

General Purchasing Terms

KEMARO AG, Version 10/2024

1 General

The following General Purchasing Terms ("Terms" or "AEB") apply to the legal relationship between the vendor and KEMARO AG („KEMARO“).

Conflicting General Terms of the vendor (e.g. their general delivery terms), particularly those which explain their applicability with their offer, are fundamentally not recognized by KEMARO. They are applicable only when accepted by KEMARO explicitly and in writing. Neither silence on the part of KEMARO nor assumptions by the vendor or KEMARO's payment are valid as recognition or acceptance.

The Terms in its current version are valid

and subject to an otherwise contractual regulation.

All verbal and telephone arrangements must be confirmed in writing to be binding. If the clarification is covered in an e-mail, this is also treated as a condition of being 'in writing'.

2 Offers from vendors / Contract termination

On request of KEMARO a vendor is required to present an offer at no cost. The offer must be made in accordance with KEMARO guidelines and in the case of any discrepancies in the vendor's quote, these need to be explicitly indicated by the vendor. The vendor is obliged to clarify all items with KEMARO that could be of interest in the offer or the offered services.

Should the vendor not set any timelines in its offer, the offer is binding for 30 days. The contract materializes when KEMARO accepts the vendor's offer within a 30 day period in writing. Silence from KEMARO about the offer of the vendor is under no circumstances valid as a declaration of acceptance. KEMARO is under all circumstances free to choose if KEMARO wants to accept the offer from the vendor or not. If a contract does not get realized, the vendor can under no circumstances claim compensation for expenses or loss of profit/gains.

KEMARO may terminate a Contract in whole or in part, if KEMARO notifies the vendor (i) before the vendor has dispatched the Goods to KEMARO; or (ii) after the vendor has dispatched the Goods to KEMARO but within 3 months after Delivery. If KEMARO cancels a Contract in whole or in part in accordance with this clause and has paid the Purchase Price for that Contract already, the vendor shall repay 90 % of the part of the Purchase Price which corresponds to the value of the Goods which the cancellation concerns.

KEMARO may not cancel a Contract in whole or in part (i) if the Goods have been sold by KEMARO or the Goods' original packaging has been opened; or (ii) if the Goods have been manufactured specifically for the relevant Contract and can not be used by the vendor or its manufacturer, e.g. by being made-to-measure for KEMARO only.

3 Scope of delivery

The vendor is obliged to ensure that they are timely aware of all the information necessary to correctly execute their contractual obligations, particularly obligations that impact KEMARO's own deliveries.

The vendor confirms that (i) their deliverables include all services (including consultation, documentation etc.) that are necessary for the safe and commercial use of the delivered products and (ii) that the deliverables are suitable for their intended use and conform with up-to-date current science and technique practices. The vendor must follow all current standard regulations (laws, technical regulations and norms, standards etc.) for the delivery of their services, especially the relevant regulations for environmental, hazard, and accident protection at the destination. The vendor needs to educate KEMARO on the regulatory approvals and reporting requirements for the import and operation at the destination of the products being delivered.

The vendor must deliver the specified ordered products and use only the specified components as identified by KEMARO in case of so-called assembling products. Alternative products (second sources) require prior written approval from KEMARO. Should the vendor deliver alternative products without prior written approval from KEMARO, the vendor is fully liable, incurring all consequential damages/losses irrespective if the alternative products were noticed or not by KEMARO during inspections at the time of stock receipt or at the time of processing (refer point 9.1).

KEMARO can (within reason) ask the vendor for amendments in the construction and execution of the products being delivered. The vendor would need to implement these within a reasonable time frame.

The vendor must be able to supply products that are yet to be delivered or have been delivered for a time period of 15 years after the last order including spare parts for the product delivered.

