

General Terms and Conditions for services rendered by Kupek GmbH (GTCS) – Version 4 March 2022

1. Scope of application

These General Terms and Conditions shall be valid for all contracts closed between Kupek GmbH (hereinafter referred to as Kupek) and the client the subject-matter of which is the rendering of services in the area of procurement and logistics.

We expressly oppose the validity of client's conditions to the contrary. Such conditions of the client shall only become valid if expressly agreed upon in writing.

Alterations and supplementary agreements of these GTCS as well as of contracts closed on the basis of these GTCS shall be in writing and have to be legally undersigned by both parties.

2. Performance

It is not the subject matter of individual advice, training and/or professional implementation of services to achieve a specific economic success. The service has been rendered when the desired and necessary activities are carried out or recommendations and comments are made to the client. If, deviating from these regulations, the required service has to have the character of a work contract; this has to be agreed upon expressly and unmistakably in an individual contract.

The specific date of the service rendered has to be individually coordinated between the client and Kupek.

2.1. Kupek shall carry out all operations with the greatest possible care. On request of the client Kupek has to provide information about the work progress.

2.2. Data supplied by the client or by third parties shall be adopted and implemented as received. Kupek has no obligation to check these data in detail with regard to correctness and usability.

2.3. The presentation of the achieved results shall be made in clear and comprehensible manner and in accordance with agreements made with the client.

2.4. Kupek shall be entitled to make use of selected, qualified sub-contractors carrying out the order, however, shall remain at all times directly responsible to the client. Kupek shall permanently control the sub-contractors.

3. Changes of performance

Alterations and supplementary agreements to and the resulting consequences for the order (under certain circumstances increase of the fee payable and/or delay or postponement) shall only be valid if made in writing. It is necessary that both parties confirm in writing with the signature of responsible managers the changed conditions. Kupek is entitled to suspend the performance of the owed service as long as an agreement about the change of scope of order, the compensation or the fixed dates has not been reached.

4. Confidentiality

Kupek and the client shall impose a reciprocal obligation to keep confidential all documents and information, business and trade secrets, regarded as such, for an unlimited period and disclose them by no means to third parties who are not involved in

the execution of this order, unless the contractual partner will explicitly agree to a transfer.

The sub-contractors selected by Kupek have to oblige themselves similarly in writing to confidentiality, as well as possible third parties involved in the order process by the client. In this context, companies connected with the client shall also be considered as third parties.

5. Obligation of the client to cooperate

5.1 The client shall be obliged to make available in time and completely the valid and correct documentation and information which is necessary for the optimal realization of the order. The client shall support Kupek to the best of his ability and shall provide the necessary conditions when the order is executed in his premises. The client shall provide manpower support according to the extent agreed.

If the order is executed in the client's premises he shall provide the necessary and appropriate rooms, operating material (e.g. telephone, copying and fax machine), and access authorizations to the necessary systems free of charge and for the period of order execution.

5.2 The client shall inform the employees and agents of Kupek about every danger and risk to which they may be exposed in the client's area of disposition. He shall be fully responsible against Kupek, his employees and agents, if they suffer a damage or injury due to a violation of this duty of notification. The same applies for material damage to property or possession of Kupek.

6. Conditions of payment

The remuneration for the rendered services is calculated based on the times used for the contractual activities or as a fixed price as agreed in writing. Payment of a fee in accordance with the level of success or only if the outcome is successful is ruled out in the absence of any written individual agreement. If not otherwise agreed, Kupek is entitled to reimbursement of expenses connected with the order beside the agreed fee. Kupek is obliged to influence the employees taking care of executing the order as to economic behavior.

6.1. For projects with duration longer than a month monthly payments are agreed to the amount of the rendered services due at the end of the current month.

6.2. If not otherwise agreed, long-term orders shall be adapted in a 1-year cycle to the current Kupek price list. If the adaptation is exceeding to a large extent the prices set by normal market conditions the client is entitled to cancel the contract.

6.3. Services are payable immediately on receipt of invoice without any deductions and plus the legal value added tax. The value added tax is explicitly mentioned on the invoices. Arrears of payment are deemed to have occurred without the needs for a reminder after the due date according to the legal regulation. If client fails to pay in time Kupek is entitled to charge an interest based on the rate of interest paid on overdraft, but not less than 8% more than the current basis interest rate fixed by the European Central Bank. The right to claim such interest is based on the regulations of the § 286 BGB (German Civil Code), if there is no other agreement made about the due date in the contract. Interest on arrears plus overdue fees of 8 € will be charged. Kupek is entitled to claim any losses or damages exceeding the value of the interest paid on overdraft.

