

Contractual terms and conditions of purchase for Kontron Embedded Modules GmbH

10/2007

Preamble

The following terms and conditions shall apply to contractual relationships between suppliers/contractors (the "Supplier") and the buyer/principal (Kontron Embedded Modules GmbH ("KONTRON")); they shall also apply to additional supplies and contracts for services. These terms and conditions shall apply to commercial entities (§ 310 subparagraph 1,14 of the *Bundesgesetzbuch* (German Civil Code)) but not to consumers. KONTRON will not accept conflicting conditions of the Supplier, notwithstanding that KONTRON may not have objected expressly to such conflicting conditions nor that KONTRON may have made reference to communications from the Supplier in which the Supplier refers to the Supplier's conditions. These terms and conditions of purchase shall also apply to business concluded with the Supplier in the future, notwithstanding that these terms and conditions of purchase might not be expressly incorporated into the future contract again.

Part A of these terms and conditions deals with general provisions regarding the business to be transacted; part B contains provisions relating to quality control.

Part A – General provisions

§ 1 Conclusion and conditions of the contract

- (1) The contract shall be concluded by means of a written order and confirmation of the order (by the Supplier). Amendments or additions to the contract shall be made in writing in order to be valid.
- (2) Orders placed by KONTRON are subject to change, unless retention periods have been agreed.
- (3) KONTRON may, within reason, require changes to be made to its order with regard to design, implementation or delivery times provided the Supplier has not yet performed its contractual duties. The parties shall come to a reasonable amicable agreement in respect of the effects of any such change, e.g. increased or reduced costs and delivery dates.
- (4) In the case of work deliveries the Supplier may not commission subcontractors to carry out the principal service unless KONTRON has given its consent.
- (5) Changes to the subject matter of the supply being made, in particular with regard to technical enhancements ("revisions"), shall not be permitted unless prior notice thereof is given by the Supplier and KONTRON gives its consent thereto.

§ 2 Delivery dates/Penalties

- (1) Time is of the essence with regard to all dates agreed. In general the decisive time shall be the time at which the contractual subject matter and all accompanying documentation is handed over to KONTRON.
- (2) If the agreed delivery deadline is exceeded, a penalty of 0.2% of the value of the delivery (net excluding value added tax) will be payable for every working day by which the delivery is

delayed, up to a maximum of 5% of the value of the delivery. KONTRON reserves the right to claim for damages over and above this amount on production of evidence to this effect; in this instance the contractual penalty as a minimum amount of damages will be set off against the amount of damages claimed. Contractual penalties may be enforced up until such a time as final payment is made.

§ 3 Delivery/Passing of risk/Packaging

- (1) Unless otherwise agreed, delivery shall be made "duty paid" to the location designated in the order (INCOTERMS DDP).
- (2) In addition to INCOTERM DDP the parties hereby agree that risk shall pass to KONTRON from the time at which the unloaded delivery is received and acknowledged by KONTRON.
- (3) Partial delivery is not permitted, unless expressly agreed otherwise. In this case KONTRON will be entitled to cancel the remaining delivery.
- (4) The Supplier shall duly package the goods. Differing items (item numbers) shall be packaged separately and shall be labelled sufficiently on the packaging. The Supplier shall take back all packaging material free of charge if requested to do so by KONTRON so that it can be used again or disposed of.
- (5) Goods shall not be delivered as mixed batches (particularly as regards their manufacturer, date code and product revisions).

§ 4 Acceptance and notification of defects

- (1) If by way of a supplementary service the order includes the installation or assembly of a product then such installation or assembly must be formally accepted. Acceptance cannot take place until a phase of testing has been carried out.

- (2) Payment by KONTRON does not signify acceptance by KONTRON of the contractual goods. Acceptance of the goods, a prototype or a sample does not automatically relieve the Supplier from liability for defects.
- (3) KONTRON is not under a duty to inspect or give notice of defects in respect of obvious defects in accordance with § 377 of the *Handelsgesetzbuch* (German Commercial Code). As a minimum KONTRON is obliged to inspect that the goods accord with the delivery note and to check for damage caused in transport; the Supplier is obliged to carry out a final inspection of the goods and as such the Supplier shall enter into a quality control agreement with KONTRON (see Part B). In the event of there being obvious defects then a notice of defects shall be deemed to have been given on time to the Supplier if given within 7 working days (excluding Saturdays) from the date on which the goods are received, or in the case of latent defects from the date on which the defect is discovered. Should in any individual case the "duty to act promptly" contained in § 377 of the *Handelsgesetzbuch* (German Commercial Code) be longer than 7 working days then this longer notice period shall apply.

§ 5 Payment/Assignment

- (1) Unless otherwise agreed payment shall be made within 30 days from the date on which the contractual goods are received in accordance with the contract and the duly issued auditable invoice has been received by KONTRON's accounting department.
- (2) The Supplier shall grant a discount of 3% if payment is made within 14 days. Payment shall be made by bank transfer or cheque.
- (3) The Supplier may not assign any claims it may have as a result of this contract to any third party in full or in part without the prior consent of KONTRON. This shall not affect the provisions in § 354 a of the *Handelsgesetzbuch* (German Commercial Code).