4 Price / Payment terms / Invoice Details

The prices agreed upon are considered final and cannot be increased without explicit approval from KEMARO, even if foreseen or unforeseen circumstances change. Subject to an explicitly different arrangement, the prices set include costs of

transport and provisions attached to the products being delivered (packing, transport costs, insurance, entry or exit taxation, costs attached to quality assessment, conformity assessment, enrollment, approval and certification procedures etc).

Unless otherwise specified, the payment follows within 2 weeks with a 3% discount, within 1 month with a 2% discount or within 3 months without any deductions. The time frame begins with the receipt of delivery in accordance with the contract and correct verifiable invoice. In the case of an early delivery the time frame starts on the delivery date agreed upon.

Invoices are to be submitted as a basic document specifying KEMARO's article number, unloading point, vendor number, vendor article number, factory/manufacturer, factory/manufacturer article number, date code, RoHS/Non-RoHS confirmation, tax tariff number, origin, preference eligibility, delivery quantity and unit price.

If a delivery error occurs, KEMARO is entitled to stop payments until the error is corrected. Also, as per paragraph 9, payment is not a confirmation of correct delivery or guarantee waiver.

KEMARO reserves the right to choose the mode of payment (transfer, cheque etc.).

The vendor is not authorized to transfer or collect through a third party any claims due towards KEMARO.

5 Delivery deadline and term / delay

Delivery dates agreed upon or delivery periods (terms) are binding. Arrival of the delivery at the destination is considered as the standard compliance of the delivery date or delivery time period. With non-compliance of the delivery date or delivery duration, the vendor automatically and without prior notice is delayed.

Should the vendor know that the delivery date or delivery time period cannot be maintained, KEMARO must be notified immediately in writing, stating the reasons and the anticipated duration of delay.

Should the vendor be delayed without fixing a renewed deadline in advance, KEMARO is authorized to refuse accepting the delivery, though KEMARO could also allow the delivery. The presumption of Art. 190 of the Swiss Civil Code (Obligationenrecht OR) is not applicable. Irrespective as to whether KEMARO allows or refuses the (subsequent) delivery, the vendor is liable to compensate for any cost and losses due to the delay, even if the vendor is not responsible for the delay. KEMARO reserves the same rights when the vendor is not already delayed but anticipates with almost certainty that the delivery date or delivery duration will not be maintained.

Should the vendor not comply with the delivery date, the delivery duration or the delivery point, the vendor owes KEMARO a contractual penalty of 0.5% per day of delay, but not more than 5% of the total value of the delivery in question. The contractual penalty can still be claimed if KEMARO accepts delivery or does not refuse delivery despite the delay. Additionally, KEMARO does not give up their right to claim damages due to contractual penalty. Should the contractual penalty nevertheless be paid, the claim for compensation is reduced by the contractual penalty amount already paid.

Partial delivery and prior delivery are permissible only with written consent from KEMARO.

6 Further delivery terms

As long as nothing contrary exists in the AEB and as long as the parties have not agreed upon anything contrary, the delivery follows under DDP terms (as per valid current Incoterms) to the destination designated by KEMARO or agreed upon by the parties.

A delivery note needs to accompany each delivery. The delivery note needs to mention the delivery, article and vendor numbers for KEMARO as well as the delivery quantity, vendor article number, brand/manufacturer article number, date-code and RoHS/Non-RoHS confirmation.

The products to be delivered are to be packed in accordance with safety specifications appropriately as per trade standards of the destination. KEMARO reserves the right to stipulate the packing method to the vendor.

7 Confidentiality obligations / Trademark rights of KEMARO

The vendor is obliged to maintain confidentiality of privileged information i.e., not apparent information from KEMARO (specially manufacturing and trade secrets etc.) during and after fulfillment of the contract and must not share it with any third parties. The vendor must also ensure that any personnel and subcontractors handle this information confidentially. Confidentiality obligations are applicable irrespective as to whether privileged information was obtained accidentally or entrusted knowingly.

