

General Terms and Conditions of Purchase

§ 1 General Information & Scope

- (1) Only these General Terms and Conditions of Purchase apply for purchase orders made by Thomas-Krenn.AG. The supplier recognizes them for the contract in question, no later than upon commencing execution of the contract. General Terms and Conditions from the supplier are not recognized unless agreed to in writing by Thomas-Krenn.AG at the time of contract finalization. The General Terms and Conditions of Purchase from Thomas-Krenn.AG even apply if the contract from the supplier contains conflicting terms or terms that deviate from Thomas-Krenn.AG's General Terms and Conditions of Purchase.
- (2) Special terms on contracts for servers or other fixed assets are also covered by these General Terms and Conditions of Purchase.
- (3) Contracts are to be concluded in writing or by e-mail. Oral agreements outside of the written contract do not exist.
- (4) The General Terms and Conditions of Purchase also apply for future transactions and contracts with the supplier.
- (5) Any correspondence regarding the contract is to be performed with the purchasing department at Thomas-Krenn.AG with specification of the order number.

§ 2 Order, Order Documentation

- (1) The supplier is obliged to accept our purchase order within a period of 2 days.
- (2) Regarding any images, drawings, calculations and other documentation, we reserve the right of ownership and copyrights; these are not to be made accessible to third parties without our express written consent. They are to be used exclusively for the purpose of filling our order; upon completion of the order, they are to be returned without further prompting.

§ 3 Shipping, Transfer of Risk, Performance

- (1) The delivery is to be performed at the place of performance specified by Thomas-Krenn.AG.
- (2) Shipping and packaging costs are to be borne by the supplier, insofar as no agreements to the contrary have been made. Where prices are quoted ex works or warehouse of the supplier, the goods are to be sent in each case at the lowest possible costs insofar as Thomas-Krenn.AG has not specified a mode of transport. Additional costs arising from a breached shipping or packaging guideline is to be borne by the supplier. The same applies for additional transportation costs arising to comply with a delivery date.

- (3) Should a shipping agent be used for transportation, the supplier is obliged to inform the shipping agent that Thomas-Krenn.AG does not require delivery insurance (RVS) or freight insurance (SVS) as Thomas-Krenn.AG is covered by its own insurance.
- (4) The delivered goods must be delivered in a packaged state insofar as the nature of the goods requires it. The packaging must be adequate to ensure safe transportation and comply with the applicable transportation regulations for the selected mode of transport as well as any packaging requirements stated in our order.
- (5) Packaging material (returnables) will only be returned by Thomas-Krenn.AG if these are clearly marked as such by the owner.
- (6) The goods are transported at the risk of the supplier until reaching the place of performance, unless the transport is performed using our own vehicles or via a transport company specified by Thomas-Krenn.AG. If the shipment is received in damaged packaging at the place of performance or is given to our drivers/the transport company specified by Thomas-Krenn.AG in damaged packaging, Thomas-Krenn.AG is entitled to reject the shipment without examining its contents. The costs for a possible return are borne by the supplier.
- (7) For deliveries involving pallets, only exchangeable EURO pallets (DBNorm) in proper condition are to be used. Should a damaged pallet be identified during processing of the delivered goods, Thomas-Krenn.AG is entitled to charge this at replacement value.
- (8) Every delivery must come with a delivery note indicating both the product name and order/product numbers specified in our order.
- (9) The provision of service for servers and fixed assets comprises the construction, manufacture and delivery of the functional investment good according to our technical specifications including detailed build sketches and any documentation and devices provided for this good. Possible necessary corrections and adjustments are also included in the scope of services.

§ 4 Acceptance, Withdrawal from Contract

- (1) Acceptance is subject to the reservation of all rights particularly those relating to defective or late delivery.
- (2) If acceptance is prevented or made considerably more difficult due to circumstances outside of our influence, Thomas-Krenn.AG is entitled to postpone acceptance for the duration of these circumstances. These particularly include events affecting the course of our operations or the processing, sale or other use of the

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goods via interventions by high authorities such as import and export restrictions, natural events such as damage by fire or water, shortage of raw materials or means of transport, disruptions to our business such as strikes and walkouts, the interruptions or restriction of energy supplies, and any other circumstances leading to a stoppage or considerable restriction of our production.

- (3) Should these circumstances prevail for longer than four weeks, the supplier is entitled to cancel the contract if we continue to refuse acceptance of the goods. Any claims beyond this are excluded.
- (4) Thomas-Krenn.AG can withdraw from the contract insofar as the supplier applies for insolvency proceedings, opens insolvency proceedings or such an opening is rejected due to lack of assets. A right of rescission also exists if individual enforcement actions are carried out against the supplier.

