

General Sales Conditions of AKKA Business Unit Germany

AKKA Group offers engineering and consulting services worldwide. In the automotive, rail and aerospace sectors, AKKA supports manufacturers and suppliers along the entire product development process - from conception to series production. AKKA Germany (BU Germany) is part of the network of AKKA Technologies SE, headquartered in Brussels. The present general sales conditions apply to the AKKA companies of the Business Unit Germany. The respective contracting AKKA company is hereinafter referred to as called "AKKA".

(1) General • Area of Application

1.1 These general sales conditions of AKKA (GSC) apply exclusively; any terms and conditions of the customer contradicting, supplementing or otherwise deviating from these general sales conditions of AKKA are not accepted by AKKA unless their application has been expressly approved by AKKA in writing. These general sales conditions of AKKA shall apply even if AKKA unreservedly renders the agreed services despite having knowledge of a customer's conflicting, supplementing or deviating general terms and conditions.

1.2 All agreements between AKKA and the customer with respect to the fulfillment of an order are made in writing; there are no verbal subsidiary agreements.

1.3 These GSCs apply only vis-a-vis a business, a legal entity of public law and a special asset subject to public law pursuant to Art. 310 par. 1 German Civil Code.

1.4 In the case of ongoing business relationships, these GSCs shall also apply to all future transactions involving the customer concerned.

1.5 These GSCs apply for all legal entities comprising AKKA BU Germany; unless a legal entity of AKKA BU Germany expressly excludes the applicability of these GSCs in writing.

(2) Offers • Offer Documentation

2.1 Offers supplied by AKKA are binding unless it they are specified as "non-binding" or "without obligation".

2.2 Upon customer's request AKKA submits at its expense a binding offer stipulating an acceptance period. A contract is concluded upon receipt of customer's written order within the stipulated acceptance period, provided that the order does not deviate in any way from AKKA's offer. In case of deviations from conditions set out in AKKA's offer, the customer's order shall be deemed refused, unless customer receives a written order confirmation from AKKA within 4 weeks after receipt of customer's order.

2.3 AKKA retains ownership and copyright of all figures, drawings, calculations and other documentation. The same applies to all written documentation marked as "confidential". The customer must receive the express written prior consent of AKKA before disclosing any such documentation or materials to third parties.

(3) Scope of service

3.1 The type and scope of services to be rendered by AKKA are detailed exhaustively in the Offer. The offer is typically compiled by AKKA on the basis of the functional and technical specifications to be provided by the customer, which must be complete and accurate.

3.2 If, with customer's consent, AKKA assumes the deliverables of a third-party contractor as the basis or component of its services, AKKA shall be entitled to use these deliverables without a corresponding inspection in connection with the further provision of its services, unless the customer such an inspection is expressly ordered in writing by the customer.

3.3 AKKA shall render all services on the basis of the relevant applicable recognised codes of practice as at the time of the order and with due care and diligence.

3.4 Should customer's additional service requirements or change requests lead to a modification of the agreed scope of service, AKKA shall only be obliged to provide such services once an according amendment to the contract (including compensation) has been agreed in text form.

3.5 AKKA may employ the services of third parties for order completion. This applies in particular to all companies of the AKKA Group worldwide.

(4) Customer cooperation

4.1 The complete and punctual provision of necessary customer documents and information is an essential part of any successful project and a cooperation obligation of the customer. Responsibility for the provision of documentation, information, hardware and software, and all other information and assets required to render the services in question lies with the Customer. The same applies for potentially necessary transport of test specimens to and from the facility. The scheduling of such activities must be coordinated with AKKA in advance.

4.2 Scope and quality of the services rendered by AKKA are largely contingent upon scope and quality of the cooperation extended by the customer and, where applicable, product manufacturer and/or user. The customer will ensure its full and timely provision of all necessary support and cooperation necessary for the service provision by AKKA at no charge.

4.3 Any and all costs and expenses incurred by AKKA due to the necessity to repeat or delay work shall be borne by the customer if such repeat or delay is caused by late, inaccurate or incomplete specifications or by other cases of non proper cooperation by the customer. In case of a binding fixed price or maximum price agreement, AKKA shall nonetheless be entitled to a compensation for such additionally incurred cost.

