

KORN CONSULT GMBH GENERAL TERMS AND CONDITIONS

§ 1 Application

- 1.1 Any and all supplies, services and offers of KORN CONSULT GmbH, hereinafter referred to as „Korn Consult“, shall be performed exclusively on the basis of these General Terms and Conditions. These General Terms and Conditions form an integral part of the contracts concluded between Korn Consult and customer, hereinafter referred to as „Customer“. They shall also govern any and all future supplies, services or offers provided to Customer even where no express reference is made thereto again upon concluding the contract.
- 1.2 These General Terms and Conditions shall apply exclusively. Differing or contrary terms of Customer or any third party shall not apply except if expressly agreed upon in writing.

§ 2 Conclusion of Contract

- 2.1 Any and all offers and advertising material of Korn Consult are subject to change without notice and non-binding.
- 2.2 The written order of Customer shall be a binding offer. The contract shall only be concluded upon Korn Consult`s written order confirmation.
- 2.3 Any amendments or modification to the agreements reached between the parties, including, but not limited to these General Terms and Conditions, and any other verbal side agreement between the parties shall be effective only if agreed separately in writing.

§ 3 Prices, Terms of Payment

- 3.1 Prices shall apply for the scope of supplies and services of the respective order confirmation and are net exclusive of the respective statutory VAT. Supplies and services beyond the scope of the respective order confirmation shall be invoiced separately.
- 3.2 If prices effective at the date of delivery or performance deviate from prices effective at the date the contract has been concluded by more than ten percent and if more than four months elapse between conclusion of the contract and delivery or performance, the price effective at the date of delivery or performance shall apply.
- 3.3 Receivables shall become due and payable immediately without deductions upon delivery of the supplies or rendering of the services and upon receipt of the invoice. Korn Consult and Customer may agree on individual payment terms.
- 3.4 In case of a delay in payment of more than thirty days, Korn Consult is entitled to demand interest in the amount of nine percent above the base rate established by the German Federal Bank without the necessity of a reminder.
- 3.5 If circumstances become aware which arise justified doubts about the customer`s creditworthiness, Korn Consult shall be entitled to insist on cash in advance for outstanding supplies or services or to make them dependent on the provisions of a security.
- 3.6 In this case, Korn Consult shall be furthermore entitled to withdraw from contracts which are not fulfilled yet and if all due liabilities to pay have not been discharged in full within a reasonable period of time determined by Korn Consult.

- 3.7 Korn Consult shall be entitled to assign receivables from the business relationship to third parties. Customer shall assign such receivables only upon Korn Consult's prior written consent.
- 3.8 The Customer shall have a right of set-off or retention only if its counterclaims have been confirmed in a final binding judgement or are undisputed.

§ 4 Supply and performance time, Delays

- 4.1 The period for supplies and services shall begin with Customer's receipt of the written order confirmation.
- 4.2 In case of default of acceptance or any other breach of obligations to co-operate by the Customer, Customer shall compensate Korn Consult for any damages occurred due to such default of acceptance or breach of obligation to co-operate, including possible additional expenditures. Further claims shall remain unaffected.
- 4.3 Unforeseeable and unavoidable events, e.g. stoppages and interruption of operations, strikes, lockouts or any other unforeseeable event which may impair supplies or services, shall result in an appropriate extension of the deadlines. By notification to Customer Korn Consult shall be entitled to extend the respective deadlines for the duration of the relevant event. The parties shall be entitled to withdraw from the contract in case supplies or services become impossible or will last longer than three months according to aforementioned reasons.

§ 5 Place of Performance

If agreed separately, the place of performance shall be the business premises of Customer, otherwise the place of performance shall be the registered office of Korn Consult.

§ 6 Warranty

- 6.1 The warranty period is twelve months from the date of delivery or performance. The foregoing shall not apply in case of injury to life, body or health by Korn Consult or a vicarious agent of Korn Consult or Korn Consult or a vicarious agent of Korn Consult has acted willfully or in gross negligence. In this case, the statutory warranty period shall apply.
- 6.2 Customer shall inspect the supplies or services without undue delay following delivery or performance. Supplies and services shall be deemed accepted by Customer if Customer fails to notify Korn Consult in writing without undue delay of any apparent defect which would have been visible during the ordinary course of such inspection. Any hidden defect shall be deemed accepted by Customer if Customer fails to notify Korn Consult in writing of such defect without undue delay after detection; at Korn Consult's request, rejected goods shall be returned to Korn Consult carriage free.
- In the event of justified notification of defects Korn Consult shall bear the delivery charges; this shall not apply as far as expenses increase due to the fact that the goods are located somewhere other than the place of use as determined.
- 6.3 In case of defects Korn Consult shall initially be obliged and entitled to repair them or supply replacement according to its choice, which is to be made within a reasonable period of time. Should repairs or substitute deliveries fail, e.g. due to impossibility, unreasonableness, denial or unreasonable delay, Customer shall be entitled to withdraw from the contract or demand appropriate reduction of the purchase price according to the applicable law. Regarding any claims for damages Section 11 shall apply.

