

## GENERAL TERMS AND CONDITIONS

Kolff Computer Supplies B.V.  
Kuipershaven 22  
3311 AL DORDRECHT

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#### I. DEFINITION

1. In these general terms and conditions 'KCS' shall be understood to mean: the private limited company Kolff Computer Supplies B.V. with its registered office in DORDRECHT and its principal place of business there at Kuipershaven 22.

#### II. GENERAL PROVISIONS

##### **2. Applicability**

- 2.1. These conditions apply to all offers made by KCS, to all agreements concluded by KCS and to all contracts and obligations that may result therefrom.
- 2.2. In derogation from Article 2.1, the general conditions as laid down in KCS's "GENERAL CONDITIONS FOR DISTANCE PURCHASE" shall apply to offers made by KCS or agreements concluded by KCS which are to be regarded as (an offer for) distance purchase within the meaning of Book 7, article 46a(b) of the Dutch Civil Code.
- 2.3. KCS will hereinafter also be referred to as the Contractor or the Seller. The other party will be referred to as "the Customer".
- 2.4. The Customer's general terms and conditions do not apply; KCS expressly rejects their applicability.
- 2.5. If any provision of these terms and conditions is invalid or is nullified, the other provisions will remain in full force and effect, and KCS and its counterparty or counterparties will enter into consultations in order to agree new provisions to replace the invalid or nullified provisions, while taking the objective and purport of the invalid or nullified provision into account as far as possible.

##### **3. Offers**

- 3.1. All offers of KCS are without obligation.
- 3.2. If the Customer provides KCS with data, drawings, models etc., KCS may assume that these are correct and will base its offer on them.
- 3.3. The prices quoted in the offer are based on delivery ex works, in accordance with Incoterms 2000. The prices are exclusive of turnover tax and packaging.

##### **4. Intellectual property rights**

- 4.1. Unless otherwise agreed and regardless of whether the Customer was charged for the production, KCS retains the copyright and all industrial property rights to its offers, designs, illustrations, drawings, models, test models, software and anything else KCS has produced as part of its contact with the Customer. The Customer will only be granted a right of use to software.
- 4.2. The Customer is aware that the software provided contains confidential information of KCS or its licensors. The Customer undertakes to keep the software and this information secret, not to disclose it or give it in use to third parties, and to use it only for the purpose for which it was made available to him.
- 4.3. If this provision is violated, the Customer will forfeit to KCS an immediately due and payable penalty of € 10,000.00, without prejudice to KCS's right to claim compensation for the actual damage.

##### **5. Advice, designs and materials**

- 5.1. The Customer cannot derive any rights from advice and information he receives from KCS if such advice and information are not directly related to the order.
- 5.2. The Customer is responsible for the drawings and calculations made by him or on his behalf and for the functional suitability of the materials prescribed by him or on his behalf.
- 5.3. The Customer shall indemnify KCS against any third-party claim relating to the use of drawings, calculations, samples, models, etc. provided by or on behalf of the Customer.

- 5.4. The Customer may, at his own expense, examine the materials which KCS intends to use (or have them examined) before they are processed. If KCS suffers any damage as a result, this will be at the Customer's expense.

## **6. Customer cooperation**

- 6.1. The Customer shall always provide KCS in good time with all data or information necessary or useful for the proper performance of the agreement and provide all cooperation.
- 6.2. The Customer is responsible for the use and application in his organisation of the equipment, software and services to be provided by KCS, as well as for control and security procedures and adequate system administration.
- 6.3. If it has been agreed that the Customer will provide software, materials or data on information carriers, these shall comply with the specifications necessary for the performance of the work.
- 6.4. At KCS's request, the Customer shall provide KCS with test equipment and test software to enable KCS to test the goods to be delivered by KCS. The Customer guarantees the soundness of the test procedure, equipment and software supplied.
- 6.5. If information necessary for the performance of the agreement is not available to KCS, or is not available on time or in accordance with the arrangements, or if the Customer fails to fulfil his obligations in any other way, KCS will in any event be entitled to suspend performance of the agreement and charge the costs incurred as a result in accordance with its usual rates.

