

General Terms and Conditions of Purchase of KWS SAAT SE & Co KGaA and affiliated Companies



From: 12.8.2020

A. General

§ 1 Application

- (1) These terms and conditions of purchase (hereinafter "**Terms of Purchase**") shall govern all contracts which KWS SAAT SE & Co KGaA and its affiliated companies within the meaning of section 2359 of Italian Civil Code (hereinafter "**KWS Companies**") conclude regarding the purchase and delivery of movable goods (hereinafter "**Goods**") or the use of services (hereinafter "**Services**") with a supplier of Goods and/or a Services provider (hereinafter "**Contract Partner**"). "**KWS**" hereinafter refers to the KWS Company or Companies concluding the relevant contract.
- (2) The Terms of Purchase shall only apply if the Contract Partner is an entrepreneur (section 2082 of Italian Civil Code), and in any case not a consumer, as identified under section 3, par. 1(a) of Legislative Decree no. 206 of 2005 ("**Consumers' Code**").
- (3) The Terms of Purchase shall apply exclusively; any differing or contrary or supplementary terms and conditions of the Contract Partner shall only become part of the contract if and insofar as KWS has expressly agreed to their validity in writing. This requirement of consent shall also apply if KWS – being aware of the differing, contrary and/or supplementary terms and conditions of the Contract Partner – accepts the Goods or Services without reservation.
- (4) KWS reserves the right to agree on individual agreements with the Contract Partner which – insofar as they deviate from or contradict the provisions of these Terms of Purchase – shall take precedence over these Terms of Purchase. The agreement of such precedence of application must be made in writing.

§ 2 Conclusion of a contract

- (1) A contract between KWS and the Contract Partner is concluded when the Contract Partner becomes aware of KWS' acceptance of an offer of the Contract Partner by placing a written order (acceptance of offer).
- (2) A contract between KWS and the Contract Partner is also concluded when KWS is aware of the acceptance by the Contract Partner of KWS' order. Subject to revocation of an order prior to its confirmation by the Contract Partner, KWS shall be bound to its orders for a period of seven (7) calendar days. The Contract Partner may accept an order from KWS by written confirmation (order confirmation) or by delivering the Goods or performing the Service without reservation within the specified period.
- (3) The Contract Partner shall treat the conclusion of each contract and the business relationship with KWS as confidential. Any reference to a business relationship with KWS in the Contract Partner's publications, in particular in advertising materials and reference lists, requires KWS' prior written consent.

§ 3 Prices, invoices and terms of payment

- (1) The prices indicated in KWS' orders are fixed prices. They are subject to the respective statutory VAT. Unless expressly agreed otherwise in individual cases, the prices include all Services and ancillary Services of the Contract Partner, in particular assembly and installation, and all ancillary costs, in particular for proper packaging (including transport packaging), transport and insurance. Costs for visits by the Contract Partner to KWS or for the preparation of offers shall not be reimbursed by KWS.
- (2) The Contract Partner must comply with all laws and regulations pertaining to invoicing (including e-invoicing), and – where technically feasible due to the applicable laws and regulations on invoicing – it shall submit invoices to KWS in duplicate, quoting the order number and the date of the order. In the case of Goods, invoices must be submitted separately from the delivery. Courtesy copies of invoices must be clearly marked as such.
- (3) Invoices issued to KWS are not due for payment before the expiry of thirty (30) calendar days counting from the complete delivery of the Goods or performance of the Service and in the case of acceptance of a Service counting from the acceptance, and receipt of a proper invoice. For payments within fifteen (15) calendar days from the occurrence of the circumstances mentioned in sentence 1 of this para. (3), the Contract Partner allows KWS to deduct a 3% discount on the net invoice amount. The date on which the remittance order is issued shall be decisive for compliance with the payment deadlines. The unconditional payment of an invoice amount shall not constitute acknowledgment of the Goods or Services concerned as being in accordance with the contract.
- (4) If the Contract Partner provides Services for an indefinite period of time, it must invoice KWS for each calendar month in which it has worked for KWS by the 15th of the respective following month, unless otherwise agreed. If the contract does not specify the scope and subject matter of the Services to be provided, the Contract Partner shall enclose with each invoice comprehensible descriptions of activities and details of the time spent on them in each case in steps of one tenth of an hour (e.g. 1.5 hours for one hour and 30 minutes).
- (5) KWS does not owe any interest on maturity. The Contract Partner's claim to payment of default interest remains unaffected. The statutory provisions shall apply to the occurrence of default; however, KWS shall not be in default without a reminder/warning (*costituzione in mora*).