7. Liability for defects

Any defects which can be attributed to the responsibility of Kupek will be corrected by Kupek as far as this is possible with a reasonable amount of effort. The client has to inform Kupek about possible defects immediately in writing, however, at the latest within 3 months after performance.

8. Limitation of liability

8.1. Kupek is liable in cases of intention or gross negligence according to the legal requirements – even in case of actions of their legal representatives or auxiliary persons. In all other cases we are only liable in case of culpable injury of persons or infringement of major contractual obligations. Indemnity claims out of the infringement of major contractual obligations are in all cases limited to the foreseeable damages inherent to such contract. Even in cases of gross negligence our liability shall be limited to foreseeable damages inherent to such contracts, if no one of the in sentence 1 mentioned exceptional causes is shown. The regulations extend to compensation for damages in addition to the goods and services and compensation instead of the goods and services, irrespective of legal basis, especially because of defects, breach of contractual duties (particularly or impossibility) or tort action. They apply accordingly for the title of compensation of useless expenditures.

8.2 If the client intends to hold Kupek, his employees or auxiliary persons responsible because of infringements of the general company's rules or similar internal regulations, this is only possible after having before verifiably obligated the executing employees to act in strict compliance with the respective rules. The limited liability acc. to item 8.1 shall be valid for these infringements as well.

8.3. A reversal of the burden of proof at client's disadvantage will not be a result of these regulations.

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9. Termination

9.1. In the absence of other agreements in any individual contract, the appropriate period of notice for service contracts which are based on these terms and conditions with a duration of less than 4 months shall be 6 weeks' notice to the end of the month, with a duration of 4 to 6 months shall be 8 weeks' notice to the end of the month, with a duration of more than 6 months up to a year shall be 3 months' notice to the end of the month and with a duration of 1 year and longer, it shall be 6 months' notice to the end of the year when the contract will expire.

9.2. The client can declare partial terminations of contracts having duration of less than 6 months with a period of 4 weeks' notice to the end of the month and having duration of 6 and more months with a period of 3 months' notice to the end of the month.

9.3. The right to terminate the contract for good cause is not affected by this regulation. Important reasons can be infringements of confidentiality, continued serious violations of other contractual regulations, as well as the opening of insolvency proceedings against one of the contractual parties.

9.4. Each notice of termination needs to be given in writing. The date on which the consignee receives the termination will be decisive if it has been received by the deadline. The burden of proof is at the sender for the on-time delivery of the termination.

10. Copyright

10.1 We reserve the property and copyright over all quotations, estimations of costs, drafts, drawings and other documents, as well as software designed by us; those documents may not be disclosed to third parties without our prior agreement. Drawings and other documents which are part of our quotations have to be returned on request.

10.2. The title of ownership or the transfer of rights to use products covered by the contract shall only pass to the client when this has been agreed explicitly in the individual contract and the contractually agreed payment has been made completely.

11. Final provisions

11.1. Should any provision of these terms and conditions be or become completely or partly invalid, the validity of the remainder of the contract shall not be affected. The contracting parties have to replace the invalid term with a legally valid one which has to coincide to the utmost extent with the intention originally pursued. Verbal or tacit commitments which are contrary to these conditions shall be invalid.

11.2. The client agrees that in connection with the business relationship the data he sent to Kupek will be electronically stored under observation of the Data Protection Act.

11.3. The customer must not transfer his rights from the business relation with Kupek to third parties, unless Kupek will give his consent in writing.

11.4. Kupek shall be allowed to use the name and the logo of the customer for his promotion and business presentation.

12. Data protection

All customer data recorded in the frame of registration or order will be stored by Kupek and processed for the purpose of order handling or customer service; the above described is to be regarded as notification according to §§ 13 and 14 EU-GDPR and §§ 32 and 33 BDSG new (German Data Protection Act).
You can learn more about how we handle your personal data in our privacy policy.

13. Place of jurisdiction and applicable law

13.1. Place of jurisdiction for all disputes in connection with this contract with Kupek shall be the court responsible at the place of the respective Kupek Company.

13.2. All titles and rights from this contract are subject to the law of the Federal Republic of Germany (BGB, HGB) the conditions of the UN Purchasing Law (CISG) are explicitly excluded.

Kupek GmbH, Bahnhofstraße 13, 96277
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