## **7. Delivery period**

- 7.1. The delivery period will be determined by KCS by approximation. When determining the delivery period, KCS will assume that it can execute the order under the circumstances known to it at that time. The delivery period begins when agreement has been reached on all the technical details, all the necessary data, final drawings etc. are in KCS's possession, the agreed payment or instalment has been received, and the conditions required for execution of the order have been met.
- 7.2. If there are circumstances other than those known to KCS when it determined the delivery period, KCS may extend the delivery period by the period needed to execute the order under these circumstances. If the work cannot be fitted into KCS's planning, it shall be completed as soon as its planning permits.
- 7.3. If there is additional work, the delivery period shall be extended by the period needed to supply (or arrange for the supply of) the materials and parts for this purpose and to carry out the additional work. If the additional work cannot be fitted into KCS's planning, the work will be completed as soon as the planning permits.
- 7.4. If there is a suspension of obligations by KCS, the delivery period will be extended by the duration of the suspension. If continuation of the work cannot be fitted into KCS's planning, the work will be completed as soon as the planning permits.
- 7.5. Exceeding the agreed delivery period shall in no case give rise to any entitlement to compensation, unless agreed in writing.

## **8. Liability**

- 8.1. KCS accepts legal obligations to pay compensation insofar as this is apparent from this article.
- 8.2. KCS's total liability for an attributable failure in the performance of the agreement will be limited to compensation for direct damage up to a maximum of the amount of the price stipulated for that agreement (excluding VAT).
- 8.3. In no case, however, will the total compensation for direct loss exceed €50,000 (fifty thousand euro).
- 8.4. Direct damage is exclusively understood to mean
  - a. the reasonable costs which the Customer would have to incur to have KCS's performance conform to the agreement. However, this damage will not be compensated if the Customer has dissolved the agreement;
  - b. the costs incurred by the Customer when being forced to keep its old system or systems and associated facilities operational for longer because KCS did not deliver on a delivery date which was binding on it, less any savings resulting from the delayed delivery;
  - c. reasonable costs incurred in determining the cause and extent of the damage, insofar as the determination relates to direct damage within the meaning of these terms and conditions;
  - d. reasonable costs incurred to prevent or limit damage, insofar as the Customer demonstrates that these costs have resulted in limiting direct damage within the meaning of these terms and conditions.
- 8.5. KCS will not be liable for indirect damage, including consequential damage, loss of profit, lost savings, and damage due to business interruption.
- 8.6. Apart from the cases mentioned in Articles 8.2, 8.3 and 8.4, KCS will not be liable for any compensation, irrespective of the ground on which an action for compensation is based. However, the

- maximum amounts referred to in articles 8.2 and 8.3 will cease to apply if and insofar as the loss is the result of an intentional act or omission or gross negligence on the part of KCS.
- 8.7. KCS's liability for an attributable failure in the performance of an agreement will only arise if the Customer immediately and properly gives KCS notice of default in writing, thereby specifying a reasonable period for remedying the failure, and KCS continues to fail attributable in the performance of its obligations even after that period. The notice of default shall contain a description of the failure that is as detailed as possible, so that KCS will be able to respond adequately.
  - 8.8. A condition for any right to compensation shall always be that the Customer reports the loss to KCS in writing as soon as possible after it has arisen.
  - 8.9. The Customer shall indemnify KCS against all third-party claims for product liability resulting from a defect in a product or system which the Customer has delivered to a third party and which partly consisted of equipment, software or other materials delivered by KCS.
  - 8.10. Neither party will be obliged to fulfil any obligation if it is prevented from doing so as a result of force majeure. Force majeure also includes a non-attributable failure on the part of KCS's suppliers.
  - 8.11. If and insofar as KCS's liability falls under the scope of any insurance, such liability will be limited to the amount paid out under this insurance in the relevant case.

## **9. Complaints**

- 9.1. Immediately after delivery by KCS, the Customer shall - by random sampling or otherwise - carry out a check on the proper functioning of what has been delivered. The Customer may no longer invoke a defect in the performance if he has not complained to KCS in writing within 14 days of discovering or reasonably being able to discover the defect.