§ 5 Payment Conditions, Prices

- (1) On the date of dispatch, the invoice detailing our order number, an exact list of the contents and their weights and all mandatory details according to § 14 (4) UstG is to be supplied as a single copy. Invoices with false/incorrect or missing statements will not be accepted and returned to the sender for corrections or additions.
- (2) Unless otherwise agreed net within thirty [30] days after receipt of the goods and invoice. Any set-off is considered equivalent to payment.
- (3) In no case is the term of payment to commence before the agreed delivery date.
- (4) Claims arising from contracts concluded with Thomas-Krenn.AG are only to be ceded with our written consent.
- (5) Set-off rights and rights of retention are available to us to the legal extent.
- (6) The price shown in our order is a mandatory fixed price, that includes all of the services and costs listed in § 3 (9) – including all costs that may be incurred by third party services. In the absence of any different express written agreement, the price includes delivery and packaging. The statutory value added tax is not included.
- (7) Insofar as nothing contrary has been agreed to, the following payment approvals apply to advance payments: 1/3 on order confirmation and provision of bank's guarantee from supplier (insofar as the provision of a bank's guarantee is agreed to), 1/3 prior to delivery, 1/3 after delivery in accordance with the deadlines in § 5 (2).

§ 6 Warranty, Defects, Delivery Times, Delays, Deadlines

- (1) Insofar as nothing contrary has been agreed to, the warranty is established by the applicable statutory provisions.
- (2) In cases of defective delivery, we have the right to choose between repair and replacement. We are also entitled to repair the defects ourselves, have these defects repaired by a third party or purchase the required goods from a third party, all at the supplier's

expense, if the supplier is in danger of defaulting or there is need for particular urgency.

- (3) After one failed attempt at repair by the supplier, we can either withdraw from the contract and/or demand damages instead of further service; the supplier does not have a right to a further repair attempt. Insofar as only part of the supplier's services are defective, we have the right to withdraw from the contract or demand damages instead of the service in relation to this part of the contract or the entire contract, as we choose.
- (4) For the purpose of repair, the defective goods are to be made available to the supplier either at the place where they are located when the defect is discovered or at the place of performance according to § 2. The supplier is obliged to pick-up the goods from this location if a repair is not possible on site and subsequently return them.
- (5) The costs for repairs are borne by the supplier. The duration of the warranty is suspended during the duration of the repair.
- (6) The notice of defect is to be considered timely insofar as it is received by the supplier within 8 business days, as calculated from the receipt of the goods or, in the case of a hidden defect, from the time of its discovery.
- (7) For new deliveries or rectification work, the supplier is liable to the same extent as for the original delivery; for new deliveries, the limitation period starts over with the new delivery.
- (8) Replacement and follow-up costs incurred by Thomas-Krenn.AG and/or third parties due to defective deliveries will be borne by the supplier even if the goods are at a different location than the agreed place of performance.
- (9) The previously mentioned provisions apply in a similar sense to late deliveries. If a late delivery is expected, the supplier is required to inform us on the probable duration of the delay, irrespective of its other obligations. For the timeliness of deliveries, the receipt of the goods at the specified place of performance is authoritative.
- (10) Should the supplier fall behind schedule, we are entitled, irrespective of our other rights, a penalty of 1% of the order value per week started in delay, for a maximum penalty of 5% of the order value. This provision is irrespective of any further claims including a higher amount of damages; in the event that a claim for higher damages is made, any damages already paid will be deducted therefrom. The supplier is permitted to supply evidence to show that a lesser or no such damage arose.
- (11) We are entitled to assert the contract penalty in addition to performance; we are obligated to notify the supplier of the reservation of the contract penalty within 10 working days at the latest, starting from receipt of the delayed delivery.

§ 7 Reservation of Property Rights, Provisions, Tools, Confidentiality

- (1) We retain title to all goods/parts provided by us to the supplier. Processing or alteration of such goods will be performed by the supplier on our behalf. If the retained

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goods are processed with other items not belonging to us, we thereby acquire co-ownership of the new item in proportion to the value of our goods (invoice value, incl. VAT) to the other processed goods at the time of processing.