§ 4 Documents, objects, manufacturing and documentation

- (1) Illustrations, plans, drawings, calculations, instructions, guidelines, formulas, product descriptions and other documents (hereinafter "**Documents**") that KWS makes available to the Contract Partner shall be used exclusively for the purpose of determining the Goods to be delivered or for the Services to be rendered, and shall be returned to KWS immediately after the delivery of the Goods or performance of the Services. The transfer of Documents to the Contract Partner does not imply the granting of any rights to these Documents or their contents. These Documents constitute Confidential Information within the meaning of § 5 para. (1) of these Terms of Purchase.
- (2) The provision of para. (1) applies accordingly to substances, materials, tools, templates, samples, forms, models, profiles and other objects (hereinafter "**Items**") that KWS makes available to the Contract Partner for the purpose of determining the Goods to be delivered or the Services to be rendered. Insofar as KWS does not hand over Items to the Contract Partner for the purpose of processing them, the Contract Partner shall store the Items separately at its own expense until they are returned to KWS and shall insure them to the usual extent against destruction and loss.
- (3) Dies, gauges, matrices, models, samples, tools, forms, welding templates, data processing programs and the like (hereinafter "**Production Equipment**") which the Contract Partner manufactures according to documents or objects provided by KWS, may only be used by the Contract Partner for the purpose of delivering the ordered Goods or performing the ordered Services. The Contract Partner shall neither use these Production Equipment for its own purposes nor offer or make them available to third parties.
- (4) Without undue delay, but at the latest within fourteen (14) calendar days after delivery of the Goods or performance of the Services or, if applicable, after acceptance of a

Service, the Contract Partner shall send KWS the drawings, calculations, storage, assembly and operating instructions and instructions for the inspection, maintenance and repair of the Goods and all other technical documentation relating to the Goods or Services, as delivered or provided, free of charge in standard DIN format or on data processing media.

§ 5 Confidentiality and compliance

- (1) The Contract Partner undertakes to treat all documents, information and knowledge of a technical, commercial or organizational nature (collectively "**Confidential Information**") which it has obtained from KWS as strictly confidential and to use them exclusively for the purposes of fulfilling the contracts concluded with KWS. Confidential Information includes, in particular, trade secrets that are marked or identified as such, within the meaning of sections 98 and 99 of Legislative Decree no. 30 of 2005 (e.g. product data, commercial, financial and technical data, as well as the content of each contract, trade secrets of the companies affiliated with KWS) and all information about customers of KWS or the companies affiliated with KWS, and all related personal data within the meaning of section 4, para. 1(1) of Regulation 2016/679/EU (General Data Protection Regulation – "**GDPR**"), Legislative Decree no. 196 of 2003 (Italian Data Protection Code) and all further provisions on data protection.
- (2) The obligation to maintain confidentiality shall not apply to information:
 - a. which were already known to the Contract Partner before;
 - b. which the Contract Partner obtained from a third party lawfully in possession of the information and not subject to any confidentiality obligations with regard to the information;
 - c. that becomes publicly known without the fault of the Contract Partner;
 - d. which the Contract Partner can prove that it has independently created/developed without relying on the confidential information obtained from KWS.

Legal and official disclosure obligations remain unaffected.

