

## Appendix 2) - General Terms and Conditions for Supplies and Services

of

KESSLER S.à r.l.  
10, rue Martin Maas, Z.I.  
6468 Echternach / Luxembourg

(In the following referred to as "KPA")

### § 1 Subject matter and framework conditions for the activity of KPA

- (1) These project terms and conditions (referred to as "terms and conditions" in the following) shall apply to all – also future – contracts on supplies and services between KPA and the Customer. KPA will not recognize conflicting or deviating terms and conditions of the Customer, unless KPA expressly agrees to their validity in writing. Objections are hereby raised to potential terms and conditions of the Customer also in the event that KPA receives such terms and conditions in a confirmation letter or in other ways, or that KPA provides supplies or services vis-a-vis the Customer without reservations, or KPA accepts services of the Customer without reservations, without objecting to the Customer's terms and conditions once more.
- (2) KPA shall render its services exclusively in independent activity and shall not be subject to any instructions from the Customer during the implementation of the activities transferred. The Customer will only make specifications on the content, scope and nature of the transferred activities, insofar as these are necessary for the proper contractual implementation.
- (3) KPA is also entitled to work for other customers.
- (4) KPA can also avail itself of third parties to fulfill its tasks. KPA shall, however, remain accountable to the Customer for the proper fulfillment of the contractual obligations.

### § 2 Scope of services of KPA

- (1) KPA shall owe towards the Customer the performance of those supplies and services, which are explicitly described in the offer. The scope of services can be amended, supplemented or specified by the parties at any time in mutual agreement (Article 5). KPA will then submit to the Customer a corresponding supplementary offer. KPA is not obligated to services, which are not mentioned in the written offer or in the supplementary offers of KPA or in these terms and conditions.
- (2) Furthermore, KPA offers the Customer to support him at the beginning of the project in determining his specific needs and in preparing the service specifications by the following measures to be commissioned and remunerated separately:
  - Preparation and implementation of a workshop (single-day or several days) at the premises of the Customer.
  - The workshop will support the Customer in determining his needs with respect to the project and in preparing the service specifications.
  - The parties shall determine in advance in mutual agreement in writing, how many workshop days are required for determining the needs.
  - KPA will determine as part of the workshop together with the Customer in particular the actual condition and define the target condition.
  - KPA will determine options on the basis of a comparison between the actual and target condition as to how the Customer can achieve the target condition. In this context, KPA shall give an initial, non-binding review of the software/hardware products, which are relevant to the Customer – based on his needs. Presentation of the products taken into consideration is based on the respective manufacturer's specifications.
  - After the implementation and analysis of the workshop, KPA shall provide the Customer with a written analysis of needs as well as a preliminary concept that shows, how the Customer can achieve the desired target condition.
  - KPA will provide support and advice only in this workshop phase. The Customer shall remain responsible to full extent for the correct and complete preparation of the service specifications.

### § 3 Customer's obligation to cooperate

- (1) The Customer is aware of the fact that a particularly close cooperation between the Customer and KPA is taken as prerequisite for the success of the project due to the complexity and high degree of client-orientation of IT and software products. Both parties are therefore obligated to ensure mutual consideration, comprehensive information, precautionary warning for risks and protection against disturbing influences, also from third parties.
- (2) In particular, the Customer is responsible for ensuring that KPA is provided with all information and documents necessary for the implementation of the project (especially, but not limited to, all functional processes, plans and process engineering related descriptions of functions) in an unsolicited and timely manner, and free of charge for KPA, and that KPA shall be informed of all events and circumstances, which are of importance directly or indirectly for its services. This also applies to documents, information, processes and circumstances, which become known only during the activity of KPA.

