



# General Terms and Conditions for Services of Körber Supply Chain Logistics GmbH

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## 1. General

The provision of services ( hereinafter "Services") by Körber Supply Chain Logistics GmbH ( hereinafter "Körber") is subject solely to the following terms and conditions. Any other terms and conditions, including general terms and conditions of the Customer, shall apply only where expressly accepted in writing by Körber.

## 2. Conclusion of Contract

2.1 Körber' offers are valid four weeks. The contract is concluded once the offer has been signed by both parties.

2.2 Körber reserves all rights in property and copyrights of cost estimates, drawings, software and other documents. The Customer shall make these available to third parties only with Körber' prior written consent and shall upon request be immediately returned to Körber.

## 3. Scope of Services

3.1 The scope of Services comprises the Goods as described in the offer and the specified options, as the case may be, and which form an integral part of the contract. The Customer shall inform Körber about changes in the configuration of the plant.

3.2 Any performance of Körber in addition to the originally agreed scope of supply on request of the Customer shall be reimbursed by the Customer separately. The prices of the options as specified in the offer or the pricelist at the date of performance shall apply.

## 4. Prices and Terms of Payment

4.1 Prices are quoted in EUR and net of value-added tax which shall be invoiced separately at the rate as per the tax legislation valid at the time.

4.2 Prices do not include expenses for travel and meals which will be invoiced separately against receipt with a mark-up of 10%.

4.3 Customs duties, consular fees and other taxes, charges, fees levied due to regulations outside the Federal Republic of Germany and also related costs shall be borne by the Customer.

4.4 Invoices are due and payable within 30 days upon receipt of without any deduction.

4.5 The Customer shall only be entitled to set-off or exercise rights of retention against those claims which are uncontested or declared final and binding by court of law.

4.6 In the event of default of payment or Körber' claims becoming jeopardized due to a worsening of the Customer's creditworthiness, Körber shall be entitled declare its claims immediately due and payable independently of the term of any bill(s) of exchange or to demand collateral. Körber shall also be entitled to effect still outstanding deliveries only against payment in advance or against provision of collateral.

4.7 Körber shall be entitled to adjust the prices in accordance with the agreed price escalation or otherwise not earlier than 4 months after conclusion of the contract in accordance with the percentage increase of the then applicable standard wages ("Ecklohn IG Metall"). Körber informs the Customer 4 weeks before the new price becomes effective.

4.8 Except for contractually agreed price escalations, the price escalation is deemed to have been accepted if the Customer does not object to such price adjustment within the before mentioned period. Otherwise, the parties shall find a mutual agreement within a further period of 4 weeks. In case the parties cannot reach an agreement, the contract shall terminate when this further period has elapsed.

## 5. Time of Performance and Delay

5.1 Compliance with the time of performance is subject to the order having been fully clarified in time, in particular that all necessary licenses and approvals being granted by the Customer and also all documents, payments and collateral to be furnished by the Customer having been received timely by Körber. A further

condition is the timely completion of necessary preparatory works for construction and installation, if any, and any other obligation to co-operate of the Customer, in particular free issue equipment and other services in accordance with Clause 6.4.

5.2 The time of performance shall be prolonged appropriately in so far as the above preconditions have not all been met in time. The time of performance shall be deemed as met if the consignment is ready for shipping within the agreed deadline and corresponding notification has been sent to the Customer.

5.3 Körber performs the Services from Monday to Friday, except for public holidays (hereinafter "Normal Working Time"). If on request of the Customer Services are performed beyond Normal Working Time, Körber shall levy surcharges in accordance with its price list valid at the time. Körber shall perform Services beyond Normal Working Time only if this is in compliance with the applicable regulations, in particular occupational health and safety. Körber performs the Services in accordance with the tariff provisions up to 10 hours per day if required. Longer working hours require a permit from the competent supervisory authority, for which the Customer has to submit an application. The Customer shall observe the applicable working time regulations.

