

# Terms of Contract and Purchase of Kontron Embedded Computers GmbH

Date: 11/2002

## **Preamble**

The following terms apply to the contractual relationship between supplier/contractor (to be referred to in the following as supplier) and the orderer/customer (to be referred to in the following as Kontron Embedded Computers GmbH (KONTRON)); these terms are also to be applied for further deliveries or contracts of manufacture. These terms apply to a contractor (§ 310 paragraph 1,14 Civil Code), but not to a consumer.

## **I. Conclusion of Contract and Contract Terms**

- (1) The contract takes place by a written order and acknowledgment of receipt (by the supplier). Changes or additions to the contract must be made in writing in order to come into effect.
- (2) If the supplier does not accept the order within 10 days after receipt, then the orderer is entitled to cancel the order without the supplier being entitled to any claim for compensation as a result.
- (3) KONTRON is entitled to demand - as long as the supplier has not yet met his obligations fully - reasonable changes of the order with regard to construction, type or delivery time. In this case, the consequences e.g. additional costs or reduced costs, delivery dates are to be regulated by mutual agreement.
- (4) In the case of work supplies it is only permissible to commission subcontractors to provide the main goods and services with the consent of KE.
- (5) Changes of the delivery items - particularly technical further developments ("revisions") – are only permissible after the supplier has given prior notice and with the consent of KONTRON.

## **II. Delivery dates / Contractual Penalty**

- (1) Delivery dates set are legally binding. Handing over of the delivery item to KONTRON as stipulated in the contract is absolutely decisive for this.
- (2) If the delivery time is exceeded, then a penalty for breach of contract to the amount of 0.5% of the delivery item is to be paid for each new week of the delay in delivery. This must not be more than 6 % of the delivery item's value, however. KONTRON reserves the right to claim for damage that exceeds this on presentation of proof. The penalty for breach of contract is left until final payment.

## **III. Delivery /Transfer of Risk/Packaging**

- (1) The goods are to be delivered "duty paid" to the place of use stated on the order, provided that nothing else is agreed.
- (2) The risk is transferred to KONTRON upon acceptance and acknowledgment of the delivery.
- (3) Partial performances - provided that nothing else is expressly agreed – are not permitted. KONTRON is entitled to cancel the remaining quantity in this respect.
- (4) The goods must be properly packed by the supplier. Different articles (numbers) must be packed separately and sufficiently marked on the packaging. Packing material must be taken back by the supplier cost-free for further use or disposal on request of KONTRON.

## **IV. Acceptance**

- (1) If the purchase order also includes the installation or assembly of the delivery item as a supplementary service, then a formal acceptance is required. It can only take place after successfully completing the test phase.
- (2) Payments from KONTRON does not mean that the delivery item has been accepted by KONTRON.

#### **V. Payment/Assignment**

- (1) Payment is always made within 30 days upon receipt of the delivery item as stipulated in the contract and upon separate receipt of the adequate, orderly and verifiable invoice at the KONTRON "accounting department".
- (2) The supplier grants 3% cash discount for payment within 14 days. The payment is made by bank transfer or cheque.
- (3) Claims of the supplier stemming from this contract may neither be fully nor partially assigned to third parties without prior consent of KONTRON. § 354a of the Civil Code is unaffected by this.

#### **VI. Production Documents/Means of Production**

- (1) Means of production such as plans, source codes, theories, matrixes, models, samples, tools, drawings etc. remain the property of KONTRON and must be returned by the supplier upon request of KONTRON.
- (2) The means of production entrusted to the supplier or manufactured according to instructions by KONTRON may neither be reproduced, sold, transferred as a security, pawned nor passed on in some other way for use by third parties without the express written consent of KONTRON. The same applies to delivery items manufactured with the help of these means of production.

#### **VII. Liability for Faulty Goods**

- (1) As per contractual agreements, the delivery must be made according to the state of the art as well as the additional existing knowledge of the supplier.
- (2) In the case of defects, KONTRON is entitled to demand legal claims (subsequent fulfilment, withdrawal, reduction and compensation). Contrary to § 377 of the Civil Code, the supplier must be notified about defects as soon as they have been discovered in the course of regular business.

### **VIII. Observance of Secrecy**

The supplier must treat the existence as well as all non-obvious business and technical details that have become known to him due to the business relations as a business secret. Employees as well as subcontractors must commit themselves correspondingly.

### **IX. Other Provisions**

- (1) If one of these provisions and the further agreement possibly made is or becomes null and void, then the validity of the rest of the contract is not affected thereby. The contracting parties undertake to replace the null and void provision within the bounds of what is reasonable by a regulation that most closely approximates an economic success for them.
- (2) On request of KONTRON the supplier shall mark the delivery items in a way specified by KONTRON, issue manufacturer or conformity attestations and mark the items with the CE-mark.

### **X. Place of performance, Place of Jurisdiction, applicable Law**

- (1) The law of the Federal Republic of Germany is to be applied provided that nothing else is agreed. The United Nations Convention on Contracts for the International Sale of Goods (UN-CISG) is excluded.
- (2) The place of performance is Eching near Munich.
- (3) The place of jurisdiction for traders is Munich.