- (3) If the Customer commissions KPA with the implementation of a workshop to determine the needs (Article 2 para. 2), the parties will determine the dates for the planned workshop jointly. The dates agreed in writing are binding and can only be changed with the agreement of the respective other party. The Customer warrants that all project-relevant persons are present at the workshop or at least reachable.
- (4) The Customer shall remain responsible to full extent for the correct and complete preparation of the service specifications.
- (5) The Customer will assist in the definition of intermediate results ("milestones") upon written request from KPA. All inquiries of KPA, which are conducive to the project realization from the perspective of KPA, must be answered immediately by the Customer.
- (6) The Customer further warrants that KPA receives the necessary access to the Customer's premises, that adequate working space and communication facilities are available, and that project-relevant employees of the Customer, if and insofar as necessary, are available in sufficient numbers, so that the required knowledge transfer and technical support are ensured. In addition, if not agreed otherwise in writing, KPA will receive from the Customer sufficient remote access to all systems required for the project implementation, as well as sufficient authorizations on these systems.
- (7) As part of the project implementation, it may be necessary to migrate the Customer's data and the standard and individual software used by him (the "Customer's System") in consultation with him to one or several virtual machines operated by KPA for the Customer, and to operate the Customer's System there. Depending on the requirements of the individual case, the Customer's system then runs exclusively or in parallel in the virtual environment operated by KPA for the Customer before it is migrated back to the Customer. The Customer guarantees vis-à-vis KPA that he has all necessary licenses at his disposal, which are required by KPA for the outlined temporary parallel operation of the Customer's System in a potentially redundant virtual environment.
- (8) The Customer accepts all cooperation and provision duties mentioned in the above paragraphs 1-7 as his own essential contractual obligations.

#### **§ 4 Deadlines for supplies and services, default**

- (1) The parties shall jointly determine the time schedule for the project implementation immediately after awarding the job order, and define the milestones for the intermediate acceptances in particular. The deadlines and milestones agreed in writing are binding for both parties and can only be changed in writing and in mutual agreement.
- (2) Unless otherwise specified in writing in the offer, the earliest start of order execution by KPA is 30 days after the official awarding of order.
- (3) KPA's delivery obligation shall be subject to its own suppliers delivering to it correctly and punctually, unless KPA is at fault for receiving incorrect or late delivery.
- (4) If a bindingly stipulated date is exceeded for reasons, for which KPA is solely and directly responsible, the Customer must first request KPA in writing to provide the service owed and grant KPA a reasonable period of time, which is at least 14 days. Only after fruitless expiration of this period KPA shall be in default. In the event of default, the amount of compensation for damage shall be limited to 0.5%, at the most to 5%, of the value of the delayed part of the service for each week of delay. This paragraph does not apply to intent or gross negligence on the part of KPA or its vicarious agents. Moreover, the Customer reserves the right to prove that a higher damage has occurred and KPA reserves the right to prove that no damage has occurred at all, or only a considerably lesser damage has occurred.
- (5) The claims in paragraph 4 constitute the only legal remedies of the Customer in the event of default. A recourse to competing bases of claims, in particular of non-contractual nature as well, shall be excluded.
- (6) KPA shall not be liable for the impossibility or delay of the performance, as far as this is caused by force majeure or other events not foreseeable at the time of the conclusion of the contract (e.g. mobilization, war, riot, traffic accident, natural disasters, sabotage, serious illness of essential project employees, other operational disturbances of all kinds and delays in the delivery of essential operating materials or input materials, which also include strikes and lockouts, but also direct and indirect consequences of the Covid 19 pandemic or similar events), which KPA is not responsible for and which KPA cannot avert even with reasonable care. If such events significantly hinder or make impossible the performance and if the hindrance is not only temporary, KPA is entitled to withdraw from the contract. In case of temporary hindrances, the deadlines agreed upon for the performance are extended or the respective deadlines are postponed by the period of the hindrance plus a reasonable restart period. As far as the Customer cannot be expected to accept the performance as a result of the delay, he can withdraw from the contract by immediate written declaration towards KPA.
- (7) If the Customer does not fulfill his obligations to cooperate or provide in full or in part, or does not fulfill them in due time, any service deadlines affected by this shall lose their binding nature for KPA; in particular, KPA will not be in default. After the first unsuccessful written reminder, KPA is entitled to compensation for the resulting damage, including any additional expenses. If the Customer does not fulfill his obligations within a reasonable period of grace set by a second reminder, KPA is furthermore entitled to terminate the contract without notice and to claim compensation for damages in accordance with the statutory provisions.

