General Purchasing Conditions.

SCOPE AND CONTRACTUAL BASIS

These General Purchasing Conditions (GPC) apply to all contracts for deliveries and services concluded with the companies „kraftwerk Agentur für neue Kommunikation GmbH“, „kraftwerk technologies GmbH“ and „kraftwerk consulting GmbH“ [hereinafter referred to as „kraftwerk“]. Deviating conditions of the contractor [hereinafter referred to as „CN“] (CN e.g. the supplier’s general terms and conditions) shall only apply upon express written consent. Acts of contract performance shall not constitute consent to deviating conditions.

QUOTES AND COST ESTIMATES

Quotes and cost estimates must be binding, complete, and submitted in writing.

ORDERS AND ORDER CONFIRMATION

Orders are placed in writing. The CN must confirm these within 7 days. Deviations shall be deemed a new offer and require written acceptance.

PRICES, PAYMENT, INVOICING

The payment term is 90 days net from receipt of invoice. Deviating payment terms may be agreed separately in individual cases. kraftwerk expressly reserves the right to set off its own claims and to assert rights of retention. A payment does not constitute acceptance of complete or defect-free performance. The invoice shall be issued once the service has been rendered in accordance with the contract (on time, within budget and to the required quality) and has been accepted in writing by kraftwerk and the end client.

DELAY IN DELIVERY AND CONTRACTUAL PENALTY (POENALE)

The provisions on delay in delivery and contractual penalties may only apply if the end client order provides for contractual penalties in the event of delay. Accordingly, in the event of delay the following may be demanded: kraftwerk: 1% per week, max. 10% of the order value. Withdrawal is possible after a 14-day grace period. Claims for damages remain unaffected.

WARRANTY AND GUARANTEE

All services rendered are subject to Austrian law and therefore also to warranty and guarantee obligations. A warranty period of 24 months applies. In the event of defects, the CN may first choose between improvement and replacement; thereafter, price reduction or rescission are available as legal remedies if the statutory requirements are met. The costs of remedying defects shall be borne by the CN. Deadlines shall recommence after the defect has been remedied. Section 377 of the Austrian Commercial Code (UGB) (notice of defects) is excluded.

PRODUCT LIABILITY AND INSURANCE (FOR ORDERS EXCEEDING EUR 50,000 NET)

A waiver of recourse pursuant to Section 12 of the Austrian Product Liability Act (PHG) is excluded. The CN is obliged to maintain extended product liability insurance (of up to EUR 1 million, depending on the client order value). Proof of insurance must be provided upon request.

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THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

The CN guarantees that no third-party intellectual property rights will be infringed. In the event of damage, the CN is obliged to provide full compensation for costs. All information received must be treated as confidential, including by subcontractors. In the event of a breach of the confidentiality obligation, the CN shall pay a contractual penalty of EUR 50,000.00, which is not subject to fault and not subject to judicial mitigation. The assertion of damages beyond this amount remains unaffected.

SUBCONTRACTORS AND BIDDING CONSORTIA

The use of subcontractors is only permitted with written consent. In the case of bidding consortia, all partners are jointly and severally liable.

SET-OFF AND REFUSAL OF PERFORMANCE

kraftwerk may set off its own claims. In the event of justified complaints, the withholding of remuneration is permissible. Any right of the CN to refuse performance is excluded.

TERMINATION OF CONTRACT

kraftwerk may terminate the contract without notice, in particular if: there is a failure or delay in performance or delivery despite a grace period, insolvency proceedings are initiated or business operations are discontinued, or false representations have been made.

GOVERNING LAW AND JURISDICTION

Austrian substantive law shall apply, excluding the UN Convention on Contracts for the International Sale of Goods (CISG). The place of jurisdiction is Vienna.

SPECIAL PROVISIONS FOR IT SERVICES

Ownership and comprehensive rights of use in individually developed software components shall transfer to kraftwerk's clients. Software must be free of protection mechanisms, malware and third-party rights. The CN undertakes to disclose, in the course of providing services, the open source components, third-party libraries or other software components used. The CN guarantees that the use of approved open source software does not give rise to any additional licensing, disclosure, remuneration or publication obligations for kraftwerk or its clients. The CN undertakes to fully indemnify and hold kraftwerk harmless from and against all third-party claims, damages, costs and expenses (including legal costs) arising from any infringement of open source or third-party software licences. Documentation and source code must be provided in full and form part of every service provision / agreement.

SPECIAL PROVISIONS FOR CREATIVE SERVICES

The partner transfers to kraftwerk all rights to the creative services delivered; kraftwerk may pass these on to its clients without restriction. The services must be free of third-party rights.

REFERENCE USAGE

The naming of the end client as a reference is generally excluded. Any use of a reference requires prior express written consent from kraftwerk on a case-by-case basis.

DIRECT CONTACT

Direct contact with the end client is prohibited without prior express written consent from kraftwerk. Any form of contact or business communication with the end client requires the consent of kraftwerk. In the event of a breach, the CN shall pay a contractual penalty of EUR 50,000.00, which is not subject to fault and not subject to judicial mitigation. The assertion of damages beyond this amount remains unaffected.

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