

General Terms and Conditions of Purchase - valid from 1.1.2007

1. Applicability

Unless stipulated otherwise in the purchase order, contracts between the supplier and Kapsch shall exclusively be subject to the following terms and conditions. This shall also apply if different terms and conditions of the supplier are not objected to. Different terms and conditions of the supplier or other modifications of the purchase order shall only become part of the contract if they are accepted by Kapsch expressly and in writing. Even if express reference is hereinafter made to goods, products, components or deliveries only, these General Terms and Conditions of Purchase shall also apply *mutatis mutandis* to the rendering of services.

2. Purchase orders

Only written purchase orders expressly designated as purchase orders of the purchasing department (but no advance purchase orders, forecasts or information on a budgeted demand) shall be binding on Kapsch.

3. Acknowledgements of Purchase orders

Purchase orders shall be acknowledged by the supplier in writing on a copy of the purchase order. These acknowledgements shall be duly signed and returned by the supplier to Kapsch within 8 calendar days of the date of the purchase order. Upon expiration of such period the purchase order shall be deemed accepted in accordance with the conditions of the purchase order unless the supplier has rejected the purchase order by written notice.

4. Quality

Deliveries and services shall be exactly in accordance with the quality requirements stated in the purchase order. If and to the extent that no special quality requirements are stated in our purchase order, the goods delivered shall have first-class quality and be in compliance with applicable safety provisions (laws, regulations, standards, etc.), considering the state of the art in technology as well as with the *Elektrotechnik- und Fernmeldegesetz* (Electrical Engineering and Telecommunications Statute) and all provisions based thereon as well as all valid provisions of the ÖVE [Austrian Electrotechnical Association] and/or VDE [Association for Electrical, Electronic & Information Technologies] and technical Ö-NORMEN (Austrian Standards, Specifications, Certification and Technical Regulations published by the Austrian Standards Institute), DIN [German Industrial Standards] and/or harmonised European Standards.

The standards stated in the purchase order (e.g., DIN, ÖNORM, Werknormen (plant standards)) and drawings shall refer to the version valid at the date of the purchase order unless expressly stated otherwise in the purchase order. All EU directives (e.g., concerning CE marking, **prohibition of use of certain substances**) relevant to the product shall be complied with. Suppliers from non-EU countries shall be obliged to hand over the relevant declaration of conformity including relevant documentation together with the first delivery.

The supplier shall also make available those deliveries and services which are necessary to fulfil the requirements of Kapsch and shall include the same in the price even if they are not explicitly stated in the purchase order or in the contract. Unless otherwise demanded in the purchase order, the supplier shall deliver brand-new products in compliance with the state of the art.

The supplier hereby represents and warrants that when rendering deliveries and services he shall always apply the knowledge, caution and care of a prudent businessman.

In particular, the following points shall be deemed agreed in connection with this purchase order:

- The supplier shall employ a quality management system in accordance with ÖNORM EN ISO 9001 (preferably ÖNORM EN ISO 9001:2000) or a similar system. Upon request by Kapsch the supplier shall send the related certificates and documents.
- The supplier agrees that Kapsch, in addition, shall have the right to carry out supplier audits in agreement with the supplier, with staff of the customer of Kapsch being allowed to participate in such audits.
- The supplier shall avoid use of prohibited substances as listed in the List of Substances subject to declaration and has to inform Kapsch of the use of substances to be declared.
- Kapsch shall notify the supplier of complaints in writing. After an analysis the supplier shall be obliged to initiate appropriate corrective measures in agreement with Kapsch to repair the defect and to prevent any reoccurrence of the same. Such corrective measures shall be notified to Kapsch in writing, shall be documented appropriately and shall be examined as to their effectiveness. Production records and quality records (FMEA, 8-D, ...), test plans, inspection procedures, etc. shall be reviewed accordingly. In this respect the supplier shall be obliged to completely document, archive and make available upon request of Kapsch all relevant measures and related documents which are relevant under product liability/product safety.
- The supplier shall be obliged to inform Kapsch without delay of technical changes or changes relevant to quality or standardisation or logistics in connection with products delivered or still to be delivered. In the absence of any other written agreement, products or components to be delivered at a later point of time shall be absolutely identical to products delivered or accepted earlier.
- The supplier shall be obliged to give notice to Kapsch of the discontinuation of production of products not later than twelve months prior to discontinuation of production of the product and to duly process a final purchase order placed by Kapsch.

