

# KLK Kolb Specialties B.V. & Dr. W. Kolb Nederland B.V. General Terms and Conditions of Technical Purchase of goods, works & services

Version August 2021

## 1 DEFINITIONS

1.1 In these Conditions the following definitions are used:

“KLK”	the private limited companies in the Netherlands with facilities in Delden (KLK Kolb Specialties B.V.) and Moerdijk (Dr. W. Kolb Nederland B.V.)
“Contract”	the agreement resulting from the Order and the Supplier’s acceptance of the Order;
“Goods”	any goods (except chemicals (bulk) and packaging) delivered and to be delivered to the Company by the Supplier (including any part or parts of them and any software);
“Losses”	losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation), claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis);
“Services”	any services provided and to be provided by the Supplier to KLK;
“Order”	the Company’s written instruction to supply the Goods, Works and/or Services;
“Supplier”	the person, firm or company who accepts KLK’s Order.
“Works”	any Works provided and to be provided by the Supplier delivers to KLK.

## 2 APPLICABILITY

2.1 These general terms and conditions replace and prevail over all preceding general terms and conditions applied by KLK.

Applicability of any purchasing or other terms and conditions of the Supplier is explicitly rejected.

- 2.2 The present general terms and conditions apply to all legal relationships, in which KLK acts as (prospective) buyer of Goods, Works and/or Services, and the other party, to be referred to hereinafter as “the Supplier”, also after termination of the legal relationship.
- 2.3 KLK is not bound by any proposal or offer originating from the Supplier but after written acceptance of such proposal or offer by KLK. Amendments of these general terms and conditions and the agreement(s) made between KLK and the Supplier are only valid if they have been agreed upon in writing. If in a specific case KLK and the Suppliers deviate from these general terms and conditions, the Supplier cannot derive any rights from it in respect of other legal relationships, entered into at a later date or not.

## 3. TAKING EFFECT OF THE AGREEMENT PRICE AND PAYMENT

- 3.1 The price of the Goods, Works and/or the Services shall be firmed fixed and be stated in the Order and unless otherwise agreed in writing by KLK, shall be exclusive of VAT but inclusive of all other charges, costs and expenses incurred in connection with the fulfillment of Supplier’s obligations under the Contract.
- 3.2 No Price increase or extra charges will be applicable, unless expressly accepted in writing by a duly authorized representative of the KLK.
- 3.3 In respect of Goods, the Supplier shall invoice KLK after completion of delivery. In respect of Works and/or Services, the Supplier shall invoice KLK on completion of the Works and/or Services. The invoice shall be sent to KLK separately. Each invoice shall include such supporting information as is required by KLK to verify the accuracy of

the invoice and shall quote the purchase order reference number (if any) of the Order to which it relates.

- 3.4 KLK shall pay the price within sixty (60) days after receipt by KLK of a valid invoice or, if later, after acceptance of the Goods or Works and/or Services in question by KLK.
- 3.5 If KLK objects to the invoice or to the Goods delivered or the Works and/or Services rendered it may suspend payment, without prejudice to any of its other rights by Contract or law.
- 3.6 Without prejudice to any of its other rights by Contract or law, KLK reserves the right to set off any amount owing or allegedly owed at any time from the Supplier to KLK against any amount payable by KLK to the Supplier under the Contract.

#### **4 SECRECY**

- 4.1 The Supplier shall not publicize any data or information concerning KLK received from KLK or become known to him in another manner, directly or indirectly, nor make them accessible to third parties in another manner, not even after termination of the agreement for whatever reason. Supplier shall restrict disclosure of such confidential material to such of its employees or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to KLK and shall ensure that such employees or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

#### **5 PROPERTY**

- 5.1 If KLK makes Products available to the Supplier under the performance of the legal relationship between KLK and the Supplier, they remain the property of KLK.
- 5.2 Products in the sense of this Article 5.1 are:
- A) all raw materials, semi-finished Products, material and parts;
  - B) machines, installations, models, stamps, packaging material, matrixes, moulds, calibres, drawings and other information carriers;
  - C) all other goods

- 5.3 The Supplier is obliged to store Products, which are the property of KLK, apart from the rest and to mark them as the property of KLK

- 5.4 The Supplier commits not to (have somebody) use Products which are the property of KLK, nor to allow third parties to do so for any purpose other than the performance of this duties vis-à-vis KLK. The Supplier must immediately inform KLK of any claims by third parties and of any measures it has taken in that context.