The vendor acknowledges that the entire immaterial goods rights relinquished subject matters (models, templates, samples, and similar subject matters) along with discoveries, techniques/practices, know-how, descriptions, report, drawings/plans, patents, other commercial trademark rights etc. stay exclusively with KEMARO. The vendor is obliged to desist from all actions that could violate the commercial trademark rights of KEMARO. The vendor is also obliged to safely preserve the documents and materials provided to him for KEMARO within the scope of the contract execution and return them or destroy them immediately upon request by KEMARO, latest albeit at the end of the contract. The vendor is not entitled to withhold documents or material for any reason. The complete return or destruction is to be confirmed in writing.

Any breach of obligation in the previous paragraphs immediately incurs a contractual penalty for violation for each case in the amount of CHF 30,000.00. The vendor reserves the right to get the appropriateness of the amount of the contractual penalty legally appraised. Paid contractual penalties are to be calculated (credited) into the claim for damages.

8 Third party intellectual property rights.

The vendor needs to vouch that use of the delivered products does not damage the trademark rights or miscellaneous rights or business or trade secrets of a third party, and in doing so releases KEMARO and their customers from all third-party claims.

9 Guarantee (liability for defects / faulty goods) / Quality

9.1 *The contract compliant condition*

The vendor guarantees and ensures, (i) that the products that have been or will be delivered do not exhibit any flaws that impair their value or usability, (ii) that they encompass all features agreed upon, (iii) that they comply with the specifications and documentation (data sheets etc.) that were submitted to the vendor and (iv) the material, execution, and construction comply with the science and technique as well as all applicable regulations (laws, technical regulations and norms, quality safety norms, standards etc.) as of when the contract was signed (compare besides aforementioned point 3 paragraph 2).

The vendor is obliged to deliver exclusively products indicated by KEMARO and to use exclusively components indicated by KEMARO in case of product assembly. Alternative products (second sources) require prior written approval from KEMARO. Should the vendor deliver alternate products without written approval of KEMARO, the vendor is liable for all consequential damages and must take complete accountability regardless if the change was or was not identifiable by KEMARO within the scope of incoming goods, inspection, or during processing.

Should the vendor assess that the product ordered by KEMARO would be commercially non-viable or impractical for the use intended by KEMARO the vendor needs to point this out to KEMARO immediately in writing. If this is not done the products also count as flawed, even if they comply with standards set by KEMARO and terms in this document.

The vendor is also liable if they did not have knowledge about the flaw. They are liable for their subcontractors just as they are for their own services and are responsible that the delivery and use of the delivered products do not violate third party safety proprietary or other rights.

9.2 *Guarantee period*

For each delivery a guarantee period of three (3) years is applicable. This period starts on the arrival of the delivery at the destination, normally KEMARO's plant location.

During the guarantee period, KEMARO is authorized to contest flaws of any type. The vendor must not object to delayed examination of the delivered products nor object to delayed claims on defects.

9.3 *Rights arising from product defects*

Should the delivered products be flawed, KEMARO is authorized at free will and without any further conditions to either (i) reduce the price corresponding to the shortage (ii) to step out of the contract or (iii) to demand subsequent delivery of flawless products or correction of the flawed products. In the last scenario (iii) KEMARO will set a reasonable duration for subsequent delivery or product correction respectively for the vendor. Should the vendor allow this duration to elapse unutilized, or should they indicate that setting a timeline is of no use, or should there be danger of delay, KEMARO is authorized to undertake correction on their own or through a third party or arrange for replacement of the flawed products at the vendor's expense.

Additional to the aforementioned terms (paragraph 9.3, section 1), KEMARO is authorized to demand compensation for losses suffered from the delivery (direct or indirect) of the flawed products regardless as to whether or not the vendor is at fault for the flaw in the delivered product. Compensation liability also entails the actual losses that emerge since KEMARO becomes liable for a seller's warrantee towards their customers, provided accountability for defective products is attributable to the vendor.

