



Non-Series Purchasing Conditions
KTM AG
Version 10/2019, Oct 30, 2019

PURCHASING CONDITIONS FOR NON-SERIES

1. GENERAL INFORMATION

- 1.1. These purchasing conditions (“PCs”) apply to the purchasing of all works, goods, software and services which are not intended for use in series production or as spare parts, initial samples, prototypes, KTM PowerParts, or tools or devices for their manufacture (non-series, hereinafter “delivery items”) by KTM AG (“KTM”) from a supply partner.
- 1.2. Insofar as the term “supply partner” is used hereinafter, this shall be understood to mean KTM’s contractual partner.
- 1.3. The legal relationships between KTM and its supply partners shall be governed exclusively by these purchasing conditions. The general terms and conditions of the supply partner shall not apply even if KTM has not objected to them in individual cases.

2. SUPPLY CONTRACT

- 2.1. Supply contract means any contract that is concluded by a written (20.1) acceptance by KTM of a binding offer from the supply partner or by a written (20.1) order confirmation by KTM of a non-binding offer from the supply partner accepted by KTM in writing (20.1) or any contract concluded between the contracting parties in writing (20.2) for the purchase of delivery items.
- 2.2. The supply partner shall immediately confirm in writing (20.1) the written (20.1) acceptance by KTM of a (non-)binding offer. In any event, the written (20.1) acceptance shall be deemed to have been confirmed without any changes to its content if the supply partner does not object to it within 5 (five) KTM working days at the latest (except for KTM company holiday) from the date of the written (20.1) acceptance.
- 2.3. KTM shall have the right, within the scope of the supply contract 20.1, to demand company-related deviations with regard to the ordered delivery items, in particular but not only with regard to the quantity, time and location of the delivery, quality, specifications, drawings, design, structures and packaging. In the event of such deviations, the operational circumstances of the supply partner must be taken into account. In addition, the supply partner is obliged to propose to KTM modifications concerning the delivery items that it deems necessary or appropriate in relation to statutory or other mandatory provisions or on the basis of its technical expertise.
- 2.4. The quantities or delivery periods communicated by KTM before the supply contract is entered into are merely non-binding reference values (e.g. for pricing calculations).

3. PRICES

The agreed prices are fixed prices. In particular, these include all the costs of the supply partner for quality management, functional and quality checks, packaging, documentation, labeling (branding) as well as any approvals and insurance.

4. DELIVERY DATES, DELIVERY DEADLINES, DELAY IN DELIVERY / DEVIATION IN QUANTITY, CONTRACTUAL PENALTY, FORCE MAJEURE

- 4.1. Delivery and performance dates and deadlines as well as quantities shall be agreed by mutual consent between KTM and the supply partner. Unless otherwise agreed, the delivery and performance dates and deadlines and quantities stipulated by KTM in the supply contract shall be deemed to have been agreed upon in the absence of an express objection by the supply partner within 5 (five) KTM working days.
- 4.2. A delivery is deemed to be on time if the delivery items (e.g., in accordance with the supply contract) are received in full at the delivery address specified by KTM or, at KTM’s discretion, have been accepted, including any assembly, provision of documentation, training, commissioning. (“Receipt”)



