



Terms and Conditions for Purchase Production Material
KTM AG
Version 01/2020, 20.07.2020

PURCHASING CONDITIONS FOR SERIES PARTS, SPARE PARTS, AND KTM POWERPARTS

1. GENERAL INFORMATION

- 1.1. These purchasing conditions ("PCS") apply to the purchasing of series and spare parts, first samples, prototypes, KTM PowerParts as well as tools and devices for their manufacture and software for use in series production ("delivery items") by KTM AG ("KTM") from the supplier.
- 1.2. Insofar as the term "supplier" is used hereinafter, this shall mean the party with whom KTM is contracting.
- 1.3. The legal relationships between KTM and its suppliers shall be governed exclusively by these purchasing conditions. The general terms and conditions of the supplier shall not apply even if KTM has not objected to them.
- 1.4. This Agreement shall also apply to supply relationships of supplier and affiliates of KTM. An affiliate of KTM within the sense of this Agreement is understood to be a company, that is controlled by KTM, either indirectly or directly, that directly or indirectly control KTM, that is combined with KTM under uniform management, or that is with KTM under joint control. Control is understood to mean that at least 50% of the shares or voting rights are held.

2. SUPPLY CONTRACT

- 2.1. Supply contract means any contract that is concluded by a written (23.1) acceptance by KTM of a binding offer from the supplier or by a written (23.1) order confirmation by KTM of a non-binding offer from the supplier accepted by KTM in writing (23.1) or any contract concluded between the parties in writing (23.2) for the purchase of delivery items.
- 2.2. The supplier shall immediately confirm in writing (23.1) the written (23.1) acceptance by KTM of a non-binding or binding offer. In any event, the written (23.1) acceptance shall be deemed to have been confirmed without any changes to its content if the supplier does not object to it within 5 (five) KTM business days (excluding KTM company holidays) from the date of the written (23.1) acceptance.
- 2.3. KTM is entitled to issue written (23.1) delivery schedules (see the details in the "Delivery schedule guidelines") within the scope of the supply contract and shall have the right to demand business-related deviations with regard to the ordered delivery items, in particular but not limited to the quantity, time and place of delivery, quality, specifications, drawings, design, construction and packaging. In the event of such deviations, the operational circumstances of the supplier must be taken into account. In addition, the supplier is obliged to propose to KTM modifications regarding the delivery items which the supplier considers necessary or expedient with regard to the statutory or other mandatory provisions or on the basis of its technical expertise.
- 2.4. The quantities or delivery periods communicated by KTM prior to the conclusion of the supply contract are merely non-binding reference values (e.g., for calculating prices).

3. PRICES

The agreed prices are fixed prices. In particular, these include all the costs of the supplier 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. The delivery dates, deadlines, and quantities stipulated by KTM in the supply contract or delivery schedule shall be deemed to have been agreed to in the absence of an express objection by the supplier within 5 (five) KTM business days.
- 4.2. A delivery is on time (i.e., in accordance with the delivery schedule) if the delivery items 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 reserves the right to reject a delivery or parts thereof and/or to return it to the supplier at the supplier's expense if the delivery is not carried out as agreed in the delivery schedule (e.g. premature delivery, partial delivery or excess quantities).



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- 4.4. If the supplier's delivery is delayed, KTM shall be entitled to demand performance of the contractual obligations and compensation for the damage caused by the delay or after allowing and expiration of a reasonable grace period, KTM reserves the right to terminate the contract and claim damages for the non-performance. In both events, among other things, KTM reserves the right to claim compensation for loss of profit and compensation for the interruption of operations, loss of production, downtime, special transport or other damages. In the event of a delay in delivery and irrespective of any fault, the supplier shall pay a contractual penalty of 1 (one) % of the value of the respective order for each commenced KTM business day of the delay.
- 4.5. The acceptance and/or payment for a delayed delivery by KTM shall not constitute a waiver by KTM to make a claim for damages.
- 4.6. The supplier hereby agrees to immediately notify KTM, in writing (23.1), in the event that it becomes aware of a risk of a delay in delivery and/or a deviation in quantity. Supplier further agrees to notify KTM of the measures the Supplier has taken to counteract this delay or deviation in order to mitigate the adverse consequences for KTM.
- 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 unavoidable and/or unforeseen and which are beyond the party's control. A delay shall be deemed to be unavoidable and/or unforeseen if it is not caused by the fault of the defaulting party and is therefore beyond its control (for example, but not conclusively: cases of force majeure, restrictions or prohibitions by state authorities, embargoes, natural disasters, epidemics or pandemics). If such events occur and in order to avert any possible disadvantage, KTM shall be entitled to obtain delivery items elsewhere and to reduce the delivery quantities stated in the delivery schedules without any obligation towards the supplier. Verification of any costs that have arisen as a result of obtaining an alternative supply of the delivery quantity originally agreed to the supplier shall be provided by KTM and invoiced to the supplier.