4.4 AKKA shall not be liable for damages or costs caused by incomplete or non-compliant preliminary work or incomplete work rendered by the customer or, if applicable, product manufacturer and/or user. If any such preliminary work is not rendered as per the existing schedule, the terms agreed shall be lengthened accordingly.

4.5 The customer is obliged to indemnify or reimburse damages, costs and losses incurred by AKKA due to insufficient cooperation by the customer.

(5) Prices • terms of payment • advance payments

5.1 AKKA reserves the right to modify its price structure accordingly and within reason if, after contract conclusion, cost reductions or increases occur, particularly as a result of wage agreements or changes in materials prices. AKKA shall provide appropriate evidence to the customer upon request.

5.2 Prices specified by AKKA do not include VAT. VAT at the applicable rate shall be indicated separately on the invoice.

5.3 The deduction of a discount must be specifically agreed in writing.

5.4 Unless otherwise agreed in writing, the net price (without deduction) is payable within 14 days of receipt of invoice. Payment terms are deemed to have been met if AKKA has the sum at its free disposal within this term. Statutory regulations shall apply to the consequences of non-payment.

5.5 AKKA shall be entitled to demand advance payment, at an appropriate rate, for legitimate reasons and in due consideration of the customer's interests.

5.6 The customer shall be entitled to offset rights only if its counter claims are established as legally valid, undisputed or recognised by AKKA in writing. Furthermore, the customer shall be entitled to exercise its right of retention insofar as its counterclaim is based on the same contractual relationship.

Scope with respective place of business: AKKA Austria GmbH, Graz; AKKA Consulting GmbH, Sindelfingen; AKKA Deutschland GmbH, Saarbrücken; AKKA Digital Swiss AG, Sarnen; AKKA DNO GmbH, Köln; AKKA DSO GmbH, München; AKKA DSW GmbH, Stuttgart; AKKA EDWY GmbH, Frankfurt am Main; AKKA EMC GmbH, Waiblingen; AKKA EMV GmbH, München; AKKA Germany GmbH, München; AKKA GmbH & Co. KGaA, Sindelfingen; AKKA Management Services GmbH, Stuttgart; AKKA Services GmbH, München; AKKA Verwaltungs-GmbH, Stuttgart; ATP Automotive Testing Papenburg GmbH, Osnabrück; Proceda GmbH, Stuttgart

(6) Acceptance

6.1 If the manufacture of a product/work is the basis for the contract, the acceptance of the agreed deliverables must be made without undue delay after deliverables have been finalised and/or transferred to the customer by AKKA.

6.2 Unless the customer expressly rejects to accept the deliverables due to deficiency incompleteness, or for any other legal reason, the deliverables shall be deemed to have been accepted at the latest 2 weeks after completion respectively transfer of the deliverables.

(7) Cross-border services

7.1 Should AKKA render services on behalf of the customer in countries outside of the European Union, the customer must substantiate its entrepreneurial status by way of certification from the relevant authorities of the respective country or by way of a valid excerpt from the commercial register. If such evidence is not provided, the customer shall be liable to pay the applicable rate of VAT for services rendered within the Federal Republic of Germany. Such payment must be made immediately.

7.2 Should AKKA render services on behalf of the customer in any other European Union member state other than Germany, the customer must provide AKKA with its VAT identification number before the services are rendered. The customer must inform AKKA proactively and without undue delay about of any change to its tax number.

(8) Terms • deadlines

8.1 The start of any time periods stipulated by AKKA as well as the compliance with any deadlines are subject to the binding clarification and resolution of all technical issues and an issued binding order by the customer.

8.2 Furthermore, adherence by AKKA to its obligations is subject to the customer fulfilling all of its obligations in a timely and complete manner. The right to defend non-fulfilment of contractual obligations (*Einrede des nichterfüllten Vertrages*) remains unaffected.

8.3 If, during the course of order performance, it becomes apparent that AKKA can, for reasons beyond its control (e.g. industrial action or lockout, operational failures or delays on the part of contractors or cases of *force majeure*) not meet the agreed deadlines, such deadlines shall be extended accordingly. The same applies in case the customer extends or changes the scope of services or in case of delays caused by incorrect or incomplete specifications or other non satisfactory provision of cooperation obligations or contributions supplied by the customer. AKKA shall promptly inform the customer of any any resulting impact on deadlines.

