

General Terms and Conditions of Purchase

(Last update:07/2018)

1. Scope

1.1 All deliveries of results, materials, products, components and systems, as well as services of the supplier (jointly referred to as a "delivery item" or "deliveries and services") to KITE Electronics GmbH are made exclusively on the basis of these General Terms and Conditions of Purchase. These are an integral part of all contracts that KITE concludes with the supplier for delivery items, even if they are not separately agreed again.

1.2 Terms and conditions of the supplier or third parties shall not apply, even if KITE does not object to their validity in individual cases. The acceptance of deliveries or services of the supplier or their payment shall not constitute consent, even if the acceptance or payment is made in the knowledge of the supplier's conflicting contractual terms. Even if KITE refers to a letter containing or referring to terms and conditions of the supplier or a third party, this does not constitute agreement with the validity of those terms and conditions.

1.3 In the case of framework agreements and continuing obligations, changes to the General Terms and Conditions of Purchase shall be notified to the supplier in writing. They shall be deemed approved if the supplier does not object in writing within one month of receipt of the notification. KITE shall make special reference to this consequence when it is announced.

1.4 Contracts for deliveries and services, accepted orders and call-offs are hereinafter also referred to as a "delivery contract".

2. Placing an order

2.1 The supplier is required to point out to KITE before conclusion of the contract if the delivery items to be delivered are unsuitable for the purpose intended by KITE and known to the supplier; the same applies in particular to health, safety, environmental and other risks. If the supplier does not fulfil this obligation, the delivery item shall be deemed not to comply with the contract.

2.2 Offers, orders and series call-off orders as well as amendments and supplements thereto must be made in writing. Verbal agreements that are not confirmed in writing by KITE shall not become an integral part of the contract.

2.3 KITE must immediately confirm each order in writing. If the supplier does not accept the order within 10 days of receipt, KITE is entitled to cancel it. The order is deemed to have been accepted by the supplier without changes on confirmation or with the beginning of the performance of the deliveries or services. Any deviation from the order is permitted only with KITE's prior written consent. If the supplier's order confirmation refers only to extracts of the order, all other points of the order shall be deemed accepted by the supplier.

2.4 KITE is entitled to demand changes of the ordered delivery item with regard to the time, place, packaging and product specifications in writing at any time. The supplier shall inform KITE immediately and bindingly of the resulting additional costs. The contract between the parties shall be amended accordingly with KITE's written consent.

2.5 No remuneration or compensation shall be granted for visits or the preparation of offers, projects etc..

2.6 The written form is also fulfilled by fax, remote data transmission or email.

3. Prices, dispatch, packaging

3.1 The price and the delivery conditions stated in the order are binding.

3.2 The agreed prices are fixed prices, unless the parties have agreed otherwise.
KITE shall not bear any freight charges or other shipping charges. The type of pricing does not affect the agreement on the place of performance.

3.3 Unless agreed otherwise, the delivery is to be made "free house" (DAP or DDP) in accordance with Incoterms 2010 to KITE or to the place designated by KITE. KITE has the right to change to a delivery of FCA Incoterms 2010 at any time, with the transport costs to be deducted from the price of the delivery items accordingly by the supplier.

3.4 The delivery of the delivery item must take place in the agreed and approved packaging. Any delivery must be accompanied by a detailed delivery note or packing slip in a sealed envelope.

4. Call-offs and quantities

4.1 A call-off is binding for the supplier. This shall not apply if the supplier rejects the call-off in writing within 48 hours of receipt due to unreasonable quantities or delivery dates, stating the earliest possible replacement delivery date.

4.2 All quantities in inquiries, framework orders or contracts are non-binding previews. KITE's obligation to accept only relates to the quantities with the status "production release". The quantities with the status "material release" authorise the vendor to start material requirements planning. All other quantities, including quantities with the status "Preview" are for planning purposes only and do not constitute a purchase obligation on the part of KITE. The supplier must ensure the necessary capacities to be able to meet the quantities, including preview quantities (plus 15% capacity security) from orders or forecast delivery schedules. Further details will be regulated in the logistics agreement.

