

GENERAL TERMS AND CONDITIONS FOR SALE

PART I: General Provisions for products, services and software licenses

1. Scope of Validity

- 1.1. These provisions apply for Deliveries of Kapsch Public TransportCom Belgium N.V. (hereafter, "KPTC") to customers, provided that the contractual partners have not expressly agreed upon anything to the contrary in separate agreements. This shall also then apply whether any conflicting terms and conditions of the customer are objected to. Conflicting terms and conditions of the customer or other amendments of the order shall only then become part of the contract if this has been agreed upon by the contractual partners and such terms and conditions are expressly accepted by KPTC in writing prior to the approval of the order. These General Terms and Conditions for Sale shall complete any specific provisions of the relevant offer issued by KPTC ("the Offer") and all, constitute the entire terms and conditions effective to the contractual partners.
- 1.2. "Customer" means any natural or juridical person who purchases Deliveries from KPTC.
- 1.3. "Offer" means the commercial, technical and work proposal submitted by KPTC to the Customer.
- 1.4. "Product" means any hardware, good, spares, equipment etc. offered by KPTC under this General Terms and Conditions.
- 1.5. "Deliveries" shall comprise delivery of Products and/or the licensable Software and/or the rendering of services, regardless of the type (e.g., installation, commissioning; assembly, consulting, maintenance and support services, training, Software updates services), all as specified in the Offer to Customers.
- 1.6. "Territory": means the territory where the Service is performed and/or the place of delivery of the product and/or the Software license is granted.

2. Offers, Project Documents, Conclusion of the Agreement

- 2.1. Offers of KPTC shall be considered non-binding, except otherwise stated in the Offer. In this case KPTC shall be bound for 30 calendar days from issuance date of the written Offer that was submitted to the Customer, provided that no other time period has been stated in the Offer.
- 2.2. Only written order of the Customer, which is expressly designated as such (however, not e.g. preliminary orders, forecasts or information regarding a planned need, or express of intent) and which are unconditional, shall be considered as valid by KPTC provided this order is in accordance with the relevant Offer and expressly accepted in writing by KPTC.
- 2.3. An agreement ("Agreement") shall be considered concluded between KPTC and the Customer upon the Customer's receipt of KPTC's written order confirmation or KPTC started to provide ordered Deliveries after receipt of the order .
- 2.4. The obligation of KPTC to perform any of its obligations under an Agreement shall be conditional upon the approval by any relevant governmental authority to export the Product, Software, documentation or any other deliveries items. Any

delivery terms shall prolong proportionally for the time frame until the approval of the relevant governmental authority.

- 2.5. Sales prospectuses, general product information, price lists and the like shall only then become a component of the Agreement if this is expressly referred to in the Offer.

3. Prices

- 3.1. Unless otherwise stated in the relevant Offer, the prices are in Euros (€) excluding VAT or other any tax, duties and levies as specified in Clause 5.
- 3.2. Unless otherwise stated in the relevant Offer, the agreed-upon prices for the sale of Product shall be considered to be FCA (Free Carrier) according to Incoterms 2010, residence of KPTC Belgium or any other location defined at the sole discretion of KPTC, excluding disassembly, take-back and proper recycling and disposal of waste electrical and electronic equipment for commercial purposes, as well as other fees, taxes and levies associated with the Product.
- 3.3. With respect to services, the agreed-upon prices shall not include expenses, travel cost, cash expenditures and any pre-study etc, except otherwise mentioned in the Offer and shall include the sole works and tasks as specified in writing by KPTC in its Offer.
- 3.4. Other performances not specified as included in the agreed-upon price by KPTC which are useful for the rendering of Services (like pre-studies) or are desired by the Customer, may then be invoiced by KPTC at the general rates of KPTC on a separate basis if no other written agreements with the Customer have been made to the contrary. Travel time shall not be considered as part of the services delivered and associated time to travel has to be taken in consideration on the price and on the time schedule.
- 3.5. As part of the Services, KPTC may have to perform one or more pre-studies in order to, inter alia, analyze and identify the scope of the Deliveries, including services, to be provided. If, upon completion of a pre-study, it is concluded that the requirements and the scope of services and the detailed design of the Product, Software, documentation or the services, as set forth in the Offer need to be revised, KPTC shall issue an update version of the Offer taking in consideration variation on scope of work, time schedule, quantities, prices and/or any other provisions of the Offer.
- 3.6. In case the Customer and KPTC don't agree on the outcome of a pre-study and the Customer subsequently does not approve the associated Offer modifications, KPTC may at its sole option and without liability, postpone work and further Deliveries and/or terminate the Agreement. In such case the Customer shall pay KPTC for any work performed and Deliveries done and compensate KPTC for its incurred costs.
- 3.7. KPTC reserves the right to make price changes if orders made by the Customer deviate from a set overall Offer or if the work to be performed and/or the Product to be delivered varied from the relevant scope of work. Furthermore, KPTC is permitted to adjust prices if, between the time of the order and the time of the Delivery, cost changes occur, e.g., increases in wages, material costs, change in

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exchange rates of more than 2% also related to suppliers and any other price increase of suppliers out of the reasonable control of KPTC. If and insofar prices are related to periodical payments, KPTC has the right to change such prices annually as per January 1st. in accordance with the agreed price index rate - if not otherwise agreed the Belgian Health Index as published by Statbel (Directorate-General Statistics – Statistics Belgium), Health index | Statbel – and applying the following price adjustment formula : $p=P (a \frac{s}{S} + b)$ whereby a= 80% variable b= 20% fixed, p= price after indexation, P= base price, S= index of base month (to be defined upon award) from the column base year 2013=100, s= index 2 months before the start date of the considered period for which payment is invoiced.