- (3) Only such organs, employees or agents of the Contract Partner may have access to KWS' confidential information, whose knowledge is necessary for the performance of a contract and who are subject to equivalent confidentiality obligations as agreed here. Confidential information shall not be made accessible to other third parties.
- (4) The Contract Partner undertakes to keep all documents, materials and storage media containing Confidential Information of KWS separate from other documents, materials and storage media and to mark them as Confidential Information of KWS.
- (5) The Contract Partner undertakes to take appropriate measures to maintain secrecy over trade secrets, as identified by section 98, par. 1(c) of Legislative Decree no. 30 of 2005, and the technical and organizational measures required in accordance with section 32 of the GDPR in order to maintain the confidentiality of KWS' Confidential Information. The Contract Partner shall in particular implement appropriate IT security measures, visitor controls, admission restrictions or other measures appropriate in individual cases.
- (6) The Contract Partner shall return the Confidential Information of KWS, including all copies, to KWS or destroy them upon the request of KWS as soon as this Confidential Information is no longer required for the purposes of the contract. The complete return or destruction shall be confirmed in writing upon request.
- (7) In case of doubt as to whether information constitutes Confidential Information, the Contract Partner shall consult KWS.
- (8) The obligation to maintain the confidentiality of the Confidential Information of KWS exists for a period of five (5) years beyond the date on which the last contract concluded between the parties ends.
- (9) For each case of culpable violation of the confidentiality obligations, the Contract Partner shall pay a contractual penalty of EUR 10,000.00 to KWS. KWS reserves the right to assert a claim for damages in excess thereof.
- (10) The organs, employees and agents of KWS are contractually obliged to observe KWS' compliance rules. The Contract Partner undertakes to refrain from any action that could lead to criminal liability due to fraud or embezzlement, insolvency offences, offences against non-competition, granting of advantages, acceptance of advantages, bribery, corruption or comparable offences committed by an organ, employee or agent employed by KWS or by the Contract Partner. Any attempt of such an offense shall entitle KWS to – without prejudice to any other rights KWS is legally entitled to – immediately terminate all contracts upon notice under section 1456 of Italian Civil Code, without prejudice to any further remedy at law (such as the right to compensation of the suffered damages).
- (11) The Contract Partner acknowledges and undertakes to comply with the "**KWS Code of Business Ethics for Suppliers**" as attached to these Terms of Purchase or available, as updated from time to time, at <https://www.kws.com/corp/en/cobel/>. The Contract Partner also undertakes to comply with provisions of Legislative Decree no. 231 of 2001, and with KWS Organization Model, as adopted pursuant Legislative Decree no. 231 of 2001 (if any). In the event of failure by the Contract Partner to comply with the provisions of Legislative Decree no. 231 of 2001 and/or KWS Code of Business Ethics for Suppliers and/or KWS Organization Model, KWS will be entitled to immediately terminate all contracts upon notice under section 1456 of Italian Civil Code, without prejudice to any further remedy at law (such as the right to compensation of the suffered damages).

§ 6 Services by third parties

Without KWS' prior written consent, the Contract Partner may not commission third parties, in particular subcontractors, to perform the services owed by it.

§ 7 Right of retention and off-set

- (1) KWS reserves all rights to offset or retain payment according to applicable law.
- (2) Subject to sentence 2 of this para. (2), the Contract Partner may only offset or retain payment with counterclaims that have been legally determined or are undisputed. Offsetting is also possible with synallagmatic counterclaims.

§ 8 Liability of KWS

- (1) KWS shall be liable without limitation for damages caused by gross negligence or intent on the part of KWS, legal representatives or vicarious agents of KWS.
- (2) In all other cases, KWS liability shall be limited to the compensation of the damages that were foreseeable at the time of the conclusion of the contract.

§ 9 Applicable law and jurisdiction

- (1) These Terms of Purchase and all contracts concluded between KWS and the Contract Partner and their interpretation are subject to the laws of the Republic of Italy, excluding the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980.
- (2) The exclusive place of jurisdiction for all disputes arising from or in connection with a contract, including these Terms of Purchase, shall be the registered office of KWS.

