

General Terms and Conditions for Deliveries of Kapsch BusinessCom AG

(General Delivery Terms)

1. Scope of application

1.1 The sale of systems and system components to the principal shall be performed by Kapsch BusinessCom AG (hereinafter shortly referred to as „Kapsch“) subject to the present General Delivery Terms (as amended from time to time). With regard to possibly commissioned installations/assemblies the Assembly Conditions of the High- and Low-voltage industry as amended from time to time (available under www.feei.at) shall apply additionally. With regard to software the General Software Conditions of Kapsch BusinessCom AG shall prevail.

1.2 Deviations from the conditions stated in item 1.1. shall only be effective if accepted by Kapsch in writing. Legal conditions and/or General Terms and Conditions of the principal shall not apply and are conjointly excluded.

2. Offer

2.1 Offers made by Kapsch shall, subject to a credit assessment concluded with a positive result, have a binding effect for a period of 14 days.

2.2 Any and all offer- and project documents may neither be reproduced nor made available to third parties without the consent of Kapsch.

2.3 Information contained in sales documents, catalogues, brochures etc, particularly standards, dimensions and output data shall only be relevant if explicitly referred to in the specification of the offer. Otherwise such information shall anyhow be non-binding.

3. Contract conclusion

3.1 Delivery contracts between Kapsch and the principal shall be concluded by legally valid signing of the offer made by Kapsch. Subject-matter shall be the offer inclusive of all attachments as well as any and all printable and storeable conditions published on the website of Kapsch BusinessCom AG, insofar as these are applicable on the offered subject-matter.

3.2 Modifications and amendments of the contract shall be made in writing in order to be legally valid. No oral subsidiary agreements exist.

4. Prices

4.1 The fees and prices stated in the offers of Kapsch shall be in EURO unless another currency is explicitly referred to and shall be based on the actual costs of Kapsch at the time of offering. The prices for assemblings resp. for installations as well as for scheduled work shall be based on the charge rates of the Kapsch customer service and shall change accordingly.

4.2 If the offer of Kapsch states prices in US-\$, Kapsch reserves the right to perform a respective price adaptation in case of a fluctuation of the dollar exchange rate of +/- 2%.

4.3 Statutory Value Added Tax is not included in any of the stated prices.

4.4 Unless agreed otherwise prices shall be ex works resp. ex stock of Kapsch exclusive of packing, shipment, dismantling, redemption and disposal of waste equipment.

5. Delivery

5.1 Delivery of the systems resp. the system components shall be made to the agreed delivery address at the agreed resp. at the date announced by Kapsch. Kapsch shall also be entitled to perform partial deliveries.

5.2 Unless agreed otherwise, the system resp. the system components shall be deemed sold EXW according to INCOTERMS 2010.

5.3 If delays of the delivery date should be caused by the principal, Kapsch reserves the right to separately charge the costs caused by such a delay in addition to default interest, irrespective of a possible fault of the principal.

6. Assembly / Installation

6.1 Given a respective commissioning Kapsch shall assemble the system resp. the system components at the agreed installation site against payment of a separate fee. Unless agreed otherwise, the services connected to the assembly/installation shall be invoiced at actual cost with regard to material and working hours in accordance with the prices valid at the time. The respective prices for assembly/installation resp. the hourly rates are based on the charge rates of the Kapsch customer service and shall be amended in accordance with these.

7. Prerequisites and preparation works for performance

7.1 The prerequisites and preparation works for performance stated in the offer shall be provided by the principal in their entirety in order to warrant a proper performance by Kapsch. If these prerequisites should not or not sufficiently be satisfied by the principal, all additional

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services and expenses which are necessary as a result thereof, shall be charged to the principal.

8. Acceptance

8.1 An acceptance protocol for the system and the system components included in the delivery offer shall be drawn up and signed by the principal and by Kapsch.

8.2 The system shall be deemed accepted and Kapsch entitled to invoice with the drawing up of the acceptance protocol, with the use of the systems and system components delivered by Kapsch at the latest however. The principal shall not be entitled, not even in part, to retain payments, unless defects are given which materially impair the use of the delivered system.

9. Payment conditions

9.1 Invoices shall be due for payment without any deductions within 14 days after billing. In case of an order value of more than EUR 12.000,00 one third of this value shall be due upon ordering as an advance payment. With regard to the rest, payment shall be made according to the respective invoices. These shall be issued to the extent of delivery progress resp. in case of a delivery date according to the supply of the systems and the system components.