- 4.3. KTM shall have the right to reject a delivery or parts thereof and/or to return it to the supply partner at the supply partner's expense if this is not performed as agreed in the supply contract (e.g. premature delivery, partial delivery or excess quantities).
- 4.4. If the supply partner is in default of a delivery, KTM shall be entitled to demand performance of the contract and compensation for the damage caused by the delay or, in the event of a culpable delay, to cancel the contract by setting a reasonable period of delay, and claim damages for non-performance. In the event of a culpable delay, compensation for loss of profit and for the interruption to operations, loss of production, downtime, special transport or other indirect damages shall be included. In addition, and irrespective of any fault, the supply partner shall pay a contractual penalty of 1 (one) % of the value of the respective order for each commenced KTM working day of the delay in the event of a delay in delivery.
- 4.5. The acceptance of and/or payment for a delayed delivery by KTM shall not constitute a waiver of any claims for compensation by KTM.
- 4.6. The supply partner pledges to notify KTM in writing (20.1) immediately as soon as it becomes aware of the risk of a delay in delivery and/or a deviation in quantity, as well as of the measures it has taken to counteract this, and shall endeavor to reduce the associated adverse consequences for KTM to the best of its ability.
- 4.7. Each of the parties to the contract shall be entitled to suspend the performance of a supply contract in the event of a delay that is unalterable and outside its sphere of control. Any delay for which the defaulting party is not at fault shall be regarded as unalterable and beyond its control (for example, but not exhaustively: cases of force majeure, restrictions or prohibitions by state authorities, embargoes or natural disasters). In order to avoid any possible disadvantage if such events occur, KTM shall be entitled to stock up in some other way and to reduce the delivery quantities stated in the delivery call-offs without any obligation to the supply partner. KTM shall provide proof of any costs that may arise as a result of obtaining an alternative supply of the delivery quantity originally agreed with the supply partner and invoice the supply partner.

5. SHIPPING, PLACE OF PERFORMANCE, TRANSFER OF OWNERSHIP, DELIVERY DOCUMENTATION, PASSING OF THE RISK

- 5.1. The shipping of the delivery items as well as the passing of the risk and the place of performance of the delivery shall be governed by the separate agreement concluded by the parties. The specific provisions shall each be individually agreed in writing (20.1). If no such provisions have been agreed, the place of performance shall be Stallhofnerstraße 3, A-5230 Mattighofen, and all costs and risks shall be borne by the supply partner, including any customs duties and taxes, up until receipt (4.2) by KTM.
- 5.2. When payment is made in full, KTM acquires ownership of the delivery items that are supplied in accordance with the supply contract.
- 5.3. The supply partner shall notify the transport company that the delivery items are ready for shipping in good time so that the agreed receipt time (4.2) can be adhered to.
- 5.4. The supply partner shall include with each shipment a written delivery note specifying the details of the order transmitted by KTM, such as the order number, order item number, part number, place of delivery and delivery address, as well as a precise description of the contents. If these details are not included on the delivery note, KTM shall be entitled to reject the delivery at the expense and risk of the supply partner. If several items from different supply contracts are delivered together and a single delivery note is used, clear information must be provided indicating how the items are assigned to the different supply contracts. With regard to the accompanying documents for the delivery items, the supply partner shall comply with the agreed guidelines.
- 5.5. When the supply partner dispatches a shipment, a dispatch note shall be sent to KTM in good time in writing (20.1) specifying the time of delivery, the data on the delivery note, the means of transport and the name of the forwarding agent/carrier.
- 5.6. The delivery of goods to KTM factories shall only take place during the opening hours of the KTM incoming goods department.



6. EXPORT CONTROL

The supply partner pledges to sign the KTM export control conditions.

7. QUALITY

- 7.1. At KTM's request, the supply partner pledges to sign the KTM quality assurance agreement (QSV).
- 7.2. If KTM is obliged to permit the competent authorities, in particular the authorities responsible for product safety, to inspect its documentation, the supply partner hereby declares that it will provide all reasonable support in this regard at KTM's request. The supplier shall also grant KTM full access to its records and provide any samples requested if facts arise resulting in reasonable doubt as to quality assurance having been correctly carried out or if required as evidence in cases of damage. Furthermore, the supplier shall assist KTM in analyzing the records and samples.