§ 10 Miscellaneous

- (1) Declarations of the Contract Partner which are intended to have legal effect (e.g. setting of deadlines, reminders, withdrawal) must be made in writing to be effective.
- (2) Amendments and supplements to a contract must also be made in writing, unless the contract provides otherwise. This also applies to changes to the written form requirement.
- (3) Insofar as these Terms of Purchase require the written form, this requirement shall be fulfilled by transmission via e-mail or other text form. This shall not apply to declarations of termination, contestation or withdrawal from a contract and amendments to the contract including the cancellation of the written form requirement: such communications shall be via fax or certified email (*posta elettronica certificata*) or registered letter with acknowledgement of receipt.
- (4) If any provision of these Terms of Purchase proves to be invalid or unenforceable, the validity and enforceability of the remaining provisions of the Terms of Purchase shall not be affected thereby.
- (5) There is an Italian and an English version of these Terms of Purchase. In case of discrepancy between the two versions, the English version shall prevail.

B. Special part for the delivery of Goods

§ 1 Delivery dates, default in delivery, liquidated damages and partial delivery

- (1) Agreed delivery dates are fixed; neither party may change them without the consent of the other party. If an order does not contain a delivery date and no other delivery date has been agreed upon, the delivery period shall be no more than six (6) weeks from the conclusion of the contract.
- (2) If a contract specifies the delivery period as "expected", "approximate", "subject to usual reservations" or similar, there may be no more than five (5) working days between the specified date and actual delivery.
- (3) Should a delivery date be indicated as essential, delay in delivery will result in KWS right to immediately terminate the contract without notice under section 1457, par. 2 of Italian Civil Code, without prejudice to any further remedy at law (such as claims for compensation of the suffered damages). Should the delivery date not be indicated as essential, in the event of delay KWS will notify the delay to the Contract Partner, and will order the delivery within the subsequent fifteen (15) days (or other term from time to time agreed between the parties); should the Contract Partner fail to perform the delivery within such term, then KWS will be entitled to terminate the contract, without prejudice to any further remedy at law (such as claim for compensation of the suffered damages).
- (4) The Contract Partner shall immediately inform KWS in writing of any threatening or actual delay in delivery. The information shall contain details of the cause and the expected duration of the delay. In such cases, the Contract Partner shall, at its own expense, take all measures that are necessary and appropriate to prevent an impending delay in delivery or to keep the delay as short as possible. The Contract Partner shall inform KWS in writing of the measures it has taken and is planning to take.
- (5) If the Contract Partner is in default of delivery, it shall pay KWS – in addition to further statutory claims – a lump-sum compensation for damages caused by the delay in the amount of 0.2% of the net price of the Goods delivered late per completed calendar day, in total not exceeding 5% of the net price. KWS reserves the right to prove that KWS has incurred higher damages. The Contract Partner reserves the right to prove that KWS has suffered no damage at all or only a significantly lower damage.
- (6) Partial deliveries are only permitted with KWS' prior express consent.

§ 2 Delivery place, delivery note, safety data sheets, packaging, assembly and installation

- (1) The Contract Partner must deliver the Goods "free of charge" to the place specified in the order. If the place of delivery is not specified and nothing else has been agreed upon, the place of delivery shall be the registered office of KWS. The respective place of delivery is also the place of fulfillment.
- (2) Each delivery shall be accompanied by a delivery note indicating the order number, the KWS business reference, the date of the order, the number and date of issue of the delivery note, the date of dispatch of the delivery, the type and scope of the delivery, the material and item numbers stated in the order and the type of dispatch.
- (3) Insofar as statutory provisions require safety data sheets and trencards to be enclosed with the Goods, these must be handed over to KWS at the latest upon delivery of the Goods. If the safety data sheets or trencards for the delivered Goods are changed after delivery, the Contract Partner shall be obliged to send the new safety data sheets and/or trencards to KWS without delay.
- (4) KWS is entitled to determine the type of packaging and shipping. If nothing has been specified and nothing else has been agreed upon, the Contract Partner is obliged to select the least expensive commercial packaging option and mode of shipping for KWS. Upon KWS' request, the Contract Partner shall at any time and at its own expense repossess transport, sales and outer packaging and dispose of it in accordance with the law.
- (5) If installation and/or assembly are part of the object of delivery, the Contract Partner shall be obliged to comply with all applicable regulations and requirements regarding work safety, accident prevention (such as, including but not limited to, Legislative Decree no. 81 of 2008), fire protection, product safety and environmental regulations.