5. Environmental Requirements

Commercial packaging that is customary in trade shall be taken back by the supplier at his cost.

Austrian suppliers undertake to release themselves from their obligations as laid down in the Austrian Packaging Regulation regarding the packaging of their products via an area-wide collection and recycling system (e.g. ARA). Upon the prior written consent of Kapsch packaging may also be taken back by the supplier in exceptional cases with no charges for Kapsch. If the supplier renders services (e.g. repairs, specialist services, etc.) on the premises of Kapsch, he shall at his own cost collect and dispose of packaging, replaced substances, waste and packaging materials. The supplier shall be obliged to notify Kapsch in case the goods contain hazardous substances of unusual kinds or quantities.

Furthermore, the supplier undertakes to comply with any and all statutory requirements concerning disposal of packaging, waste material, waste equipment, waste goods and hazardous substances and shall otherwise fully indemnify and hold Kapsch harmless.

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To the extent that under the *Elektroaltgeräteverordnung* [EAG-VO Austrian regulation on waste electrical and electronic equipment] the supplier is subject to an obligation to take back waste electrical equipment and the waste equipment is not taken back at the time the new one is delivered, the supplier undertakes to take back the same by collecting the waste equipment within twelve months of the date of delivery or to reimburse Kapsch the costs incurred by Kapsch for collection and disposal of such equipment according to a respective agreement.

In addition, the supplier shall provide Kapsch with all data and information necessary for Kapsch to fulfil the obligations defined in Section 14 EAG-VO (duty to inform) with regard to the components, units or devices, free of charge and in an itemised, structured, electronic form. In addition, the supplier shall ensure that the present deliveries fulfil all obligations to which Kapsch is subject under the EAG-VO (implementation of Directive 2002/96/EC on waste electrical and electronic equipment as amended by Directive 2003/108/EC as well as by Directive 2002/95/EC on the restriction of the use of certain hazardous substances (ROHS) in electrical and electronic equipment (WEEE) (e.g. marking, prohibition of substances, etc.)).

6. Special Terms on Deliveries of Hardware and Software, Spare Parts, Documentation

The supplier guarantees that the hardware and software delivered contains no copy protection, date locks or program locks or other limitations of use and that it is free from any viruses and rights of third parties. The delivery shall in any case contain a German-language documentation, which shall be complete and comprehensible for a skilled person and which shall also describe typical and predictable failure situations as well as methods to eliminate the same. Moreover, the price shall include theoretical and practical training of the operating staff.

For testing purposes the supplier shall provide test runs including test software free of charge.

The supplier shall grant Kapsch a transferable right to use and exploit the delivered software which shall be unlimited in time and place. He shall be obliged to offer maintenance services for hardware and software as well as spare parts for a period of 10 years from performance in conformity with the contract at market prices and shall provide information on each new version of the software.

The supplier shall hand over documents, plans, reports, etc. to be delivered in duplicate as hardcopy as well as one copy thereof on data carriers prescribed by Kapsch.

7. Place of Performance, Prices and Packaging

The place of performance shall be the place stated in the purchase order; if no other place is stated, it shall be the registered office of Kapsch. If the purchase order states delivery terms, they shall be interpreted in accordance with the Incoterms 2000. Until acceptance by Kapsch at the place of performance the supplier shall bear risk and costs, including but not limited to the premiums for an appropriate transport insurance to be taken out by him.

Unless stated otherwise in the purchase order, the prices shall be deemed to include packaging, delivery free destination (DDU), but unloaded and they shall be fixed prices.