- 5.5 If the Supplier creates a good with the use of any Company Property, it will be considered to create that good for KLK.

#### **6 INTELLECTUAL PROPERTY AND KNOW-HOW**

- 6.1 All Products as well as material such as documents, sales brochures, reproductions, drawings etc. provided by KLK to the Supplier will remain the property of KLK. The Supplier is not entitled to use them in any manner other than for the sake of the use of the Products which they relate to.

- 6.2 The Supplier fully warrants KLK from third-party claims in respect of any infringement or alleged infringement of industrial or intellectual property rights, including know-how in respect of Products delivered or still to be delivered by the Supplier.

#### **7 WORKING CONDITIONS (HEALTH AND SAFETY)**

- 7.1 The Supplier shall comply with KLK policy with respect to all prescribed rules regarding Safety, Health & Environment, a.o. the use of Personal Protective Equipment.

- 7.2 On request, the Supplier shall provide KLK with copies of the VCA, Certificate of Good Conduct (VOG), diplomas, testimonials and any employer references in respect of the personnel and/or engaged third parties.

- 7.3 Without limiting the generality of this clause 7, the Supplier agrees that it will ensure that its employees and officers, agents, subcontractors and any other person performing services for the Supplier in connection with the contract, as well as the Supplier itself, will strictly comply with all applicable laws pertaining to bribery and other corruption, as stated in KLK's Code of Conduct.

## 8 REMEDIES & INSURANCE

8.1 Without prejudice to any other right or remedy which KLK may have, if any Goods, Works and/or Services are not supplied or provided in accordance with, or the Supplier fails to comply with, any of the terms of this Contract, KLK shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods, Works and/or Services have been accepted by KLK:

- i) to cancel the Order and/or terminate the Contract;
- ii) at the Company's option to give the Supplier the opportunity at the Supplier's expense to (a) reperform the Works and/or Services; (b) remedy any defect in the Goods; (c) supply replacement Goods; (d) and/or carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- iii) to carry out at the Supplier's expense any work necessary to make the Goods, Works and/or Services comply with the Contract;
- iv) to reject the Goods, Works and/or Services (in whole or in part) and receive a full refund for the Goods or Services rejected, to be paid forthwith by the Supplier;
- v) to refuse to accept any further deliveries of the Goods or provision of the Works and/or Services but without any liability to the Supplier;
- vi) to recover from the Supplier any expenditure reasonably incurred by the Company in obtaining the Goods or Works and/or Services in substitution from another Supplier;
- vii) to claim such Losses as may have been sustained in consequence of the Supplier's breaches of the Contract.

8.2 The Supplier shall, at its expense for the conduct of its business, maintain an insurance policy with cover against liability that is customary in the industry with reputable insurers. At the request of KLK, the Supplier will provide copies of the policy certificates and details of the cover offered.