5. PACKAGING

The supplier hereby agrees to sign the KTM packaging instructions.

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

- 6.1. The shipment of the delivery items as well as the transfer of the risk of loss and the place of performance of the delivery shall be governed by a separate agreement concluded by the parties. The specific provisions shall be individually agreed to in writing (23.1). If no such provisions have been agreed to, the place of performance shall be Stallhofnerstraße 3, A-5230 Mattighofen, and all costs and risks shall be borne by the supplier, including any customs, duties and taxes, until receipt (4.2) by KTM.
- 6.2. When payment has been made in full, KTM acquires ownership of the delivery items supplied in accordance with the delivery schedule.
- 6.3. The supplier shall notify the transport company in a timely manner that the delivery items are ready for shipment so that there can be compliance with the agreed receipt (4.2).
- 6.4. The supplier shall include a written delivery note with every shipment 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 an exact description of the contents. In order to avoid confusion with serial parts, it is also essential to specify the exact degree of maturity (such as prototype parts, first sample parts, sample parts, etc.). If this information is not included in the delivery note, KTM shall be entitled to reject the delivery at the expense and risk of the supplier. If several items from different delivery schedules are delivered together and a single delivery note is used, clear information must be provided of the assignment to the different delivery schedules. With respect to the accompanying documents for the delivery items, the supplier shall comply with the agreed guidelines.
- 6.5. When the supplier dispatches a shipment, a dispatch note shall be sent to KTM in timely manner in writing (23.1) specifying the time of delivery, the information on the delivery note, the means of transport and the name of the forwarder/carrier.
- 6.6. The delivery of goods to KTM factories shall only take place during the opening hours of the KTM incoming goods department.



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6.7. If components are provided by KTM or third parties, the supplier shall bear the risk of loss or damage for these components from the time of delivery to the supplier. The supplier shall also bear the risk of loss or damage for the return of the components to KTM or third parties.

7. EXPORT CONTROL

The supplier hereby agrees to sign the KTM export control conditions.

8. QUALITY

8.1. The supplier hereby agrees to sign the KTM quality assurance agreement (QAA).

8.2. If KTM is obliged to permit the government authorities, in particular, the authorities responsible for product safety, to inspect its documentation, the supplier hereby acknowledges that it will provide all reasonable support in this regard, at KTM's request.

9. PAYMENT, INVOICING, OFFSETTING

9.1. After receipt (4.2), the supplier 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 supplier
- Date of shipment and place of delivery
- Additional delivery costs (customs duties, packaging, transport, insurance)

Invoices that do not contain the required information or have factual or mathematical deficiencies or errors that delay the process of invoice verification may be rejected by KTM and do not establish a due date. Any resulting costs, in particular input tax deductions refused by the tax authorities, shall be borne by the supplier. In this event, the new due date for payment shall be calculated from the date of receipt of a new invoice that is free of content errors and properly issued.

9.2. Unless otherwise agreed, payment shall be made by bank transfer. Transfer fees shall be shared between KTM and the supplier (expense option "SHA" – "shared"). Transfers shall take place once a week on a business day specified by KTM and shall include all invoices which are correct, verified and due by that business day. Transfers shall be made to the bank account provided to KTM by the supplier. Notice of any change in the supplier's bank details must be provided to KTM in accordance with a process defined by KTM that will be communicated separately.

9.3. Payment shall be made within ninety (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 supplier shall be confirmed by KTM.