§ 6 Manufacturing documentation/Manufacturing devices

- (1) Manufacturing devices such as plans, source codes, theories, matrices, models, samples, tools, drawings and the like shall remain the property of KONTRON and shall when requested be returned to KONTRON by the Supplier.
- (2) Any manufacturing devices provided to the Supplier by KONTRON or produced by the Supplier in accordance with KONTRON's instructions may not be duplicated, sold,

charged, pledged or transferred in any other manner without KONTRON's express written consent, nor used in any manner for any third party. The same applies to any contractual goods manufactured with the help of any such manufacturing devices.

§ 7 Liability for defects

- (1) The service shall be provided in accordance with the provisions of the contract and in line with the most up to date technical status quo, as well as in accordance with the relevant applicable environmental, occupational safety and accident prevention regulations and any additional knowledge of the Supplier. In addition, the Supplier is responsible for ensuring that the contractual goods accord with legal requirements and that they do not have any other defects.
- (2) In the event of any defect KONTRON shall have a right to assert any claims to which it is entitled by law (notably subsequent performance, rescission, a reduction in the purchase price and a claim for damages).
In the event of any defect KONTRON shall, in particular, be entitled to require that the defect be remedied or that defect-free goods be delivered (subsequent performance); any costs incurred in this respect shall be borne by the Supplier. In urgent cases (risk caused by delay or particular urgency) KONTRON may remedy the defect itself at the cost of the Supplier. A case will be considered to be urgent if it is no longer possible to notify the Supplier and to set a new (albeit short) deadline for subsequent performance.
- (3) The limitation period shall be 3 years from the date of delivery, provided the law does not stipulate a longer period. Should new goods be delivered within the scope of subsequent performance then the limitation period shall recommence provided it is considered to be an acknowledgement of the Supplier's duty to provide subsequent performance. The same shall apply in the case of subsequent performance in respect of that part of the contractual service that has been subsequently performed.
- (4) The Supplier shall at its own expense arrange a sufficient level of third party insurance cover for damage caused by the Supplier, its personnel and/or subcontractors, proof of which shall be provided to KONTRON when required. In addition, the Supplier shall at its own expense arrange a sufficient level of transport insurance.

§ 8 Legal regress

- (1) In the event of any claim for manufacturer's liability, product liability or any other type of liability being made against KONTRON in respect of any defect in any of the goods delivered by the Supplier, the Supplier shall indemnify KONTRON in respect of any liability arising from the defect insofar as such defect is the responsibility of the Supplier. The indemnity shall be provided when first demanded.
- (2) In this context the Supplier is also under a duty to reimburse expenses in accordance with § 683 or § 670 of the *Bundesgesetzbuch* (German Civil Code) or § 830, § 840 or § 426 of the *Bundesgesetzbuch* (German Civil Code) incurred in respect of or in connection with a product recall. KONTRON will notify the Supplier without delay within the limits of reasonableness and possibility of the content and scope of any such recall. KONTRON reserves the right to assert any other statutory rights it may have.
- (3) If any other type of claim is made against KONTRON in respect of any defect in any of the goods delivered by the Supplier, KONTRON shall have a right to assert in full its rights to legal redress as contained in § 478 of the *Bundesgesetzbuch* (German Civil Code); the only exception shall be if KONTRON has previously been granted compensation of an equal value in respect of its right to legal redress.

§ 9 Industrial property rights

- (1) The Supplier warrants that no third party rights have been violated in connection with the delivery.
- (2) Should a claim be made against KONTRON in this respect then the Supplier is obliged to indemnify KONTRON against such claims. The indemnity shall be provided when first demanded. KONTRON may not come to any arrangement (notably settlement) with any such third party without the consent of the Supplier.
- (3) The Supplier's duty to indemnify KONTRON shall also apply in respect of any expenses necessarily incurred in respect of or in connection with any such third party claim.
- (4) The limitation period for claims of this nature shall be 3 years from the date of delivery, provided the law does not stipulate a longer period.
- (5) This shall not affect any other statutory rights.

§ 10 Confidentiality

All design drawings, plans, written documents, models, electronic data carriers, drawings and similar business documentation shall

remain the property of KONTRON and shall be used in utmost confidentiality at all times. The same applies to commercial or technical details and business or company secrets. Any such confidential information shall not be made available to third parties without the consent of KONTRON. The Supplier covenants to maintain utmost confidentiality in respect of any other information which shall come to the Supplier's knowledge within the scope of its business with KONTRON. The Supplier shall also ensure that its employees adhere to the provisions on confidentiality.

