

# **Kompetenzzentrum Holz GmbH (KZH) Standard Terms and Conditions for the Supply of Products and Services**

(This is a translation; in case of doubt, the original German version will always apply)

## **1 Scope**

- 1.1 These Standard Terms and Conditions for the Supply of Products and Services (“Terms and Conditions”) govern exclusively the sphere of activity of the Wood Competence Center (KZH). KZH shall effect transactions exclusively on the basis of these Standard terms and conditions. These Terms and Conditions shall govern both the present transaction and any future transactions and all information relative to this transaction provided verbally, in writing or via the Internet in brochures, price lists, advertisements on packaging etc.
- 1.2 No terms and conditions contained in any purchase order placed with us, other than those stated herein, shall be binding on us. The Contract Partner hereby agrees to this exclusion of applicability. Kompetenzzentrum Holz (KZH) does not need to object to the Contract Partner’s terms and conditions even if the application thereof is stated as an express condition therein.
- 1.3 The Terms and Conditions form an integral part of all legal relationships into which KZH enters, particularly in the form of individual contracts.
- 1.4 Should any individual provisions of the Terms and Conditions be or become invalid and/or unenforceable, the validity of the remaining provisions hereof shall in no way be affected; in such case the content coming as close as possible to the sense and purpose of the void and/or unenforceable provisions shall apply.

## **2 Orders and Quotes**

- 2.1 KZH quotations are non-binding.
- 2.2 No copies of the quotation and project documents may be taken and no access to such documents shall be allowed to third parties without the consent of KZH. Such documents may be reclaimed at any time and shall be promptly returned to KZH if the contract is awarded to somebody else.

## **3 Formation of Contract**

- 3.1 The Contract shall be deemed formed when KZH, after receiving an order, issues a written Confirmation or sends out the products ordered.
- 3.2 Any information contained in catalogs, brochures etc. and other written or verbal statements shall only be binding if expressly referred to in the Confirmation.
- 3.3 No variation or amendment to the Contract including the Terms and Conditions shall be valid unless it is in writing. This shall also apply to a waiver of the written form requirement. KZH is at discretion to assign the contract awarded to KZH, in whole or in part, to third parties (subcontracting). Any oral information, ancillary agreements and any other representations and warranties whatsoever made by KZH shall be invalid unless confirmed in writing by KZH prior to entering into the contract. KZH’s personnel shall not have authority to make legally binding statements e.g. on delivery dates, prospects of success (for research projects) etc.

## **4 Provision of Services, Acceptance, Indemnities**

- 4.1 Subject matters of a contract with KZH are:
  - Literature studies and baseline studies
  - Preparation and implementation of experimental designs
  - Sample and materials characterization
  - Implementation of complete research projects or completed project modules
  - Provision of expert service
  - Education and training measures
  - Organization and implementation of workshops
  - HR services
  - Other services

- 4.2 The basis for the provision of the service offered are the Supplier's written specification of services in the form of e.g. project descriptions including time and operating plans, experimental designs, test specifications and other information. The Customer shall provide the necessary information, materials and services. The parties involved in the implementation of a project shall promise mutual provision of research and development services of the type, content and scope defined in the relevant agreements and/or documents in accordance with the prevailing state of the art upon formation of contract and international standards for comparable research projects. It is expressly stated that there is no guarantee of reaching specific research goals and R&D results. Also in case of doubt performance shall be the only duty owed by KZH to the Contract Partner. If a project is discontinued because such goals and results are not achieved, no business contributions or subsidies spent will be refunded. Kompetenzzentrum Holz GmbH and all (university) partners and subcontractors assume no liability for damage incurred by a partner or third party in connection with the use of the R&D results.
- 4.3 KZH accepts no liability for any losses other than losses caused by gross negligence or willful act or omission by KZH; the aggregate liability shall not exceed the contract value. The Supplier shall not be liable to the Customer in respect of any consequential damage, lost profit or anticipated savings that failed to materialize or third-party damage – as far as such damage is not non-reimbursable according to the law anyway – regardless of degree of fault. The Supplier accepts no liability for accidental destruction of products handed over and/or results obtained, including force majeure causes.
- 4.4 The absence of features and/or contents guaranteed in the specification of services must be promptly notified in writing to KZH in detail by the Customer. The Customer undertakes to fully inspect the features and/or results provided immediately after the handover and at any rate before passing the products on or transferring any rights to them to third parties.

