

# General Terms and Conditions of Business of

## Kontron Embedded Computers GmbH (Kontron)

Valid: 04/2003

### Preamble

The business relationship between the supplier (the "Supplier" / "Kontron") and the buyer / purchaser (the "Customer") shall be governed by the terms and conditions ("Terms and Conditions") set forth below; the Terms and Conditions shall also apply to other deliveries and services. The Terms and Conditions shall apply towards Customers who are business enterprises (Art. 310 Para. 1,14 BGB [German Civil Code]), but not towards consumers.

### § 1 General

- (1) Any terms and conditions of the Customer which deviate from these Terms and Conditions and which have not been expressly accepted by Kontron shall not be binding on Kontron even if they are not expressly rejected by Kontron.
- (2) The incorporation and interpretation of these Terms and Conditions as well as the conclusion and interpretation of legal contracts with the Customer itself shall be governed solely by the law of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- (3) Should any of the provisions of these Terms and Conditions or any part thereof be or become invalid, the other provisions shall nevertheless remain in full force and effect. The contracting parties shall have a duty, acting in accordance with the principles of good faith, to replace any invalid provision by one which is valid and which produces the same economic outcome as that intended by the invalid provision and providing that such replacement does not result in any material change to the content of the contract; the same shall also apply analogously to any matter which requires regulation but for which no provision is made in these Terms and Conditions.
- (4) The place of performance for all obligations and duties arising directly or indirectly from the contractual relationship between the parties, including payment obligations, shall be the place of domicile of Kontron.
- (5) The sole legal venue shall be Munich. In matters required to be brought before a regional court, it is agreed that sole jurisdiction shall rest with Munich Regional Court II (Landgericht München II).

### § 2 Offers, Scope of Delivery and Conclusion of Contracts

- (1) Offers of Kontron are without engagement. A contract shall only come into existence on confirmation in writing by Kontron of the Customer's order.
- (2) Kontron reserves the right to make changes to the design, choice of materials, specification and type even in cases where an order confirmation has already been sent provided such changes are not incompatible either with the order confirmation or the Customer's specification. The Customer shall also agree to any other changes proposed by Kontron provided such changes are not unreasonable for the Customer. Improvements to

the products shall be permitted provided they are not unreasonable for the Customer and take the reasonable interests of Kontron into account. Documents on which an offer or order confirmation is based, such as illustrations, drawings and indications of dimensions and weights, shall normally be deemed approximate only unless expressly stated as being binding.

- (3) Cost estimates, drawings and other offer documents are and shall remain the property of Kontron. Kontron shall have the sole right of exploitation under copyright.

### § 3 Prices and Terms of Payment

- (1) Prices are quoted ex works, exclusive of packing and other shipment and transport costs. Packing will be charged for at cost and will only be taken back in cases where Kontron is required to do so by law.
- (2) In the case of deliveries with a value of less than € 2,000.-, Kontron reserves the right to effect delivery on the basis of cash on delivery.
- (3) Where, though no fault of Kontron, a time of more than 4 months elapses between conclusion of a contract and delivery, Kontron shall have the right to make a reasonable increase in the price to take account of any increases in material, wage and other ancillary costs to be borne by the Customer which have occurred in the meantime. Should the purchase price increase by more than 40%, the Customer shall have the right to cancel the contract.
- (4) Should Kontron incorporate modifications on the Customer's request, any additional costs incurred by Kontron as a result thereof will be charged to the Customer.
- (5) Should the Customer fail to effect payment within the specified period, Kontron shall have the right, without prejudice to its right to make any other claims, to charge interest in accordance with Art. 288 Para. 2 and Art. 247 BGB..
- (6) In the event of any unforeseen changes to customs, import or export duties, Kontron shall have the right to adjust the price accordingly.

### § 4 Right of Offset and Withholding

- (1) The Customer shall have no right to make offset or to withhold any part of the payment except in respect of Customer's counterclaims which are undisputed or have been finally and absolutely established at law.