- (8) If the Customer does not call off the ordered services at KPA, or does not call them off on the agreed date (Article 4 para. 1), then KPA is entitled to invoice the ordered services to the Customer after expiry of a reasonable deadline of at least 14 days set in writing. KPA will then provide the actual service at its own discretion at a later date; originally agreed dates will lose their validity in this case.

#### **§ 5 Changes to the scope of services**

- (1) Changes to the scope of services in accordance with Article 2 may be requested by both parties at any time in writing. However, an obligation to implement the change requests only exists if both parties have agreed on the associated adjustments to the description of the scope of services, the compensation, the schedules and execution deadlines and any other issues that a party considers needing regulation, in writing as part of the change request procedure to carry out the corresponding change.
- (2) The change request procedure (referred to as "CR procedure" in the following) must be complied with in order to enable smooth project execution. A request to change the scope of services (change request) is introduced in the CR procedure by the Customer as a written proposal (e-mail suffices). In the case of several, simultaneous change requests, the Customer has to prioritize these himself. Supply and service deadlines are extended by the period during which KPA, at the request of the Customer, reviews the Customer's requests for changes, prepares change offers, negotiates with the Customer about change offers or, as a result of the change request, the project realization was interrupted at the request of the Customer, plus a reasonable restart period. The additional expenses incurred by KPA as a result of the Customer's change request shall be remunerated by the Customer in accordance with the terms and conditions of the offer (in particular the applicable hourly or daily rates, Article 9 (4)), unless the parties agree otherwise in writing.
- (3) For the rest, in the case of change requests, KPA will submit a supplementary offer to the Customer in each case and will only commence implementation after written acceptance of the respective supplementary offer.

#### **§ 6 Acceptance of the requirements specifications**

- (1) The Customer will review the requirement specifications prepared by KPA on the basis of the service specifications drawn up by the Customer in particular with regard to the implementation of the information and documents provided by the Customer in writing with the service specifications, and shall accept them in writing.
- (2) Within the planning or project phase, a defect means, in particular, any deviation of the requirements specifications from the information and documents provided in writing by the Customer with the service specifications, unless the deviation is based on subsequent and additional information of the Customer and a corresponding change request.
- (3) The Customer may not refuse to accept the requirements specifications due to insignificant defects. However, this is subject to the immediate remedy of these defects by KPA.
- (4) If the Customer does not hand over a written list of defects to KPA within 14 days of receipt of the requirements specification, the requirements specification is deemed accepted.
- (5) If the acceptance of the requirements specifications fails at least twice due to reasons, for which KPA is solely and directly responsible, the Customer may assert the rights to which he is legally entitled.

#### **§ 7 Acceptance of software and hardware**

- (1) Subject matter of the acceptance is the contractually owed capability of the software as well as the supplied hardware, including the complete implementation of the requirements specifications (if required, in the version existing after execution of one or more change request procedures), as well as the proper quality of the documentation. Hardware in terms of these terms and conditions does not only mean computer / IT hardware, but includes all physical supply objects (such as, but not limited to, switching cabinets, motors, etc.). Prerequisite for the acceptance is that KPA completely hands over the software, hardware, documentation and all work results to the Customer and indicates readiness for acceptance to him.
- (2) KPA will offer the Customer the software and hardware for acceptance ("offer for acceptance"). The Customer shall check the software, the hardware and the functionality of the system immediately, but in any case within 14 days of receiving the offer for acceptance. Scope of testing as well as detected defects will be recorded by the Customer and KPA will be notified immediately in writing. KPA is obligated to remedy the notified defects immediately or to forward them to the manufacturer for rectification.
- (3) The preceding paragraph 2 shall apply accordingly with regard to partial acceptance. The obligation for the total acceptance shall remain unaffected by any partial acceptance.
- (4) An acceptance despite slight defects does not absolve KPA from the obligation for supplementary performance or subsequent improvement. In particular, there is a significant defect if the system is not functional, or only functional with significant restrictions or significant deviations from the software documentation. In contrast, there is no defect if the results expected by

the Customer can already be achieved by changing the individual system settings ("customizing"). If the documented essential defects have been remedied, acceptance by the Customer must be declared immediately in writing. If the Customer does not hand over a written list of defects to KPA within 14 days of receipt of the offer for acceptance, or if the Customer puts the system into productive operation, the supplies and services provided by KPA shall be deemed accepted.