## **10. Payment**

- 10.1. All invoices shall be paid by the Customer in accordance with the payment conditions stated on the invoice. In the absence of specific conditions, the Customer shall pay within 30 days of the invoice date.
- 10.2. Irrespective of the agreed payment conditions, the Customer is obliged to provide KCS on request with what KCS considers to be sufficient security for payment, for example in the form of a bank guarantee or deposit. If the Customer fails to do so within the prescribed period, he will immediately be in default. In such a case, KCS will be entitled to dissolve the agreement and recover its losses from the Customer.
- 10.3. The Customer's right to set off his claims against KCS is excluded, except in the event of bankruptcy of KCS.
- 10.4. The full claim for payment will be immediately due and payable if:
  - a. a payment deadline has been exceeded;
  - b. the Customer has gone bankrupt or applied for a moratorium;
  - c. the Customer's assets or claims are seized;
  - d. the Customer's legal entity is dissolved or liquidated;
- 10.5. If payment has not been made within the agreed payment term, the Customer will automatically, and therefore without further notice of default, owe a default interest to KCS. This default interest shall be 1% per month, but will be equal to the statutory interest if this is higher.
- 10.6. If payment has not been made within the agreed payment term, the Customer will owe KCS all extrajudicial costs. The amount of these extrajudicial costs shall be equal to two points of the applicable court-approved scale of costs in the first instance with a minimum of € 50,00 and a maximum of 15% of the principal sum. In the event of collection via the Subdistrict Section of the District Court, the extrajudicial costs will be determined in accordance with the "Subdistrict Courts graduated scale", published as an appendix to the report of the working group of the Netherlands Association for the Judiciary concerning extrajudicial costs.

## **11. Export**

- 11.1. In the event of export by the Customer of equipment, parts or software sold or produced by KCS, the relevant export provisions will apply. The Customer will indemnify KCS against all third-party claims related to infringements of the applicable export provisions that are attributable to the Customer.

## **12. Dissolution**

- 12.1. If the Customer wishes to dissolve the agreement without there being any failure on the part of KCS and KCS agrees to this, the agreement will be dissolved by mutual agreement. In such a case, KCS will be entitled to compensation for all financial losses such as loss suffered, lost profit and costs incurred.

## **13. Applicable law and choice of forum**

- 13.1. Dutch law shall apply.
- 13.2. The Vienna Convention on Contracts for the International Sale of Goods (C.I.S.G.) shall not apply, nor shall any other international regulation the exclusion of which is permitted.
- 13.3. Only the civil court that has jurisdiction in KCS's place of business is competent to hear disputes, unless this is in conflict with mandatory law. KCS may deviate from these rules of jurisdiction and apply the statutory rules of jurisdiction.

- 13.4. The parties may agree another form of dispute resolution, such as arbitration or mediation.

### III. PRODUCTION AND SALE OF PRINTED CIRCUIT BOARDS AND SALE OF COMPONENTS AND OTHER ITEMS

The provisions of this chapter apply in addition to the General Provisions if KCS is to be regarded as the producer of components and/or PCBs or as the seller of such components and/or PCBs in the agreement with the Customer.

#### **14. Commissioned production**

- 14.1. Unless otherwise agreed in writing, KCS will provide the Customer with one or more assessment copies for approval in the case of production of PCBs and/or assembly of components. After approval by the Customer, KCS will commence production of the agreed number. Within reasonable limits, this series produced shall, with due observance of the brands, types and values specified by the Customer, correspond (visually) to the assessment copies approved by the Customer.
- 14.2. The Customer is responsible for type approval, (performance) testing, and provision of quality mark(s).

#### **15. Risk transfer**

- 15.1. In the event of purchase, delivery shall be ex works, in accordance with Incoterms 2000; the risk will pass at the time when the Seller makes the goods available to the Buyer.
- 15.2. Notwithstanding the provisions of the preceding paragraph, the Customer and KCS may agree that KCS will arrange for transport. In this case, too, the Customer shall bear the risk of storage, loading, transport, and unloading. The Customer may take out insurance against these risks.
- 15.3. Also in the event that the Seller installs and/or assembles the sold item, the risk of the item will pass at the moment that the Seller makes the items available to the Buyer on the Seller's business premises or at another agreed location.