## 9 CANCELLATION, SUSPENSION AND TERMINATION

- 9.1 KLK shall have the right at any time and for any reason to cancel an Order and/or terminate any Contract in whole or in part, by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and KLK shall pay to the Supplier only fair and reasonable compensation for work-in-progress and costs actually incurred by the Supplier up to the date of termination, which will in no case exceed the price stated in the Order. For the avoidance of doubt, such compensation shall not include loss of anticipated profits or any consequential loss.
- 9.2 Notwithstanding Article 9.1, if KLK cancels an Order and/or terminates a Contract for Services before the expiry of its contractual period or otherwise terminates the Contract prematurely, KLK will never be obliged to more than (i) payment for the Services actually performed in the event of periodic payment; or (ii) in the event of a fixed contract sum, payment of a proportional part of the compensation agreed, based on the contractual term already expired and the Works and/or Services performed.
- 9.3 Without prejudice to any other rights that KLK has under the Contract or the law, KLK has the right at any time to immediately suspend payment or to cancel an Order and / or to terminate a Contract in whole or in part by means of a written notice. to the Supplier, if: (i) the Supplier is in breach of any of the terms of the Contract; (ii) goods of the Supplier or its assets are seized; (iii) the Supplier enters into a compromise or settlement with its creditors; (iv) the Supplier is declared bankrupt, applies for a moratorium, is declared subject to the Debt Restructuring for Natural Persons Act, (v) the Supplier ceases or threatens to cease business; or (vi) the Supplier's financial position deteriorates to such an extent that, in KLK's opinion, the ability of the Supplier to adequately fulfill its obligations under the Agreement is endangered (vii) the Supplier is placed under guardianship or its assets are placed under administration.
- 9.4 Cancellation or termination of the Contract, in any way whatsoever, does not affect the rights of KLK that have been built up prior to such cancellation or termination. Any Terms expressly or implicitly in effect upon cancellation or termination will survive cancellation or termination.

## **10 TRANSFER OF RIGHTS AND OBLIGATIONS/ SUBCONTRACTING**

10.1 The Supplier shall not be permitted to transfer rights and obligations resulting from the Purchase Order to third parties without the prior written consent of KLK. KLK may attach conditions to this permission. Prior written consent of KLK shall be required for subcontracting to third parties substantial parts of the obligations arising from the Purchase Order.

The Supplier shall nevertheless remain entirely responsible and liable towards KLK for the proper fulfilment of the Purchase Order.

10.2 The Supplier hereby agrees that KLK may assign the Contract or any part of it to any person, firm or company and hereby cooperates with such an assignment in advance.

## **11 LIABILITY AND INDEMNITY**

11.1 Improper performance of the Supplier will render Supplier in default immediately, without notice of default being required.

11.2 Without prejudice to any other rights of KLK under the Contract or law, the Supplier shall indemnify and keep indemnified KLK in full and hold it harmless on demand from and against any and all Losses suffered or incurred by KLK or for which KLK may become liable arising out of or in connection with:

(i) defective design, workmanship, quality, materials or any other defect in the Goods or Works and/or Services to the extent that the defect is attributable to the acts or omissions of the Supplier, its employees or sub-contractors; (ii) any infringement or alleged infringement of any intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods or the supply, receipt or use of the Works and/or Services; and (iii) the supply of the Goods or Works and/or Services, to the extent that such Losses arise out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees or sub-contractors.

## **12 PACKAGING**

The Supplier will pack the Goods as economically, safely and carefully as possible and in such a way that the shipment can be properly handled. Supplier is liable for all damage resulting from insufficient or unsuitable packaging. The packaging material must not be harmful to the environment, judged on the basis of the state of the art at the time of delivery and must not otherwise pose a threat to the safety, welfare or health of humans or animals.

## **13 FORCE MAJEURE**

13.1 KLK is not liable in the event of force majeure. Force majeure on the part of KLK means all circumstances beyond KLK's will that prevent compliance with the agreement in whole or in part.

13.2 Should the Supplier not collaborate in delivery, once KLK has allowed him a term of fourteen (14) days to do so, then KLK will be released from its obligations without the Supplier being released from any of his obligations.

## **14 APPLICABLE LAW/JURISDICTION**

14.1 Dutch law applies to all legal relationships between KLK and the Supplier. Applicability of the provisions of the LUVI – Uniform Act on International Sale (The Hague, July 1, 1964) and the CISG – United Nations Convention on International Sale Agreements (Vienna, April 11, 1980) is expressly excluded.

14.2 Disputes between KLK and the Supplier which fall within the jurisdiction of the District Court, also including disputes concerning claims which are presented in preliminary proceedings to the court of the place of registration of KLK, will exclusively be judged by the court of the place of registration of KLK, save when being the plaintiff or the petitioner KLK chooses the competent court of the abode or place of registration of the Supplier.