The delivery items shall be packaged properly and in accordance with special instructions given by Kapsch, if any. Damage caused by improper packaging or non-compliance with such instructions shall be to supplier's account.

If prices decrease in the period between offer and delivery (e.g. in case of changes of list prices), such price reduction shall be fully passed on to Kapsch.

If the supplier grants a third party more favourable conditions for comparable purchase orders, the terms and conditions of the contract shall subsequently have to be adjusted accordingly (by price reduction or credit note).

8. Invoices and Delivery Notes

Purchase order number and item number, if any, according to the purchase order of Kapsch shall be stated with each and every invoice item and delivery note item.

Invoices shall contain detailed information on purchase order number, purchase order date and delivered goods (indication of type and quantity) and shall be in compliance with the provisions of the Austrian Turnover Tax Act, failing which the invoice amount shall not become due. In case of deliveries within the EU every invoice shall contain the commodity code and the net weight of the goods as well as the VAT number of the contractors. In case of deliveries to non-EU countries a delivery note as well as four copies of the invoice shall be enclosed with the goods in addition. Upon request of Kapsch the supplier shall be obliged to provide a certificate of preferential origin.

9. Delivery and Delay in Delivery

Delivery dates requested by Kapsch and/or agreed delivery dates or completion dates shall be deemed fixed dates and shall mean that the goods shall be available to Kapsch at the advised delivery date and the advised delivery address complete and ready to use.

In case of delivery and/or rendering of service on the business premises of Kapsch the supplier undertakes to visibly wear a visitor ID card and to comply with the rules of conduct imposed on him by Kapsch.

In case of a delay in delivery Kapsch shall be entitled, notwithstanding any other statutory or contractual claims, to rescind the contract without granting a grace period. If the supplier is not able to comply with the agreed delivery dates or completion dates, the supplier shall inform Kapsch thereof in writing in advance as early as possible. Irrespective of compliance with this duty to inform Kapsch, any and all damage suffered by Kapsch as a result of a delay in delivery of the supplier, be it due to the supplier's fault or not, shall be to the account of the supplier.

If the agreed delivery period is not observed for reasons other than force majeure, Kapsch shall, in addition, be entitled to claim payment of a contractual penalty irrespective of fault in the amount of 2% of the purchase order value per each week commenced by which the delivery is delayed, up to a maximum amount of 20% of the total purchase order value. Assertion of claims for damages shall remain unaffected despite payment of the contractual penalty.

If execution of a purchase order requires import, export or other official licences or permits or the consent of third parties, the supplier shall procure the same in a timely manner. In case of an early delivery Kapsch reserves the right to invoice to the supplier additional costs resulting therefrom, such as storage costs, or to reject the delivery.

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The agreed payment periods shall commence only after receipt of the invoice and subject to the proviso that the invoice has been duly issued as per the Invoice and Delivery Notes clause or upon receipt of the goods (including documentation and ancillary services) or as of the agreed delivery date, whichever event occurs last, and in case of complaints only after complete settlement of the same. Accounts receivable may only be assigned by the supplier with the prior written consent of Kapsch. Payment shall not mean that Kapsch accepts the delivery and/or service to be in order and, thus, means no waiver of any claims.

In the absence of a different express agreement duly signed by Kapsch, Kapsch shall pay invoices within 30 days minus a 3% cash discount, within 60 days minus a 2% cash discount and within 120 days without deduction of any discount.

11. Acceptance and Warranty

The warranty period shall be 24 months and shall commence on the day on which the deliveries and services are fulfilled. If an acceptance procedure has been agreed, the warranty period shall commence upon acceptance.

In case of replacement delivery or repair of defects the warranty period regarding the deliveries and services concerned shall commence anew also with respect to all defects yet undetected. For notifying defects as well as for asserting and enforcing of other statutory or contractual claims within the warranty period Kapsch shall not be bound by any periods provided by law or otherwise prescribed as regards obvious or hidden defects.

The supplier waives his right to claim late notice of defects.

