

General Terms and Conditions of Purchase of AKKA Business Unit Germany for Engineering and Development Services

The AKKA Group Germany ("AKKA") is internationally leading in Engineering and Consulting services. AKKA is distinguished by the tightly meshed development and consulting services covering the entire automotive value chain, railway and aerospace sectors. With more than 5000 employees, AKKA is represented in Germany, the Czech Republic, Hungary, China, Turkey and the USA. The company is part of the network of AKKA Technologies SE headquartered in Brussel. The present general purchase conditions apply to the AKKA companies of the Business Unit Germany. The contracting AKKA Company is called "AKKA" in the following.

Clause 1 - General points and scope of these General Terms and Conditions

1. These AKKA General Terms and Conditions of Purchase for Engineering and Development Services (GTC Engineering) shall be applicable on an exclusive basis; any Contractor's terms and conditions contrary to or in addition to or in deviation from these provisions shall not be recognized by AKKA unless they have been expressly approved by AKKA in writing. These GTC Engineering shall also apply if AKKA is aware of conflicting, supplementing or deviating Contractor's GTC and if it has accepted the Contractor's services without reservation.
2. Any arrangements concluded between AKKA and the Contractor for the implementation of the underlying contract shall be specified in this agreement in writing; there are no supplementary verbal agreements.
3. AKKA's GTC Engineering shall only apply in relation to business persons, legal entities under public law and public law special funds as defined in the German Civil Code (Bürgerliches Gesetzbuch, BGB) section 310 subsection 1.
4. Under an ongoing business relationship these AKKA GTC Engineering shall also apply to all future business with the relevant Contractor.
5. Engineering and development services shall be understood to cover technical services as well as deliverables that are to be achieved through services and also items that are to be created or modified through services.
6. These GTC Engineering also apply to any subsidiaries of AKKA Business Unit Germany; this does not apply, if a subsidiary of AKKA expressly excludes the applicability of these GTC Engineering in writing.

Clause 2 - Call-off orders (German: Abrufbestellungen), orders and order documents

1. The object of this agreement is the delivery of services based on orders issued by AKKA to the Contractor, based on these GTC Engineering. The Contractor shall work for AKKA within the specified service period as detailed in the service specifications and shall ensure that its performance does not exceed this period.
2. AKKA's call-off orders regarding concluded framework service contract must be made in writing in order to be valid. AKKA's call-off orders are binding as defined in the German Civil Code (Bürgerliches Gesetzbuch, BGB) section 145. The contract is concluded with receipt of the countersigned call-off order within the acceptance period. AKKA may revoke the call-off order after expiration of the acceptance period.
3. Moreover, single service contracts shall be formed electronically on the AKKA-Supplier-Portal (e-procurement system). In this case AKKA's binding order is formally valid in text form as defined in the German Civil Code (Bürgerliches Gesetzbuch, BGB) section 126b and will be send via the AKKA-Supplier-Portal as pdf file and the contract will be concluded by clicking the acceptance-button within the acceptance period. AKKA may revoke the order after expiration of the acceptance period.
4. AKKA reserves ownership rights and copyrights in respect of all illustrations, drawings, calculations and other documents; such documents shall not be shared with third parties without AKKA's express written permission. They shall be used exclusively for services ordered by AKKA; once the ordered services have been delivered, such documents shall be returned to AKKA without the need for a request. Confidentiality shall be kept towards third parties in respect of such documents, subject to the additional provisions detailed in clause 12 subclause 1.

Clause 3 - Payment, content of invoices and terms of payment

1. Payment shall be exclusively and bindingly subject to the hourly/daily rate specified in the order, but not the total (net total) specified therein. The payable amount shall be invoiced according to the services performed and shall be based solely on an electronic service record submitted by Contractor on the AKKA-Supplier-Portal. The validity of the e-service-record must be confirmed by AKKA's project manager/cost centre manager. Section 616 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) is hereby waived.
2. AKKA generally pays the daily rate for 8 working hours; additional working hours per day cannot be invoiced. If services of less than 8 hours are rendered, the daily rate is reduced on a pro rata basis.
3. The payable amount detailed in the purchase order does not include VAT, which shall be specified by the Contractor separately in the invoice at the relevant rate stipulated under the relevant VAT legislation.
4. Travel times, i.e. the time taken for journeys between the Contractor's place of business and a place of performance specified by AKKA, shall not be remunerated unless otherwise agreed in writing.

