

General Terms and Conditions of Purchase of AKKA Business Unit Germany for Material Procurement

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 General Terms and Conditions of Purchase of AKKA for Material Procurement (GTC Material) shall be applicable on an exclusive basis; any Contractor's terms and conditions contrary to or in addition to or in deviation from these GTC Material of AKKA shall not be recognized by AKKA unless they have been expressly approved by AKKA in writing. These GTC Material of AKKA shall also apply if AKKA is aware of conflicting, supplementing or deviating Contractor's GTC and if it has accepted the Contractor's goods 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 Material 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 Material shall also apply to all future business with the relevant Contractor.
5. These AKKA GTC Material 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 AKKA GTC Material in writing.

Clause 2 - Orders, call-off orders (German: Abrufbestellung) and order documents

1. The Contractor shall confirm acceptance of AKKA's binding purchase order within 5 business days (Monday-Friday), which it shall indicate by returning the signed order confirmation or by delivering goods ordered in due time. AKKA may revoke the purchase order after expiration of the acceptance period.
2. AKKA's call-off orders are binding offers as defined in the German Civil Code (Bürgerliches Gesetzbuch, BGB) section 145) and formally valid in text form as defined in the German Civil Code (Bürgerliches Gesetzbuch, BGB) section 126b. A contract shall be formed in accordance with the call-off procedure specified in the call-off contract. AKKA may revoke its call-off order with expiration of the acceptance period.
3. 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 consent. They shall be used exclusively for production on the basis of AKKA's purchase order and shall be returned to AKKA after the completion of the purchase order 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 11.1.

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

1. The price stated in the purchase order/call-off order is exclusive of VAT at the relevant rate and is binding to this extent. VAT shall be specified separately in the invoice by the Contractor at the rate applicable on the invoice date. Unless otherwise agreed in writing, the price shall include "free domicile" shipment to the specified premises (DDP, Incoterms 2010) and free packaging. The return of packaging is subject to a separate agreement.
2. The Contractor's request for payment 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. The invoice can only be processed if AKKA has received the delivery note and if the invoice contains especially the following details, as specified by AKKA in its purchase order/call-off order: bill-to party as indicated in the purchase order/call-off order, purchase order /call-off order number, purchase order/call-off order date and the specific goods recipient. The original invoice must also be sent to the bill-to party and must not be attached to the delivery and may in principle relate to only to one delivery note. If an invoice relating to multiple delivery notes, the invoice shall contain all the above mentioned requirements for all of the underlying purchase orders. Any consequences resulting from non-compliance shall be the Contractor's responsibility, unless the latter can provide evidence that it bears no responsibility.
3. AKKA shall be entitled to a right of retention regarding the full invoice amount (net amount plus VAT), until AKKA has received an invoice in accordance with the specifications in clause 3.2. However, AKKA shall inform Contractor of the non-compliant invoice and AKKA shall demand a compliant invoice.
4. Following the delivery of the goods – which shall be free from material defects and from defects of title – AKKA shall pay the full purchase price within 30 days of the receipt of the compliant invoice unless otherwise agreed in writing.
5. AKKA shall be entitled to its statutory rights of offset and retention.

Clause 4 - Delivery time

1. The delivery time specified in the purchase order/call-off order shall be binding.

2. The Contractor shall notify the relevant contact (as specified in AKKA's purchase order/call-Off order) immediately and in writing if circumstances occur or become noticeable showing that the agreed delivery time cannot be observed.
3. If, during the performance of the contract, that Contractor recognizes not to meet the deadlines agreed, for reasons beyond its control (e.g. force majeure, industrial action or lockout, operational failures or delays on the part of contractors), deadlines shall lengthen accordingly, as far as the modified deadline is reasonable for both parties taking into account all circumstances of each case. If an adjustment of deadlines is not possible or is not reasonable for one party, it may withdraw from the contract.
4. In case of force majeure, faultless operational failures, disturbances, government actions and other inevitable incidences, AKKA shall not accept goods ordered during persisting incidences.
5. The unconditional acceptance of a late delivery does not constitute a waiver of AKKA's claim for damages due to late delivery until full payment of the purchase price.
6. In the event of a delay in delivery AKKA may claim all-inclusive damage compensation for the delay, amounting to 1% of the delivered goods value per complete week and up to a maximum of 10% of the total delivered value; AKKA reserves the right to assert further legal rights and claims for the 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.