4. Payment, Contractual Exclusion of Set-off Exclusion of the Right of Retention, Delay

- 4.1. The payment terms shall be stipulated in the Offer. Otherwise, each invoice shall be due and payable thirty (30) days from invoice date subject to initial and continuing credit approval. Invoices for advanced payment are payable immediately.
- 4.2. The invoice for Product shall be issued at the relevant delivery date in accordance with the delivery term specified in Clause 16;
- 4.3. For Software and for services at the rendering of the performance of the services, except otherwise stipulated in the Offer.
- 4.4. Invoices are payable without any discount or reduction to KPTC in EURO or the agreed-upon currency as stipulated in the Offer.
- 4.5. The acceptance of bills of exchange, promissory note, letter of credit shall take place after a prior written approval of KPTC.
- 4.6. The interest and bank fees associated with the payment are to be assumed by the Customer.
- 4.7. For initial orders and orders exceeding 250.000 Euros, a payment guarantee (like a letter of credit) may be requested by KPTC. All costs related to such payment guarantee must be covered by the Customer, and the payment guarantee must be delivered to KPTC before any shipments will be made or services will be performed.
- 4.8. Payments shall be considered as having been rendered from the point in time when KPTC has access to such funds.
- 4.9. Should Price reductions be granted to the Customer they are subject to the timely payment by the Customer.
- 4.10. The Customer may not withhold payments and/or performances owed to KPTC or offset them against KPTC due to warranty and/or other claims.
- 4.11. If the Customer fails to make any payment when due, KPTC may, at its option and without prejudice to any other remedy it may have under applicable law, stop or withhold delivery of the Deliveries, or any part thereof, until KPTC has received payment in full of such delinquent amount. KPTC shall give notice of its intention to exercise its rights under this Clause by fax, mail, courier or personal delivery. All overdue payment shall become immediately due and payable. In addition, KPTC shall be entitled, by law and without previous notice, to interest on the amount of the

invoice at the rate of one (1)%, each beginning of the month counting as a full month, as well as an indemnity in the amount of ten (10)% of the invoice, with a minimum of 100 EUR and a compensation for recovery cost with a minimum of 40 EUR.

5. Taxes, duties and levies

- 5.1. The Customer shall be responsible for all taxes, custom duties, charges, dues and levies related to the Deliveries which may be payable in the Territory or that are related to the exportation/importation of the products into the Territory in accordance with the delivery terms.
- 5.2. If in accordance with present or future laws or regulations in the Territory, KPTC shall be obliged to pay, or the Customer shall be obliged to deduce from any payment to KPTC, any amount with respect to any taxes, custom duties, charges, dues and levies for which the Customer is responsible as stated above, the Customer shall increase the payment to KPTC by an amount to cover such payment by KPTC or deduction by the Customer.

6. Modification of the Performance and Deliveries

- 6.1. Modifications of the agreed-upon scope of performance may be agreed upon only in writing by KPTC. The existing scope of performance shall continue to be applicable until KPTC written agreement for its variation. If such variation requires an examination and/or additional or other renderings of performance by KPTC, then KPTC shall be entitled to invoice for the expense required for this or any additional services or to recalculation of the contract price.

7. Obligation of cooperation of the Customer

- 7.1. The rendering of the services and the Delivery of the Product requires the close cooperation between KPTC and the Customer. KPTC shall receive from the Customer all documents, information, data, access and passwords, workspace, technical data for interface with existing systems, data and plans for the respective site and approvals and certificate required for the rendering of the services, product deliveries (also for third parties).
- 7.2. Provided that KPTC offer a specific software development (exclusive of software adaptation and/or customization) for the Customer, the Customer will provide a complete requirements specification and all required test data in a suitable form. Furthermore, the Customer will provide to KPTC the required and correspondingly trained personnel for the fulfilment of its obligation to cooperate.
- 7.3. The Customer shall in a timely and proper fashion:
 - 7.3.1. fulfil all its obligations specified in the responsibility matrix, if any, at such times as are stipulated in the time schedule;
 - 7.3.2. make the sites available to KPTC's personnel and subcontractors with all facilities, such as, but not limited to, heat, light, ventilation, electric current and outlets, adequate storage space if required, at such times as are stipulated in the applicable time schedule or as otherwise may be reasonably required in order to enable KPTC to start up and without interruptions