5. Unless otherwise agreed in writing, payment shall include travel as far as the relevant place of performance and other incidental expenses.
6. After the performance of the services, the Contractor's payment claim shall not become due until a legally compliant invoice has been issued as specified in the German VAT Act (Umsatzsteuergesetz, UStG), sections 14 and 14a.
7. Invoices can only be processed if AKKA has received the original signed call-off order from the Contractor. Respectively the conclusion of contract has to be documented on the AKKA-Supplier-Portal. Further the Contractor has to deposit the e-service-record. Moreover, Contractor's invoice – as specified in AKKA's order – has to include the bill-to party specified therein, the purchase order number/call-off order number, the purchase order date/call-off order date and the actual service recipient and the responsible department. Invoices shall be sending to the bill-to party specified by AKKA. Any consequences resulting from non-compliance shall be the Contractor's responsibility, unless the latter can provide evidence that it bears no responsibility.
8. AKKA shall be entitled to a right of retention regarding the full invoice amount (net amount plus VAT), until AKKA receives an invoice in accordance with the specifications in clause 3.6 and 3.7. However, AKKA shall inform Contractor of the non-compliant invoice and AKKA shall demand a compliant invoice.
9. After performance of the services AKKA shall make the relevant payment within 30 days of receipt of invoice unless otherwise agreed in writing.
10. AKKA shall be entitled to its statutory rights of offset and retention.

Clause 4 - Service time frame, payment arrears and subcontractors

1. The service period specified in the order for the delivery of services and the relevant service time specified for this purpose are binding.
2. The Contractor undertakes to notify the contacts specified in the purchase order immediately by phone and in writing if circumstances occur or if it realizes that the agreed time frame or service time cannot be observed.
3. If the Contractor does not start with the performance of the services on the agreed date, then AKKA shall be entitled to all-inclusive damage compensation of 1% of the order value per completed week, albeit no more than 10%; AKKA reserves the right to assert further legal rights and claims in the event of delay. The Contractor shall be entitled to prove to AKKA that a given delay has caused no more than minor loss or none at all. If AKKA claims damage compensation, then the Contractor shall be entitled to prove that it is not responsible for a violation of duties.
4. Clause 4 subclause 3 shall apply by analogy if the Contractor has exceeded a binding date of submission or completion.
5. The Contractor shall not engage subcontractors for the fulfilment of the contract without written consent from AKKA.

Clause 5 - Service record

1. AKKA's project manager/cost Centre manager shall confirm a perfectly executed service within a reasonable period of time; in evidence thereof, unless otherwise agreed in writing, the Contractor shall accept the e-service-record confirmed by AKKA on the AKKA-Supplier-Portal.
2. The Contractor undertakes to ensure that each e-service-record is correct and confirmed by AKKA before issuing an invoice; if the Contractor fails to do so, then the resulting delays in processing shall not be the responsibility of AKKA.

Clause 6 - Contacts at AKKA

In its order AKKA shall appoint a technical contact (project manager) and an operational manager (buyer). Observance of contractual performance shall be monitored and documented by the project manager. All questions of the Contractor on the processing of an ordered service may also be dealt with by the buyer as a contact.

Clause 7 - Contractor's staff

1. The Contractor shall only employ skilled staff to ensure on-time and compliant contractual fulfilment. If the Contractor's staff members need to be replaced for reason within a given person as an individual, then the Contractor cannot derive any rights to an extension of the deadline or any damage claims.
2. If the ordered service is not performed on the Contractor's own outdoor or indoor premises, then the Contractor undertakes to ensure that its staff will observe the relevant house rules and safety and security regulations and that they shall comply with all internal instructions issued by the AKKA project manager. In case of violations and infringements against such instructions, AKKA may ban the relevant Contractor's staff members from its premises and may require the Contractor to replace such persons with different staff.
3. Contractor's staff may only enter AKKA's indoor or outdoor premises for the fulfilment of ordered services. No access shall be granted to individuals who have not been appointed by the Contractor for the performance of ordered services.

- Contractor's staff shall not be permitted to use AKKA facilities or equipment unless they have been expressly permitted to do so by the AKKA project manager.

Clause 8 - AKKA's right to be informed / Quality Management

- Whenever requested by AKKA, the Contractor shall grant AKKA full access to the available working results and shall provide the same with any other details required for information purposes; furthermore, whenever requested, the Contractor shall also grant access to AKKA's representatives to premises where ordered services are performed provided that this is done during the Contractor's normal working hours.
- To ensure process and performance quality the contractor warrants that he applies certified quality management systems (for example ISO 9000). This also applies for the achievement of adequate information security (confidentiality, integrity and availability of AKKA information and data of all kinds) by the given warranty of the actual state of art technology and appropriate organizational measures. In this regard the customer is entitled to carry out audits at the contractor concerned. Information security incidents which have or may have a direct or indirect impact on AKKA must be reported immediately to AKKA (security-germany@akka.eu).

Clause 9 - Liability

- AKKA shall be entitled to unrestricted legal rights and claims arising from non-fulfilment, poor performance and impossibility of performance; in the event of non-fulfilment AKKA shall be entitled, but not obliged, to claim subsequent performance in respect of the promised services from the Contractor. AKKA expressly reserves the right to damages alongside performance and the right to damages in lieu of performance or reimbursement of money spent unnecessarily.
- The Contractor shall be liable for all injury or damage caused by its staff to AKKA, irrespective of the level of care taken by the Contractor in the selection of staff and in instructing the same.