5.4 The Customer suggests the dates of the service intervals and coordinates the actual performance times with Körber about 4 weeks before the planned Service. Körber notifies the Customer of a date and the Customer shall either confirm this date or suggest an alternative. If the Customer does not suggest any alternative date by at least 10 working days before the proposed service date the proposed date shall be deemed accepted.

5.5 If the performance of Services is hindered by force majeure, including but not limited to e.g. acts of war, riot, civil commotion, terrorism, strike and lockout, virus attacks and other attacks on IT-systems by third parties (e.g. hacker attacks), delayed or incorrect deliveries by sub-suppliers, natural disaster, epidemic, archaeological discoveries, strikes, lock-outs or any act or failure to act by any authority, or any similar event, the times of performance shall be extended by the duration of the interruption and a reasonable start-up time. The same shall apply in the event of delayed or non-conformant deliveries by Körber' subcontractors. Should the fulfilment of Körber' obligations become impossible or unreasonable due to the hindrance Körber shall be entitled to terminate the contract with 4 weeks' notice; the Customer shall also be entitled to terminate if acceptance of the Services cannot be reasonably expected due to the delay.

5.6 In case of a delay with the performance times of more than two weeks which is solely due to a fault of Körber and provided the Customer can prove that it suffered loss as a result of such delay the Customer shall be entitled to liquidated damages per each completed day of delay amounting to 2/30 of the monthly service flat-rate price of the price of the part of the Services that is in delay but in no event shall exceed 5% of the yearly service flat-rate.

5.7 Any and all further claims based on delay which exceed the before mentioned limits shall be excluded in all cases of delayed Services even after expiry of an extension of time that may have been granted to Körber for performance. The Customer may terminate the contract if a continuous delay exceeds 3 months.

5.8 Any termination right the Customer or Körber is entitled to shall apply only to the unperformed part of the contract. Insofar as any partial Services performed cannot be reasonably used by the Customer, he may also terminate regarding these partial Services.

5.9 Except for those claims in this Clause 5, any and all further or other claims against Körber based on delay, in particular claims for compensation, shall be excluded.

## 6. Rights and Duties of the Customer

6.1 The Customer shall provide Körber with the specified free issue equipment and other services for the duration of the provision of Services at the agreed dates.

6.2 In the event the plant is not made available for the provision of Services in due time the Customer shall compensate Körber for any costs incurred as a result (e.g. for idling time and travel expenses) in accordance with Körber' current price list.

6.3 The Customer shall make available the relevant documents (documentation, manuals etc.) and shall provide Körber with the necessary information on the plant and shall document all malfunctions, damages and system changes known to it and inform Körber accordingly.

The Customer shall be responsible for any work in connection with the removal and refitting of covers, panelling, suspended ceilings etc. on site.

In the event that faults or other defects of software are identified, isolated and reported, the Customer shall adhere to the application documentation of the software as well as any notes issued by Körber. The Customer shall provide qualified personnel for troubleshooting at its own expense, especially during the remote diagnosis.

The Customer shall keep a system log to record all malfunctions (dates, causes, downtimes), special findings, any technical changes implemented (where applicable) etc. Körber shall be entitled to inspect this system log as well as other logs of the system printer and console at any time.

The Customer shall inform Körber of any adaptations of and any additions or modifications to the software in the plant specified in the contract as well as of the installation of additional software. In the event that modifications are implemented by the Customer or a third party, Körber shall be entitled to adjust the contract before expiry of the contract term, or to terminate it, at its own discretion.

The Customer shall archive the up-to-date source codes and software as well as the supplied technical documentation and in the case of the provision of Services provide it free of charge to Körber.

6.4 For the duration of on-site Services, the Customer shall provide the following free issue equipment and other services:

- material to be conveyed in sufficient quantity for a trial run under load,
- required support personnel (Customer's operating personnel familiar with the system as well as personnel familiar with the plant to procure the information, material and auxiliary devices required for the Services),
- test weights for the safety check of the plant,
- functioning remote internet access as defined by Körber.

