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Introduction

These General Terms and Conditions of Kieback&Peter GmbH & Co. KG – hereinafter referred to as "**Kieback&Peter**" – consist of

- General Conditions, Part A
- Special Conditions for Work Performance, Part B, and
- Special Conditions for the Provision of Software, Part C.

All parts shall hereinafter jointly be referred to as "**GTC**".

The GTC shall apply to all agreements and any other legal transaction based on which Kieback&Peter provides works and/or services and/or carries out deliveries – such works, services and deliveries hereinafter jointly referred to as "**Services**" – to its contractual partner – which hereinafter shall be referred to as "**Purchaser**".

These GTC shall, however, neither apply to the provision of work services, whereby a physical structure is constructed, maintained, modified or demolished, nor to the supply of constructed or movable building and/or plant components. For such aforementioned work services and supplies, the General Terms and Conditions for Construction Services of Kieback&Peter GmbH & Co. KG shall apply exclusively.

Part A - GENERAL Conditions

1. SCOPE OF APPLICATION, NO OTHER TERMS AND CONDITIONS APPLY

1.1 The provisions of Part A shall apply unless provisions of Parts B or C provide otherwise.

1.2 For the scope of the General Terms and Conditions for Construction Services of Kieback&Peter GmbH & Co. KG mentioned in the introduction, such terms and conditions shall apply exclusively. Apart from that, the present GTC and any other Kieback&Peter's general terms and conditions, if so agreed upon, shall apply exclusively.

Any terms and conditions of purchase and/or other general terms and conditions of Purchaser deviating from these GTC shall not become an integral part of the agreement, even if Kieback&Peter accepts an order, and even if Kieback&Peter has failed to object to such terms and conditions.

This constitutes an explicit rejection of the standard notice of Purchaser's general terms and conditions.

1.3 The GTC shall apply to all future transactions, even if the GTC are not expressly referenced elsewhere and even if such are not again enclosed with a proposal, an order acknowledgment or a contract.

2. AMENDMENTS TO THE GTC

2.1 Kieback&Peter shall be entitled to amend the GTC even within an existing contractual relationship while adhering to the following procedure.

2.2 Kieback&Peter shall notify Purchaser of any amendments to the GTC at least 30 days prior to the scheduled effective date of said amendments. Purchaser may object to such amendments in writing within 30 days from receipt of such notification. If there is no objection and should Purchaser continue to use the Services after expiration of the objection deadline, said amendments shall be deemed to have been effectively agreed for all Services provided after expiry of said deadline.

2.3 In the aforementioned notification, Kieback&Peter shall refer to the aforementioned deadline and advise on the legal consequences of their elapsing where the option to object was not exercised.

3. OFFERS BY KIEBACK&PETER

3.1 Any general presentation of services by Kieback&Peter (e.g., on the website or in advertising brochures) shall be non-binding and shall not constitute an offer to conclude a contract.

3.2 Kieback&Peter shall be bound by its offers and quoted pricing for a period of six weeks. Any obvious typos or miscalculations may be corrected by Kieback&Peter, including with retroactive effect.

4. TERM OF CONTRACTS

4.1 Unless agreed otherwise, contracts on the provision of repetitive Services (such as maintenance of components, support of software or Software-as-a-Service) shall generally be concluded for an indefinite period of time, with a minimum term of 12 months.

Upon expiry of the minimum term, the contract shall be extended automatically by consecutive 12-months-periods, unless it has been terminated upon expiry of the minimum term or upon expiry of the current extension period, with termination in each case to be given at three months' notice.

4.2 The right of either party to terminate the contract for cause shall remain unaffected. For Kieback&Peter, cause for immediate termination is given especially if Purchaser, despite reminder, breaches Purchaser's payment obligations.

5. PRICING AND PRICE RESERVATIONS; WITHHOLDING AND OFFSETTING

5.1 The offer prices are strictly net and do not include any applicable value-added tax, packaging, freight, customs clearance, insurance and installation charges. In the event of deliveries, the prices shall be deemed ex works.