5. Invoicing, payment

5.1 The invoice must be sent in duplicate to KITE's address and may not be attached to deliveries. The wording must exactly match the designations in the order and must contain all of the order information, in particular order number, delivery note number, delivery quantity and price, as well as all information and proof required by law.

5.2 Unless otherwise agreed in writing, the invoice shall be settled without deduction within 30 days after delivery. The receipt of the delivery items shall be decisive for payment of the invoice. Tools, devices and models ordered on the basis of a written order are excluded from this regulation. The remuneration regulations result in this respect from the respective individual contracts.

5.3 Insofar as advance payment and/or payment on account have been agreed, the supplier is required to provide an appropriate security on KITE's request, e.g. in the form of an irrevocable, directly enforceable guarantee on first demand from a recognised credit institution.

5.4 The supplier is not entitled to assign its claims against KITE without the prior written consent of KITE which must not be unreasonably refused. The supplier can only offset claims against KITE which are undisputed or legally binding.

5.5 KITE is also entitled to set off claims of the supplier against claims of companies of the KITE Group according to the value date.

6 Retention of title

6.1 In the case of a retention of title by the supplier, only the simple retention of title shall be deemed agreed. Enhanced or extended reservations of title are inadmissible.

6.2 The simple retention of title of the supplier shall expire upon full payment for the delivery item subject to the retention of title and expressly does not refer to any other outstanding claims of the supplier.

7. Samples, drawings

7.1 Samples, drawings and other technical or commercial documents ("documents") which KITE makes available to the supplier remain the property of KITE and are to be returned free of charge without request as soon as they are no longer required for the performance of the delivery. The supplier may only use the documents for deliveries and services to KITE and may not make them accessible to third parties without the express consent of KITE. No photocopies or other duplicates may be produced unless KITE has given his prior written consent to this.

7.2 The supplier must return the documents at KITE's request at any time. Copies made by the supplier must be destroyed when the documents are returned.

7.3 Deliveries made according to documents designed by KITE or according to confidential information from KITE or with tools from KITE or tools reproduced by KITE may not be used by the supplier himself or offered or delivered to third parties.

8 Tools

8.1 Tools, gauges, devices, templates, anvils, measuring instruments, patterns and software, drawings and other associated documentation ("tools") which KITE makes available to the supplier shall remain the property of KITE. Tools which are manufactured by the supplier on KITE's order or by third parties on KITE's order and which are reimbursed by KITE separately or in excess of the purchase price of the delivery items shall become the property of KITE on completion. In this case, the handover of the tools shall be replaced by KITE allowing the supplier to use them free of charge to manufacture the contractual items for KITE (loan). If third parties are in possession of the tools, the supplier hereby assigns its right to recovery to KITE.

8.2 They are to be identified by the supplier as the property of KITE and may only be used for the purposes of deliveries and services to KITE. The supplier shall take the tools into free, appropriate storage and care for KITE and take out sufficient insurance against the usual risks such as fire, water and theft.

8.3 On request, the supplier is required to return the tools to KITE in proper condition without delay. Costs for maintenance, servicing, repair and renewal of the tools shall be borne by the supplier, unless other agreements have been made expressly and in writing.

9. Material supplies

9.1 Materials (supplies) provided directly or indirectly to the supplier by KITE remain the property of KITE and may only be used by the supplier for the manufacture of delivery items for KITE or third parties designated by KITE and may not be used for other purposes or allowed to be used by others without KITE's prior written consent.

9.2 The supplier is required to treat the materials provided with care. In particular, it is required to insure them at its own expense against theft, fire and water damage. As long as ownership has not yet been transferred, the supplier must inform KITE immediately in writing if the supplies are seized or exposed to other interference by third parties.

9.3 The processing or alteration of the materials provided by the supplier shall always take place in the name of and on behalf of KITE. If the processing is carried out in such a way that the supplier's item is to be regarded as the main item, it is agreed that the supplier shall assign co-ownership to KITE on a pro rata basis.

10. Performance of work

Employees of the supplier or third parties employed by the supplier who carry out work within KITE's premises to fulfil a contract are subject to the provisions of KITE's company regulations. The existing regulations for entering the factory must be observed.