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- carry out the Installation and/or commissioning services in accordance with the time schedule;
- 7.3.3. obtain and maintain all permits, licenses, etc. related to sites, rights of way and other facilities as may be required by KPTC to fulfil its obligations;
 - 7.3.4. actively assist KPTC to obtain and maintain required permits for importation and re-exportation of KPTC's Product on a duty and customs free temporary basis;
 - 7.3.5. actively assist KPTC in obtaining and maintaining any entry or working permits or visas required for personnel engaged by KPTC;
 - 7.3.6. upon request by KPTC, otherwise assist KPTC in all respects reasonably required for the due start-up and progress of the services and the completion of the acceptance activities;
 - 7.4. The Customer is responsible for all data storage and to take any action for data security and confidentiality, files, computer programs and any information necessary for the provisioning and management of its network, in order to avoid loss or damage and to allow data restoration. In general, the Customer shall make any data backups as necessary and preserve them as close to its needs to the extent they are necessary to limit any damage. Prior any performance of KPTC's obligation, the Customer shall notify KPTC which data security rules are implemented to its network.
 - 7.5. The Customer is responsible for any third party (not being a subcontractor of KPTC) engaged in or with dependencies to the Deliveries to be performed and delivered by KPTC to the same extent as Customer is for its own performance and obligations hereunder.
 - 7.6. Should Customer fail to meet or be delayed in meeting its undertakings under this Clause 7, then KPTC shall, at Customer's cost, be entitled to postpone or cancel its obligation. The Customer shall reimburse KPTC in respect of all costs and expenses incurred as a result of Customer's delay or default. Such costs and expenses shall be paid within thirty (30) calendar days from the date of KPTC's invoice.
 - 7.7. Should KPTC be unable to carry out the planned delivery due to the Customer, the Products and/or Software ordered shall be invoiced at the date of the planned delivery. In addition, the Customer shall be liable to pay to KPTC for each day of delay a flat-rate sum of two (2)% of the price of the products and/or Software to be delivered without prejudice to the right for KPTC to claim a higher indemnity.
- 8. Acceptance**
- 8.1. Deliveries shall be considered as having been accepted upon delivery of the Products or the orderly rendering of services, as applicable, both in accordance with these General Terms and Conditions, provided that nothing else has been agreed upon.
 - 8.2. Products, for which installation and commissioning services are agreed and provided by KPTC, shall be tested in accordance with the KPTC standard tests activities. In case of product expansions, the relevant acceptance activities shall only be performed on the additional products and associated services. KPTC shall notify the Customer in writing five (5) business days prior to the commencing of any acceptance activities to be carrying out and complete by KPTC. The Customer has a right to attend the acceptance activities. The result shall be accounted for in a report(s) designed to clearly document whether the acceptance criteria are met or not.
- 8.3. If, during an agreed-upon acceptance process, defects are discovered, KPTC shall eliminate these defects within the appropriate time period without compensation.
 - 8.4. If the acceptance is rejected due to another reason than a significant defect that substantially limits the use of the Product or makes it impossible, then the Product shall be considered as having been accepted from the point in time of its provision for acceptance, in any case nonetheless with its operational use.
 - 8.5. When, according to the above, Product is accepted or deemed accepted, such acceptance shall be confirmed by the Customer's issuance of an acceptance certificate. The acceptance certificate shall be issued promptly, however no later than three (3) business days after KPTC's written request. If the acceptance certificate has not been issued within such period, KPTC may on behalf of the Customer issue such acceptance certificate, with the relevant invoice.
 - 8.6. Acceptance of a Product not being subject to installation and Commissioning services provided by KPTC
 - 8.7. The Customer may perform an incoming inspection upon delivery of products. Any deviation in quantities and specifications shall be notified in writing to KPTC within three (3) business days after the delivery date, otherwise the product shall be deemed to be accepted as of the date of delivery.
- 9. Warranty**
- 9.1. In the adherence to the agreed-upon payment terms and conditions, KPTC shall be obliged in accordance with the following provisions to eliminate each defect existing at the time of the transfer that limits the stipulated functionality if this defect is based upon a flaw in the construction, material or execution.
 - 9.2. KPTC shall, for a period stipulated in article 9.3, at its option without undue delay repair or replace at its charge, any part of the Product which do not conform to its technical specification by limiting the stipulated functionality if the non-conformity is based upon.
 - 9.3. Consumable parts, such as, but not limited to, lamps, fuses, batteries etc., shall be excluded from said warranty.
 - 9.4. Provided that no special warranty periods have been agreed upon under the Offer or are required under statutory law, the warranty period shall be 12 months for Products commencing on the date of transfer of risk as stipulated in Clause 18 and 6 months for Software commencing on the delivery of the Software ("the Warranty Period").
 - 9.5. All transportation costs and risk of loss incurred with respect to the repair and/or replacement of defective deliverables shall be borne by the Customer when returned to KPTC, and by KPTC when returned to the Customer, transportation being by normally scheduled surface carrier, unless otherwise agreed.
 - 9.6. The Customer undertakes to comply with KPTC's instructions concerning disposal of defective Products.