5.2 Partial Services may be invoiced separately.

5.3 The offer price shall only apply if a contract for the Services offered is placed in full. If orders for such Services are placed in part or as partial deliveries, Kieback&Peter reserves the right to amend the prices accordingly.

5.4 Purchaser may only withhold payments or offset with such counterclaims that have been established with legally binding effect or that are undisputed.

6. PAYMENT TERMS, PAYMENT DEFAULT

6.1 In the event of deliveries, Kieback&Peter shall be entitled to issue an invoice on the date of delivery; in the event of advance invoices on the day the goods are ordered.

Unless otherwise explicitly agreed, Kieback&Peter shall invoice its Services as follows:

- in the event of compensation on a time and material basis: monthly and/or upon conclusion of the Service provided;
- in the event of recurring compensation: in advance as agreed (e.g., monthly or annually).

6.2 In the event of payment default by Purchaser, a flat-rate default fee of EUR 40.00 plus default interest of 9 percentage points above the base rate will be charged by Kieback&Peter. Other claims arising from payment default shall remain unaffected.

Kieback&Peter reserves the right to prove higher default damage.

6.3 In the event of payment default by Purchaser, including under other contracts with Kieback&Peter, any and all of Kieback&Peter's outstanding receivables against Purchaser shall become due with immediate effect.

- 6.4 Once Purchaser is in payment default, Purchaser shall no longer be entitled to continue to process, combine or mix with other objects the goods supplied by Kieback&Peter subject to retention of title, or to sell any such goods.
- 6.5 In addition, in the event of payment default, Kieback&Peter shall also be entitled, after having sent a reminder, to render any outstanding Services only against advance payment. This shall also apply to any outstanding services under other contracts with Purchaser.
- 6.6 The assertion of its right to retention of title and any seizure of delivered goods by Kieback&Peter shall not be deemed a rescission from the contract, unless expressly declared by Kieback&Peter in writing.

7. DELIVERIES

- 7.1 Goods shall be delivered ex works at Purchaser's expense and risk. Unless expressly agreed otherwise, this shall also apply to partial deliveries, to which Kieback&Peter is entitled.
- 7.2 Packaging is invoiced separately. Evidence of proper packaging shall be deemed given once the goods have been accepted by the shipping agent or freight forwarder without objection. Purchaser shall be entitled to submit evidence to the contrary.
If Kieback&Peter is obligated to take back packaging used for transport in accordance with the German Packaging Ordinance, costs of the return of any packaging used shall be borne by Purchaser. If Kieback&Peter takes back any goods that were duly delivered, Kieback&Peter shall be entitled to invoice a reasonable administrative fee for the additionally incurred expense.
- 7.3 Provided merchandise planning has been duly managed, the correct and on-time delivery from own suppliers of Kieback&Peter shall remain reserved. Kieback&Peter shall notify Purchaser without undue delay if any goods to be delivered are unavailable. Should Purchaser choose to rescind from the contract in such event, Purchaser shall be reimbursed the purchase price without undue delay.

8. RETENTION OF TITLE

- 8.1 Until all of Kieback&Peter's receivables from Purchaser have been paid, the goods delivered shall remain the property of Kieback&Peter. The same shall apply to orders against a line of credit.
- 8.2 All of the receivables to which Purchaser is entitled after resale of the goods subject to reservation of title and which it itself has also secured by way of a retention of title shall hereby be assigned to Kieback&Peter in advance. The assignment shall be made up to the amount invoiced to Purchaser by Kieback&Peter in relationship to the resold goods subject to reservation of title. Kieback&Peter hereby accepts said assignment.
Purchaser shall be authorized to collect such receivables as long as it meets its payment obligations to Kieback&Peter. Purchaser shall, however, not be entitled to dispose of the receivables in any other manner, such as by assigning them otherwise. Purchaser agrees to notify Kieback&Peter without undue delay with regard to any existing or intended blanket assignments. Kieback&Peter shall refrain from collecting the receivables and disclosing the assignment for as long as Purchaser meets its payment obligations as agreed.