If the Customer requests that such equipment or services are provided by Körber and if this is feasible such provision requires a prior agreement and a separate compensation.

If Services are rendered via remote data transmission (RDT) on request of Körber the Customer shall also make available the equipment and services as described above.

6.5 The Customer shall provide Körber with detailed information on the relevant safety and factory regulations and shall hand those over in writing. The Customer shall make Körber also aware of any health risks or any specific characteristic. In case this information requires a substantial amount of time, Körber may invoice such time in accordance with its valid price list. The Customer shall support Körber in the implementation of any activities for the prevention of hazards and makes available trained first-aiders. In case Körber requires specific personal protective equipment and clothing the Customer shall provide these free of charge and in proper condition. Körber may use the Customer's changing rooms, sanitary facilities and recreation rooms free of charge and the canteen, if available, in accordance with the usual conditions.

6.6 The Customer shall be responsible for the disposal of replaced lubricants and parts.

6.7 The Customer shall appoint a contact person in charge which is entitled to make or to procure binding decisions.

## 7. Spare Parts, Lubricants, Repair Works

7.1 The price does not include spare and wear parts, lubricants, cleaning agents and other consumables. Unless the Customer provides them free of charge, Körber may provide these on the

basis of separate orders in accordance with the "General Terms and Conditions for the Sale of Single Components and Spare Parts of Körber Supply Chain Logistics GmbH" and invoiced separately.

7.2 Extensive repair works or preventive or corrective maintenance activities beyond the agreed scope of Services are not included in the price. Körber shall make the Customer aware of required repairs and provide them on the basis of separate orders.

## 8. Software

8.1 Unless expressly specified, software, new program revision levels (updates) or new program versions (upgrades) are not included in the scope of Services. These shall be provided by Körber on the basis of separate orders in accordance with the "General Terms and Conditions for the Provision of Software of Körber Supply Chain Logistics GmbH".

8.2 If required to fulfil its obligations under this contract and to maintain or restore the system such that it is in sound working order, Körber shall be entitled to modify the system software.

8.3 The Services shall not apply to third-party software or to modifications of software supplied by Körber implemented by third parties or the Customer, unless expressly agreed in the contract.

## 9. Warranty

The defects liability period for the Services shall be 12 months starting from the date of transfer of risk to the Customer.

## 10. Limitation of Liability

10.1 Any other or further claims, rights and remedies of the Customer against Körber irrespective of the legal theory they are based on (e.g. in contract or tort or under warranty) that are not expressly stipulated in this contract shall be excluded. In particular, Körber shall in no event be liable for loss of profit or revenue, loss of use, loss of production or interruption of operation, loss of capital or loss of interest, loss of information and data, and damages resulting from claims of other contractual partners of the Customer.

10.2 In case the agreed provision of Services is impossible and Körber is responsible for such impossibility, the Customer shall be entitled to demand damages. However, the Customer's claim for compensation shall be limited to 10% of the value of that part of the Services which cannot be performed as intended because of the impossibility.

10.3 Körber' liability shall be limited to EUR 100.000 per event. Körber' aggregate liability in connection with this contract shall be limited to 7.5% of the contract price.

10.4 Any limitation of liability set forth in this contract shall also apply for the benefit of Körber' employees, subcontractors, employees, directors, agents or any other person acting for Körber.

10.5 The Customer shall ensure that any liability of Körber towards contractual partners of the Customer does not exceed the limitations of liability agreed in this contract. The Customer shall indemnify and hold harmless Körber from and against any exceeding claims asserted by such contractual partner.

10.6 Any and all liability of Körber under this contract shall cease with the expiry of the liability period for Defects as set forth in Clause 9.

## 11. Contract Term, Termination

11.1 The contract shall be valid for the time as specified therein.

11.2 After expiration of the contract term the contract shall be automatically extended by one year at a time, unless one of the parties has terminated the contract at least 3 months before the end of the contract term.