- (5) If the acceptance fails at least twice due to reasons, for which KPA is solely and directly responsible, the Customer may assert the rights to which he is legally entitled.

#### **§ 8 Retention of titles**

- (1) All delivered goods shall remain the property of KPA until any and all receivables have been paid by the Customer under the business relationship, irrespective of the legal ground, including receivables arising in the future or that are conditional (referred to as "reserved goods" in the following).
- (2) Treatment and processing of the reserved goods shall be carried out for KPA as manufacturer in terms of Article 950 of the BGB (German Civil Code) without obligating KPA. The processed goods shall be deemed reserved goods in terms of paragraph 1. In case of processing, compounding and mixing of the reserved goods with other goods by the Customer, KPA shall become a co-owner of the new goods in proportion of the invoice amount of the reserved goods to the other goods used. If KPA ceases to be the owner due to compounding or mixing, the Customer shall already assign to KPA the proprietary rights to the new inventory or the goods to which it is entitled in the scope of the invoice amount of the reserved goods at this point in time and shall store it for KPA free of charge and in trust. The co-ownership rights arising from this shall be deemed reserved goods in terms of paragraph 1.
- (3) In the event of an occurred or impending pledging or other impairment of the reserved goods by third parties, the Customer is to immediately notify KPA in writing and to mark the reserved ownership of KPA as such.
- (4) If the aforementioned rights to retention of title are not valid or enforceable under the law of the territory where the goods are located, the security corresponding to the retention of title in this territory shall be deemed as agreed. The Customer is obligated to take all required measures and collaborate on them, which are necessary to substantiate and retain comparable rights or securities.

#### **§ 9 Prices; terms and conditions of payment; hourly and daily rates**

- (1) For the contractually agreed scope of services, the Customer owes KPA the respective price communicated in the offer or in supplementary offers of KPA. All prices are calculated, unless agreed otherwise in writing, from the registered place of business of KPA, excluding packaging, plus statutory VAT, respectively in the amount valid at the time of the conclusion of the agreement.
- (2) KPA's offer is based on the Luxemburg index level valid at the time of the submission of the offer. Should this index level change by the time the order is placed, KPA reserves the right to adjust the price accordingly.
- (3) Unless otherwise stipulated in writing in the offer, KPA will invoice the owed price immediately after the agreed milestone has been reached or after (partial) acceptance by the Customer. Invoices are payable within 30 days of invoicing without any deduction, free of fees and charge for KPA to the account named by KPA. Decisive for the date of payment is the receipt by KPA. The Customer shall be deemed in default at the latest 10 days after the due date of the receivables without a warning being necessary. If the payment date is exceeded, at the latest from the beginning of default, KPA shall be entitled to charge interests in the amount of 9 percentage points above the base interest rate. KPA reserves the right to assert additional damages caused by default.
- (4) Licenses and hardware will be charged to the Customer directly after the placing of the order.
- (5) Additionally ordered services as well as the additional expenses incurred by KPA due to changes requested by the Customer will be remunerated separately by the Customer in accordance with the terms and conditions of the offer. Waiting periods, which are not the responsibility of KPA, are also to be remunerated against proof per commenced hour. The hourly and daily rates enclosed with the offer as Appendix shall apply.
- (6) KPA reserves the right to change its prices, using its reasonable discretion, if after conclusion of the contract price-relevant cost reductions or cost increases occur, in particular due to collective wage agreements or material price and energy price changes. KPA will make use of this right especially if there are more than four months between the original calculation and the date of performance. In case of cost reductions, e.g. concerning products of third-party suppliers, KPA is entitled to reduce the prices, as far as these cost reductions are not completely or partly compensated by increases in other areas. Price increases, e.g. concerning products of third-party suppliers, shall entitle KPA to a cost increase only to the extent that no compensation by possibly decreased costs in other areas takes place. In exercising its reasonable discretion, KPA will select the time of a price change in such a way that cost reductions are not taken into account according to standards that are less favorable for the Customer than cost increases. Any price change will be announced by KPA to the Customer in writing in due time before the changed prices become effective.