Clause 5 - Transfer of risks and documents

1. Unless otherwise agreed in writing, shipping shall be free domicile. The Contractor shall bear the risk of accidental loss, destruction or deterioration until delivery of goods at the agreed place of delivery and acceptance of AKKA.
2. The Contractor undertakes to ensure that all shipping papers and delivery notes bear the exact purchase order number/call-off order number assigned by AKKA, the purchase order date/call-off order date and the goods recipient and AKKA's technical contact person shown in the purchase order/call-off order and shall enclose these documents with each consignment. At this the requirements of DIN 4991 are considered in principle. If the Contractor fails to do so, then the resulting delays in processing shall not be the responsibility of AKKA.

Clause 6 - Quality assurance

1. The Contractor shall conduct quality assurance of which the type and scope shall match the prevailing state of the art and shall notify AKKA accordingly upon request. Should this be required, the Contractor shall conclude a suitable quality assurance agreement with AKKA.
2. 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 7 - Inspections and liability for defects

1. AKKA shall inspect the goods for any deviations in quantity and quality within a reasonable period of time. A legally valid notification of a defect over the phone shall be considered as delivered on time if it is presented within a period of 3 working days, counting from goods receipt in the event of an obvious defect and counting from discovery in the case of a hidden defect; any written notification after verbal notification is purely declaratory and shall be confirmed by the Contractor within 5 working days of its receipt by returning a signed duplicate. A legally valid notification of a defect in electronic form, in writing (with or without signature) shall be considered as delivered on time if it is presented within a period of 5 working days, counting from goods receipt in the event of an obvious defect and counting from discovery in the case of a hidden defect.
2. If within six months after the transfer of risk, a material defect is recognizable as a consequential defect, it is presumed that the material defect existed at the transfer of risk as a fundamental defect. This does not apply, if the presumption is incompatible with the kind of thing or defect. German Civil Code (Bürgerliches Gesetzbuch, BGB) section 476.
3. If a quality assurance agreement has been concluded between AKKA and the Contractor, then those special provisions shall apply in respect of AKKA's duty to inspect for and report defects instead of the provisions detailed in clause 7.1.
4. AKKA has an unrestricted entitlement to legal claims and rights arising from the surrender of goods with material defects or with defects of title; in either case AKKA may require the Contractor to effect subsequent performance within a reasonable period of time, at AKKA's discretion, either by removing the defect or by delivering a new item. If AKKA requests remedy of defect, it may also specify the manner in which such remedy is to be performed. AKKA expressly reserves the right to damages alongside performance and the right to damages in lieu of performance or reimbursement of money spent unnecessarily.
5. The place of fulfilment for remedy of defect shall be the place where the goods with defect are located at the time when the Contractor conducts remedial performance; the Contractor thus bears the risk of goods being removed from the original place of performance.
6. If purchased goods have a defect and after the unsuccessful expiry of a reasonable deadline set by AKKA for the remedy of the defect, AKKA may remove the defect itself and require the Contractor to pay compensation for the resulting expenses.
7. In case of remedy of defect in form of the delivery of a new item, the period of limitation starts with subsequent delivery. This does not apply if the Contractor delivers with fairness in trade, to avoid legal action or with the interest of ongoing supplier relationship.

8. The limitation period shall be 24 months from the transfer of risk unless a given instance is subject to mandatory application of the provisions detailed in the German Civil Code (Bürgerliches Gesetzbuch, BGB), sections 478 and 479. German Civil Code (Bürgerliches Gesetzbuch, BGB) section 438 subsection 3 shall not be affected. A reduction of the purchase price or a withdrawal from the contract is invalid if the claim for remedy is barred by limitation by the time of receipt of the relevant statement and if the Contractor pleads for. There is a three (3) year limitation period for claims arising from declared effective withdrawal or effective reduction of purchase price, counted from the end of the year in which the claim arose.

Clause 8 - Product liability, indemnification and liability insurance

1. If product damage has occurred for which the Contractor is responsible, then the Contractor shall indemnify AKKA from third-party damage claims upon first request, provided that the cause of the damage is under its own control and within its own organizational sphere and that the Contractor itself is liable within its relationship with the relevant third parties.
2. Acting under its liability for damage within the meaning of clause 8.1, the Contractor also undertakes to reimburse any expenses incurred under sections 683 and 670 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) or under sections 830, 840 and 426 of the same code, where such expenses arise from or in connection with a product recall conducted by AKKA. Provided that this is possible and reasonable, the Contractor shall be notified by AKKA about the object and scope of a given product recall that is to be conducted and shall furthermore be given an opportunity to comment. This applies notwithstanding further legal claims.
3. The supplier undertakes to maintain product liability insurance with an insured sum (all-inclusive) of €10 million per injury or property damage; if AKKA is entitled to further-reaching damage claims, then such claims shall not be affected.