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- 9.7. Defective Product parts shall become the property of KPTC without compensation at the date of its disposal by KPTC.
- 9.8. Any repaired or replaced Product or Software shall be warranted for the remainder of the original Warranty Period.
- 9.9. Any warranty above in this Clause, shall apply only if:
- 9.9.1. the Product is used and maintained under normal conditions and in accordance with the documents, information and advice furnished by KPTC;
- 9.9.2. the Customer without undue delay has given KPTC notice of such defects, non-conformities or deviations before the expiration of the applicable Warranty Period;
- 9.9.3. such defect, non-conformity or deviation was not caused by inter-working equipment not supplied by KPTC;
- 9.9.4. the Customer has given KPTC every opportunity to inspect and remedy such defect, non-conformity and deviation;
- 9.9.5. the Customer has provided warranty fault reports in accordance with the procedure specified by KPTC and
- 9.9.6. the Customer has implemented, for fault preventive purposes, any software updates that KPTC supplies to the Customer with from time to time during the Warranty Period.
- 9.10. Furthermore, the warranty shall be limited to the defects as defined in 9.1 and exclude any defects that result from following or similar events:
- modification of products without KPTC's prior written approval
 - arrangement and assembly not effected by KPTC
 - insufficient adjustment,
 - non-compliance with installation requirements and conditions of use,
 - excessive stress on parts beyond the performance specified by the seller,
 - negligent or incorrect treatment and use of inappropriate operating material;
 - material provided by the buyer;
 - acts of third parties ;
 - atmospheric discharges, overloads and chemical influences;
 - through natural wear and tear.
- 9.11. Through the elimination of the defects, the original Warranty Period shall not be extended.
- 9.12. These warranty provisions shall apply – provided that provisions themselves do not provide to the contrary – accordingly for each liability for defects derived from other legal reasons.
- 9.13. The assertion of claims on the ground of lesion enormous error, or lapse of purpose by the Customer is excluded.
- 9.14. The warranties given in this Clause 9 constitute the only warranties and obligations made by KPTC with respect to the products, or any part thereof and are in lieu of all other warranties, written or oral, express or implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose, and the remedies stipulated in this Clause 9 are the sole and exclusive remedies.
- 9.15. Should the Customer want to obtain any additional support services in order to complement KPTC's warranty undertakings as regulated in this Clause 9,

such services should be regulated in a specific service agreement.

10. Industrial Property Rights and Copyrights

- 10.1. If a Delivery of KPTC is produced based upon the construction specifications, drawings, models or other specifications of the Customer, then the contractual parties agree that the Customer shall indemnify and hold KPTC harmless for any violation of protected rights.
- 10.2. Notwithstanding anything in the Agreement to the contrary, it is understood that the Customer receives no title or ownership rights to the software, Execution documents, such as plans, sketches, other technical documents, samples, catalogues, prospectuses, illustrations and the like and all such intellectual property rights shall always remain with KPTC (or its supplier).
- 10.3. The Customer agrees that the Software or Documentation provided to it by KPTC or any renewals, extensions, or expansions thereof, shall, be treated as proprietary and a trade secret of KPTC (or its suppliers), and shall be subject to the provisions of Clause 11 (Confidentiality).

11. Confidentiality

- 11.1. All disclosure of information, orally, visually or otherwise, disclose by KPTC will be deemed to be confidential and proprietary unless specifically designated as non-confidential at the time of disclosure or by nature obviously is non-confidential or non-proprietary.
- 11.2. The Customer agrees to treat the same strictly confidential and shall not divulge, directly or indirectly, to any other person, firm, corporation, association or entity, for any purpose whatsoever, confidential information so received, and shall not make use of or copy such confidential information, except for the purpose of the Agreement. Such confidential information may be disclosed only to such of the employees of the Customer who reasonably require access to such information for the purpose for which it was disclosed and who have secrecy obligations to Customer similar to this Clause 11.
- 11.3. The Customer shall upon becoming aware of inadvertent or unauthorized disclosure, by negligence or not, notify KPTC without delay and take all measures to mitigate the effects of such disclosure and to prevent any further disclosure.
- 11.4. The obligations of confidentiality set out in this Clause 11 shall be valid for an indefinite period of time and survive the termination of the Agreement.
- 11.5. The Customer shall not advertise or publish any information related to the Agreement without the prior written approval of KPTC.