§ 11 Labelling/Miscellaneous provisions

- (1) If a provision within these terms and conditions or within any additional agreement that may have been made should be or become invalid, this shall not affect the validity of the remaining provisions of this contract. Within the limits of reasonableness the contractual parties agree to replace the invalid provision with a provision that achieves the commercial purpose of the invalid provision as nearly as possible.
- (2) The Supplier shall label the contractual goods in the manner as prescribed by KONTRON, and shall as required issue manufacturer certificates or conformity certificates containing the relevant CE-descriptions. The Supplier's duty to label the contractual goods covers a duty to at least state the manufacturer and the date code. Particularly in the event of any product revision the Supplier must explicitly label the fact that a non-mixed delivery is being made.
- (3) KONTRON will use all data relating to the Supplier for the sole purpose of transacting the business in accordance with the relevant applicable data protection laws. Insofar as the Supplier has provided personal information to KONTRON the Supplier may at any time object to such information being stored, processed or used in the future. The Supplier has a right to apply in writing for access to any personal information which has been stored, processed or used by KONTRON.
- (4) Words and provisions importing one gender shall include any other gender and shall in all other respects be non-discriminatory within the meaning of the *Allgemeines Gleichbehandlungsgesetz* (German Equal Treatment Act).

§ 12 Place of performance; Jurisdiction; Applicable law; Contractual language; Burden of proof

- (1) These terms and conditions are subject to German law. The provisions of the UN Convention for the International Sale of

Goods and the conflict of laws provisions as established by the *Einführungsgesetz zum Bürgerlichen Gesetzbuch* (Introductory Act to the German Civil Code) are excluded from this contract. The contractual language is German.

- (2) The place of performance within its legal meaning is the place of business of KONTRON.
- (3) The competent court of jurisdiction shall be at the place of business of KONTRON, provided the Supplier is a commercial entity, public law entity or public law fund. The same shall apply if the Supplier has not specified a court of jurisdiction within Germany or the Supplier moves its place of business abroad after the contract has been entered into. KONTRON may, if it so chooses, commence proceedings at another competent court of jurisdiction.
- (4) None of the provisions within these terms and conditions shall be deemed to reverse either the statutory or the case-law burden of proof.

Part B – Provisions for quality control

The following provisions shall apply in respect of quality control, unless special arrangements have been made between KONTRON and the Supplier. Should special arrangements have been made then the following provisions shall apply as ancillary provisions.

§ 13 Quality control system

- (1) The Supplier undertakes to adhere to the quality requirements listed in the order, and as a minimum to adhere to the requirements of DIN ISO 9001:2000 and the environmental management system requirements of DIN EN ISO 14001. The Supplier hereby accredits that these are so.
- (2) In this context the Supplier will plan, establish, implement and supervise quality control measures so as to achieve the zero-defect objective.

§ 14 Duty of proof and duty to supply information

The Supplier shall be obliged to provide proof and information in the event of any problem with quality and notably in the following instances:

- (1) Manufacturing problems or a fall off in quality that have occurred or are expected to occur (an increase in deviations of the current quality from the intended quality of the goods).
- (2) Corrective or remedial measures for the removal of any such problems (until such measures are effective KONTRON shall be entitled to demand special measures such as a higher frequency of testing, whereby all extra costs incurred shall be borne by the Supplier provided the Supplier is responsible for the problem with quality).
- (3) A presumption on discovering a variation in quality that goods with the same problem with quality have already been delivered.
- (4) Conclusion of or changes to insurance cover in the area of product liability insurance and provision of all relevant documentation.
- (5) Knowledge gained by the Supplier in respect of:
 - technical documentation or descriptions that are defective, unclear or incomplete;
 - product requirements or requirements of the required testing procedures that are defective, unclear or incomplete;
 - properties that deviate from the prototype; or
 - any similar deviations in respect of quality.

- (6) Knowledge gained by the Supplier in respect of procedural methods which are better, more economically advantageous or more effective.

§ 15 Labelling and traceability

- (1) The Supplier shall ensure that goods can be traced from their issue back to their raw material stage. This shall include any prior suppliers. In order to achieve this goods (or alternatively the goods' packaging) shall be labelled in such a manner as to be able to ascertain the entire product pallet affected in the event of any defect.
- (2) The Supplier undertakes to keep a record of complaints within the meaning of the *Geräte- und Produktsicherheitsgesetz* (German New Equipment and Product Safety Act) and to permit KONTRON to access these records at any time. In the event of any notifiable facts arising within the meaning of the *Geräte- und Produktsicherheitsgesetz* (German New Equipment and Product Safety Act), the Supplier undertakes to notify KONTRON prior to notifying the authorities so as to enable KONTRON to comply with its duty of disclosure to the authorities; the purpose of this is to ensure that KONTRON gains knowledge of a defective product before the authorities or the media do. This duty to supply information in advance shall not apply if this would cause an additional risk to life or limb of any person.

§ 16 Audits

The Supplier shall, if requested in the context of any audit, permit KONTRON or its customers to check that quality control systems have been adhered to within the Supplier's business. For this purpose KONTRON shall be given access to all relevant documentation and processes.