§ 3 Transfer of risk and default in acceptance

- (1) The risk of accidental loss or accidental deterioration to the Goods passes to KWS upon proper and complete delivery of the Goods at the place of fulfillment. Insofar as acceptance is required, the risk shall not pass to KWS until acceptance has taken place.
- (2) The statutory provisions shall apply to the occurrence of default in acceptance by KWS. However, the Contract Partner shall even expressly offer its Services to KWS in the event that a specific or determinable calendar period has been agreed upon for an action or cooperation of KWS (e.g. provision of material). If the contract concerns an unrepresentable item to be manufactured by the Contract Partner (individual production), the Contract Partner shall only be entitled to rights in excess of those stipulated in section 1217 of the Italian Civil Code insofar as KWS undertook to cooperate and is responsible for the delay in cooperation.

§ 4 Duty to inspect and duty to give notice of defects

- (1) The Italian Civil Code provisions shall apply to KWS duties to inspect and give notice with the following specifications: KWS' duty to inspect is limited to defects that become apparent during the incoming goods inspection by KWS through external inspection, including the delivery documents, and during quality control by KWS in a random sampling procedure, i.e. e.g. transport damage, wrong or short deliveries. In addition, the duty to inspect does not apply if the inspection is omitted in the orderly course of business due to the circumstances of the individual case. KWS' duty to give notice of defects discovered at a later date remains unaffected. In all cases, a notice (notification of defects) by KWS shall be deemed to be valid if KWS sends it to the Contract Partner within eight (8) days after the defect has been discovered. If it is agreed that Goods to be delivered are subject to acceptance by KWS, the duty to inspect and give notice does not apply to KWS; KWS shall only recognize the Goods as being in conformity with the contract upon acceptance, if necessary subject to the rights in respect of defects.
- (2) The expenses for the examination of a defect notified by KWS and for the attempts to rectify the defect shall be borne by the Contract Partner even if it turns out that there was

in fact no defect. KWS' liability in the event of unjustified requests for rectification of defects shall remain unaffected; it is subject to the restrictions specified under § 8.

§ 5 Warranty and self-performance

- (1) The statutory provisions shall apply to KWS' rights in the event of defects of material or title of the Goods, unless otherwise provided for below.
- (2) In accordance with the statutory provisions, the Contract Partner shall be liable in particular for ensuring that the Goods have the agreed quality at the time of transfer of risk to KWS. The agreed quality shall also be deemed to be that the Goods comply with the state-of-the-art technology and with all legal and official requirements applicable at the place of delivery and at the contractually stipulated places of use, with the relevant standards and regulations and guidelines of authorities, professional associations and trade associations, in particular for work, equipment and product safety and for accident prevention and fire protection, and that the Goods have been tested by the competent authorities and have been approved for the contractually stipulated purpose of use.
- (3) KWS shall be entitled to claims for defects without restriction, also if KWS was unaware of the defect at the time the contract was concluded.
- (4) For repaired Goods, the warranty period begins upon the end of rectification, for Goods delivered as replacements the warranty period begins upon delivery of the replacement, and if acceptance has been agreed, the warranty period begins upon acceptance. The period shall in no case end before the expiry of the limitation period for claims for defects agreed for the originally delivered Goods.