## **15 DELIVERY**

15.1 Delivery shall be made free of charge at the warehouse of KLK, or at a place to be defined by KLK.

15.2 Delivery and/or partial delivery earlier than has been agreed between KLK and the Supplier may only take place

after prior written permission of KLK. Premature delivery and/or partial delivery does not result into changes of the agreed date of payment.

15.3 KLK is entitled to return all Products delivered by the Supplier but not ordered by it to the Supplier without prior notice and at the expense and risk of the Supplier.

15.4 The Supplier shall ensure that all instructions of use and mounting, certificates, manuals, and other documents relating

to the Products to be delivered by him, will be in the possession of KLK by the moment of delivery.

15.5 The Supplier warrants that all components and spare parts of the delivered Goods (including any software) will be available during the technical life of the delivered Goods and promptly dispatched to KLK upon its request.

15.6 The Products are the property of KLK from the moment of the delivery or, should acceptance of the Products take place at a later moment, from the moment of acceptance. Applicability of any reservation of title made by the Supplier is expressly dismissed.

15.7 The Products supplied by the Supplier shall be at the risk of KLK after acceptance of the Products by KLK.

15.8 Agreed delivery dates shall be considered deadlines. If the Supplier is unable to perform the agreement made with KLK immediately or by the term agreed, the Supplier will inform KLK thereof at once, while stating the term by which the Supplier expects to be able to perform the agreement. If as a result of non-timely performance of the agreement by the Supplier KLK incurs damage, the Supplier is held to compensate such damage to KLK, regardless of whether it concerns direct or indirect damage.

15.9 Notions commonly used in trade such as FOB, CIF, CIP etc. shall be interpreted in conformity with the Incoterms 2010 as registered with the International Chamber of Commerce in Paris.

15.10 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Order number, line item number, date of Order, number of packages and contents and, in the case of partial delivery, the outstanding balance remaining to be delivered.

## 16 QUALITY AND DEFECTS

16.1 The Supplier warrants that the delivered Goods (including the packaging materials) are in conformity with the Contract. This means at any rate that the Goods (including but not limited to any repaired Goods) shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by KLK to the Supplier and that the Goods shall be fit for the particular purposes for which they are required by KLK and comply with all applicable statutory rules and regulations. By fulfilling the Order, the Supplier acknowledges that KLK is relying upon the Supplier's skill or judgment in providing such Goods.

16.2 Without prejudice to any other rights of KLK under the Contract or the law, the warranty set forth in Article 16.1 shall extend for a period of twenty four (24) months from the actual date of delivery of the Goods to KLK. Any Goods repaired or replaced during said warranty term are warranted for the remainder of the original warranty term or twelve (12) months following the delivery date of such repaired or replaced Good as specified by Article 15.2, whichever period is longer.

16.3 At any time prior to delivery of the Goods, KLK shall have the right to inspect and test the Goods.

16.4 If the results of such inspection or testing cause KLK to be of the opinion that the Goods do not conform or are unlikely to conform to the Contract, KLK shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition KLK shall have the right to require and witness further testing and inspection.

16.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

16.6 If any of the Goods fail to comply with the provisions set out in this Article 16, KLK shall be entitled to any one or more remedies listed in Article 8.

## **17 QUALITY AND ENVIRONMENT**

17.1 The Supplier shall maintain a quality system that is certified according to the quality standards of ISO 9001. Waivers to the ISO 9001 quality standards are not valid unless approved in writing by KLK. The Supplier shall maintain an environment

system that is in line with the standards of ISO 14001.

## **PERFORMANCE OF WORK AND/OR SERVICES**

### **18 GENERAL**

18.1 In addition to Articles 1 to 17, Articles 18 - 20 will apply if and in so far a Contract relates to the performance of Work and Services.