11. Delivery dates, delay in delivery

11.1 The delivery time (delivery date or period) stated by KITE in the order or the call-offs is binding. The receipt of the delivery items at the place of receipt or use specified by KITE or – if acceptance of the delivery items is required – the timeliness of successful acceptance shall be decisive for compliance with the delivery time.

11.2 If the supplier realises that an agreed deadline cannot be met, it must inform KITE of this immediately in writing, stating the reasons and the duration before the expected delay occurs. The supplier must oblige its subcontractors accordingly in this regard. The supplier's obligation to deliver and perform in accordance with the contract remains unaffected by this. In the event of a delay in delivery or performance by the subcontractor, the supplier shall immediately procure the required delivery item and services elsewhere in order to comply with the delivery dates and periods agreed with KITE.

11.3 Deviations from the agreed delivery date require the written consent of KITE. After the delivery date has passed or a deadline expired, the supplier is in default of delivery without setting a further period of grace.

11.4 The supplier is required to compensate KITE for all damages caused by delay (default). In the event of delays in delivery, KITE is entitled to demand a contractual penalty from the supplier in the amount of 0.3% of the agreed net order value per working day of the excess, however, up to a maximum of 5% of the net order value. KITE reserves the right to assert a higher damage caused by the default and/or to withdraw from the contract. The contractual penalty shall be set off against the damage caused by default to be compensated by the supplier. The supplier shall be entitled to prove that no damage has occurred at all or significantly less damage has occurred.

11.5 The supplier is aware that delays in delivery can lead to production downtimes at KITE. It is also aware that KITE delivers just in time to its customers, meaning that delays in delivery can lead to considerable claims for damages and contractual penalties on the part of KITE's customers.

11.6 The unconditional acceptance of the delayed delivery/service does not constitute a waiver of KITE's claims for compensation due to the delayed delivery or service.

11.7 If the agreed deadlines are not met for reasons for which the supplier is responsible, KITE shall be entitled to obtain a replacement from a third party after the fruitless expiry of the delivery deadline. The supplier shall bear the additional costs incurred by KITE as a result.

11.8 If delivery is made earlier than agreed, KITE reserves the right to return the goods at the supplier's expense. If no return delivery is made in the event of premature delivery, the delivery item shall be stored at KITE's risk and expense until the delivery date.

11.9 In the event of premature delivery, KITE reserves the right to make payment only on the agreed due date. In this case, the basis for calculating the due date is the delivery date specified in the purchase order or in the series call-off order. Partial and excess deliveries are only permitted with KITE's written consent. In the case of agreed partial deliveries, the remaining quantity must be stated on the delivery note.

12. Force majeure

12.1 If a party is prevented from fulfilling its contractual obligations due to force majeure, it shall be released from these obligations for the period of force majeure. However, it must immediately inform the other party in writing of the occurrence of force majeure and must keep the disadvantages for the other party as low as possible. Within this context, the supplier is also required to use replacement goods from third parties, to choose fast transport routes (e.g. air freight) and to take other measures to maintain the ability to deliver in order to meet his delivery obligations at its own expense.

While the supplier's performance is prevented and for a reasonable period thereafter, KITE is entitled to procure replacement goods from third parties and to reduce the supplier's delivery quantities accordingly. If the supplier cannot credibly assure that a delay will not exceed thirty (30) days or if the delay lasts longer than thirty (30) days, KITE may terminate the contract without liability with respect to the supplier.

12.2 Force majeure is defined as any unforeseeable and unavoidable event beyond the control of the party concerned, such as natural disasters, riots, wars, sabotage and terrorist attacks, which prevents or delays the full or partial performance of its contractual obligations. Industrial action is not to be regarded as force majeure.

13. Quality

13.1 The supplier is required to maintain a quality management system in accordance with IATF 16949 and must comply with and fulfil the provisions of IATF 16949 in its deliveries and services to KITE. If the supplier does not have a quality management system in accordance with IATF 16949, it must set it up immediately; however, it must at least meet the ISO 9001 standard.

The supplier must take into account the respective customer-specific requirements relevant to the contractual products. These are published on the IATF homepage: <http://www.iatfglobaloversight.org/oem-requirements/customer-specific-requirements/> or will be communicated to the supplier at KITE's request.