As regards defects which cannot be detected within the warranty period even with financially reasonable and customary efforts, Kapsch shall have the right to give notice of defects even after expiration of the warranty period, for at least 3 months after the defect has been detected, and the supplier shall be obliged to also provide warranty for such defects.

In case of goods which can be evaluated according to quality criteria, quality control shall be effected in accordance with the relevant MIL sampling procedure valid from time to time (currently MIL-105D) with the AQL value stated in the technical document. If no value is prescribed, an AQL of 1.5% shall apply. The properties stated in the purchase order or, subsidiarily, the properties stated in relevant standards or the properties usually accepted shall apply as test criteria. If a defect is identified after such inspection of a delivery or of a delivery lot, the entire delivery shall be treated as defective. In addition, Kapsch shall, in such a case, be entitled to cancel all other parts of the purchase order which have not been definitely accepted, without any claims of whatsoever nature arising against Kapsch.

Confirmations on the receipt and/or on the acknowledgement of receipt regarding acceptance of the goods shall always be subject to reservation, i.e. deliveries and services shall only be considered accepted if in the course of the subsequent inspection no short deliveries and/or defects are identified.

Notwithstanding any claims provided for by law, Kapsch shall, in case of defect covered by warranty, be entitled to claim, at its option, substitute delivery free of charge, repair of defects free of charge, cancellation of contract or a reasonable price reduction or may have the identified defects repaired at the cost of the supplier even if the defects are of a minor nature or can be repaired.

If due to statutory provisions a grace period has to be granted, a maximum period of 14 days shall in any case be deemed reasonable. In urgent cases Kapsch shall be entitled to carry out necessary repair work or substitute deliveries at the cost of the supplier without granting a grace period and in a way which is appropriate to Kapsch, or to have third parties carry out the said repair work. For the rest, the supplier's warranty for deliveries where identified defects are repaired by Kapsch or by third parties shall continue to apply.

If a defect becomes obvious only in the course of processing of the delivered goods by Kapsch and such defect results from non-compliance with the specifications asked for by Kapsch in the purchase order and/or non-compliance with quality customary in trade, Kapsch shall, among other things, be entitled to reimbursement of the expenses incurred in vain in connection with use of the defective material as damages. The supplier shall fully indemnify and hold Kapsch harmless from and against all warranty claims and/or claims for damages which are caused by the delivered goods.

During the warranty period Kapsch may retain an amount of up to 10% of the purchase order value, which shall not bear interest, for warranty purposes.

At the time of acceptance by Kapsch no third-party security rights of whatsoever kind may be attached to the delivered goods; otherwise the supplier shall indemnify and hold Kapsch harmless from and against any damage resulting therefrom.

12. Product Liability

The supplier undertakes to reimburse Kapsch all damage under product liability with regard to the products delivered by him, which shall also include partial products, and to indemnify and hold Kapsch harmless from and against all third-party product liability claims with regard to personal injury and damage to property and any pecuniary loss resulting therefrom.

In addition, the supplier shall be obliged also to supply completely and without request any and all documents, instructions, drawings and other documentation necessary for the intended use (installation, application, etc.) of the products delivered by him. Furthermore the supplier shall immediately advise the name of the relevant manufacturer, importer or upstream supplier upon request.

If the supplier becomes aware of circumstances which might lead to claims under product liability, he shall be obliged to immediately inform Kapsch thereof and to reimburse Kapsch for all expenses incurred and damage suffered by Kapsch in connection with any factory recalls of defective products and/or expenses and damages Kapsch has to pay to third parties.

If legal disputes arise with regard to cases of product liability, the supplier shall make available all useful evidence in a timely manner, use his best efforts to support Kapsch and reimburse Kapsch reasonable costs of such legal disputes.

13. Production Documents

Drawings, samples, models, forms and other aids provided by Kapsch to the supplier shall remain the tangible and intellectual property of Kapsch, of which Kapsch may freely dispose. They shall be kept secret by the supplier. The supplier shall pass on the secrecy obligation to all staff who will have access to such production documents described. Any compensation claims of the supplier based on provision not effected on time shall be excluded.