- 8.3 If Kieback&Peter is entitled to reclaim the goods and if such goods have already been resold, Purchaser hereby agrees to disclose the names of the buyers and the scope of the sales contracts and to send copies of the relevant correspondence so that Kieback&Peter is able to exercise its rights in relationship to the buyer. The buyer is to be notified by Purchaser with regard to the retention of title and about the assignment of the claims without undue delay. Purchaser shall be obligated to store the goods delivered under retention of title with the due care expected of a prudent and conscientious businessperson.
- 8.4 If the value of all collateral provided to Kieback&Peter that can be realized, in particular not only under the extended retention of title, exceeds the coverage limit, i.e., the value of the receivables of Kieback&Peter to be secured, by more than 20%, Kieback&Peter hereby undertakes, at its discretion, to release such securities up to an amount of the sum by which the coverage limit plus 20% is exceeded. Kieback&Peter shall duly account for any justified concerns of Purchaser.

9. PURCHASER'S DUTY TO COOPERATE

- 9.1 Purchaser shall support Kieback&Peter in the performance of the Services where necessary and reasonable for Purchaser and shall ensure as part of its cooperation duty within its area of responsibility all the prerequisites for the proper performance of the agreement in a timely manner and free of charge for Kieback&Peter.

In particular, Purchaser shall, to the extent necessary and reasonable,

- provide any and all documentation and information required by Kieback&Peter for proper performance of the Services in compliance with the contract;
- notify Kieback&Peter without undue delay of any defects, malfunctions, problems, etc. that Purchaser may have determined while rendering the Services;
- in case of the performance of the Services on site at Purchaser's premises, make available any infrastructure necessary to render the Services in accordance with the agreement;
- allow Kieback&Peter or authorized representatives of Kieback&Peter access to the locations and Services in question during normal working hours;
- make any necessary data back-ups, and
- ensure that its staff cooperates with Kieback&Peter and its authorized representatives.

Further cooperation duties to which Purchaser shall be bound may be referred to in the offer.

- 9.2 To the extent to which compliance with particular statutory, regulatory, or operating safety regulations is required, Purchaser shall provide such regulations to Kieback&Peter in due time prior to commencement of Service provision.

10. SUPPLIES FROM PURCHASER

- 10.1 All supplies to be provided by Purchaser as agreed or that are necessary (such as documents, data or software) must be provided by Purchaser in a timely manner, free of charge to Kieback&Peter and in the form and quality necessary for the performance of the Services in accordance with the agreement. The location of the supplies provided in each case shall be Kieback&Peter's place of business unless expressly agreed otherwise.