§ 6 Product liability

- (1) The Contract Partner shall indemnify KWS against third party claims upon first written request insofar as such claims are based on defects of the Goods for which the Contract Partner itself is liable to the third party.
- (2) Under the same conditions, the Contract Partner shall reimburse KWS for expenses incurred by KWS from or in connection with third party claims and the recall of Goods. KWS shall inform the Contract Partner of the object and extent of the recall measures as far as this is possible and reasonable and shall give Contract Partner the opportunity to comment. Further statutory claims of KWS shall remain unaffected.
- (3) The Contract Partner shall take out and maintain a product liability insurance with an adequate insurance amount for personal and property damage and, if necessary, adapt it to changed risks. The Contract Partner shall prove to KWS the existence of this insurance cover in an appropriate form at any time upon request.

§ 7 Third party rights and property rights

The Contract Partner warrants that the Goods are free from any rights, including any industrial or intellectual property rights, of any third party, and that the contractual use of the Goods does not infringe any rights of any third party. If a third party claims that the Goods or their use in accordance with the contract infringes its rights ("Third Party Claim"), KWS will inform the Contract Partner of the Third Party Claim. The Contract Partner shall indemnify KWS from all consequences resulting from the Third Party Claim, including the reasonable costs of legal defense, upon initial request, and shall support KWS upon request in the defense against the Third Party Claim. In addition, the Contract Partner shall either replace the Goods with Goods that do not infringe any rights of the third party, but still meet the agreed requirements, or obtain all rights necessary, and grant those rights to KWS, to allow KWS to use the Goods in accordance with the contract without restriction.

§ 8 Supplier recourse

- (1) In addition to the claims for defects, KWS is without restriction entitled to the statutory rights of recourse within a supply chain (section 131 of the Consumers' Code).
- (2) Before KWS recognizes or fulfils a claim for defects asserted by a customer (including reimbursement of expenses), KWS shall notify the Contract Partner and request a written statement, providing a brief description of the facts. If the Contract Partner does not respond within a reasonable period of time, and if no agreement is reached by other means, the claim for defects granted by KWS shall be deemed to be owed to the customer; in this case, it is up to the Contract Partner to prove the contrary.
- (3) The recourse claims of KWS shall also apply if the Goods have been further processed before they were sold by KWS or a customer of KWS, e.g. by means of installation in another product.

§ 9 Limitation Period

- (1) The claims of the parties shall become statute-barred in accordance with the statutory provisions, unless otherwise provided below.
- (2) The general limitation period for claims arising from defects shall be one (1) year from the delivery of the Goods. If acceptance has been agreed, the limitation period shall commence upon acceptance. The limitation period for claims for surrender of property by third parties (section 2946 of Italian Civil Code) remains unaffected. KWS' claims against the Contract Partner arising from Third Party Claims (including eviction claims) shall not be time-barred as long as a third party can still assert its rights –because they are not time-barred yet – against KWS.

C. Special part for Services

§ 1 Delivery dates, default in delivery, liquidated damages and partial performance

- (1) All agreed dates and deadlines are fixed; neither party may change them without the consent of the other party.
- (2) If the place of performance is not specified and unless otherwise agreed, the place of performance shall be the place of business of KWS. The respective place of performance is also the place of fulfillment.
- (3) If a contract specifies the period of performance as "expected", "approximate", "subject to usual reservations" or similar, there may be a no more than five (5) working days between the date specified and the actual performance.
- (4) Should a performance date be indicated as essential, delay in performance will result in KWS right to immediately terminate the contract without notice under section 1457, par. 2 of Italian Civil Code, without prejudice to any further remedy at law (such as claims for compensation of the suffered damages). Should the performance date not be indicated as essential, in the event of delay KWS will notify the delay to the Contract Partner; should the performance not be carried out in the subsequent fifteen (15) days, then KWS will be entitled to terminate the contract, without prejudice to any further remedy at law (such as claim for compensation of the suffered damages).
- (5) The Contract Partner shall immediately inform KWS in writing if it is unable or unlikely to meet a performance deadline. The information shall contain details of the cause and the expected duration of the delay. In such cases, the Contract Partner shall, at its own expense, take all measures necessary and suitable to prevent an impending delay in performance or to keep the delay as short as possible. The Contract Partner shall inform KWS in writing of the measures it has taken and intends to take.
- (6) If the Contract Partner is in default, it shall pay KWS, in addition to further statutory claims, a lump-sum compensation for damages caused by the delay in the amount of 0.2% of the net price of the delayed Services per completed calendar day, in total not exceeding 5% of the net price. KWS reserves the right to prove that KWS has incurred