8. PAYMENT, INVOICING, OFFSETTING

- 8.1. After receipt (4.2), the supply partner shall send its invoices electronically to accounting@ktm.com or via EDI. These must comply with Section 11 of the Austrian Sales Tax Act (UStG) and contain the following information:
- Order number, order item, part number, part description and supplier number
 - Delivery note number of the supply partner
 - Delivery date and place of delivery
 - Additional delivery costs (customs duties, packaging, transport, insurance).
- Invoices that do not contain the required information or feature factual or mathematical mistakes or errors that delay the process of invoice verification may be rejected by KTM and do not constitute a due date. Any resulting costs, in particular input tax deductions paid by the tax authorities, shall be borne by the supply partner. In this case, the new due date for payment shall be calculated from the date of receipt of a new invoice that is free of any content errors and has been properly issued.
- 8.2. Unless otherwise agreed, payment shall be made by bank transfer. Transfer fees shall be shared between KTM and the supply partner (expense option "SHA" – "shared"). Transfers shall be made once a week on a working day specified by KTM and shall include all invoices that are correct, verified and due by that working day. Transfers shall be made to the bank account provided to KTM for the supply partner. Any change in the supply partner's bank details must be communicated in accordance with a process defined by KTM that will be communicated separately.
- 8.3. Payment shall be made within 90 days of receipt of the invoice into the bank account provided to KTM, subject to receipt (4.2) of the delivery items. Until the contractual obligation has been duly performed in full, KTM shall be entitled to withhold payment or to a reimbursement if payment has already been made. The contracting parties shall share the transfer charges. Any change to the bank details of the supply partner must be confirmed by KTM.
- 8.4. KTM shall be entitled to set off its own claims even if its own claims are not yet due or are payable in a foreign currency. The supply partner shall not be entitled to assign any claims against KTM to third parties unless KTM agrees to this in writing (20.1) in advance.
- 8.5. At KTM's request, the supply partner agrees to switch to the credit procedure in accordance with Section 11 para. 7 and 8 UStG. A separate agreement shall be signed in this regard.

9. IMPLIED WARRANTY

- 9.1. The supply partner shall be liable for defects of the delivery items and guarantees their suitability for their intended use after receipt (4.2). The specifications stated in the supply contract are guaranteed properties. Furthermore, the supply partner warrants that the delivery item, its design and production reflect the very latest science and technology, comply with all internationally applicable product safety



regulations (in particular in the USA and Asia), as well as those applicable in the European Economic Area and in Austria, and with the underlying samples.

- 9.2. The warranty period for all delivery items begins with the receipt (4.2) and ends on the 3rd anniversary of the receipt (4.2).
- 9.3. The supply partner waives its right to object to the delayed notification of the defect.
- 9.4. At KTM's choice, the supply partner pledges to improve or replace the defective delivery items. The supply partner also pledges to remedy such defects even by working in multiple shifts or at overtime or production hour rates if this is necessary for urgent operational reasons at KTM and can be reasonably expected of the supply partner. KTM shall not be obliged to accept more than 1 (one) attempt at replacement or repair. If a delivery item is repeatedly delivered in a defective condition, KTM shall be entitled to terminate all supply contracts with this supply partner.
- 9.5. If the supply partner does not immediately fulfill its warranty obligation in accordance with 9.4, KTM shall be entitled to remedy defects itself or through third parties at the expense and risk of the supply partner, or to demand a reduction in the price, or to declare a rescission of the contract and return the delivery items to the supply partner at its expense.
- 9.6. In the event that a defect in the delivery item is remedied – including by replacement, repair, etc. of defective parts – the warranty period for the entire delivery item shall begin to run anew.

10. COMPENSATION FOR DAMAGES

- 10.1. The supply partner shall be liable to KTM, irrespective of the degree of fault, for all damage and consequential damage (due to a defect) as well as lost profit, including compensation for expenses for interruption of operations, downtime of the production line, interruption of production, or other indirect damages (such as: sorting and reworking expenses, conversion, repair, reassembling and testing expenses, or costs for error analysis and complaint processing). Furthermore, for all damages in recourse that KTM has paid to third parties that have suffered damages as a result of a defective delivery item, including costs for (judicial) prosecution.
- 10.2. KTM shall be liable to the supply partner for intentional or grossly negligent conduct, with the exception of personal injuries for which its liability arises even for slight negligence.