12. Termination

- 12.1. Regardless of its other rights, KPTC shall be entitled to terminate the Agreement – or also with respect to still outstanding partial Deliveries,
- 12.1.1. if the carrying-out of the Delivery or the continuation of the performance becomes impossible or is further delayed despite the setting of an

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- additional time period due to reasons for which the Customer is responsible,
- 12.1.2. if concerns regarding the ability to pay of the Customer are revealed and the Customer, upon the request of KPTC, neither makes an advance payment nor provides satisfactory security or
- 12.1.3. if the extension of the delivery time period amounts to in total more than half of the originally agreed-upon delivery time period, at least nevertheless 6 months, due to circumstances which are beyond or reasonably beyond the control of KPTC.
- 12.2. Provided that bankruptcy proceedings are commenced regarding the assets of a contractual party or an application to the commencement of bankruptcy proceedings is rejected due to insufficient assets, each contractual party shall be authorized to terminate the Agreement without providing an additional time period.
- 12.3. For the avoidance of any doubt, any termination or expiration of the Agreement is without prejudice to any outstanding payments due under it. Further, upon expiration or termination of an Agreement, KPTC shall (after taking into account amounts previously paid or invoiced under the Agreement) be entitled to invoice the Customer for all Deliveries delivered or performed at the date of termination or expiration and the pro-rated accumulated price for services under execution but not completed on the date of termination or expiration, together with any additional sums properly expended and documented by KPTC in regard to termination, plus a reasonable rate of overheads and profits on the same. This shall also apply if the Customer has not yet accepted the Delivery or performance or KPTC has made preparatory actions. In its free discretion, KPTC may also demand the return of the Products already delivered.
- 12.4. Other claims (particularly damage compensation claims) of KPTC shall remain unaffected by the termination. Other consequences of the termination are excluded.

13. General limitation of liability

- 13.1. The liability of KPTC is limited to the direct damages and shall in no event exceed five (5) % of the value of the order (with a maximum of EUR 1 million). In no event shall KPTC be liable for loss of production, loss of profit, loss of use, loss of business or market share, loss of data, revenue or any other economic loss, whether direct or indirect, or for any special, indirect, incidental or consequential damages, whether or not the possibility of such damages could have been reasonably foreseen and whether as a result of breach of contract, warranty or tort.
- 13.2. The Customer suffering loss or damages shall take all reasonable measures to limit such loss or damages.
- 13.3. No action, regardless of form, arising out of any alleged breach of contract or obligations may be brought by the Customer more than two (2) years after the cause of action has occurred.

14. Applicable Law and Arbitration

- 14.1. For the contractual relationship between the Customer and KPTC (a Company under Belgian

Law), the substantive laws of Belgium shall apply, excluding the conflict of law provisions. Applicability of the UNCITRAL Convention on Contracts on the International Sale of Goods shall be excluded.

- 14.2. Any and all disputes, action or proceeding arising out of or related in any way to these General Terms and Conditions, Offers and accepted orders, shall be finally settled in Brussels under the competent court of justice. In the event that the Customer has his registered office abroad and that, at the time claims 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, action or proceeding arising out of or related in any way to these General Terms and Conditions, Offers and accepted orders 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 Brussels.

15. Final Provisions

- 15.1. Whether signed or not by the Customer, these General Terms and Conditions shall be deemed accepted by the Customer by issuing an order referring the KPTC Offer, and these General Terms and Conditions shall prevail to any other general purchase terms and conditions of the Customer.
- 15.2. Modifications or supplements to an Agreement, including the written form clause, shall be required to be in writing, provided that a more stringent form is not provided for by law. This shall also apply for the amending of this written form clause. All declarations and notifications, which are permitted in accordance with these General Terms and Conditions, shall be required to be in writing. E-mail, which has an electronic signature, shall correspond to this written form requirement.
- 15.3. The Customer shall only be authorized, after the prior written express approval of KPTC, to assign its rights or obligations from the Agreement to third parties.
- 15.4. In the event that a provision of these General Terms and Conditions should be or become legally invalid or unworkable, the legal validity of the remaining provisions of these General Terms and Conditions shall remain unaffected by this. In the place of the legally invalid or unworkable provision, that legally valid and workable provision shall be considered to be agreed upon which most closely corresponds to the intended economic purpose of the legally invalid or unworkable provision. The same shall apply for the contractual interpretation.
- 15.5. In the event that parts of these General Terms and Conditions should be or become invalid due to a violation against the mandatory statutory provisions or for other reasons, then in the absence of a substitute agreement between the contractual parties, the permissible provision shall apply that most closely approaches the content of the legally invalid part. The validity of the remaining provisions of these Delivery Provisions shall remain unaffected.

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PART II: Product delivery provisions

16. Product deliveries

- 16.1. These Product delivery Provisions shall be added on a supplementary basis to the General Provisions Part I of these Terms and Conditions and shall apply for deliveries of Products.
- 16.2. KPTC will notify the Customer of the planned delivery date. The delivery term shall begin with the latter of the following points in time:
- Date of the receipt of the written approval by KPTC of the order as stipulated in Clause 2.3,
 - Date of fulfilment of all technical, commercial and other requirements incumbent upon the Customer.

The supply date is always subject to force majeure and any impediments to supply outside KPTC's or control, or if such circumstances affect sub-suppliers.

- 16.3. KPTC is authorized to carry out and invoice for partial deliveries.
- 16.4. Except otherwise specified in writing in the Offer, the Customer represents that it has acquired the purchased Product only for use in its own business environment and not for the purpose of resale.

17. Packaging

- 17.1. All items shall be packed in accordance with KPTC's general packing and shipping standards.
- 17.2. The packing shall be marked in accordance with KPTC's standard procedures, which are normally developed also to facilitate customs clearance.
- 17.3. KPTC shall – provided that statutory law does not provide to the contrary – not be entitled and obliged to take back and to dispose of packaging.