9.4. KTM shall be entitled to an offset even if its own claims are not yet due or are payable in a foreign currency. The supplier shall not be entitled to cede or assign its claims against KTM to third parties unless KTM agrees to this in writing (23.1) in advance.

9.5. At KTM's request, the supplier agrees to change to the credit note procedure in accordance with § 11 (7) and (8) UStG. The supplier shall sign a separate agreement for this purpose.

10. TERMS AND CONDITIONS FOR TOOLING

The supplier hereby agrees to sign the KTM Terms and Conditions for Tooling, if necessary, on the basis of the supply contract.

11. WARRANTY

11.1. The supplier shall be liable for defects of the delivery items and guarantees the suitability of the delivery items for their intended use after receipt (4.2). The specifications stated in the supply contract are warranted properties. In addition, the supplier warrants that the delivery item, its design and production comply with the state of the art of scientific and technological development, all internationally applicable product safety regulations (particularly in the USA and Asia), as well as those



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applicable in the European Economic Area and in Austria, as well as comply with previously approved samples.

11.2. The warranty period for all delivery items begins with the receipt (4.2) and ends at the earlier of the following dates:

- On the expiry of the warranty period to which the end user of the final products manufactured by KTM into which the delivery items have been incorporated is entitled, or
- On the 4th (fourth) anniversary of the receipt (4.2)

The above provisions shall apply subject to any longer warranty periods based on the national provisions of the sales markets into which the final products into which the delivery items have been incorporated are supplied.

11.3. The supplier waives hereby its objection to a delay in notification of defects.

11.4. At KTM's election, the supplier shall improve or replace the defective delivery items. The supplier shall also remedy such defects if the supplier has to work in multiple shifts, overtime or increased production hourly rates, if necessary, for urgent operational reasons at KTM and can be reasonably expected of the supplier. 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 the supplier.

11.5. If the supplier does not immediately fulfill its warranty obligation in accordance with 11.4, KTM shall be entitled to remedy the defects itself or through third parties at the expense and risk of the supplier, or to demand a reduction in the price, or to declare a rescission of the contract and return the delivery items to the supplier at the supplier's expense.

11.6. 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.

12. INDEMNITY

12.1. The supplier shall be liable to KTM, irrespective of the degree of fault, for all damages and consequential damages (due to defects or otherwise) as well as lost profits, including compensation for expenses for interruption of operations, downtime of the production line, interruption of production, or other indirect damages (such as: sorting and rework expenses, conversion, repair, reassembly, and testing expenses, or costs for error analysis and complaint processing). In addition, supplier agrees to indemnify KTM for all damages, including but not limited to, all attorney fees and costs for legal action paid to third parties as a result of the defective delivery item.

12.2. KTM shall be liable to the supplier for intentional or gross negligence, with the exception of personal injuries for which, in some jurisdictions where applicable, its liability arises for slight negligence.

13. PRODUCT LIABILITY

13.1. Product liability arises regardless of fault and cannot be limited or excluded, in advance, in the relationship between the party liable for the product and the injured party.

13.2. If third parties take legal action against KTM, the supplier shall - notwithstanding point 22 - join the court proceedings on the side of KTM after receiving a third-party notice in such proceedings. KTM shall remain in control of the proceedings. The supplier shall make all the documents available to KTM that are required for the litigation and that have been requested by KTM. The supplier shall only make its own submissions to the court after prior consultation with KTM. If third parties make extrajudicial claims against KTM, KTM shall be entitled to include the supplier 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 opposing such a claim or action by a third party and the resulting financial burdens between themselves.

13.3. If KTM pays damages to an adversely affected third party, irrespective of whether through settlement, acknowledgment, or final judgment, the supplier shall indemnify and hold KTM harmless. This shall not apply if the supplier proves that the delivery item was not defective 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 supplier did not culpably cause the damage.