11. PRODUCT LIABILITY

- 11.1. Product liability is not dependent on fault and cannot be limited or excluded in advance in the relationship between the party liable for the product and the party that suffered a loss or damage.
- 11.2. If third parties take legal action against KTM, the supply partner shall join legal proceedings on the part of KTM as an intervening party after receiving a notice in legal proceedings. KTM shall remain in control of the proceedings. In particular, the supply partner is obliged to subject itself only to the jurisdiction selected by the third party or KTM and shall not object to the jurisdiction. In addition, the supply partner pledges not to object to the absence of a summons or personal notification. The supply partner shall make available to KTM all the documents that are required for the litigation and that have been requested by KTM. The supply partner shall only make its own submissions to the court after prior consultation with KTM. If third parties make contractual claims against KTM, KTM shall be entitled to include the supply partner in discussions with third parties. KTM shall remain in charge of the settlement negotiations. In each of the two cases referred to above, the contracting parties shall endeavor to conclude an agreement setting out the conditions under which the contracting parties share the responsibility and liability for the defense of such a claim or action by a third party as well as the resulting financial burdens between themselves.
- 11.3. If KTM pays damages to an injured third party in court proceedings, irrespective of whether through settlement, an acknowledgment, or final judgment, the supply partner shall indemnify and hold KTM harmless. This does not apply if the supply partner shows that the delivery item was not faulty when the KTM product with the integrated delivery item was placed on the market or that the delivery item



was not the cause of the damage, or, beyond product liability, that the supply partner did not culpably cause the damage.

12. INSURANCE, DOCUMENTATION

- 12.1. The supply partner shall take out business and product liability insurance that is appropriate for the order volume and the obligations assumed with renowned and solvent insurance companies. In particular, KTM recommends that insurance cover be obtained for its liability which exceeds the statutory liability provisions (product liability cover of at least EUR 5,000,000.00). The supply partner shall ensure that the North American market (Canada and USA) is expressly taken into account in the insurance contract or insurance policy to cover the risk of its product liability with sufficient levels of cover.
- 12.2. The supply partner shall make the requested documents, which are specified in more detail in separately concluded agreements, available to KTM in full in German and/or English.
- 12.3. The supply partner shall notify KTM immediately in writing (20.1) of any changes in the insurance conditions, in particular the loss of insurance coverage or a reduction of the minimum amounts of cover.
- 12.4. Unless the mutually agreed terms of delivery provide otherwise, the supply partner shall instruct every carrier/forwarding agent appointed by it to take out sufficient transport liability insurance. The supply partner shall indemnify and hold KTM harmless in this regard.

13. CONFIDENTIALITY

The supply partner pledges to sign the KTM non-disclosure agreement (GHV).

14. ADVERTISING

- 14.1. The use of the business relationship between KTM and the supply partner for advertising purposes as well as the use of the name, logo, brands, equipment, product names or company logos – unless otherwise agreed in writing (20.1) – is not permitted.

15. TERMINATION OF THE CONTRACT

Unless otherwise agreed, contracts between the contracting parties may only be terminated in writing (20.1) without notice and with immediate effect if there is a good reason for doing so. In particular, KTM shall be entitled to terminate the contract immediately without prior notice in the following cases:

- if a competitor of KTM acquires, participates in, or holds shares in the business or assets of the supply partner
- repeated failure to meet delivery deadlines
- repeated (end) customer complaints
- the failure to initiate insolvency or comparable proceedings due to the supply partner having insufficient coverage of the costs or if the conditions are met for such proceedings to be initiated or for such an application to be rejected
- if there is a material breach of these purchasing conditions, of KTM's Code of Conduct (CoC) or of a separate written (20.2) agreement between the parties (e.g.: non-disclosure agreement, quality assurance agreement, and such like)
- other circumstances which jeopardize the proper and planned production process of KTM and its preparations, and fall within the supply partner's sphere of responsibility

16. PROTECTIVE RIGHTS, OTHER RIGHTS

- 16.1. The supply partner shall be liable for ensuring that no intangible protective rights of third parties are violated as a result of the contractual use of its delivery items (produced on the basis of its drawings and/or its know-how) – even if they have only just been applied for. It shall indemnify KTM and its



subcontractors against all claims resulting from a breach of such protective rights and pledges to provide KTM with the necessary authorizations (licenses) at its own expense.