8.4 Should the customer be in acceptance default (*Annahmeverzug*) or otherwise breaches any of its cooperation obligations, AKKA shall be entitled to demand compensation for damages incurred, including for any other additional incurred expenditures. Further claims or rights shall remain reserved.

8.5 Provided the provisions set forth in section 8.4 apply, the risk of accidental loss or deterioration of the deliverables shall be pass to the customer from the of default.

8.6 In case a default of AKKA is due to a negligent breach of contract violation within the control of AKKA, AKKA's liability for damages shall be limited to foreseeable typically occurring damages.

(9) Transfer of risk

9.1 In case of shippable deliverables, delivery "ex works" is agreed unless otherwise specified in AKKA's offer or confirmation of order.

9.2 If desired by the customer, AKKA shall cover the shipment with appropriate transport insurance; costs in this respect shall be charged to the customer.

(10) Liability for defects

10.1 Any defect claims of the customer are subject to the customer properly fulfilling its examination and notification obligations.

10.2 In case of defective performance, AKKA is at its own discretion entitled to supplementary performance by way of rectification or renewed delivery of service, provided that AKKA shall be obliged to bear all costs associated with supplementary performance, in particular all transport, shipping and handling, operational and materials expenses, provided that these do not increase due to the deliverable having been moved to another location than the place of fulfilment.

10.3 If supplementary performance fails, the customer is at its discretion entitled to demand a reduction in price (*Minderung*) or to withdraw (*Rücktritt*).

10.4 AKKA is liable in accordance with statutory regulations if the customer claims damages based on intent or gross negligence, including intent or gross negligence on the part of representatives or vicarious agents of AKKA.

10.5 Accountability for culpable injury to life, limb or health remains unaffected. The same applies to mandatory liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*) and in case of breach of a material contractual obligation, the fulfillment of which is essential for the proper performance of the contract and upon which the customer typically relies and may rely. In all other cases, AKKA's liability for damages shall be limited to the foreseeable, typically occurring damages.

10.6 Unless otherwise stipulated above, AKKA's liability is excluded.

10.7 The period of limitation for defects claims shall be 12 months, to be calculated from transfer of risk.

(11) General liability

11.1 Other than as stipulated in Clause 10 above, any further liability for damage compensation is excluded irrespective of the legal grounds of the claim asserted. This applies in particular to damage compensation claims due to fault at contract conclusion, to other breaches of duty or to tort claims for property damage compensation pursuant to Art. 823 German Civil Code.

11.2 Limitation of liability as per section 11.1 also applies if the customer demands compensation for fruitless expenditure rather than a claim for damage compensation in place of performance.

11.3 If and to the extent the damage compensation liability of AKKA is excluded or limited, this also applies to the personal damage compensation liability of employees, staff members, colleagues, representatives and vicarious agents of AKKA.

(12) Copyright • property • utilisation

12.1 AKKA retains all copyrights, co-copyrights and property rights associated with all processes, documentation, programs, calculations, other illustrations and the like developed by AKKA.

12.2 The customer receives the exclusive right to use the deliverables for the contractually agreed purposes, else for purposes of manufacturing and/or marketing of respective products without restriction to the manufacture and sales area.

12.3 Each contracting party shall bear its own costs for property right registration during the period of service provision. This also applies to financial rewards for inventions paid to the respective employees. The contracting parties undertake to inform each other without delay of any submission of a property right registration. Furthermore, the countries in which this occurs must be disclosed.

12.4 If employees of AKKA and employees of the customer are party to the development of inventions created in the course of delivery of the agreed services, the contracting parties shall agree without undue delay who shall be responsible for finalising the joint patent application. The

filing of joint inventions shall be made by both parties jointly; the associated costs shall be born by both parties equally unless the customer receives exclusive exploitation rights.

12.5 If one contracting party is no longer interested in pursuing an industrial property right, the party in question shall offer to surrender its share to the other contracting party.

(13) Third-party rights

13.1 AKKA shall be liable to the customer for any violation of the commercial property rights of third parties in accordance with the following provisions. AKKA shall be liable that its services are not infringing any third-party industrial property rights within the Federal Republic of Germany.