## **5 Prices**

- 5.1 Prices stated are prices ex works or warehouse of KZH and exclusive of packaging material, loading and VAT. Any charges, taxes or other levies imposed in connection with the consignment shall be paid by the Customer. If delivery of the consignment is agreed, delivery and transport insurance, if requested by the Customer, will be invoiced separately and will not include unloading the consignment and carrying it anywhere. Packaging material will only be taken back if expressly agreed between the parties.
- 5.2 Where a purchase order deviates from the overall offer, KZH reserves the right to adjust the prices accordingly.
- 5.3 Prices shall be based on the costs prevailing at the date of first quoting. Should the costs increase until the date of delivery, KZH shall have the right to adjust the prices accordingly.
- 5.4 The Customer will be invoiced separately for travel expenses, daily allowance and accommodation expenses incurred by KZH. Transit time shall be considered work time.

## **6 Delivery**

- 6.1 KZH will use its reasonable endeavors to deliver the products at the time stated (upon completion), but delivery dates shall be regarded as approximate only.
- 6.2 Performance deadlines can only be met if the Customer provides all the necessary works and documents, including, but not limited to, the specification of services according to item 4.2 above, accepted by the Customer, until the dates specified by the Supplier, and meets his duty to collaborate to the extent required. Delivery delays and increases in costs due to inaccurate, incomplete or subsequently altered information and/or documents provided shall not be attributable to the Supplier and cannot lead to Supplier's default. Any additional costs relating thereto shall be paid by the Customer. Moreover, the Customer undertakes to indemnify the Supplier for any damage relating thereto incurred by the latter, including, but not limited to, loss of profit, regardless of the Customer's fault.
- 6.3 With regard to installments of a shipment covered by a single contract KZH shall be entitled to make installment shipments and invoice each installment shipment.

6.4 Unforeseeable business disruptions and force majeure events as well as other events beyond the control of KZH, including, but not limited to, delays in delivery etc. by the upstream suppliers, shall entitle KZH, to the exclusion of any claims under guarantee, voidability due to error or claims for damages, to extend the delivery periods or, in case of continuing impediment to performance, to cancel the contract. This shall also apply if such events occur at a time when KZH is in default.

The transport shall be carried out for account and at the risk of KZH's Contract Partner, also in the case of installment shipments. The products shall be insured exclusively for the account and upon express request of the Contract Partner. Risk in the products shall pass to the Contract Partner upon shipment or when the freight forwarder picks up the products and no later than upon handover of the products to the Contract Partner or his agent.

If the products purchased are exported, the Contract Partner of KZH shall be obligated to obtain the necessary export and customs approvals etc. at his expense. KZH accepts no liability for the permissibility of export of the products. The Contract Partner shall indemnify and hold KZH harmless from any expenses or costs incurred by KZH from the shipment, transport or export of the products.

## **7 Acceptance**

The Customer shall not refuse to accept delivery of any consignment on account of insignificant defects.

## **8 Payment**

8.1 Unless otherwise agreed 30 % of the price shall be paid upon receipt of the Order Confirmation, 40 % after half of the delivery time has elapsed, and the remainder shall be payable upon delivery. Notwithstanding the aforesaid the VAT included on the invoice must at any rate be paid no later than 30 days from the invoice date.

8.2 Invoices for installment shipments shall be payable upon receipt of each invoice. This applies also to the invoice amounts exceeding the original contract amount resulting from additional shipments or other agreements, regardless of the payment terms stated for the main shipment.

8.3 All payments must be made without deduction of any kind free of charges to the bank named by the KZH in the currency stated.

8.4 The Customer shall not be entitled to retain or set off any payment on the grounds of any warranty claims or any other counterclaims.

8.5 Payments shall be deemed to have been made on the date on which KZH's account is credited.

8.6 If the Customer is in default of payment or with respect to any other service to be provided under the present or any other transactions, KZH shall, without prejudice to any other rights which KZH may have, be entitled to

a) delay the performance of its own obligations towards the Customer until the respective payment or other performance has been provided and avail itself of reasonable extension of delivery time,

b) demand immediate payment of all accounts receivable under the present or any other contract and charge 1.25 % interest on arrears per month on these amounts as of their respective due date unless the Supplier furnishes proof of costs exceeding this amount;

c) In any case the Supplier shall be entitled to charge costs incurred before taking legal action, including, but not limited to, dunning fees and lawyers' fees.

8.7 Rebates granted shall only be valid if the payment is made in full within the payment period stated on the invoice.

## **9 Intellectual Property Rights**

The services rendered, including, but not limited to, intellectual property rights shall be and remain the property of the partner providing them. Unless otherwise agreed the other Contract Partner shall thus only be granted an indefinite, non-exclusive and personal right to use the results for his own purposes. Any transfer of these rights of use or of (partial) results to third parties albeit temporary for any legal reason whatsoever, whether in dissolution or liquidation of the company,

particularly also in the case of bankruptcy, shall not be permitted. As far as the Contract Partner provided KZH with results for use within the framework of KZH's work and any third party thereupon raises claims against KZH, also for indirect use of these results by KZH, the Contract Partner shall be obligated to promptly examine and settle these claims and hold KZH harmless in this respect.