#### **16. Retention of title and pledge**

- 16.1. After delivery, KCS will remain the owner of the goods delivered for as long as the Customer:
- fails or will fail to perform his obligations under this agreement or other similar agreements;
  - fails to pay for work performed or to be performed under such agreements;
  - fails to pay claims resulting from the non-performance of the above agreements, such as damages, penalties, interest, and costs.
- 16.2. As long as goods delivered are subject to retention of title, the Customer may not encumber them other than in the normal course of his business.
- 16.3. After KCS has invoked its retention of title, it may take back the goods delivered. The Customer shall allow KCS to enter the place where these goods are located. The associated costs shall be borne by the Customer.
- 16.4. If KCS is unable to invoke its retention of title because the goods delivered have been mixed, distorted or copied, the Customer - to the extent permitted - will be obliged to pledge the newly formed goods to KCS.

#### **17. Price change**

- 17.1. If four months have passed since the date on which the agreement was concluded and KCS has not yet completed its performance, an increase in price-determining factors may be passed on to the Customer.
- 17.2. Payment of the price increase as referred to in paragraph 1 shall be made simultaneously with payment of the principal sum or the final instalment.

#### **18. Warranty**

- 18.1. If the agreed performance consists of the delivery of an item, KCS will guarantee the soundness of the item delivered for a period of 30 days after delivery, unless otherwise agreed in writing. If it appears that the delivery has not been sound, the item shall be returned to KCS carriage paid. Thereafter, KCS will choose whether to (A) repair the item, (B) replace the item, or (C) credit the Customer for a proportionate part of the invoice.
- 18.2. If the agreed performance (partly) consists of the installation and/or assembly of an item delivered, KCS will guarantee the soundness of the installation and/or assembly for the period specified in paragraph 1. If it appears that the installation and/or assembly has not been carried out properly, KCS will remedy it. Any travel and accommodation costs incurred will be borne by the Customer.
- 18.3. The Customer shall in all cases give KCS the opportunity to repair any defect or to carry out the processing again.
- 18.4. The Customer may only invoke the guarantee after he has fulfilled all his obligations towards KCS.
- 18.5. No guarantee is given for defects that are the result of:
- normal wear and tear;

- b. any external cause, such as fire or water damage
  - c. improper use;
  - d. maintenance that has not been carried out or that has been carried out incorrectly;
  - e. installation, assembly, modification or repair by the Customer or by third parties.
- 18.6. No guarantee is given for delivered items that were not new at the time of delivery.

#### **19. Equipment from suppliers**

- 19.1. If and to the extent that KCS delivers equipment from third parties to the Customer, the conditions of those third parties will apply with respect to that equipment, to the exclusion of any derogating provisions of these terms and conditions. The Customer shall accept these conditions of third parties. These conditions are available for inspection by the Customer at KCS, and KCS will send them to the Customer on request. If the conditions of the third party do not apply -for whatever reason- the provisions of these terms and conditions will apply in full.

### IV. SOFTWARE DEVELOPMENT

The provisions of this chapter apply in addition to the General Provisions if KCS develops software on the instructions of the Customer, in combination with the delivery of hardware.

#### **20. Software development**

- 20.1. The parties shall specify in writing which software will be developed and in what manner this will be done.
- 20.2. KCS will be entitled, but not obliged, to investigate the correctness, completeness or consistency of the data or specifications provided to it and, if any imperfections are found, to suspend the work agreed until the Customer has eliminated the imperfections concerned.
- 20.3. Without prejudice to the provisions of Article 4, the Customer acquires the right to use the software in his company or organisation. If and insofar as expressly agreed in writing, the source code of the software and the technical documentation produced during the development of the software may be made available to the Customer, and the Customer will be entitled to make changes to this software.