13.2 If a third party asserts a claim against the customer based on registered property rights, any potential liability of AKKA shall be conditional on the customer informing AKKA without undue delay of such claim and aligning its handling of such claims and the protection of its rights with AKKA. In case a third-party property rights violation for which AKKA is liable is given and the use of a deliverable by the customer is therefore legally binding prohibited in full or in part, AKKA shall, at its discretion and at its own expense,

(a) procure for the customer the right to use the service (licence purchase), or

(b) make its service free of property rights, or

(c) replace its service with another service of corresponding quality that does not violate property rights, or

(d) withdraw its service against reimbursement of counterperformance.

13.3 If third party rights are infringed due to the customer modifying the services of AKKA and/or connecting or combining the deliverables with other devices or equipment, AKKA shall not be liable.

13.4 AKKA shall not be liable for violations of third-party property rights resulting from services rendered on the basis of templates, development services or other specifications supplied by the customer, or for any use of a service not foreseeable by AKKA. In such cases, the customer shall indemnify and hold AKKA harmless from any third-party claims.

13.5 The customer shall not be entitled to more extensive or other claims as a result of a violation of third-party industrial property rights. In particular, AKKA shall not compensate for consequential damages, such as loss of production or utilisation, or lost profits. These restrictions on liability shall not apply in the event of mandatory liability for standard contractual, foreseeable damages in cases of intent or gross negligence breach of essential contractual obligations or the failure of warranted characteristics. The customer's right to withdraw from the contract remains unaffected.

13.6 No rights are acquired by the customer to use industrial property rights of AKKA that affect the interaction of AKKA's service with third-party services.

(14) Termination

14.1 If the customer fails to fulfil its mandatory duties of cooperation or fails to ensure the level of cooperation on the part of the product manufacturer and/or user required for service provision, if the information or specifications communicated by the customer, product manufacturer and/or user are fragmentary, unsuitable, or incomplete, or if change requests necessitate additional non-budgeted operational outlay with additional costs not borne by the customer, AKKA shall be entitled to terminate the agreement without notice, after an appropriate period for stipulating suitable prerequisites or for the assumption of additional costs by the customer has elapsed without avail.

14.2 The customer undertakes to reimburse any costs incurred by AKKA as a result of such contract termination without notice. Partial services as set forth in the contract may continue to be rendered until the contractual

relationship is officially terminated. These must be accepted and remunerated by the customer.

(15) Confidentiality

15.1 Each party to this agreement as well as its vicarious agents undertake to maintain confidentiality in the conclusion and execution of the services provided as well as of all information and documentation received from the opposing contracting party, and furthermore undertake to use this information and documentation for operational purposes within the scope of the respective contract only. The customer furthermore undertakes to impose this duty of confidentiality on each product manufacturer and/or user that is involved either on a consultancy or other basis in the performance of the service, or that supplies equipment or components required to render the service. If AKKA appoints subcontractors, AKKA undertakes to impose a duty of confidentiality on these parties. This obligation shall remain in force for a period of 3 years from date of transfer/delivery and/or acceptance.

15.2 This duty of confidentiality does not apply to information demonstrable as pre-existing knowledge, information that has been or is legitimately disclosed or made available by third parties, information that is deemed to be in the public domain or generally accessible, or information that becomes known or accessible at no fault of the respective contracting party. Furthermore, this duty does not apply to information demonstrable as a product of independent internal development activity or to information that must be disclosed in accordance with legal regulations or official directives.

15.3 For reference purposes, AKKA shall be authorised to cite the circumstances of service provision that underlie the respective contract.

(16) Retention of ownership guarantee

16.1 AKKA shall retain ownership of all deliverables until receipt of full payment as per the contractual agreement. If the customer is in violation of the contract, in particular in default of payment, AKKA shall be entitled to recover deliverables. The recovery of deliverables by AKKA constitutes a withdrawal from the contract. AKKA shall be entitled to utilise the deliverables after these have been recovered; the proceeds of any such utilisation shall be deducted from the customer's accounts payable, minus any reasonable expenses.