- 16.2. The contracting parties shall inform each other without delay of any violations of property rights or related risks. At KTM's request, the supply partner shall be prepared to disclose all the protective rights that are owned by it or its subcontractors and that are used in the development or manufacture of the delivery items or relate to them in some other way.
- 16.3. Both contracting parties shall be entitled to pass on the technical documentation of the other party to the extent required at the request of the authorities.
- 16.4. The supply partner shall grant KTM or its representatives access to documents, instruments, books and records in connection with the relevant supply contract after an appropriate appointment has been arranged. The supply partner pledges to keep records for a period of at least 10 (ten) years after the last delivery of the delivery items to KTM.
- 16.5. If the direct cooperation in the business relationship with KTM results in new inventions or designs, all the protective rights shall belong to KTM. If the supply partner has made a significant contribution to the development at its own expense, it shall be entitled to a proportionate share of the protective rights in the absence of any agreement to the contrary.
- 16.6. Contractually agreed development services are subcomponents of a larger overall project. In overall projects, KTM is always responsible for project management as well as the development and control function in all project areas and development levels from a technical as well as an organizational point of view. These development services are awarded subject to explicit specifications by KTM. These services are therefore in-house research services within the meaning of Section 108c (2) line 1 of the Austrian Income Tax Act (EStG) and therefore represent research expenses incurred by KTM that are subsidized by subsidies.

17. SPARE PARTS

- 17.1. The supply partner pledges to supply KTM with spare parts, and to do so for a period of 10 (ten) years after receipt (4.2) of the delivery items
- 17.2. The price stated in the last applicable supply contract shall apply, in addition to any costs for special packaging.

18. COMPLIANCE

KTM is committed to complying with all legal standards and to value-based operation as a company. The supply partner must therefore comply with KTM's compliance guidelines and pledges to sign the Code of Conduct (CoC) and comply with the rules and principles of conduct contained therein.

19. APPLICABLE LAW, PLACE OF JURISDICTION OR ARBITRATION AGREEMENT

- 19.1. Supply partner with its registered office within the EEA or Switzerland:
Austrian law shall apply exclusively, excluding the conflict of laws rules of private international law (Internationales Privatrechtsgesetz - IPRG) and the UN Convention on Contracts for the International Sale of Goods (CISG). The court of competent jurisdiction for A-5230 Mattighofen, Austria shall have exclusive jurisdiction in respect of all disputes arising from or in connection with this agreement.
- 19.2. Supply partner with its registered office outside the EEA or Switzerland:
Any disputes arising from or in connection with this contract shall be finally resolved in accordance with the rules of arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with those rules. The language of the proceedings shall be English and the place of arbitration shall be A-5020 Salzburg. The applicable substantive law shall be Austrian law.

20. FINAL PROVISIONS

- 20.1. In writing shall mean exclusively either signed by both parties, or by fax, e-mail, or electronic data interchange (EDI).



- 20.2. Amendments to these purchasing conditions shall only become valid if they are agreed mutually, separately, in writing and signed by both parties.
- 20.3. In the event that one or more subcontractors are commissioned, the supply partner pledges to transfer all the obligations arising from the present business relationship as well as from these purchasing conditions and its attachments to such subcontractors and shall indemnify and hold KTM harmless in this regard.
- 20.4. If individual provisions of the contracts or of these purchasing conditions should be invalid, this shall not affect the validity of the remaining provisions. In such a case, a provision that corresponds most closely to the legal and economic purpose of the invalid provision shall be deemed to have been agreed.
- 20.5. The supply partner pledges to inform KTM without delay of any changes in its ownership structure.

Place, Date

Place, Date

KTM AG

Supply partner