Clause 10 - Liability insurance

- The Contractor shall maintain professional liability insurance / employer's liability insurance with at least € 2,500,000 coverage per claim for injuries and property damage and € 500,000 for financial loss; if AKKA is entitled to further reaching damage claims, then such claims shall not be affected. The Contractor shall maintain liability insurance beyond the term of the contract for at least another 6 months.
- The Contractor undertakes to keep informed about the liability risks involved in conducting the relevant project and to ascertain whether it is sufficiently insured or whether a project-specific professional or employer's liability insurance with suitable coverage may be required.
- If requested, the Contractor shall submit to AKKA proof of cover in respect of such insurance; until proof of insurance AKKA can refuse the offered services without delay in accepting performance.

Clause 11 - Industrial property rights

- The Contractor shall ensure that no third-party rights are violated within the European Union in connection with its services.
- If a claim is made to this effect on AKKA, then the Contractor undertakes to indemnify AKKA from such claims upon the first written request; AKKA is not entitled to conclude agreements with third parties unless it has the Contractor's consent; in particular, AKKA is not permitted to conclude a settlement.
- The Contractor's obligation to indemnify AKKA refers to all expenses that are necessarily incurred by AKKA from or in the connection with a third-party claim.

Clause 12 - Confidentiality and advertising ban

- The Contractor shall maintain strict confidentiality on all illustrations, drawings, calculations and other documents and details received from AKKA. Such material shall only be disclosed to third parties upon obtaining express consent from AKKA. This confidentiality commitment shall continue beyond the termination of this agreement; it shall expire if and when the manufacturing expertise contained within the documents and details given to the Contractor has entered the public domain, but no later than 5 years after the underlying contract has been signed by the last of the parties.
- The Contractor shall not refer to AKKA as a business partner in information and advertising material unless it has AKKA's express written consent to do so; the Contractor is liable towards AKKA for any damage arising from activities exceeding its authorities in this matter.

Clause 13 - Use of results

The Contractor shall transfer to AKKA the ownership of all written project results arising through the performance of services, covering both the creation of such results and each stage of processing. The Contractor shall thus continue to keep the items owned by AKKA until the hand-over / acceptance of the service. As soon as work has been created that is protected by industrial property rights or by copyright, the Contractor shall transfer to AKKA the complete, irrevocable and unlimited usufruct on such work, including the accompanying documents. AKKA's usufruct includes, in particular, the rights to duplicate, modify and combine the results and the right to grant usufruct to third parties.

Clause 14 - Non-solicitation commitment

1. If AKKA uses the Contractor on its customer's premises, then the Contractor shall refrain from entering into direct or indirect contractual relationships with such customers both during deployment and for a period of two years upon termination of the work in cases where such relationships would involve activities under the customer project previously handled by AKKA. In cases where companies do not meet EU criteria for small and medium-sized enterprises (SMEs) (i.e. workforce less than 250, turnover less than or equal to EUR 40 million, balance total max. EUR 27 million) and also in the case of groups of companies, the non-solicitation commitment shall only apply to the relevant project organizer, i.e. the department that has the primary responsibility for the relevant project. In such cases the non-solicitation commitment shall by no means be applicable to the entire company or group of companies. Neither shall the non-solicitation commitment apply to cases where there are already demonstrable contacts with the relevant lead department.
2. Each violation against legitimate non-solicitation interests of AKKA shall incur a contractual penalty of €10,000, although this penalty shall be limited to 10% of the relevant order volume, while reserving the right to assert further statutory claims and rights.

Clause 15 - Compliance with legislation

1. The Contractor is obliged to desist from all practices which may lead to penal liability due to fraud or embezzlement, insolvency crimes, crimes in violation of competition, guaranteeing advantages, acceptance of benefit, bribery, acceptance of bribes or other corruption crimes on the part of persons employed by the Contractor or other third parties. In the event of violation of the above, AKKA has the right to immediately withdraw from or terminate all legal transactions existing with the Contractor and the right to cancel all negotiations. The above notwithstanding, the Contractor is obliged to adhere to all laws and regulations applicable to both itself and the commercial relationship with AKKA.
2. In particular, the Supplier will observe the AKKA Code of Conduct. Available at <https://www.akka-technologies.com/en/our-values>.

Clause 16 - Term and ordering party's right of termination

1. The contractual relationship shall terminate automatically through the achievement of its purpose (i.e. conclusion of the project), albeit no later than the termination of the binding service period set for the performance of services; this provision shall apply without prejudice to clauses 11 and 15 and without prejudice to the routine dismissal. The terminating party has to give the written notice of dismissal by the third workday (Monday-Friday) of the month to take effect on the end of the month
2. If the parties have concluded a work contract as defined in the German Civil Code (Bürgerliches Gesetzbuch, BGB) section 635), AKKA may cancel the contract at any time until the completion of the work, without specifying a deadline and without giving reasons. If AKKA cancels, the Contractor shall be entitled to receive payment for any services rendered up to that point, including any imputed profit in relation to those services.

Clause 17 - Place of jurisdiction and performance

1. The exclusive place of jurisdiction for all disputes arising from or in connection with this legal relationship is for both parties to the contract the one to whom the contracting AKKA company has its registered office.
2. The underlying agreement shall be subject to the laws of the Federal Republic of Germany, without application of the UN Convention on Contracts for the International Sale of Goods (CISG).
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 December 2018