In addition, the supplier is required to comply with the KITE quality assurance agreement version 2.0/2018 (download at https://www.KITE.de/fileadmin/user_upload/PDF_Uploads/Downloads/180607_QSV.pdf) as well as the generally valid VDA documents as amended. In particular, reference is made to:

- VDA Volume 2 "Ensuring the quality of deliveries" (PPF)
- VDA Volume 4 "Quality assurance in the process landscape"
- VDA Volume 14 "Preventive QM methods in the process landscape"

13.2 KITE has the right to check the effectiveness of the quality management system within the scope of an on-site audit after prior announcement. The supplier shall ensure that an appropriate auditing right also exists with the supplier's sub-suppliers.

13.3 The supplier must observe the latest state of the art, all relevant statutory regulations, other regulations, standards and guidelines as well as the relevant industry standards and standards of the trade associations in its deliveries and services. This applies in particular to all exhaust gas, emission or product safety regulations, REACH or other hazardous substance regulations. The supplier must provide all necessary test certificates, documents and proofs.

13.4 The supplier must check the specification or drawing for suitability, completeness, manufacturability and defects accuracy and shall inform KITE immediately of any deviations or abnormalities. The supplier is required to point out to KITE before conclusion of the contract if the delivery item to be supplied is unsuitable for the intended use intended by KITE and known to the supplier; the same applies in particular to health, safety, environmental and other risks. If the supplier does not fulfil this obligation, the delivery item shall be deemed not to comply with the contract.

13.5 The supplier must provide the necessary tests and documents for the approval of the delivery items in time. Serial delivery may only begin after KITE has granted approval for samples. Irrespective of this, the supplier must continuously check the quality of the delivery items within the context of quality inspections during production and subject them to an outgoing inspection. Should the customer demand special tests from KITE, these must be introduced by mutual agreement.

13.6 In its incoming goods inspection, KITE shall examine the delivery item only with regard to identity, quantity, transport damage and other externally visible damage. In addition, KITE shall carry out tests during production in accordance with the QS management system in KITE's production process. The supplier shall be notified immediately of any defects discovered in the process. In this respect, the supplier waives the objection of late notification of defects.

14 Liability for defects

14.1. The supplier warrants that the contractual items comply with the specification and drawing are free of defects in design, material and production, correspond to the recognised state of the art in science and technology and are suitable for the contractually stipulated purpose of use.

14.2 If a material defect becomes apparent within six months of the passing of risk, it is assumed that the delivery item or the service was already defective at the time of the passing of risk, unless this assumption is incompatible with the nature of the delivery item or the defect. Payments by KITE do not constitute recognition that the delivered goods or services are free of defects.

14.3 If the delivery item is defective, KITE has the right to demand repair or delivery of a defect-free delivery item as well as reimbursement of the costs incurred for this, in particular transport and logistics costs, inspection, sorting, removal and installation costs (including labour and material costs) and other necessary expenses.

14.4 If the delivery item has already left KITE's production process, the repair or replacement for the purpose of subsequent performance shall not be carried out by the supplier itself but by KITE's customer, the dealer or a workshop for the supplier and at his expense. In such cases, the supplier does not need to be requested to provide supplementary performance.

14.5 If the delivery item has already been installed and delivered to the customer by KITE, the supplier shall receive defective parts for inspection if KITE receives these from its customer or the vehicle manufacturer. The supplier acknowledges the determination of a defect on the basis of the limited parts presentation and/or the documentation of the vehicle manufacturer's organisation (such as individual case lists with exchange/repair data of the workshops) as proof of the defect.

14.6 If the customer claims a serial defect from KITE or the vehicle manufacturer which is attributable to the delivery item, the supplier shall immediately restrict the delivery items concerned. If a limitation of the affected delivery items cannot be proven, all affected delivery items shall be considered defective. A serial defect is an accumulation of failures with the same or similar cause of defect.

14.7 The warranty period for the delivery items due to defects is thirty-six (36) months with the exception of delivery items used in products and/or vehicles for the North American market (USA, Canada, Mexico) for which the warranty period is forty-eight (48) months. The warranty period begins with the initial registration of the vehicle into which the delivery item is incorporated. However, the maximum warranty period is sixty (60) months from delivery.