In case of a subsequent price increase the Customer may terminate the contract in writing, but only within two weeks from the time when it has received the announcement of the price increase.

#### **§ 10 Offset; rights of retention**

- (1) The Customer shall not be entitled to offset against KPA's claims, unless the counterclaim is undisputed or legally established. Furthermore, the Customer shall not be entitled to retain payments or suspend other obligations affecting it, unless KPA materially violated due obligations from the same contractual relationship despite a written warning, and has not offered adequate safeguarding. Sec. 215 BGB (German Civil Code) shall not apply. The Customer's warranty rights remain unaffected.

#### **§ 11 Warranty**

- (1) In accordance with the statutory provisions and Article 11, KPA warrants that the supplies and services are free from material defects and defects in title.
- (2) Without prejudice to the duty of inspection of the Customer, the Customer must notify KPA immediately in writing of a detected defect, otherwise any warranty rights shall expire.
- (3) All claims of the Customer due to defects become time-barred within one year after acceptance of the part of service or supply concerned.

#### **§ 12 Liability**

- (1) Except for liability under the Product Liability Law (ProdHaftG), for malicious nondisclosure of a defect, due to a guarantee that KPA has assumed for the quality of the supplies and services or for damage arising from culpable injury to life, limb, or health, KPA will only be liable to pay damages vis-a-vis the Customer in the case of a breach of duties arising from the contract concluded between KPA and the Customer in accordance with the following provisions without waiving the statutory prerequisites for such a liability.
- (2) KPA shall be liable for compensation for damage – for whatever legal reason – only in the event of culpable violation of significant contractual obligations and in the event of intentional or grossly negligent violation of other contractual obligations due to the Customer. Significant contractual obligations shall include such obligations which render, only if fulfilled, the proper execution of the contract possible in the first place and on the fulfillment of which the Customer relies and may rely on regularly.
- (3) In the event of a simple negligent breach of significant contractual obligations, the liability of KPA shall be limited to the replacement of the foreseeable, typically occurring damage.
- (4) In the event of a simple negligent breach of other, i.e. not significant contractual obligations existing vis-a-vis the Customer, KPA's liability shall be excluded.
- (5) The above limitations on liability also apply in the event of violations of obligations by or for the benefit of persons, for whose negligence KPA is responsible under statutory provisions.
- (6) The above limitations shall not alter the burden of proof to the Customer's detriment.

#### **§ 13 Conclusion of contract, termination**

- (1) Unless otherwise specified in the offer in writing, KPA shall be bound to this offer for 30 days from the date of the offer. The contract is concluded with the signing of the offer or the written order confirmation of KPA by the Customer and receipt of these documents by KPA.
- (2) KPA can terminate the contract with immediate effect if the Customer is in default with an agreed payment for more than 60 days or, despite a written warning, violates a provision of these terms and conditions or other agreements.
- (3) The Customer is only entitled to terminate the contract because of a breach of a contractual obligation on the part of KPA, if KPA has culpably failed to fulfill its contractual obligations despite two written warnings and after the expiry of a reasonable period set by the respective warnings.
- (4) The right of both parties to terminate the Agreement for good cause shall remain unaffected.
- (5) Each notice must be made in writing via registered letter.

#### **§ 14 Confidentiality**

- (1) KPA shall be obligated to maintain utter secrecy regarding any business and trade secrets of which it became or is becoming aware as well as information deemed confidential or clearly to be treated confidentially based on other circumstances of the Customer or his affiliates in accordance with Article 15 AktG (German Stock Company Act) also beyond this contractual relationship until such information becomes public, however, at least for a period of 3 years after the end of the term of this contract, and to not use such information for purposes other than those according to this agreement.
- (2) KPA will carefully store the business records handed over to it, protect them from third party inspection and return them at the end of this agreement. The assertion of a right of retention is excluded. KPA will impose the same obligations on the employees deployed and any third parties involved.