## **§ 5 Delivery Period, Delay, Impossibility of Delivery**

- (1) Delivery times or periods are quoted to the best of Kontron's knowledge and shall be extended accordingly in the event that the Customer should delay in providing or fail to provide any assistance which is necessary or which has been agreed. The same shall also apply in the event of any circumstances arising in connection with industrial disputes, in particular strikes or lockouts, or in the event of occurrence of any unforeseen obstacles which are beyond the control of Kontron, e.g. delays in delivery by any of Kontron's suppliers, transport or business disruptions, shortage of materials or energy etc., despite the fact of Kontron's having taken all reasonable precautions for the occurrence of such obstacles. Modifications to the products which are made on the Customer's request shall also result in a reasonable extension of the delivery period.
- (2) Partial deliveries shall be permitted provided they would not be unreasonable for the Customer. In the case of long-term delivery contracts, each part-delivery shall be deemed separate contractual performance.
- (3) The Customer may only claim damages for delay and compensation for non-performance where Kontron is culpable of willful intent or gross negligence. In the case of ordinary negligence, Kontron's liability shall be limited to the foreseeable loss or damage; the maximum amount of liability in this case shall be limited to twice the order value, and in all cases to not more than € 1 million per claim.

## **§ 6 Shipment and Passing of Risk**

- (1) The risk shall pass to the Customer as soon as the consignment has been delivered into the custody of the person effecting transport or has left Kontron's warehouse for purposes of shipment. Should dispatch be delayed for reasons for which Kontron is not responsible, the risk shall pass to the Customer on the Customer being advised of readiness for dispatch of the consignment.
- (2) Kontron undertakes to take out appropriate insurance on the Customer's request and for the Customer's account.

## **§ 7 Reservation of Title**

- (1) Kontron reserves title to the delivered goods until such time as payment has been effected in full. The reservation of title shall also apply until such time as all claims, including future and conditional ones, arising from the business relationship between the Customer and Kontron have been fulfilled.
- (2) The Customer may resell goods to which Kontron reserves title ("reserved goods") in the normal course of business provided they are likewise sold subject to reservation of title. The Customer may not pledge the goods or assign them by way of security. In the case of any attempt by a third party to seize reserved goods, the Customer shall inform such third party of the reservation of title by Kontron and shall also notify Kontron of the

attempted seizure without delay. The Customer shall take all necessary action to prevent such seizure.

- (3) Where reserved goods are combined or mixed with goods of the Customer, Kontron shall acquire co-title in the in the same proportion as that between the invoice value of the reserved goods and the value of the other goods with which they are combined or mixed. Processing of the reserved goods shall be done on behalf of Kontron as manufacturer within the meaning of Art. 950 BGB, without implying any obligations on Kontron.
- (4) In the case of any delay in payment, including also in respect of future deliveries or services, or in the case of financial collapse of the Customer, Kontron shall have the right, without prejudice to any other rights it may have, to assert its reservation of title and to recover the reserved goods, including the right to enter the Customer's premises to do so.
- (5) Assertion of its reservation of title or seizure of delivered goods by Kontron shall not be deemed rescission of the contract by Kontron.
- (6) The Customer hereby already assigns as security to Kontron its claims arising from resale of the reserved goods up to the value of the outstanding payments owed to Kontron. The Customer is entitled to collect such claims in the normal course of business. Kontron may revoke the said entitlement for good cause. The Customer shall, on Kontron's request, provide Kontron with all information on the assigned claims and on the parties by whom they are owed. Kontron may disclose the assignment at any time.
- (7) Should the value of the securities exceed Kontron's claims to payment by more than 25%, Kontron shall, on the Customer's request, release such excess part of the securities to the Customer.