- (2) If any article provided by us is combined inseparably with others not belonging to us, we will acquire co-ownership of the new article in proportion to the value of the article provided (purchase price plus VAT) to the other intermixed articles at the time of their combination. If the combination takes place in such a manner that the supplier's article is to be regarded as the main item, then it is deemed to be agreed that the supplier transfers co-ownership on a pro rata basis; the supplier will preserve for us sole or joint ownership.
- (3) The supplier is obligated to keep all provided depictions, drawings, calculations and other records and information in strict confidence. These are not to be made accessible to third parties without our express consent. The obligation to maintain secrecy also applies after this contract has been implemented; it expires if and insofar as the information contained in the supplied images, drawings, calculations and other documents becomes generally known.
- (4) We reserve our title to tools; the supplier is under obligation to use the tools solely for the manufacture of the goods that we have ordered. The supplier is obliged to insure the tools belonging to us at original value at its own expense against fire and water damages and damages caused by theft. At the same time, the supplier already now assigns all claims for compensation from this insurance to us; we hereby accept such assignment. The supplier is obligated to have any required maintenance work and inspections as well as all repair and service work done in due time at its own expense. The supplier is to notify us immediately of any malfunctions; claims for damages are not affected if it fails to do so by negligence.
- (5) To the extent our collateral rights as defined in Paragraph 1 and/or 2 exceed the purchase price of all our goods under retention of title by more than 10 %, we are, upon request by the supplier, obligated to release the collateral rights at our discretion.

§ 8 Trademarks, Confidentiality

- (1) The supplier is responsible for ensuring that neither the goods that it supplies nor their use violate any commercial protection rights or other rights of third parties. Insofar as such rights exist, the supplier will compensate us for the resulting damage irrespective of its knowledge or our knowledge. The supplier is also obliged to indemnify us upon our first written demand from and against all claims made by third parties regarding any trademarks.
- (2) The supplier is not liable where it has manufactured the goods solely in accordance with our drawings and models and the supplier was not aware, nor could reasonably expected to be aware, that it was violating any rights.
- (3) We do not have the right to come to any sort of agreement, especially compensation agreements,

with such a third party without the written approval of the supplier.

- (4) Supplier's indemnification covers all expenses necessarily incurred by us or that arise as a result of claims made by third parties.
- (5) The limitation period for such claims is 10 years, commencing with the conclusion of the respective contract.

§ 9 Product Liability, Exemption, Liability Insurance Coverage

- (1) Insofar as the supplier is responsible for damage to a product, it is obliged to exempt us from claims to compensation for damages from third parties upon initial request, as the cause occurred within its area of control and organization and the supplier is itself liable towards third parties.
- (2) Within the scope of its liability for claims in terms of Paragraph 1, the supplier is also obligated in accordance with §§ 683, 670 BGB (German Civil Code) as well as §§ 830, 840, 426 BGB (German Civil Code) to reimburse any expenses which may arise from or in connection with a product recall we may conduct. We will inform the supplier in advance of the content and scope of the recall measures to be implemented and give the supplier the opportunity to comment, provided this is possible and reasonable. This does not affect any other legal claims.
- (3) The supplier is obliged to maintain a product liability insurance policy with coverage for \$4 million per person damaged/asset damaged; any further claims for compensation that we have remain unaffected.

§ 10 Compliance

- (1) The supplier is obliged to comply with the respective regulations, particularly those regarding the treatment of employees, the environment and work safety in accordance with our Code of Conduct for Suppliers and to endeavor to reduce negative impacts on people and the environment stemming from its activities.
- (2) The supplier is to require its subcontractors to abide by these same obligations.
- (3) The supplier is obliged to integrate a QM system as part of its business activities (DIN ISO 9001).
- (4) The supplier particularly guarantees the absence of harmful substances in connection with the goods and services to be rendered.
The supplier is liable for the environmental compatibility of the products supplied and for all consequential losses resulting from the violation of environmental regulations and / or the presence of harmful substances in the products, insofar as the supplier is at fault regarding the violation of these environmental regulations and / or the presence of harmful substances.
- (5) The supplier / service provider is responsible for supplying the goods with the necessary approvals as well as all other technical and legal requirements in connection with distribution in Europe and the Federal Republic of Germany in particular.
Goods are to be labeled with the CE-label, including the corresponding CE declaration of conformity, and with

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correct registration in the national register for waste electric equipment (EAR) when necessary.
All of the technical specifications relating to the goods must correspond to the original offer from the supplier.

§ 11 Jurisdiction, Place of Performance

(1) Jurisdiction for any potential disputes is Freyung.
However, we are also entitled to choose another

permissible jurisdiction for filing suit against the supplier.

- (2) The place of performance for the delivery is the site where risk is transferred; place of performance for payment is Freyung.
- (3) The legal relationship is governed solely by the law of the Federal Republic of Germany. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply.

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