10 Product liability

Should KEMARO be prosecuted by a third party due to regulations of product liability because the delivered products do not comply with these regulations, the vendor relinquishes KEMARO from these claims. It is irrelevant whether this relates to applicable inland (Swiss) or foreign rights product liability.

KEMARO must inform the vendor as soon as they know about such claims, so that the vendor can rebuke any unjustified claims. KEMARO can cede the process execution to the vendor once it is established that the source of the damage can only be the products delivered by the vendor.

Should a recall be imposed due to a faulty product (of the vendor) based on an assessment by KEMARO, KEMARO informs the vendor about it immediately. The vendor accepts the costs for the recall action provided the recall has become necessary due to faults in the product delivered by the vendor. Should the recall be due to multiple reasons, the costs are shared proportionally.

11 Supplies

Materials, fabric, parts, containers, special packing, tools, measurement material or similar ('supplies') remain a proprietary of KEMARO. The processing, combination, mixing of the supplies, KEMARO retains joint ownership in the new product in proportionate to the value of the supplies compared to the value of the total credentials.

Supplies may be used only in compliance and are to be returned to KEMARO if not used for the order. The vendor does not reserve the right to retain supplies for any reason.

Supplies as well as duplication of the same cannot be made available to third parties (also subcontractors) and cannot be used for purposes other than agreed upon. Duplication of supplies may be done only after prior written approval from KEMARO. Upon duplication, copies shall become a property KEMARO.

12 Manufacturing equipment manufactured by the vendor (tools etc.)

Should the manufacturing of the products to be delivered require special manufacturing equipment (matrixes, models, templates, samples, tools, testing devices amongst others), KEMARO retains co-ownership or full ownership in the scope within which KEMARO contributed in the declared costs (of the manufacturing equipment).

The payment of the cost of the manufacturing equipment runs through KEMARO unmediated in the (co) ownership, even if it stays on the premises of the vendor. The manufacturing equipment is to be marked by the vendor as (co) ownership of KEMARO (on both the product and in the accounts books).

Manufacturing equipment (co) owned by KEMARO is to be used exclusively in the production of products to be delivered. The vendor is further only authorized to use manufacturing equipment physically or legally and store it free-of-charge for KEMARO at vendor's site provided they are given written consent from KEMARO. Maintenance, repairs and replacement of the manufacturing equipment is to be done by the vendor free-of-charge, as long as the lifetime of the manufacturing equipment has not been superseded.

KEMARO reserves a pre-emptive right to co-own any manufacturing equipment. After delivery, the vendor needs to hand over the production equipment immediately to KEMARO. For any manufacturing equipment that is co-owned, KEMARO needs to compensate the co-ownership share to the vendor at the current value of the equipment after receipt of the equipment. The vendor does not reserve the right to keep it under any circumstance. The vendor is also obliged to return the equipment in case the vendor becomes insolvent or there is a long term break in delivery.

13 Long term inability to deliver / impending insolvency of the vendor

In the case there is a long term inability to deliver, or should there be an impending initiation of insolvency or a comparable situation for the vendor, KEMARO is authorized to step out of the part of the contract pertaining to anything not yet fulfilled. Should the vendor be afflicted by one of the aforementioned occurrences, he is obliged to assist KEMARO or a third party with storage of the production yet to be delivered, including the transfer of trade requirements necessary for (safe) rights of production.

14 Salvatorious clause

Should one of the aforementioned provisions or individual provisions of the contract be unworkable, the balance provisions (of this AEB or contract) are hereby not to be affected (changed). The parties are obliged in such cases to agree upon regulations that correspond to the best workable practices in sense and purpose.

15 Applicable law and jurisdiction

All legal relationships between the parties are subject to the Swiss law excluding the United Nations Convention on Contracts for the International Sale of Goods dated 11th April 1980 (Article 6 UNKR).

The legal domicile for all disputes from and in relation to the contract relationship is CH-8360 Eschlikon, Switzerland. KEMARO is however entitled to bring the vendor to justice at any other competent court.