18. Transfer of Risk

- 18.1. Use and risk shall be transferred to the Customer upon delivery in accordance with FCA (free carrier), residence of KPTC (Incoterms 2010) FCA (Incoterms 2010), residence of KPTC Belgium or any other location defined at the sole discretion of KPTC or in case of delay of the Customer to at the planned delivery date; this shall also then apply if the transport is carried out by KPTC on behalf of the Customer.

19. Retention of Ownership, Assignment of Security

- 19.1. Except otherwise agreed in the Offer, KPTC shall retain the ownership to the delivered Product until the payment in full of the invoiced amounts in addition to any further claims associated with these invoices (e.g., interest, dunning charge, attorney's fees). The Customer shall be obliged to adhere to all those form guidelines and grant the information which is required for the legally valid substantiation of such a retention of ownership in accordance with the legal directives which are applicable to the Territory.
- 19.2. For the securing of the purchase price claim of KPTC, the Customer shall assign to KPTC its claims from the resale of the retained Product, even in the event of the converting, reshaping and mixing of the Product, and declare itself as willing to make a corresponding notation in its records or on its invoices as well as to notify its contractual partners (third-party debtors) of

this assignment of security. The Customer shall be obliged to adhere to all those form requirements and grant information that is required for the legally valid substantiation of such an assignment of security in accordance with the legal directives that are applicable for the commercial residence or the location of the branch office of the Customer and/or where the performance was rendered.

- 19.3. In the event of execution measures or other legal action, the Customer shall declare the right of ownership of KPTC or the assignment of security that has taken place as well as to immediately notify KPTC of this.

PART III : Software License Provisions

20. Area of Applicability, Software Definition

- 20.1. These Software License Provisions shall be added on a supplementary basis to the General Provisions Part I of these Terms and Conditions and shall apply for the Customer to be granted a Software license with respect to the delivery of Products, the rendering of Services or for the use by the Customer of any Software delivered by KPTC to Customer.
- 20.2. "Software", means computer programs in object code that are distributed on a standard basis and/or customized or adapted for the use and/or the operation or management of electronic equipment and systems including the documents passed on for this.
- 20.3. If the Customer orders from KPTC licensed Software of third parties, then this Software shall be provided in the parameters that are provided for by the licensing terms and conditions of this third party and these Software Provisions shall only then apply on a secondary basis. Upon request, the licensing terms and conditions of the third party shall be provided to the Customer at the outset in the original language.
- 20.4. Notwithstanding anything in the Agreement and any document to the contrary, it is understood that the Customer receives no title or ownership rights to the Software or documentation, and all such rights shall remain with KPTC or its suppliers.

21. Right to use the Software

- 21.1. Regardless of any special licensing Agreements, and subject to the complete payment of the relevant license fees, starting from the date which the Software is delivered to the Customer, Customer is granted a non-transferable, non-exclusive, non-perpetual and non-sublicensable, restricted license to, in the Territory, for the duration specified in the Offer and with the associated Product, use the Software (excluding source code) and associated standard documentation as provided by KPTC, subject to adherence to the contractual specifications. With respect to the accompanying Product, this right to use shall be limited exclusively to the operations with this Product. With respect to independently supplied
- 21.2. Software, this right of use shall be limited exclusively to the Product specified in the Agreement regarding the place of use according to type, number and the site location. The Customer shall receive this right to