In no event shall the limitation period expire before the expiry of six months after notification of the defect if such notification is made before the expiry of the warranty period. The limitation period for replaced and repaired parts shall begin anew in the case of replacement delivery and rectification of defects.

In the case of machines and systems, the limitation period begins with the acceptance which is determined by KITE's written declaration of acceptance.

14.8 Longer statutory periods, in particular in the case of defects relevant to exhausts, emissions or safety, shall remain unaffected by the period stated under 14.7.

The limitation period for defects of title is 60 months, unless expressly agreed otherwise.

14.9 In all other respects, the statutory provisions shall apply to liability for defects.

15 Product liability, recall, insurance

15.1 If a claim is made against KITE due to domestic or foreign product liability regulations based on a defect in a product which is attributable to a delivery item of the supplier, the supplier is required to indemnify KITE from the resulting liability.

15.2 If a recall, a workshop action or other precautionary measure is taken to check products which are suspected of being defective and to rectify faults, either by KITE, its customers or the vehicle manufacturer, either voluntarily or by order of the authorities (hereinafter "recall"), the supplier shall be liable to KITE for all damages, costs and expenses in connection with the recall insofar as the recall is attributable to a defective delivery item or a breach of the obligations arising from a supply contract by the supplier.

15.3 The supplier shall take out business liability insurance with extended product liability cover including recall cost cover without motor vehicle exclusion with cover of at least € 5 million per claim to cover the risk. On request, the supplier shall submit an insurance confirmation.

16. Industrial property rights of third parties

16.1 The supplier is liable for ensuring that patents or other industrial property rights of third parties are not infringed by its deliveries to KITE or the utilization of the delivery items by KITE.

16.2 The supplier is required to indemnify KITE against all claims raised by third parties against KITE due to the above infringement of industrial property rights and to reimburse KITE for all necessary expenses in connection with this claim. In this case, KITE is also entitled to obtain the necessary approval for delivery, commissioning, use, resale, etc. of the delivery items from the owner of such property rights at the supplier's expense.

16.3 The supplier undertakes to transfer to KITE all transferable rights to products and/or work results which are manufactured or developed individually for KITE. If the rights to products or work results are not transferable and these are manufactured or developed individually for KITE, the supplier shall grant KITE a free, transferable, exclusive, temporally and geographically unlimited right of use for all types of use. If products or work results are not manufactured or developed individually for KITE, the supplier shall grant KITE a free, non-exclusive, temporally and geographically unlimited right of use. Unless otherwise agreed, the source code of any software supplied in its current version, including the associated documentation (content and structure of the data carrier, program and data flow plans, test procedures, test programs, troubleshooting, etc.) must also be handed over to KITE.

16.4 Insofar as already existing industrial property rights of the supplier are used in delivery items and/or work results, the supplier shall grant KITE a transferable, non-exclusive, temporally and locally unlimited right of use free of charge, insofar as necessary for the use of the delivery item and/or work result.

17 Competitiveness of the supplier

KITE and the supplier agree that maintaining the competitiveness of the delivery items is of essential importance for the supply relationship. Competitiveness presupposes that the delivery items correspond to comparable goods from competitors in terms of price, quality and technology. If KITE no longer considers the competitiveness of the delivery items to be given, KITE shall inform the supplier of this, stating the reasons, and shall set a reasonable deadline to restore the supplier's complete competitiveness.

18. Spare parts

18.1 The supplier is required to ensure the supply of spare parts for the delivery items for a period of at least 15 years after the respective last series delivery. For a period of 3 years after the end of series supply, the price for the spare parts corresponds to the currently valid series price plus the costs for special packaging. At the end of these 3 years, the parties shall renegotiate the spare part prices.

18.2 If the supplier intends to stop the production of spare parts, it shall inform KITE immediately. Subject to paragraph 1, this notification must be at least 12 months before the end of production. KITE and the supplier shall then jointly seek a solution to ensure the supply of spare parts in accordance with paragraph 1. The supplier shall bear the costs incurred by KITE for securing the supply of spare parts, in particular for relocation of spare parts production or in-house production, last time buy and storage.

19. Confidentiality

19.1 The supplier shall conclude a separate non-disclosure agreement with KITE. If the supplier does not conclude a non-disclosure agreement with KITE, Sections 19.2 to 19.4 shall apply.