9.2 In case of payment default the principal shall have to pay default interest in the amount of 1% per month. In case of payment default of the principal Kapsch shall anyhow be entitled to charge pre-trial costs, particularly dunning costs, collection expenses and lawyers fees.

9.3 The principal shall not be entitled to retain or set-off payments due to warranty claims or other counterclaims.

9.4 If insolvency proceedings should be instituted on the assets of the principal or such request should be dismissed due to lack of assets, deliveries by Kapsch shall hence only be made against cash in advance.

10. Retention of title

10.1 Any and all systems and system components shall in their entirety remain the property of Kapsch until payment is completed.

10.2 Kapsch reserves the right to retract the delivered systems resp. system components maintaining the contract however, if upon maturity and despite reminder no complete payment is effected.

11. Warranty

11.1 In accordance with the following provisions Kapsch shall remedy any defect existing at the time of delivery which impairs the functionality and which is caused by a fault in construction, material or implementation.

11.2 The warranty period for bought systems and system components shall be 6 months from acceptance (acc. to item 6.).

11.3 The warranty claim of the principal shall require that the principal has issued a written notice of the defects within an adequate period and that storage-, assembly-, and operating conditions prescribed by Kapsch are complied with.

11.4 If within the scope of warranty, system components are being replaced, the original warranty period of the entire system shall not be extended.

11.5 In case of a defect subject to warranty, Kapsch shall at their choice either remedy the defective system resp. the defective system component at the place of delivery or have it shipped to them for the purpose of remedying or perform an adequate reduction of price.

11.6 Any and all additional expenses caused in connection with the remedying of defects, e.g. for mounting and dismantling, transport, trip and travel time, shall be at the expense of the principal.

11.7 Defects which do not result from an arrangement and assembly performed by Kapsch, or which result from a non-observance by the principal of installation requirements and usage conditions, shall be excluded from warranty. Kapsch shall neither warrant for defects nor damages caused by acts of third parties, by atmospheric discharges or excess voltage. Further excluded from any warranty shall be parts which are subject to natural wear and tear.

11.8 The warranty obligation shall lapse immediately if the principal himself or a third party not authorized by Kapsch performs modifications or corrective maintenance of the delivered components without written consent of Kapsch.

12. Withdrawal from the contract

12.1 A withdrawal from the contract by the principal shall – unless a specific arrangement has been agreed – be subject to a delivery delay caused by serious fault of Kapsch as well as the unsuccessful expiry of an adequate set grace period. A withdrawal shall be made in writing by registered letter.

12.2 Without prejudice to their other rights Kapsch shall be entitled to withdraw from the contract,

12.3 if performance of delivery is further delayed due to reasons which the principal is responsible for or despite the setting of an adequate grace period,

12.4 If concerns with regard to the financial solvency of the principal have formed and the principal despite a request of Kapsch neither effects an advance payment nor provides suitable securities before delivery.

12.5 Withdrawal may also be declared with regard to an open part of delivery for the reasons mentioned above.

12.6 If insolvency proceedings are instituted on the assets of the principal or a request for institution of insolvency proceedings is rejected due to lack of assets, Kapsch shall be entitled to withdraw from the contract without the setting of a grace period. In such case the withdrawal shall become effective immediately together with the decision that the company will not be continued. If the company is continued, a withdrawal shall become effective only 6 months after the institution of insolvency proceedings or after rejection of the request for institution due to lack of assets. The cancellation of the contract shall however have immediate effect, unless barred by the insolvency law which the principal is subject to, or if the cancellation is indispensable for the prevention of serious economic disadvantages of Kapsch.

12.7 Irrespective of the damage claims of Kapsch inclusive of pre-trial costs, performances or partially performed services shall be settled and paid as agreed in the contract in case of withdrawal. The same shall apply insofar as the delivery has not yet been accepted by the principal as well as for preparation works performed by Kapsch. Kapsch shall instead also be entitled to demand restitution of already delivered objects.

13. Liability / Damages

13.1 Kapsch or their vicarious agents shall be liable for personal or material damages only insofar as statutory provisions, e.g. due to intent or gross negligence or provisions of the Product Liability Law, provide a compulsory liability which may not be excluded by contract. Otherwise any liability whatsoever shall be excluded, such as in particular the liability for slight negligence, for claims resulting from damages due to interruptions of operation, loss of data and/or information, breakdown of data processing institutions, software damages, lost profits, not earned savings, loss of interest, secondary damages and pecuniary losses as well as damages resulting from claims of third parties against the principal. The reversal of the burden of proof for gross negligence shall be excluded.