## **§ 8 Defects, Liability**

- (1) The Customer shall, insofar as this is reasonable in the normal course of the Customer's business, inspect each consignment immediately after delivery and notify Kontron without delay of any defect which may be found in it. Should the Customer fail to make such notification, the delivery shall, except in the case of defects which were not detectable at the time of inspection, be deemed approved and accepted. In all other respects, Arts. 377 ff, HGB [German Commercial Code] shall apply.
- (2) Claims of the Customer shall be limited to remedy in the form either of elimination of the defect or supply of a defect-free product, whichever Kontron may prefer. Should an attempt at remedy prove fruitless, the Customer shall have the right, at its option, to claim a reduction in price or to rescind the contract.
- (3) All other claims of the Customer, in particular for consequential loss or damages and damages for delay as well as claims on all other grounds are barred. This shall, however, not apply in the case of wilful intent, gross negligence, breach of material contractual duties or the provision of written warranty by Kontron or in the case of injury to life,

limb or health. The Customer shall also have the right to cancel the contract. Kontron shall be liable for its ordinary servants only within the scope of loss or damage typically foreseeable for business transactions of the kind in question.

- (4) Except where longer periods are specified by law, claims for defects shall lapse after a period of 24 months starting from receipt of the goods by the Customer. In the case of installation by Kontron, the period for claims shall begin on readiness for operation.

## § 9 Software

### (1) Software licence

(1.1) Licensed software including successive new versions or parts thereof and the appurtenant documentation may only be used on the central unit on which they were first installed. The software may only be copied for backup purposes, whereby the copy or copies must include the copyright notice of the original copy and may only be used on the same central unit. The Customer must protect the software from access by third parties. Persons exercising the Customer's right of use on the Customer's behalf are thereby not deemed third parties. All rights of exploitation of the software shall remain the property of Kontron. Should the Customer breach any of these licence provisions, Kontron will have the right, after giving warning to no avail, to terminate the licence and to demand return of the software together with all parts and copies thereof. The Customer is responsible for ensuring that the software is used in the permitted manner and can, if necessary, be resold.

(1.2) The licence is deemed granted on delivery of the software, and the licence fee shall become due and payable at the same time. The provisions relating to the software are deemed acknowledged and recognized on acceptance of delivery.

(1.3) The source programs will only be supplied subject to a special written agreement.

### (2) Software warranty

By way of supplement to the provisions of Arts. 8 and 10 of these General Terms and Conditions, the following additionally applies in respect of software:

(2.1) On the basis of the present state of the technical art, software is by its nature never completely error-free. In the event of substantial defects, instructions on how to bypass the effects of the defect shall be deemed adequate remedy.

(2.2) Kontron does not warrant that the program functions are adequate for the requirements of the Customer or will work together in the selection made by the Customer. On the basis of the present state of the art, it is not possible to warrant interruption-free or fault-free operation or the complete elimination of any faults which may occur.

(2.3) All liability is excluded for the replacement or the loss of data which may occur through a delivery of software. The Customer therefore has a duty to back up its data accordingly.

(2.4) Because of the special characteristics of the individual programs, the Customer can be informed with legally binding effect of the scope of liability in each individual case in the offer or in a product description.

## § 10 Proprietary Rights

(1) Kontron undertakes to save and hold the Customer harmless from all payment obligations established finally and absolutely at law or entered into by Kontron under an out-of-court settlement arrangement and arising from an alleged breach by a delivered product of a German patent or other proprietary right. The precondition for this is, however, that the Customer notifies Kontron without delay in writing of all claims asserted against the Customer and any subsequent legal action, authorizes Kontron to conduct and conclude the legal action by itself and gives Kontron all reasonable assistance in doing so

(2) Kontron may, at its own option,

- obtain the right for the Customer to continue using the product
- exchange the product or modify it in such a way that it is no longer in breach of another's proprietary rights
- if any of the foregoing measures would be financially unreasonable for Kontron, to take back the product and to credit the Customer with the value after writing it down in accordance with the principles of depreciation.

(3) Apart from the foregoing, the Customer shall have no other claims in the event of any breach of proprietary rights.

## § 11 Export und Re-Export

(1) All deliveries of Kontron are made subject to the granting of an export licence by the Department of Commerce in Washington DC, USA, or the competent authority of any other country of supply.

(2) Products and technical know-how supplied by Kontron are intended pursuant to the seller's import licence for use and retention in the Federal Republic of Germany. Re-export by the Customer is only permitted with prior authorization and is subject to German foreign trade law and the US Export Regulations, with which it is the Customer's duty to comply