### **19 OBLIGATIONS OF THE SUPPLIER**

19.1 The Supplier shall perform the Works and or Services exercising the due diligence, reasonable care and skill required of a diligent Supplier. The Supplier warrants that, in performing the Contract, it, its staff and any third parties that it employs with KLK consent will strictly observe the instructions and wishes of KLK or other natural persons or legal entities designated by KLK.

19.2 The Supplier warrants that the result of the Works and/or Services to be performed by it or on its behalf will meet the qualifications set by KLK.

19.3 The Supplier warrants that the staff employed to perform the Works and/or Services will do so in accordance with any special requirements to be set by KLK or, absent such special requirements, in accordance with stringent requirements of professionalism and expertise and good industry practice.

19.4 KLK may require that staff who, in KLK reasonable opinion, do not meet the above requirements or responsibilities be removed and replaced as soon as reasonably possible.

19.5 If KLK so desires, a responsible person designated by the Supplier will always be present during the performance of the Services by the Supplier. That person's name must be known to KLK. Upon commencement, interruption or termination of the work, that person must report to KLK, who will assess

whether the Supplier has acted in conformity with the arrangements made in this matter.

19.6 If any part of the provided Works and/or Services, fail to comply with the provisions set out in this Article 19, KLK shall be entitled to any one or more remedies listed in Article 8.

19.7 Work in buildings and on premises of KLK shall be carried out during business hours unless otherwise agreed.

### **20 DELIVERY OF THE WORKS AND/OR SERVICES**

20.1 The Supplier will bear the risk of the goods, the ancillary materials and the material used by the Supplier to perform the Works and/or Services, including but not limited to the risk of theft, loss and damage.

20.2 The Works and/or Services will be deemed to have been completed only after the Supplier has notified KLK either in writing or orally that the Works and/or Services have been completed and KLK has approved the Works and/or Services and notified the Supplier accordingly in writing. The Supplier will be entitled to charge any additional work only with KLK prior written approval.

## **SOFTWARE**

### **21 GENERAL**

21.1 In addition to the above, Article 22 applies if the Contract relates to the delivery, on any legal basis whatsoever, and/or installation of software.

### **22 DELIVERY AND INSTALLATION**

22.1 The software shall be delivered entirely complete and ready for use on the agreed dates. The Supplier shall inform KLK in its offer - and after the offer has been made - if a newer version of the software in question is placed on the market. Unless otherwise agreed in writing, if new software is delivered, the latest release of that software will be delivered. All tools that are required for sound operation, additional documentation and application software will also be delivered, even if that has not been agreed explicitly.

- 22.2 If it follows from the Contract with the Supplier, which includes these Conditions, that installation will also take place, the Supplier will timely state the time that will be involved therein, as well as the consequences for the operation of KLK.
- 22.3 The Supplier warrants that the software to be delivered is compatible with the automation and/or operation systems already present at KLK.
- 22.4 Any defect in the software will be repaired free of charge within 24 hours. If the software does not function properly, either in combination with other software, it will be considered faulty and the Supplier will be considered to be in default.
- 22.5 Unless agreed otherwise in writing, the upgrade of software and the above providing of tools, documentation and application software will be free of any extra charge.

**KLK KOLB SPECIALTIES B.V.**

Langestraat 167, 7491 AE Delden, Postbus 1, NL-7490 AA Delden,  
The Netherlands  
Trade reg. Enschede No. 06005765 BTW/VAT No. NL 0012.64.916.B01  
Tel : +31 74 3775 000      [www.klkoleo.com](http://www.klkoleo.com)      [www.klkkolb.com](http://www.klkkolb.com)

**DR. W. KOLB NEDERLAND B.V.**

Industrieterrein Moerdijk, Havennummer M431, Westelijke Randweg 5,  
4791 RT Klundert, Postbus 123, NL-4790 AC Klundert, The Netherlands  
Trade reg. Breda No. 20063405, BTW/VAT No. NL 8000.39.397.B01  
Tel : +31 168 41 43 00      [www.klkoleo.com](http://www.klkoleo.com)      [www.kolb.ch](http://www.kolb.ch)