higher damages. The Contract Partner reserves the right to prove that KWS has suffered no damage at all or only a significantly lower damage.

- (7) Partial performances are only permitted with KWS' prior express consent.

§ 2 Provision of Service and changes in Services

- (1) The Contract Partner shall perform the commissioned Service with the care of a prudent businessman (and in any case with the care required by section 1176 par. 2 of the Italian Civil Code) and in compliance with the current state of science and technology. In performing the Service, the Contract Partner shall comply with all applicable laws, regulations and requirements.
- (2) The Contract Partner guarantees that the Services shall only be provided by such employees who have the necessary skills, experience, knowledge and qualifications. If KWS has justified doubts about the qualifications of the Contract Partner's employees, KWS has the right to demand that the Contract Partner immediately replaces these employees.
- (3) The Contract Partner may only commission subcontractors or other agents with KWS' prior written consent. KWS may provide its consent to such subcontractors or other agents subject to conditions and may revoke such consent at any time, in particular if it becomes apparent that the subcontractor or agent is in a dependent employment relationship or the circumstances of its employment allow for such conclusion.
- (4) The Contract Partner shall render the agreed Services free from any rights, including any industrial or intellectual property rights, of any third party. If a third party claims that the Services rendered infringe any rights of that third party ("Third Party Claim"), KWS will inform the Contract Partner of the Third Party Claim. The Contract Partner shall indemnify KWS from all consequences resulting from the Third Party Claim, including the reasonable costs of legal defense, upon initial request, and shall support KWS upon request in the defense against the Third Party Claim. In addition, the Contract Partner shall either modify the Services so that they no longer infringe any rights of the third party, but still meet the agreed requirements, or obtain all rights necessary, and grant those rights to KWS, to allow KWS to use the Services in accordance with the contract without restriction.
- (5) KWS may demand changes to the contractual Services at any time. The Contract Partner may object to the change request if the performance of the change request would be unreasonable for the Contract Partner. If an adjustment of the contract is necessary due to a change, in particular with regard to the time of performance or remuneration, the Parties shall make this adjustment by mutual agreement.

§ 3 Participation and contact persons

- (1) To the extent necessary, KWS shall support the Contract Partner in the rendering of its Services by means of cooperation. The Contract Partner must immediately give notice in writing in case of insufficient or omitted cooperation. Without such notice, KWS shall not be in default with its cooperation, and the Contract Partner may not invoke improper cooperation.
- (2) Before the start of the Services, the Contract Partner shall name a responsible person who shall be available to KWS as the first contact person for all matters relating to the contract. The Contract Partner shall immediately inform KWS of any change of the contact person or of other matters relevant to the performance of the contract concerning such contact person.

§ 4 Work results

- (1) The performance results which were rendered by the Services provided by the Contract Partner, such as software (source and program codes), drawings, sketches, drafts, other documents, knowledge and inventions ("Work Results"), belong to KWS. Only KWS – at its own expense – is authorized to register and maintain any industrial or intellectual property rights. The Contract Partner shall render any cooperation required for the registration of industrial or intellectual property rights and shall in particular make declarations to KWS and the offices responsible for the registration of industrial and intellectual property rights.
- (2) With effect at the time they were created, the Contract Partner shall assign to KWS all Work Results or – insofar as these are not transferable – all rights of use to the Work Results with the aim that KWS becomes the sole owner of all Work Results or of the rights of use existing therein without the need for another assignment. KWS hereby accepts the assignment.
- (3) To the extent that rights of use of the Work Results are not transferable, the Contract Partner shall irrevocably grant KWS at the time when the respective Work Result is created the exclusive or – to the extent that the Contract Partner does not have this power – the non-exclusive, unrestricted rights in terms of time, place and subject matter,