- 6.4 In case of defects in supplies or services from other manufacturers or service provider which Korn Consult cannot remedy for reasons of licensing law or physical reasons, Korn Consult will assign its warranty claims against the respective manufacturer or service provider to Customer. In this case, warranty claims against Korn Consult according to the applicable law and these General Terms and Conditions shall exist only if the legal enforcement of such claims against the respective manufacturer or service provider was unsuccessful or is futile, e.g. due to insolvency.
- 6.5 Warranty claims shall be excluded if Customer, without Korn Consult`s prior written consent, modifies the supplies or services or allows a third party to carry out modifications, and the remediation becomes impossible or more difficult as a result. In each and every case Customer shall bear the additional costs of remediation resulting from such modification.
- 6.6 In case of an unjustified notice of defect Customer shall bear all costs incurred regarding examination of the rejected goods, including, but not limited to, costs incurred for arrival and departure, overnight accommodation, subsistence costs and further project-related costs which have to be regarded as inevitable.

§ 7 Property Rights

- 7.1 Korn Consult warrants that the supplies or services are free from property rights and copy rights of third parties. The parties shall notify each other in writing without undue delay in the event claims are asserted against Korn Consult or Customer due to the infringement of such rights.
- 7.2 In case of any infringement of aforementioned rights, Korn Consult will either modify or replace the respective supply or service, at its choice and its expense, such that third party rights are no longer infringed while the supplies or services continue to fulfil their contractually agreed function, or procure the right of utilization by means of the conclusion of a license agreement. If Korn Consult fails to do so within a reasonable period of time, Customer shall be entitled to withdraw from the contract or demand appropriate reduction of the purchase price according to the applicable law. Regarding any claims for damages Section 11 shall apply.
- 7.3 In case of defects in supplies or services from other manufacturers or service provider which Korn Consult cannot remedy for reasons of licensing law or physical reasons, Korn Consult will assign its warranty claims against the respective manufacturer or service provider to Customer. In this case, warranty claims against Korn Consult according to the applicable law and these General Terms and Conditions shall exist only if the legal enforcement of such claims against the respective manufacturer or service provider was unsuccessful or is futile, e.g. due to insolvency.

§ 8 Copyright

Korn Consult reserves the copy right on all provided offers as well as drawings, figures, calculations, leaflet, models, tools and other documents and means. Customer shall not be allowed to make such items available to third parties in form and content, to publish them or have them used or reproduced, either by itself or by third parties, without Korn Consult`s prior written consent. At Korn Consult`s request, Customer shall completely return such items and, as the case may be, destroy any copy of them, as far as they are no longer needed in the ordinary cause of business or contract negotiations between the parties have failed. The storage of data for the purpose of safeguarding items provided electronically shall be excluded.

§ 9 Retention of title

- 9.1 Korn Consult retain title in the supplies and any items resulting from their processing until the Customer has discharged all claims arising from the business relationship with Korn Consult.
- 9.2 The delivered documentation, e.g. documents, reports or contract documents, are free for any usage within the Customer`s Company. Any external intended use with any economic background (e.g. resale, publication) shall be permitted only upon Korn Consult`s prior written consent.
- 9.3 The assertion of the retention of title regarding respective documents shall not constitute a withdrawal from the contract.

§ 10 Additional terms for Software provided

Software provided by Korn Consult in connection with the rendering of supplies shall remain the property of Korn Consult. Customer shall be entitled to use the software only for the intended purpose. Without Korn Consult`s prior written consent, Customer shall not be entitled to modify or disclose it to third parties. Customer shall be authorized to create backup copies and to use the software on computers within its company and according to the agreed license agreement. Software Korn Consult has acquired from third parties shall be subject of the respective license agreement between Korn Consult and the respective third party. Where applicable, Customer shall obey aforementioned license agreements.

§ 11 Liability

- 11.1 Korn Consult shall only be liable for damages due to breach of an essential contractual duty or for damages caused by willful misconduct or gross negligence of Korn Consult, its legal representatives or its vicarious agents.
- 11.2 In the event of a breach of an essential contractual duty due to ordinary negligence, Korn Consult`s liability shall be limited to the typically foreseeable damage.
- An essential contractual duty means any contractual duty whose fulfilment is vital to the proper performance of the contract and on whose observation the customer can regularly count.
- 11.3 Any further liability of Korn Consult shall be excluded. The foregoing shall not apply in case of injury to life, body or health. Liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.

§ 12 Final Provisions

- 12.1 Place of jurisdiction for any and all disputes arising from or in connection with these General Terms and Conditions or the contract is Frankfurt am Main.
- 12.2 German Law to the exclusion of the conflicts of laws provision and the UN Convention on Contracts for the International Sale of Goods shall apply exclusively.
- 12.3 In case of any gaps in the provisions, those gaps shall be deemed to be replaced by such provisions that shall be suitable to implement the economic purpose of the missing provision and the purpose of these General Terms and Conditions to the greatest extent possible.