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- use on any user-specific adjustments, adaptation and/or customization of the Software. The Customer does not have, based upon this right to use and, where applicable, a co-authorship right obtained from a Customer-specific adaptation of Products and/or Software, and shall not restrict the exploitation and sale of the Product supplied by KPTC.
- 21.3. The Customer shall not be entitled to all other rights to the Software. Without the prior express written approval of KPTC, the Customer shall not be entitled to:
- 21.3.1. particularly copy except for a backup purpose provided that no expressed ban of KPTC or third-party licensors is contained in the Software and provided that all copyright and ownership markings are transferred along with these copies in an unaltered fashion ; or
- 21.3.2. make the Software accessible to third parties, e.g. in the form of a sub-license or to use it on any other hardware than the Product that forms the contractual object, or available to any person except to its employees on a "need to know" basis; or
- 21.3.3. modify, decompile, reverse engineer, translate, adapt, arrange or error correct or make any other alteration of the Software or Documentation (except as specifically and expressly provided by these Terms and Conditions or by applicable law); or
- 21.3.4. create derivative work using the Software or Documentation; or
- 21.3.5. remove any trademark, trade-name, proprietary, copyrights, trade secret or warning legend from the Software, Documentation or copies thereof; or
- 21.3.6. use the Software or Documentation for any other purpose than permitted in this Clause 21; or
- 21.3.7. use or transfer the Software and/or the Documentation outside the Territory without the written consent of KPTC and after having received necessary export or re-export permits from relevant authorities.
- 21.4. The Customer shall retain a log of the number and location of all originals and permitted copies of the Software and Documentation.
- 21.5. The use of Software upon hardware that is not the contractual object or upon several workstations shall only then take place in accordance with a corresponding written agreement between the contractual parties. This shall also then apply for licenses that are transferred to the Customer with a contractually determined maximum number and the Customer shall be entitled to use these licenses upon individually specified workstations and the number of these workstations exceeds the number of the transferred licenses. Nevertheless, in each case, licenses may only be used in that scope (number) which has been agreed upon between the Licensor and the Customer.
- 21.6. In the event that the Software licensed is delivered in an inseparable package also containing other software programs and features than the contracted Software, e.g. optional software features not included in the applicable Deliveries ordered, then the Customer may not in any way use such other software programs and features. However, upon Customer's request KPTC may offer a license to use such other software programs and features to the Customer on the same terms and conditions as stipulated in this Clause 21 and at a price stipulated in a relevant Offer. The Customer shall not have the right to transfer this license to the Software and Documentation to a third party without the prior written consent from KPTC. Following such consent from KPTC, this license may be transferred to the third party provided that a separate license agreement, including price, thereafter is entered into between KPTC and the relevant third party.
- 21.7. KPTC or the Licensor shall be entitled to alter the Software specifications for new versions.
- 21.8. The Customer shall support KPTC in the assessment of the adherence to the above-mentioned requirements and, for this purpose, grant representatives of KPTC a right to inspect its relevant documents wherever they may be located, as well as in cases of doubt, make an on-site inspection. In this context, KPTC shall attempt to avoid any disruption of the business operations of the Customer.
- 21.9. Open source: If and to the extent so called free (open source) software forms part of the Software, additional rights and obligations may be applicable for such free software. Software components that are subject to an Open Source license (including but not limited to any of the licenses listed on www.opensource.org) that imposes the terms of the license to the Customer, are licensed to the Customer on the terms of such Open Source license. KPTC's technical documentation contains a list of the relevant components and the relevant licenses, and, if applicable, the location of relevant source code
- 21.10. The obligations of the Customer under this Clause 21, shall survive indefinitely the termination of the Agreement.
- ### 22. Performances of the Customer
- 22.1. The Customer shall be responsible for:
- 22.1.1. the selection of the Software offered by KPTC;
- 22.1.2. the use of the Software and the results achieved with it,
- 22.1.3. the safeguarding of all rights of KPTC (such as industrial property rights, copyrights including rights to copyright markings) to the Software, and the safeguarding of the claims of KPTC to the confidentiality regarding business and trade secrets as well as by its employees and servants or third parties. This shall also then apply in the event that the Software is modified or combined with other programs. These obligations shall continue to exist after the termination of the Agreement.
- 22.1.4. according to the necessity and upon the request of KPTC, the Customer shall supply to KPTC detailed evaluations regarding the number of users of the Software and/or other data necessary for the charging of the license fee, as applicable.
- ### 23. Warranty
- 23.1. With respect to the Software, KPTC shall warrant the conformance with the specifications that are valid for the delivery of the Software if the Software is used in accordance with the respectively valid installation requirements and subject to the respectively valid terms and conditions of use.
- 23.2. The warranty shall comprise the detection of errors as well as the elimination of errors and disruptions during