Clause 9 - Property rights

1. The Contractor shall ensure that no third-party rights are violated within the European Union or the United States in connection with its goods.
2. If a claim is made to this effect on AKKA, then the Contractor undertakes to indemnify AKKA from this claim 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.
3. The Contractor's indemnification duty refers to all expenses incurred by AKKA from or in connection with third-party claims unless the Contractor proves that it is not responsible for the breach of duty underlying the violation of industrial property rights.
4. The period of limitation shall be 36 months, counting from the transfer of risks.

Clause 10 - Retention of title, provision of materials by the principal and provision of tools

1. If AKKA provides materials to the Contractor, then it reserves ownership on the same. Any processing or modification by the Contractor shall be conducted for AKKA. If AKKA's goods under reservation of title are processed in combination with items that do not belong to the latter, then AKKA shall acquire ownership (title) of the new item at the ratio between its own item (purchase price plus VAT) and the other items at the time of processing.
2. If goods provided by AKKA are inseparably combined with items that do not belong to the latter, then AKKA shall acquire ownership (title) of the new item at the ratio between the item under reservation of title (purchase price plus VAT) and the other combined items at the time of combination. If combining proceeds in such a way that the Contractor's item must be seen as the main item, then the parties agree that the Contractor shall transfer pro-rata co-ownership to AKKA; the Contractor shall take care of the item which is under AKKA's sole or co-ownership.
3. AKKA reserves a right of ownership on tools; the Contractor shall also ensure that tools are used exclusively for manufacturing the goods ordered by AKKA. Tools owned by AKKA shall be insured by the Contractor for fire, water damage and theft at their replacement value and at the Contractor's own expense. At the same time, the Contractor hereby assigns to AKKA, by way of anticipation, all compensation claims under this insurance, and AKKA hereby accepts this assignment. The Contractor undertakes to conduct any maintenance work, inspections, servicing and repair work that may be required on our tools and shall do so at its own expense and in good time. Any faults shall be reported to AKKA immediately; culpable failure to do so shall lead to unqualified damage claims on the part of AKKA.
4. If the security interests to which AKKA is entitled under clause 10.1 and/or clause 10.2 exceed the total purchase price of all goods that are under reservation of title and which have not yet been paid and if this difference is more than 10%, AKKA shall release its security interests at the Contractor's request.

Clause 11 - Confidentiality, non-exclusive right of use and advertising ban

1. 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. The confidentiality commitment shall continue beyond the termination of this agreement; it shall expire if and when the expertise contained within the illustrations, drawings, calculations and other documents 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 oblige Subcontractors accordingly.
2. The Contractor hereby grants AKKA a non-exclusive, irrevocable, transferable right, unlimited in terms of time, place and content, to use copyright-protected results arising in connection with the development work and delivery to AKKA (e.g. designs, drawings, sketches, layouts, blueprints, plans,

design data, information) in any way, free of charge, and to amend, edit and disseminate them, in so far as AKKA remunerates the Contractor for development work in the form of a one-time payment, allocation to piece price or by other means.

3. The Contractor shall not refer to AKKA as a business partner in information and advertising material, neither shall the Contractor use the AKKA logo or brand name 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 12 - Export Control, Customs

1. The Contractor shall inform AKKA of authorizations for (re-)exports of its goods corresponding to the export and the customs regulations of the Republic of Germany, the European Union and the U.S.A., as well as of the origin country of its goods. Therefore Contractor's offers, acceptances of order and invoices shall contain:
 - a) the export list number in accordance with the attachment AL to the German foreign trade act (German: Außenwirtschaftsverordnung) or comparable classification list positions of relevant export lists,
 - b) for goods from the U.S. the ECCN(Export Control Classifications Number) in accordance with the EAR(US Export Administration Regulations),
 - c) the commercial policy origin of goods of its commodities and the parts of its goods including technology and software,
 - d) if the goods are transported through the U.S., manufactured or stored in the U.S., or produced with the help of technology from the US,
 - e) a person to contact in its company for resolving questions.
2. If explicitly demanded by AKKA, Contractor shall inform AKKA of all foreign trade data of its goods and parts in writing. Therefore the Contractor shall inform AKKA immediately of any changes to the forwarded data in writing.

Clause 13 - Ordering party's right of cancellation

Until delivery has taken place AKKA may cancel the contract at any time, without stating its reasons. If AKKA cancels, the Contractor shall be entitled to receive payment for any goods delivered up to that point, including any imputed profit in relation to those goods.

Clause 14 - Compliance with legislation

Within the framework of its commercial dealings with AKKA, 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, 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.

In particular, the Supplier will observe the AKKA Code of Conduct. Available at <https://www.akka-technologies.com/en/our-values>.

Clause 15 - Places 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