19.2 The supplier undertakes to treat all information which it obtains directly or indirectly in connection with the cooperation with KITE orally, in writing or in any other form, as strictly confidential during the term of the cooperation and thereafter and to use it only in connection with the performance of the contract. In particular, it commits neither to pass this information on to third parties nor to make it accessible to third parties in any other form and to take all appropriate precautions to avoid access to this information by third parties.

19.3 The duty of confidentiality does not apply if and to the extent that it can be proven that the relevant confidential information

- is generally available, or
- is or becomes generally known through no fault of the supplier,
- has been or will be lawfully obtained from a third party,
- was already available to the supplier upon receipt of the information,
- was developed independently by the supplier, without using the confidential information,
- has been granted to a third party with KITE's prior written consent.

The same applies if the supplier is required to disclose confidential information by order of a competent court or authority or other body or by law or under the rules of a stock exchange in which case the supplier must take all reasonable steps to prevent or restrict the disclosure of confidential information to the greatest possible extent.

The supplier is required to inform KITE, as far as legally permissible, in time before the disclosure so that the disclosure can be prevented by legal measures. The supplier shall disclose only the part of the confidential information which must be disclosed.

19.4 The supplier is only entitled to disclose the fact of the cooperation with KITE to third parties with KITE's prior written consent, in particular to name KITE as a reference, unless this is contrary to mandatory statutory provisions.

19.5 This confidentiality obligation shall apply during the business relationship with the supplier and shall remain in full force from the time of termination of the business relationship for a period of 10 years.

20. Compliance

The supplier shall not commit any acts or refrain from any acts which could lead to criminal liability for fraud or embezzlement, insolvency offences, offences against competition, granting of advantages, acceptance of advantages, corruption, bribery or comparable offences by persons employed by the supplier or other third parties. In particular, the supplier shall respect personal rights and the prohibition of child and forced labour, it shall not tolerate discrimination, it shall ensure fair working conditions, it shall not tolerate corruption, it shall respect fair competition, comply with export and import control regulations and respect environmental protection. Without prejudice to the above, the supplier is required to comply with all laws and regulations concerning it and its business relationship with KITE.

21. Termination

Each party shall be entitled to terminate a contract for the delivery of the delivered items in whole or in part without notice,

- in the event of a significant deterioration of the other party's financial situation, cessation of payments, filing for insolvency (by the supplier or by a third party, unless the application is filed in an abusive manner) or on opening of insolvency proceedings or rejection of an insolvency application for lack of assets;
- in the event of a breach of material contractual obligations by the other party which is not remedied within a reasonable period of time despite a written reminder. Material contractual obligations include payment of the purchase price and timely and faultless delivery.

In addition, KITE is entitled to terminate a contract for the delivery of the delivered items in whole or in part with a reasonable period of notice, at least 30 days, in the following cases

- if there is a significant change in the ownership structure or shareholder shares in the supplier's company as a result of which KITE cannot reasonably be expected to continue the delivery contract;
- if and to the extent to which the customer terminates KITE's delivery contract for the product into which the delivery items are incorporated;
- the supplier is no longer competitive within the meaning of clause 17 of these Terms and Conditions of Purchase.

22 Final provisions

22.1 In all other respects, the statutory provisions shall apply. KITE's rights under statutory provisions shall remain unaffected by the provisions of these Terms and Conditions of Purchase.

22.2 The supplier can only offset its own claims if its counterclaims are legally established, undisputed or acknowledged by KITE. It is only entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship. The supplier is not entitled to pass on individual contracts to third parties without the prior written consent of KITE.

22.3 The place of performance is the shipping address or place of use indicated by KITE.

22.4 The exclusive legal venue for all disputes arising from the contractual relationship is Nuremberg, Bavaria, Germany. The authoritative contractual language is German.

22.5 The contractual relations between the parties are subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.

22.6 Should individual provisions of these General Terms and Conditions of Purchase be or become invalid or impracticable, this shall not affect the validity of the remaining General Terms and Conditions of Purchase. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose economic effects come as close as possible to the invalid provision which the parties have pursued with the invalid provision. This provision shall also apply in the event of a gap in the contract.