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14. Copyrights and Patent Rights

The supplier shall be obliged to fully indemnify and hold Kapsch harmless from and against all disputes regarding patents, trademarks, design protection or copyright which are related to the delivery and/or service. In particular, the supplier shall warrant that the deliveries and/or services shall be useable, communicable and utilisable by Kapsch in any form (e.g. by dissemination via electronic media like the internet, as part of a software, etc.). As a matter of principle, Kapsch shall also be entitled to make translations or other modifications of the work of the supplier.

15. Subcontractors

The supplier shall not be entitled to have the deliveries or services which are the subject-matter of the contract completely rendered by a subcontractor. The supplier shall be entitled to commission third parties with parts of the deliveries/services, provided that Kapsch has agreed to this procedure in writing in advance. In the event that the supplier commissions parts of the purchase order to third parties, the supplier shall be fully responsible and liable vis-à-vis Kapsch for the behaviour of such third parties.

The supplier shall impose on the subcontractor all contractual obligations and liabilities of the supplier and shall prove proper imposition at any time at the request of Kapsch.

16. Secrecy

The supplier undertakes to maintain secrecy about the information of which he obtains knowledge in connection with the purchase order or execution of the purchase order to the extent that the same is not generally known or has not otherwise become legally known to him. The supplier shall use data that has become known to him exclusively for the purpose of execution of the purchase order. The supplier shall protect such data and information from access by third parties and shall subject his staff members and agents as well as subcontractors involved to the same secrecy obligation. The provisions concerning secrecy and data protection shall apply also after complete performance of the purchase order and termination of any and all contractual relationships with the supplier.

After performance the supplier shall return, destroy or, in case it is respectively agreed in the purchase order, store all documents and data provided by Kapsch as well as any copies made thereof. The supplier may comply with his statutory obligations regarding information, rectification and deletion of data but shall in that case inform Kapsch as early as possible, if possible in advance.

The supplier shall provide all necessary documents so that compliance with his obligation can be proven.

To the extent that the supplier can access information or data of Kapsch via the internet, Kapsch shall be entitled to inspect or have inspected performance and the service of the supplier for security gaps.

The supplier agrees that data related with this contract and its performance, also data of the supplier, may be processed by Kapsch and transmitted to group companies of Kapsch.

The supplier undertakes to pay to Kapsch a contractual penalty irrespective of fault in the amount of EUR 100,000 for each individual breach of this secrecy obligation. Any claims for damages shall remain unaffected despite payment of the contractual penalty.

17. Termination of the Contract

Kapsch shall, notwithstanding all of its other rights, be entitled to terminate the contract with immediate effect if

- the supplier has committed a severe breach of the contract; or
- bankruptcy proceedings have been opened over the assets of the supplier or the opening of bankruptcy proceedings has been dismissed for lack of assets or if composition proceedings have been applied for;
- facts exist which obviously render any further proper performance of the contract impossible.

If Kapsch rightfully rescinds the contract, Kapsch may at its discretion either keep goods already delivered against payment of the pro-rata price or return such goods at the cost of the supplier. The supplier shall compensate Kapsch for any damage or disadvantages suffered because of early termination of the contract.

18. Legal Venue and Applicable Law

If this contract does not provide for a regulation, in particular with regard to damages, interpretation of and amendments to this contractual relationship between the supplier and Kapsch shall be governed by Austrian law with the exclusion of those provisions referring to a different jurisdiction. The exclusive place of jurisdiction shall be Vienna.

In the event that the supplier has his registered office abroad and that, at the time claims under this legal transaction are asserted, there is no corresponding applicable bilateral or international treaty on the enforceability of judgments in civil and commercial matters, any and all disputes arising out of this legal transaction shall be finally settled by an arbitral tribunal in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The place of arbitration shall be Vienna. Applicability of the UNCITRAL Convention on Contracts on the International Sale of Goods shall be excluded.