16.2 The customer undertakes to treat all deliverables with due care; in particular, the customer undertakes to sufficiently insure these items for their "as new" value against fire, water damage and theft at its own expense. Where maintenance and inspection work is necessary, the customer must perform these duties in a timely fashion and at its own expense.

16.3 In the event of seizure or other form of intervention by a third party, the customer must inform AKKA in writing without undue delay, to enable AKKA to institute legal proceedings in accordance with Art. 771 German Code of Civil Procedure [ZPO]. If the third party in question is unable to compensate AKKA for its judicial and extrajudicial costs of legal action in accordance with Art. 771 ZPO, the customer is liable for the accrued loss to AKKA.

16.4 The customer shall be entitled to resell deliverables as a routine business transaction; the customer undertakes, however, to surrender to AKKA, at this stage, all accounts receivable at the total invoice value (including VAT) of its account receivable accrued from the resale against its purchaser or third party, and irrespective of whether the purchased deliverable has been on-sold without or after processing. The customer shall remain authorised to collect receivables after surrender. The right of AKKA to collect the receivables itself remains unaffected. AKKA undertakes, however, not to collect the receivables itself as long as the customer adheres to its payment obligations with regard to proceeds received, is not in default of payment, and, in particular, no application

for settlement or insolvency proceedings has been filed or payments suspended. If this is the case, however, AKKA shall be entitled to demand that the customer discloses full details of the surrendered accounts receivable as well as their associated debtors, provides all information required for collection, hands over all associated documentation and informs the debtors (third parties) of the surrender.

16.5 The processing and alteration of deliverables by the customer is at all times performed on behalf of AKKA. If deliverables are processed together with other materials that do not belong to AKKA, AKKA shall acquire joint ownership of the new materials at a proportionate rate; this rate shall be the proportionate value of deliverables (invoice total, including VAT) to the value of the other processed materials at time of processing. The same shall apply to materials from processing as to deliverables under reserve.

16.6 If deliverables are inseparably mixed with other materials that do not belong to AKKA, AKKA shall acquire joint ownership of the new materials at a proportionate rate; this rate shall be the proportionate value of deliverables (invoice total, including VAT) to the value of the other mixed materials at time of mixing. If the nature of the mixing results in the customer's material being regarded as the primary material, the parties to this contract hereby agree that the customer shall transfer to AKKA proportionate joint ownership. The customer undertakes to store such exclusively owned property or jointly held property on behalf of AKKA.

16.7 The customer shall also assign the claims to AKKA, which accrue to it through the possible combination of the delivered item with a property against a third party, to secure its claims against it.

16.8 AKKA undertakes to release the securities it is entitled to, at the customer's request, insofar as the realisable value of securities exceeds the receivables to be secured by more than 10%; the choice of securities to be released resides with AKKA.

(17) Penalty for breach of contract

To the extent the customer steps away from the fulfillment of an order, terminates the contract or retreats from the contract, AKKA is entitled to charge the contractually agreed compensation, reduced by such costs that are saved due to the settlement of the contract. In such case it is assumed that AKKA has an entitlement to at least 25% of the contractually agreed compensation for such portion of the services not yet provided.

(18) Compliance

AKKA places high demands on itself and its contractual partners with regard to compliance with applicable laws and directives. Consequently, AKKA has adopted a Code of Conduct as a sustainable commitment to compliant behavior. [The Code of Conduct of AKKA is available on its homepage.](#) AKKA demands compliance with the law and the directive not only from itself and its employees, AKKA also expects their contractors to act accordingly. In this respect, AKKA expects its contractual partners to comply with all laws and regulations concerning themselves and the contractual relationship with AKKA and that they do not permit or refrain from any actions that are or could have criminal relevance.

(19) Place of jurisdiction • place of fulfilment

19.1 The exclusive place of jurisdiction for both parties for all disputes arising from or in connection with this legal relationship is the place of registered office of AKKA, if AKKA is registered in Germany; in all other cases exclusive place of jurisdiction shall be Stuttgart, Germany.

19.2 The law of the Federal Republic of Germany shall apply; the application of the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded.

19.3 Unless otherwise stated in the offer of AKKA or in the order confirmation of AKKA, the place of business of the contracting AKKA company shall be the place of fulfillment.

As of January 2019

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