11.3 Either party shall be entitled to terminate this contract by written notice, if the other party becomes insolvent or has bankruptcy, composition or reorganization proceedings or any other insolvency proceedings opened against it by a court or another public authority, has an order entered against it either appointing a receiver or trustee or issuing a levy or attachment against a substantial portion of its assets, without this order being vacated, set aside or stayed within 45 calendar days from the date of entry, voluntarily files a petition under the bankruptcy or equivalent insolvency law, consents to or applies for reorganization under bankruptcy or insolvency law or makes an assignment for the benefit of its creditors.

11.4 Save and except as provided under Clauses 11.2 and 11.3, the Customer shall only be entitled to terminate the contract a) in

case of delay, if the maximum liquidated damages under Clause 5.6 are payable, an adequate additional grace period granted to Körber has expired and Körber has refused to pay liquidated damages exceeding the before-mentioned maximum liquidated damages, or b) in case Körber has materially and repeatedly breached the contract and has not remedied the breach within a reasonable period after a termination notification by the Customer, always provided the Customer cannot be reasonably expected to adhere to the contract.

- 11.5 Any termination by the Customer shall only concern those parts of the Services not already performed prior to the termination. After termination in accordance with Clause 11.4, the Customer shall pay Körber for all parts of the Services already performed prior to termination. For the avoidance of doubt, Clause 10 shall apply in case of termination.
- 11.6 Notwithstanding any other rights it may have under this contract, Körber shall be entitled to terminate the contract if after the conclusion of the contract, the Customer comes under the direct or indirect control of any person or legal entity other than at the time of contract signature.
- 11.7 In the event of termination by Körber, Körber shall be entitled to a) the contract price less any savings, and b) any additional cost and expenses incurred by Körber due to such termination. In case the Customer terminates the contract for convenience, it shall pay Körber the full contract price.

## **12. Dispute Settlement and Applicable Law**

- 12.1 All disputes arising out of or in conjunction with this contract, including any question regarding its existence, validity or termination, shall be finally settled in accordance with the Swiss Rules of International Arbitration (hereinafter "Rules") of the Swiss Chambers of Commerce by one or more arbitrators appointed under those Rules. The seat of arbitration shall be Zürich, Switzerland. The procedural law of this place shall apply where the Rules are silent. The language to be used in the arbitration proceedings shall be English.
- 12.2 This contract is governed by Swiss substantive law. The application of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Law on the International Sale of Goods) of April 11, 1980, shall be excluded.

## **13. Miscellaneous**

- 13.1 Körber shall not be obligated to fulfil this contract if such fulfilment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.
- 13.2 Körber shall be entitled to assign the whole contract or a part of it (i) to an affiliated company ("Affiliate"), i.e. any company, corporation or other legal entity ("Company") which directly or indirectly is controlled by Körber, controls Körber or is controlled by a Company which directly or indirectly controls Körber or (ii) to any third party, in cases of restructuring and sales of operations of Körber, and where Körber may be required to conduct a contract split to avoid adverse tax implications. Körber shall further be entitled to assign the contract or a part of it without any constraints stipulated above, if the duration of the obligations arising under this contract exceeds 18 months.
- 13.3 All agreements regardless of whether they were reached during or after the conclusion of the contract must be made in writing. Oral representations by Körber' personnel are only binding if they have been confirmed by Körber in writing.
- 13.4 If any provision of this contract is prohibited or rendered invalid or unenforceable, this shall not affect the validity or enforceability of any other provision. The parties shall use their reasonable efforts to substitute such provision by a legal, valid or enforceable one with the same or a similar result.
- 13.5 In so far as new or amended legislation or new requirements from public authorities and evaluation facilities lead to changes in the contractual obligations after the offer was submitted, the contract shall be changed and Körber shall be granted adequate extension of time and cost compensation.
- 13.6 In addition to these terms and conditions the "General Terms and Conditions for the Sale of Single Components and Spare Parts of Körber Supply Chain Logistics GmbH" shall apply.