human rights are to be feared in the value-added chain (e.g. risk management system), and to take systematic and adequate precautionary measures in the context of human rights based on this process. Relevant in this regard are the specifications of the UN Guiding Principles on Business and Human Rights as well as the respective relevant OECD Guiding principles & Concepts. In accordance with the Guiding Principles, the Partner shall design adequacy and scope of these measures according to the size and sales of its company, the nature of the product or service as well as according to the origin of the product or service and the raw materials contained in it, and particularly according to the associated risks.

16. Final provisions

16.1 Should individual provisions of these general terms and conditions be or become ineffective or unenforceable, this shall not affect the validity of the remaining terms and conditions. The invalid or unenforceable provision shall be replaced by an effective and enforceable provision, the effects of which most closely reflect the economic effects of the deleted provision pursued by the parties through the deleted provision. This shall also apply in the case of a gap in the contract.

16.2 The customer is not entitled to pass contracts on to third parties without the prior written consent of k3 works.

16.3 Unless otherwise expressly agreed, the place of performance for the delivery obligation shall be the registered office of k3 works.

16.4 To the extent legally permitted, the exclusive legal venue for all disputes arising from the contractual relationship shall be the registered office of k3 works Weißenburg, Bavaria. However, k3 works is entitled to bring a claim against the customer at its legal venue. The applicable contract language is German.

16.5 The contractual relations between the parties are subject to German law. The Convention of the United Nations on contracts for the international sale of goods of 11.4.1980 shall not apply