to use and exploit such Work Results. This includes in particular the right to reproduce, distribute/sell, lend and rent, create a data base, publish, make Work Result publicly accessible irrespective of their medium, reproduce and transmit online, to process (in particular the right to integrate the Work Results into other products/services of KWS or third parties, to change, expand, implement, translate, revise, arrange or otherwise rework or redesign them in any way), the right to digitalize manufacture and offer, market or use products/other services using the Work Results for one's own purposes and/or the purposes of third parties. The granting of rights shall apply to all known as well as currently unknown types of use. KWS hereby accepts the granting of rights.

- (4) KWS is entitled to assign the rights transferred or granted in accordance with para. 2 and 3 to third parties and to grant third parties exclusive or non-exclusive rights of use to the Work Results, whether in whole or in part, permanently or temporarily, free of charge or against payment.
- (5) To the maximum extent permitted under the applicable laws and regulations, the Contract Partner shall waive any right to be named as the author of a Work Result under copyright, and shall guarantee that other persons who may be involved in the creation of the Work Results also declare such a waiver.
- (6) KWS is not obliged to exploit the rights of use transferred or granted.
- (7) The Contract Partner shall receive a non-exclusive, non-transferable and non-licensable right of use to the Work Results, insofar as this is necessary for the performance of the contractual Service.

§ 5 Liability, acceptance and risk assumption

- (1) Statutory law shall apply to the liability of the Contract Partner.
- (2) To the extent acceptance is agreed, acceptance is decisive for the transfer of risk. The statutory provisions of the contract for work and services (*appalto di opere e servizi*) (in particular with regard to warranty) shall also apply accordingly in the case of acceptance, unless otherwise agreed by the parties.

§ 6 Term and termination

- (1) A contract term shall be agreed in the contract if required by the nature or scope of the Services.
- (2) If a contract is concluded for an indefinite period of time, each party shall be entitled to terminate the contract with a notice period of three (3) months to the end of a calendar month, unless otherwise agreed. The right of the parties to immediately terminate a contract under articles 1456 and 1457 of Italian Civil Code – in the cases identified in these Terms of Purchase and in the contract – remains unaffected.
- (3) Any termination must be declared in writing.

§ 7 Limitation period

Unless otherwise contractually agreed, the claims of the parties shall be time-barred in accordance with the statutory provisions.

§ 8 Compliance with employment and social security legislation

- (1) The Contract Partner ensures that it and – pursuant to article 1381 of Italian Civil Code – the third parties/agents (e.g. subcontractors) it commissions in connection with the Services comply with all relevant provisions on salary, social security, insurance and welfare obligations. The Contract Partner, also on behalf of the third parties/agents (e.g. subcontractors) it commissions in connection with the Services pursuant to article 1381 of Italian Civil Code, ensures it will provide KWS with all administrative documentation in order to prove the effective compliance with all relevant obligations on remuneration, social security, insurance and welfare obligations (such as the Insurance Contribution Payment Certificate (*Documento Unico di Regolarità Contributiva*)).
- (2) It is also understood that nothing in the contract shall be interpreted or construed to create or establish an employment relationship between KWS and any member of Contract Partner's personnel and / or the personnel of the involved third parties (e.g. subcontractors).
- (3) The Contract Partner shall indemnify KWS upon first demand against all claims asserted by third parties, sanctions, fines and other measures or claims from authorities or organizations asserted against KWS due to a violation against all relevant provisions on salary, social security, insurance and welfare obligations from time to time applicable, on the part of the Contract Partner and/or its vicarious agents and/or the third parties/agents (e.g. subcontractors) it commissions in connection with the Services. In this context, the Contract Partner shall also indemnify KWS from the costs of legal defense.