#### **21 Delivery, installation and acceptance**

- 21.1. KCS shall deliver and install the software to be developed to the Customer in accordance with the specifications laid down in writing, the latter only if it has been agreed in writing that KCS will perform an installation.
- 21.2. If an acceptance test has been agreed in writing, the test period shall be fourteen days after delivery or, if it has been agreed in writing that KCS will perform an installation, after completion of the installation. During the test period, the Customer is not permitted to use the software for productive or operational purposes.
- 21.3. The software will be deemed to have been accepted between the parties: a. if an acceptance test has not been agreed between the parties: at the time of delivery, or, if it has been agreed in writing that KCS will install the software: on completion of the installation, or b. if an acceptance test has been agreed in writing between the parties: on the first day after the test period, or c. if a test report as referred to in Article 21.5 is received before the end of the test period: at the time the errors mentioned in that test report have been repaired, without prejudice to the presence of any errors pursuant to Article 21.6. if before the end of the test period, KCS receives a test report as referred to in Article 21.5: at the moment the errors mentioned in that test report have been repaired, without prejudice to the presence of imperfections which do not prevent acceptance in accordance with Article 21.6. In derogation from the above, if the Customer makes any use of the software for productive or operational purposes before the moment of acceptance, the software will be considered fully accepted from the start of that use.
- 21.4. If during the performance of the agreed acceptance test it is found that the software contains errors which hamper the progress of the acceptance test, the Customer will inform KCS of in a detailed written report, in which case the test period will be interrupted until the software has been modified in such a way that this obstacle is removed.
- 21.5. If during the performance of the agreed acceptance test it is found that the software contains errors, the Customer will inform KCS no later than on the last day of the test period by means of a detailed written test report. KCS shall use its best efforts to repair reported errors within a reasonable period, while KCS is entitled to implement temporary solutions, program bypasses or problem-avoiding restrictions in the software.
- 21.6. Acceptance of the software may not be withheld on any grounds other than those relating to the specifications expressly agreed between the parties, nor on account of the existence of minor errors, i.e. errors which do not reasonably prevent the operational or productive use of the software, without prejudice to KCS's obligation to repair these minor errors.
- 21.7. If the software is delivered and tested in phases and/or parts, non-acceptance of a particular phase and/or part will not prejudice any acceptance of an earlier phase and/or another part.

## GENERAL TERMS AND CONDITIONS OF DISTANCE PURCHASE

### Definitions:

<b>Consumer</b>	the natural person who purchases Products from KCS for private use;
<b>KCS</b>	Kolff Computer Supplies BV, with its registered office at (3311 AL) Dordrecht (NL) and with its principal place of business there at Kuipershaven 22; telephone number +31 (0)78-6310931, Commercial Register of the Rotterdam Chamber of Commerce: No. 23049831
<b>Delivery Date</b>	date or period indicated by KCS for delivery of Products and/or Services;
<b>Price</b>	price of Products excluding transport costs, insurance, and VAT;
<b>Products</b>	items the Customer undertakes to buy from KCS;
<b>Third-Party Products</b>	products sold by KCS, but not manufactured, assembled or produced by KCS;
<b>Software</b>	computer software of third parties;
<b>Follow-up orders</b>	orders that are part of a series of orders placed over time or for which deliveries have been delayed;
<b>Conditions</b>	these general terms and conditions;
<b>Working days</b>	all days except Saturdays and Sundays and recognised public holidays.

### 1. Application

1. These Conditions apply to all distance contracts between a Consumer and KCS, as referred to in Book 7, article 46a sub b of the Dutch Civil Code.
2. Any order for Products shall be regarded as an offer by the Consumer to purchase the Products subject to these Conditions.
3. KCS will only accept this offer under these Conditions when it confirms the order.

### 2. Offers

1. Offers made by KCS are valid for the period stated in the offer. If no such period is indicated, an offer will be valid for ten days after the date of the offer.

### 3. Price and payment

1. The Price and other costs to be paid by the Consumer, including the costs of transport, insurance and VAT, shall be clearly stated in KCS's offer and/or order confirmation and in the invoice.
2. Consumers shall contact KCS immediately, in any case within a reasonable period, if they discover an error or discrepancy with their order in the order confirmation and/or the invoice, so that problems concerning the question of what KCS should have delivered can be avoided.
3. KCS uses payment by credit card as a means of payment for Consumers, in accordance with the rules applicable at the credit card company concerned.
4. If no payment has been received by the due date, the Consumer will owe the statutory interest on the outstanding amount after being given notice of default.
5. If KCS has to take collection measures after the due date, the Consumer will owe extrajudicial costs in accordance with "Rapport Voorwerk II". Delivery of Products may be suspended until payment of the invoice price.