- 10.2 Purchaser shall solely be responsible for the supplies. In particular, the supplies must not violate any applicable laws (including copyright laws) and other third-party rights.
- 10.3 Where the supplies are protected by copyright or other protection statutes such as trademark law, Purchaser shall grant Kieback&Peter a non-exclusive right, limited to the duration of the performance of the agreement, to use the supplies within the performance of the Services. Otherwise, any and all rights shall be retained by Purchaser or the relevant holder of such rights.
- 11. PURCHASER'S RIGHTS IN CASE OF DEFECTS**
- 11.1 Unless expressly agreed otherwise, declarations by Kieback&Peter (e.g., specifications) shall not comprise an assumption of a guarantee. Any assumption of a guarantee shall require an express declaration in writing from Kieback&Peter.
- 11.2 Where Kieback&Peter is obligated in its relationship to Purchaser to rectify defects, Purchaser shall be required to notify Kieback&Peter of such defects without undue delay and to describe them as precisely as possible.
- 11.3 Where the agreed Services are subject to the law on defects under a lease (such as for Software-as-a-Service), such shall apply with the following condition: Purchaser's right of termination as a result of failure to ensure use in accordance with Section 543(2) sentence 1 no. 1 German Civil Code shall be excluded unless the provision of use in accordance with the agreement is to be considered failed.
- Notwithstanding Article **Error! Reference source not found.** hereof, strict liability of Kieback&Peter in accordance with Section 536a German Civil Code as a result of defects that were already in place at the time of the conclusion of the agreement shall be excluded.
- 11.4 In all other respects, Kieback&Peter shall take any measures necessary in the event of its statutory liability for defects, where it shall be at Kieback&Peter's discretion to choose between any measures provided for by law.
- Purchaser must provide Kieback&Peter the necessary time and opportunity to do so and to ensure at its own cost that Kieback&Peter is given unlimited access to the (potentially defective) parts to allow an inspection and processing of such parts.
- Purchaser shall not be entitled to self-remedy unless such is mandatory in urgent cases as a result of the risk to operational safety or to defend against excessively severe damage. In such cases, Kieback&Peter must be notified thereof without undue delay.
- 12. LIABILITY AND LIMITATION OF LIABILITY**
- 12.1 Where the scope of the German Telecommunications Act (TKG) applies, Kieback&Peter's liability shall be limited in accordance with Section 44a Telecommunications Act. Outside of the scope of application of the Telecommunications Act, Kieback&Peter's liability shall be based on the following provisions.
- 12.2 Kieback&Peter shall be liable only for its own fault and for the fault of its legal representatives, executives, and other vicarious agents, in accordance with the following provisions.
- 12.3 Kieback&Peter shall be liable without limitation for damage caused intentionally or with gross negligence by Kieback&Peter and/or its legal representatives, executives, or other vicarious agents.
- 12.4 In the event of a slightly negligent violation of a duty, the compliance with which Purchaser may rely on and whose fulfillment constitutes a prerequisite for the proper performance of the agreement (referred to as cardinal duty; "Kardinalpflicht"), Kieback&Peter's shall be limited to such damage whose emergence is typically to be expected within the context of the relevant service relationship (referred to as contractually typically foreseeable damage). Kieback&Peter shall be fully liable for damage due to loss of life, physical injury and damage to health. Data protection claims are not covered by this liability regulation. Otherwise, any liability for damage caused by slight negligence shall be excluded.
- 12.5 In cases of liability of Kieback&Peter under Article **Error! Reference source not found.** hereinabove, the total liability per damage event shall be limited to an amount of EUR 250,000 and in total to an amount of EUR 500,000.
- Kieback&Peter expects that the aforementioned sums of the limitation of liability are sufficient amounts with which to cover the foreseeable damage typical for this type of agreement in the event of damage. Should Purchaser feel that this limitation of liability is not sufficient to cover the foreseeable damage typical for this type of agreement, Purchaser is to make Kieback&Peter aware thereof so that coverage can be obtained for higher liability risk, if any.
- 12.6 Liability for loss of data or the destruction of data shall be limited to the typical restoration expense that would be incurred if Purchaser were to create backup copies regularly and in accordance with the risk.
- 12.7 Liability for fraudulent conduct, personal injury, and liability under the German Product Liability Act shall remain unaffected by the foregoing provisions.
- 12.8 The aforementioned provisions shall also apply to Kieback&Peter's employees.
- 12.9 Any claims by Purchaser based on violations of duty for delivered products or Services shall expire in 12 months. In all other respects, the statutory periods of limitation shall apply.
- 12.10 Kieback&Peter hereby notifies Purchaser that any maintenance work performed on existing systems may cause damage to the overall system being maintained even if such work is being properly conducted, e.g., in the event of a necessary power interruption.
- Kieback&Peter shall not assume any liability for damage caused as a result of or for properly conducted maintenance, repair or service work or programming work to hardware and software.
- 13. NON-DISCLOSURE; DATA PROTECTION AND DATA BACK-UP**
- 13.1 The parties shall be obligated to confidential treatment of any and all operating and business secrets and the technical and organizational information obtained in the context of contract performance – hereinafter jointly referred to as "**Confidential Information.**" Information generally published by the party concerned or representing generally accessible knowledge shall not be Confidential Information.
- 13.2 Purchaser shall be solely responsible for compliance with the statutory data protection provisions and data backup requirements that apply to Purchaser.
- 13.3 If Kieback&Peter performs contracted processing on behalf of Purchaser as defined under Art. 28 GDPR, the parties shall enter into a separate agreement governing contracted processing.