13.2 Damage claims shall become time-barred 12 months after the date when the principal knew of the damage and the party at-fault.

14. Force majeure

14.1 Force majeure according to the present General Terms and Conditions shall mean any and all non-foreseeable events or events which, even if they had been foreseeable, are beyond the scope of influence of the parties and the effects on the performance of the agreement cannot be prevented by reasonable efforts of the contracting parties, also if they are happening with suppliers. Included herein shall be war, riot, strike, revolution, military or civil coups, epidemics, fire, flooding, storm, earthquake, lightning stroke, blackout, industrial dispute.

14.2 If a case of force majeure happens the party concerned shall immediately notify the other in writing. The party concerned shall not be liable for a delay or the impossibility of contract performance caused by force majeure. The agreed delivery- and performance period shall by all means be extended by the duration of the effects of force majeure.

15. Software licenses

15.1 Kapsch shall apply for possible software licenses with the licensor using the customer data present at the time of contract conclusion (company name, company address, legal form and VAT- number) and these data may afterwards only be modified upon licensor's consent. Provided that the licensor gives his consent, additional expenses connected to such a modification of the software license shall be invoiced to the principal according to actual expenses.

15.2 License- and copyright related provisions of the producer and/or the supplier shall be complied with by the principal.

15.3 In case of a possible contribution of the principal to the production/development and/or adaptation of the software to the requirements of the principal no rights of any kind beyond the contractually agreed right of use shall be obtained.

15.4 Otherwise the General Software Conditions of Kapsch shall apply additionally and primarily.

16. Export limitations

16.1 Any transfer of contractual objects, documents and other material, in particular each re-exportation may be subject to authorization according to the export laws of the USA, the European Union and possible other states. In such case the principal shall be obliged to obtain the respective authorizations from the competent authorities before the transfer. This obligation shall be imposed by contract in case of each new transfer to the respective purchaser resp. the person entitled to dispose.

16.2 If after contract conclusion it should turn out that the delivery of the contractual components is subject to an export limitation of the United States of America or the laws of the European Union or that it is subject to the “Arab Boycott”, Kapsch shall be entitled to withdraw from the contract. If the principal at the time of contract conclusion has failed to inform Kapsch on such circumstances, the principal shall fully compensate Kapsch the expenses and damages resulting from such failure.

17. Intellectual Property Rights and Copyright

17.1 Production specifications such as plans, sketches and other technical documents shall together with samples, catalogues, brochures, illustrations and the like always remain the intellectual property of Kapsch and shall be subject to the relevant statutory provisions with regard to reproduction, imitation etc.

18. References, Newsletter / Mail-Information

18.1 Upon ordering the principal allows Kapsch, until revocation which is possible at any time, to cite the company name of the principal vis-à-vis third parties as a reference.

18.2 Upon ordering the principal agrees, until revocation which is possible at any time, to be informed via Newsletter and E-Mail or by phone on product novelties.

19. Law and Forum

19.1 The contractual relationships are exclusively subject to Austrian Law excluding its conflict of laws rules. The application of the UNCITRAL treaty of the United Nations on contracts for the international sale of goods is hereby excluded.

19.2 The court in Vienna having subject-matter jurisdiction shall have exclusive jurisdiction for the decision on all disputes arising out of the contractual relationships – inclusive of disputes on their existence or non-existence.

20. General / Final provisions

20.1 The rules of business-to-business transaction shall apply on the contractual relationships, even if one of the parties is not a trading company. The principal shall inform Kapsch upon contract conclusion, if the purchased system or the purchased system components are not intended for the operation of his enterprise; otherwise the principal acknowledges that the contract conclusion belongs to his enterprise and that he is an entrepreneur in the meaning of the Consumer Protection Act.

20.2 Subsidiary agreements, amendments and supplements of contracts shall require written form in order to be legally valid. The same shall apply to a waiver of the written form clause. Oral side agreements do not exist.

20.3 The contracting parties shall immediately inform each other in writing on changes of their name, company, address, legal form, company register number, paying office etc., otherwise deliveries and payments may validly be made to the address resp. the paying office last announced.

20.4 If single provisions of these conditions or of the concluded contract should be ineffective, the efficiency of the remaining provisions shall not be affected. The ineffective provision shall be substituted by a valid one which meets the intended purpose most closely.