### 4. Delivery

1. The Delivery Date mentioned in the order confirmation is indicative and may be further specified in consultation with KCS. The place of delivery is specified in the order confirmation.
2. For practical reasons, delivery may be made in parts (e.g. for delivery of Third-Party Products, produced at a different time than KCS Products).
3. Consumers are entitled to unilaterally dissolve the agreement until the moment of delivery if delivery has not taken place within thirty calendar days of the agreed Delivery Date. KCS will refund the amount paid as soon as possible, in any event within 30 days.

### 5. Ownership and Risk

1. Ownership of Products transfers at the time KCS receives full payment.
2. The risk transfers at the time of delivery of the Products.

## **6. Acceptance and cooling-off period for Consumers**

1. Consumers may unilaterally cancel the purchase of Products without giving reasons within 7 Working Days of receipt of a Product. KCS may demand a written confirmation. Cancellation is not possible for Products that have been made according to the Consumer's specifications, have become unsuitable for sale or have been used otherwise. The Consumer is responsible for the return of the Product and the costs involved. The Price and any other amounts paid by the Consumer shall be refunded to the Consumer within 30 days after dissolution. The costs for returning a Product will be deducted from the amount to be refunded.
2. Consumers shall inform KCS of non-conformity, visible deviations from the order confirmation, within a reasonable time after discovery.
3. This provision does not affect the rights of Consumers with regard to defects in Products.

## **7. Warranty**

1. KCS guarantees that Products other than Third-Party Products will be free of defects for twelve months from the date of Delivery, unless otherwise agreed in the order confirmation. If the Product shows a defect within the guarantee period, KCS will repair or replace it free of charge within a reasonable period.
2. For Third-Party Products delivered by KCS to Consumers, during a period of six months KCS will be responsible for ensuring that the Product delivered conforms to the agreement. If the Product shows a defect within this guarantee period, it will be repaired or replaced within a reasonable period of time.
3. This guarantee does not apply if the defect is the result of an external cause and / or not attributable to KCS, including accidents, damage, exposure to water, and short circuits.
4. When carrying out repairs, KCS uses components that are new or technically fully equivalent in accordance with the standards and practices applicable within the industry.
5. These guarantee provisions do not affect the statutory rights of Consumers.

## **8. Force majeure**

1. If a shortcoming in the fulfilment of a contractual obligation is the result of force majeure on the part of one of the parties, the other party may dissolve the agreement. The party invoking force majeure will in that case, pursuant to Book 6, article 78 of the Dutch Civil Code, only be liable for the loss or damage suffered by the other party if and insofar as, in connection with its failure to perform, it enjoys an advantage which it would not have enjoyed if it had performed properly, up to a maximum of the amount of that advantage.

## **9. Liability**

1. **Product liability:** For Products other than those of Third Parties which cause damage to persons or to property that belongs in the private sphere, KCS will be liable without limit pursuant to Book 6, article 185 et seq. of the Dutch Civil Code for damage through death or bodily injury and for damage to property in the private sphere if this damage exceeds EUR 500.
2. **Statutory liability:** If any failure by KCS results in death or physical injury, KCS's liability for this will not be limited.

## **10. Intellectual Property and Software**

1. KCS is the party entitled to all software relating to the Products that are not Third-Party Products.

## **11. Export regulations**

1. The Consumer should note that both European Union legislation and the National United States Department of Commerce Export Regulations may prohibit the provision (export, sale, lease) of certain Products and/or Services to certain destinations and for certain uses.

## **12. Consumer rights**

1. These Conditions have been drawn up in accordance with Dutch legislation; KCS reserves the right to amend the Conditions at any time when legislation gives cause to do so. If a provision of these Conditions is not in accordance with Dutch consumer legislation, that legislation will prevail.

## **13. Applicable law and competent court**

1. These Conditions are governed by Dutch law. The court in Amsterdam shall have jurisdiction with regard to disputes. In the event of disputes between a Consumer and KCS, the court in the Consumer's place of residence or actual residence will also have jurisdiction.