- 13.4 Where Kieback&Peter employs the services of third parties for the performance of the Services resulting from the contractual relationship in question, Kieback&Peter shall be entitled to provide such third parties with Confidential Information and Purchaser's data insofar as is absolutely necessary for performance of the Services in accordance with the agreement. Kieback&Peter shall obligate the third party/parties to treat the Confidential Information with utmost confidentiality.
- 13.5 Kieback&Peter shall also be authorized to disclose Confidential Information and Purchaser's data where Kieback&Peter is obligated to do so by statutory provisions or official order and where third parties are concerned that are obligated to non-disclosure by virtue of their profession.

14. SENDING OF ELECTRONIC MAIL

Kieback&Peter uses the email address(es) supplied by Purchaser during the ordering process to also inform Purchaser by email of current information and offers. In accordance with Section 7 para. 3 of the Law Against Unfair Competition (UWG), Purchaser has the right at any time to object to the uses of the email address(es) for these purposes without incurring any costs other than the transmission costs according to the basic tariffs. Any objections must be sent by email to info@kieback-peter.de.

15. APPLICABLE LAW, LEGAL VENUE, PLACE OF PERFORMANCE

- 15.1 The laws of the Federal Republic of Germany shall apply to all legal relationships between Kieback&Peter and Purchaser with the exclusion of the United Nations Convention on the International Sale of Goods (CISG).
- 15.2 Legal venue shall be the competent court locally responsible for the place of Kieback&Peter's registered office. Kieback&Peter shall, however, be entitled to file a complaint alternatively at the court competent for the place of Purchaser's registered office.
- 15.3 Place of performance for both parties shall be the place of the registered office of Kieback&Peter.

Part B - Special Conditions for Work Performance

16. SCOPE OF APPLICATION OF THE FOLLOWING PROVISIONS

The provisions of Part B shall only apply to work performance ("Werkleistungen") and shall for such take priority over the other provisions of these GTC.

17. ACCEPTANCE OF WORK RESULTS

- 17.1 Kieback&Peter shall notify Purchaser in writing or by email if work results are ready for acceptance. Purchaser shall commence the acceptance inspection without undue delay in each case and shall accept each work result within an appropriate period of time, unless agreed otherwise hereinbelow or elsewhere.
- 17.2 Kieback&Peter shall be entitled to participate in the acceptance inspection. Kieback&Peter shall provide Purchaser with support in the acceptance inspection in exchange for separate payment based on the agreed hourly or daily rates, or otherwise in accordance with Kieback&Peter's current price list as may be amended from time to time.
- 17.3 Insignificant defects in work result shall not prevent acceptance.

- 17.4 Defects in the work results (i) reported by Purchaser to Kieback&Peter in a timely manner within the acceptance inspection in due time and (ii) that prevent the acceptance of the work results shall be rectified by Kieback&Peter within an appropriate period of time, unless Kieback&Peter is exempt from doing so in accordance with statutory provisions or is entitled to refuse remedying defects (e.g., because the cost of remedying such defects is cost-prohibitive).

The acceptance inspection shall be deemed successfully completed as soon as all defects reported in due time and classified as preventing acceptance have been remedied or Kieback&Peter has proven that such are not defects within the meaning of Section 640 Civil Code.

- 17.5 Where Purchaser fails to declare or confirm acceptance in writing by the expiry of the acceptance period (cf. Article **Error! Reference source not found.**) or fails to notify Kieback&Peter in justified form of the existence of defects preventing the acceptance, the work results shall be deemed accepted.

Furthermore, the work results shall be deemed accepted where Purchaser uses them productively.

- 17.6 Kieback&Peter may request the acceptance of partial results (e.g., closed service sections, completed parts of the subject matter of the agreement, or individual documents). The aforementioned provisions of this Article **Error! Reference source not found.** shall apply accordingly to any such acceptance.

In case of the acceptance of partial results, defects that occur in any later partial acceptance, whose causes originate in the partial results already accepted, shall only prevent the acceptance of the later partial results if the defect prevents the interaction with the later partial results in a more than insignificant manner or has a significantly negative effect on the functionality and such was not noticeable in an isolated manner to Purchaser within any previous partial acceptance.