## **10 Termination of Contract, Rescission**

- 10.1 The services and projects shall be deemed to have been completed after the handover and/or delivery of a final report or test report or final presentation etc. or in the case of HR services, trainings etc. immediately after providing the quoted scope of services. Rework must be agreed upon separately and in writing or re-tendered.
- 10.2 If the Customer cannot establish the conditions required for any service to be rendered, KZH may refuse further performance of the contract. If performance of the contract is prevented by circumstances within the sphere of the Customer or if the Customer refuses to implement the work, KZH shall keep its entitlement to remuneration.
- 10.3 The Customer may not cancel an order for products or services without the written consent of KZH. If KZH agrees to the cancellation, KZH shall have the right to charge a cancellation fee of 30 % of the total of contract not yet invoiced in addition to the services rendered and costs incurred.
- 10.4 KZH shall have the right to terminate the contract early for reasons that make further cooperation infeasible (termination for cause), particularly
- if a company enters into insolvency proceedings or insolvency proceedings are dismissed for lack of assets,
  - if agreed-upon or necessary collaboration to whatever extent by the Contract Partner is not provided,
  - if the Contract Partner terminates the contract in a way in which it cannot be terminated, or
  - if the confidentiality obligations agreed upon or due dates, including, but not limited to, payment dates, are not fully discharged after a final deadline has been set.
- 10.5 In case of justified premature termination of the contract relationship KZH shall be entitled, regardless of whether or not the Contracting Party is at fault, at its discretion to either seek specific damages including the consequential damage we sustained or a lump sum in the form of a penalty amounting to 50 % of the total contract value, the latter regardless of whether or not we incurred or can furnish evidence of any damage. The above-mentioned penalty shall be deemed to be a minimum amount of compensation; we reserve the right to maintain confidentiality with regard to any damage exceeding the said amount. There is no right to penalty mitigation.

## **11 Loyalty**

The Contracting Parties shall be committed to mutual loyalty. They shall refrain from luring away and employing, also via third parties, any employees of the other Contracting Party who were involved in the implementation of the contracts as long as the Contract is effective and for 12 months after termination of the Contract. Any Contracting Party in breach of this obligation shall pay lump sum damages in the amount of one annual salary of the employee concerned.

## **12 Data Protection, Confidentiality and Publication**

The Contracting Parties shall put their personnel under an obligation to comply with the provisions of § 15 of the Data Protection Act. They shall also undertake to observe the obligations of confidentiality vis-à-vis third parties with regard to any knowledge, documents, tasks and transactions of the Contracting Party that become known to them during this contract relationship as well as the results of the work – also after the termination of the contract, unless such information has become generally known otherwise. In special cases the Contracting Parties shall enter into separate confidentiality agreements.

KZH shall be entitled, however, to use the respective research results for general advertisements in such a way that the activities of KZH are made known in particular to potential markets. This shall also apply to the use of the results for general publication, education and acquisition purposes. The names and logos of the Contracting Parties may be used as reference in presentations, sales documents, press releases and other publications.

### **13 Error**

Voidability of the contract between the Supplier and the Customer due to error shall be excluded.

### **14 Reservation of Ownership**

All products delivered by KZH shall remain the property of KZH until the purchase price or compensation for services rendered is paid. We will not accept any reservation of ownership by a contracting party. KZH reserves ownership in all products delivered by KZH until the invoices including interest and costs are paid for in full. The Customer hereby assigns his accounts receivable resulting from the resale of products subject to retention of title, even if such products have been processed, converted or altered, to KZH as collateral and undertakes to state that fact in his books or on his invoices. Upon request the Customer shall notify KZH of the accounts receivable assigned including the debtor and furnish all information and documents necessary for debt collection and inform the third-party debtor of the assignment. In case of attachment or other claims the Customer must point out KZH's title to products and promptly inform KZH.

### **15 General**

Should any individual provisions of this Contract be or become void, the validity of the remaining provisions hereof shall in no way be affected. In such case the Contracting Parties shall cooperate in partnership to find an arrangement coming as close as possible to the void provisions.

### **16 Final Provisions**

The Contracting Parties agree that the contract shall be subject to the jurisdiction of the competent courts of Linz, with KZH having the right to bring an action in other courts as well, provided that another place of jurisdiction exists. All disputes shall be settled according to the Austrian laws to the express exclusion of the UN Convention on Contracts for the International Sale of Products.