#### **§ 15 Supply of hardware; supply of software and licenses; granting of rights**

- (1) Unless otherwise specified in writing in the offer, delivery of hardware will be made FCA (free carrier - Incoterms 2020) KESSLER S.à r.l., 10, rue Martin Maas, Z.I., L-6468 Echternach.
- (2) Partial supplies are permissible insofar as these can be deemed acceptable to the Customer.
- (3) The supply of software, project results as well as the project documentation shall take place in digital form, unless the parties agree otherwise in writing.
- (4) The project language is German. If KPA owes documentation, it will be delivered in German. The languages of the documentation of supplied components (software, hardware) are determined by the languages offered by the respective manufacturer and are not within the scope of responsibility of KPA.
- (5) Both the names and trademarks used for the software as well as the intellectual property rights existing in the software and accompanying materials shall remain with the manufacturer or its licensors.
- (6) Licensing takes place against payment of the agreed license fee by the Customer by way of provision of a corresponding license key, which is provided individually by KPA after installation of the system. The license depends on the underlying hardware. If system components are changed on the hardware side, a new license key must be provided. KPA shall also deliver the end user license agreement of the respective manufacturer, which has to be signed by the Customer.
- (7) The Customer acquires the right to use the software on as many workstations integrated into a local network as he has paid license fees for. The basis of assessment for this is the number of licenses listed in the associated contract as well as any special agreements made (quantity scales, unlimited licenses, etc.).
- (8) Changes, extensions of the program code / source code and change requests, which are carried out at the request of the Customer, shall become the property of KPA. The rights of use and exploitation for these program adaptations are also vested in KPA. The Customer shall receive the non-transferable rights of use of this individualization.

#### **§ 16 Intellectual property rights**

- (1) With regard to cost estimates, drafts, drawings, and other documents, KPA reserves the right of ownership and the intellectual property rights; third parties may only be granted access thereto upon prior written consent by KPA. Drawings associated with offers and other documents shall be returned upon request from KPA.
- (2) Insofar as KPA has rendered supplies and services in accordance with drawings, models, prototypes, or other documents provided by the Customer, the Customer shall assume the warranty that third-party intellectual property rights are not violated. If third parties prohibit KPA from rendering the owed supplies and services in particular, invoking intellectual property rights, KPA shall be entitled to – without the obligation to verify the legal situation – insofar suspend all activities and demand payment of damages if the Customer is at fault. Moreover, the Customer shall be obligated to indemnify KPA immediately from all claims by third parties in connection therewith.

#### **§ 17 Dispute settlement; place of jurisdiction; choice of law**

- (1) The parties will attempt to settle any disputes resulting from or in connection with the legal relationship existing between them immediately in partnership and in good faith by way of negotiation.
- (2) If the parties cannot achieve the settlement of such disputes by way of negotiation within 30 days after one party has requested negotiations with the other party in writing, both parties shall be entitled to regular legal recourse. The courts in Trier, Germany shall have exclusive jurisdiction for all disputes arising out of or in connection with the existing legal relationship between the parties.

- (3) German law shall apply to the legal relationship between KPA and the Customer, excluding the conflict of laws principles and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**§ 18 Final Provisions**

- (1) There are no oral or written ancillary agreements.
- (2) Amendments and addenda to this terms and conditions by individual agreements in terms of Article 305b of the German Civil Code (BGB) do not require any particular form. In all other cases, amendments or addenda require text form.
- (3) The Customer shall authorize KPA to designate him as a reference and, in this context, to use his name and logo on the KPA website and in presentations.
- (4) Should a provision of these terms and conditions be or become partially or fully invalid, this shall not affect the validity of the remaining provisions of these terms and conditions. The parties hereby already agree at this point in time to replace any invalid provisions with effective provisions which come as close as possible to achieving the economic purpose intended by the parties. This also applies in the case of an unintentional regulatory gap.

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