18. RIGHTS OF USE IN WORK RESULTS

- 18.1 Unless expressly agreed otherwise, Purchaser shall be granted in each case a non-exclusive, worldwide and perpetual right in the work results created for Purchaser in accordance with the contractual agreements to use the work results for the contractually intended purpose and for the contractually agreed types of use, in each case exclusively for internal operational purposes.
- 18.2 The granting of rights of use in favor of Purchaser in accordance with Article **Error! Reference source not found.** shall be subject to the prerequisite of payment in full of the relevant amount to Kieback&Peter.
- 18.3 All use and exploitation rights that are not granted expressly to Purchaser regarding the work results that are the subject matter of the agreement shall be retained by Kieback&Peter. In particular, Kieback&Peter shall be entitled to distribute and exploit any and all of the knowledge, designs, procedures, methods, expertise, processes, etc. underlying the work results without limitation.

19. COMMISSIONING EQUIPMENT

- 19.1 Where Kieback&Peter is required to commission (e.g., standard) equipment, Purchaser is to provide the necessary operating resources (such as hot water, cold water, warm/cold air, steam, power, data lines, data transmission routes, etc.) to the extent necessary.

- 19.2 Kieback&Peter is to be notified of the commissioning date within a reasonable period. During commissioning, Purchaser's employees familiar with the equipment must be present, as well as an employee from the contracted electrical company assigned to wiring the equipment. Purchaser is to ensure that the devices being commissioned can be accessed.
- 19.3 Where equipment assembly and installation does not belong to the agreed scope of the order from Kieback&Peter, Purchaser is to ensure that the necessary field devices are installed and wired and that the devices in the control cabinet have been installed in due time.

be at Kieback&Peter's discretion to decide whether and, where applicable, at which terms such updates are to be offered to Purchaser. Purchaser shall not be entitled to receive updates unless any such right has been expressly agreed or is provided for based on any mandatory statutory provisions.

Where Kieback&Peter offers Purchaser updates free of charge, Purchaser shall accept and install such upon request by Kieback&Peter, unless it would be unreasonable to expect Purchaser to do so.

Part C - Special Conditions for the Provision of Software

20. SCOPE OF THE FOLLOWING PROVISIONS

The provisions of Part C shall only apply if Kieback&Peter provides Purchaser with computer programs and associated supporting material - hereinafter jointly referred to as "**Software**" - for use, wherein the Software either is

- provided on data carriers or via download, or
- made available for use otherwise (e.g., via an online Software-as-a-Service option),

and said provisions shall in such cases take precedence over any other provisions of these GTC.

21. ADDITIONAL LICENSING TERMS

Specific licensing terms may apply to individual software products in addition to these GTC, the validity of which Kieback&Peter shall in each individual case report to Purchaser. Unless agreed otherwise in the software licensing terms, these terms shall supplement and expand the GTC herein.

22. SCOPE AND LIMITS TO THE RIGHTS OF USE

- 22.1 Unless agreed otherwise, Purchaser shall receive a simple, non-exclusive and non-transferable right to use the Software for its own internal purposes.
- 22.2 Purchaser may only use the Software provided on the systems designated for such use. Use on any other system shall be prohibited and shall require an additional agreement.
- 22.3 Unless expressly allowed as a result of the aforementioned granting of rights or as a result of mandatory statutory provisions, Purchaser shall be prohibited from any distribution, leasing, sub-licensing, duplication, translation, decompilation, disassembly, descrambling, as well as any other processing of the Software.
- 22.4 Purchaser shall only be allowed to combine the Software with third-party software programs and/or to issue sub-licenses to the Software based on an express agreement with Kieback&Peter.
- 22.5 The rights of use to the Software granted by these GTC shall be limited to the object code of the Software for any transferred Software, and to the use of the Software online for Software-as-a-Service. Under no circumstances shall Purchaser be entitled to the source code.
- 22.6 Unless agreed otherwise in the provisions hereinabove, any and all other rights to the Software and documentation, ownership in particular, shall remain with Kieback&Peter.

23. SOFTWARE UPDATES

- 23.1 Purchaser is hereby notified that the Software may be subject to adjustment, upgrades and/or updates of any other kind. Kieback&Peter shall be entitled to make any such updates to the Software and it shall