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- the duration of the Warranty Period. Provided that the contractual parties have not mutually agreed in writing upon anything to the contrary, the warranty period shall be six months from the delivery date of the Software.
- 23.3. The detection of errors shall take place based upon a written error notification by the Customer in reasonable term or due to determinations of KPTC. The Customer shall make notification to KPTC in reasonable term in writing and in detail. The detection of errors requires the receipt of the notification by KPTC.
- 23.4. The elimination of errors (function-disrupting deviations from the valid specifications) shall take place in the free discretion of KPTC by delivery of new Software or through corresponding modifications of the program.
- 23.5. The requirement for each error elimination is the presence of a function-disrupting error; furthermore, (i) that this error is reproducible, (ii) that the new Software were installed by the user as necessary within the Warranty Period, (iii) that KPTC receives from the Customer all documents and information necessary for the error elimination and that the access to the affected Product and Software is made possible for KPTC during normal working hours. The Customer shall undertake to immediately notify KPTC of these errors as soon as they appear.
- 23.6. For Software, for which the Customer or third parties have made modifications without the prior written approval of KPTC, no warranty shall exist even if the error appears in an area that has not been modified. If, in the course of an error detection, it is determined that no warranty case exists, then the Customer shall be required to assume the costs incurred from this at the rates of KPTC valid at that time.
- 23.7. KPTC shall in any case assume no warranty that the Software functions are sufficient for the requirements of the Customer, that the different programs work well together in the selection made by the Customer, that they run in an uninterrupted and error-free fashion and that all Software errors can be eliminated.
- 23.8. Open Source software components may be subject to their own warranty (which may exclude any warranty, and provide the software on an "as is" basis) as is set out in the relevant Open Source license.
- 23.9. Defects in merely individual programs shall not entitle the Customer to the termination of the Agreement, also with respect to the other programs.
- 23.10. KPTC shall provide no warranty for Software that is supplied by third parties to KPTC and is simply resold by KPTC to the Customer.
- 23.11. The Customer is – provided that statutory law as well as these provisions do not provide otherwise – obliged to provide documentation of the defectiveness of the rendered Deliveries.
- 23.12. Any other defectiveness of the Software, assertion of claims on the ground of *laesio enormis*, error, or lapse of purpose by the Customer shall be excluded.
- 24. Industrial Property Rights and Copyrights**
- 24.1. KPTC shall be entitled to all intangible property rights and copyrights – provided that the contractual parties have not agreed to the contrary. In the use of the Software, the Customer is to leave the corresponding copyright markings of KPTC unaltered.
- 24.2. If the intangible property rights and/or the copyrights of KPTC are violated by actions of the Customer or its servants or subcontractors, then the Customer shall indemnify KPTC as the situation would have been if the violation had not occurred.
- 24.3. The contractual parties agree that the Customer shall immediately notify KPTC of any violation of the rights of KPTC that it becomes aware of, even if this may be caused by third parties with whom the Customer uses the Software.
- 24.4. If claims are asserted due to the violation of protected rights for which KPTC is to be held responsible, KPTC may at its own costs and at its own choosing modify the Software, exchange it or obtain a right to use. If this is not possible, and at KPTC request, the Customer shall return to KPTC the original as well as all copies of the Software including any surrendered documents against repayment, as sole remedy for the Customer for violation of protected rights.
- 24.5. If legal action is taken by third parties against KPTC due to the violation of industrial property rights and copyrights and this violation has been caused by the Customer or its servants or subcontractors, then the Customer shall indemnify and hold KPTC harmless regarding this. Likewise, the Customer – nonetheless only upon the request of KPTC – shall intervene upon the part of KPTC in any legal dispute and provide KPTC with all information that is helpful for the legal position of KPTC.
- 25. Return and Destruction of the Software**
- 25.1. In the event of the termination of the right to use, the Customer shall, according to the wishes of KPTC, either return all of the Software including the surrendered documents to KPTC or destroy it against documentation.
- 25.2. The above-mentioned paragraph shall also apply for Software that has been modified or combined with other programs.
- 26. Duration and Termination of the Right to Use**
- 26.1. The duration of the right to use shall be in accordance with the Agreement. The right to use shall in any case end
- 26.1.1. with the expiration of the usage time agreed upon in the Agreement,
- 26.1.2. with the termination after the lapse of an agreed-upon minimum usage time period as applicable and – in the absence of another Agreement – subject to the adherence to a termination notice period of three months from the end of the billing period,
- 26.1.3. with the premature dissolution in the event of material contractual violations if the contractual condition has not been restored within an appropriate subsequent time period made in writing;
- 26.1.4. with the premature dissolution in the event of the opening of bankruptcy proceedings regarding the assets of the Customer or the rejection of an application to commence bankruptcy proceedings due to the absence of sufficient assets.

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PART IV : Service Provisions

27. Area of Applicability

27.1. These following Service Provisions shall be added on a supplementary basis to the General Provisions Part I of these Terms and Conditions and shall apply to the rendering of Services – regardless of the type – by KPTC to Customers.

28. Prices and Terms of Payment

28.1. Following acceptance of an Order by KPTC, the Customer will be invoiced for Services in advance, on an ongoing basis during the period in which the Services are provided, according to an agreed payment plan or on completion, according to the Agreement in the Order document.

28.2. Services rendered are to be accessed by the Customer during the agreed Contract period. Unless other arrangements are made, the Customer will receive no credit note or refund for Services not accessed: that is to say, KPTC shall be entitled to claim the full fee even in the event of a Customer not calling up a Service.

28.3. Moreover, once a year, but not before a full year has elapsed, KPTC may reduce or increase the classes of remuneration, rates of calculation and minimum charges, with the exception of the index adjustment referred to in Clause 3.7, by giving 3 months' notice in writing. The reduction or increase shall take effect with the presentation of an invoice at the beginning of a period of calculation or on the date stated in the notification.

29. Service Provision

29.1. Unless agreed otherwise, KPTC will render the Services on their own premises. If KPTC works on the Customer's premises or on site, the Customer shall make available appropriately equipped work stations including telephones and Internet access.

29.2. KPTC shall be entitled to replace a member of staff who is employed to render the Service ordered by another suitable employee at any time.

29.3. If the execution of the work is delayed by circumstances for which KPTC is not responsible, the Customer shall bear all the incremental costs and additional expenses caused by this delay including waiting times where applicable.

29.4. For the duration of this contractual relationship and for a further year after the end of the Agreement the Customer shall not entice away any person employed in the provision of these Services, either in person or through a third party. For each case of contravention the Customer undertakes to pay to KPTC a contractual penalty amounting to six times the gross monthly salary last drawn from KPTC by the employee concerned.

29.5. The Customer shall be under an obligation to inform KPTC of all legal, official and other regulations and particular circumstances which are to be observed during the execution of the Agreement or which could lead to difficulties in this, without being asked.

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