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- 13.4. Consent to Jurisdiction. For purposes of any proceeding or claim brought by KTM, and/or its affiliates, to enforce the Paragraphs above against supplier in the United States of America, Mexico, or Canada (collectively, "North America"), Australia or New Zealand, supplier hereby consents to submit to the jurisdiction and venue of the court exercising jurisdiction over the underlying claim or proceeding against KTM, and/or its affiliates. Supplier further waives, and agrees not to plead or make, any claim or objection that any such action or proceeding brought in said court has been brought in an improper or inconvenient forum.
- 13.5. Service of Process. In the event a claim or proceeding arises in North America as described in Paragraph 13.4 above, supplier hereby irrevocably waives, and further agrees not to plead or make, any claim or objection to the absence of a summons or of service of process. Supplier further acknowledges and agrees that, while supplier waives its right to plead or make any claim or objection to the absence of a summons or of service of process, supplier must timely file an appearance and a responsive pleading in the presiding court. The statutorily mandated time period for supplier to timely file its responsive pleading and/or motion will commence as of the date upon which supplier receives KTM, and/or its affiliates', transmission of the summons and/or complaint via e-mail.

14. RECALL

- 14.1. The supplier shall constantly monitor the product and repeatedly assess the risk of its delivery items. The supplier shall notify KTM, without delay, of any functional defects and/or recognizable sources of danger in the delivery items whose malfunction or defect may endanger life and limb.
- 14.2. If either the delivery item of the supplier is unsafe or dangerous or a KTM product in which the delivery item is installed causes the KTM product to be unsafe or dangerous, the supplier shall immediately respond to this at the request of KTM. If KTM as a result initiates either a *withdrawal* of its KTM products from the dealers or a *recall* of KTM products already in the possession of end customers, irrespective of whether KTM carries out these product safety measures voluntarily or is ordered to do so by the authorities, the supplier shall hold KTM harmless and indemnify KTM for all expenses incurred in consequence. This obligation shall not apply if the supplier proves that the delivery items in question are not unsafe according to the product safety provisions and were not the cause of the measure taken and KTM confirms this in writing (23.1).
- 14.3. 14.1 and 14.2 shall be also applicable if, instead of a danger, the delivery items have quality defects and KTM therefore initiates a voluntary KTM workshop action on the basis of a "Technical Information / KTM TI" (withdrawal/recall not officially initiated).

15. INSURANCE, DOCUMENTATION

- 15.1. The supplier shall maintain commercial and product liability insurance with a well renowned and solvent insurance company with policy limits which are adequate for the order volume. In particular, KTM requests that insurance coverage be obtained for any liability which exceeds the statutory liability provisions, i.e. product liability coverage of at least EUR 5,000,000.00. The supplier shall ensure that the North American market (USA, Canada and Mexico) as well as Australia and New Zealand are expressly taken into account in the insurance contract or policy to cover the risk of product liability with sufficient policy limits.
- 15.2. Upon KTM's request, the supplier hereby agrees to provide KTM with a copy of all the requested documentation in either German or English.
- 15.3. The supplier hereby agrees to immediately notify KTM, in writing pursuant to 23.1, of any changes in insurance coverage, including but not limited to, the loss of insurance coverage or a reduction in coverage amounts.
- 15.4. Unless otherwise agreed, the supplier hereby agrees to instruct each carrier/forwarding agent, appointed by the supplier, to obtain adequate transport liability insurance. The supplier hereby agrees to indemnify and hold KTM harmless for any claims or damages.

16. CONFIDENTIALITY

The supplier hereby agrees to sign the KTM non-disclosure agreement (NDA).



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17. MARKING OF GOODS AND ADVERTISING

- 17.1. The supplier shall mark the delivery items in accordance with KTM's specifications. The application and specific design of the supplier's brand or logo on the delivery items shall be agreed separately with KTM. The supplier shall not supply unauthorized third parties with delivery items bearing KTM markings. This also applies to any packaging.
- 17.2. The use of the business relationship between KTM and the supplier for advertising purposes as well as the use of the name, logo, brands, equipment, product names or company logos – unless otherwise agreed in writing (23.1) – is not permitted.

18. TERMINATION OF THE CONTRACT

- 18.1. Unless otherwise agreed, contracts between the contracting parties may only be terminated in writing (23.1) without notice and with immediate effect if there is good cause. 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 supplier
 - Repeated failure to comply with delivery dates
 - Repeated (end) customer complaints
 - The failure to initiate insolvency or comparable proceedings due to the supplier having insufficient funds to cover the costs or if the conditions are met for such proceedings to be initiated or for such an application to be rejected
 - A material breach of these purchasing conditions, of KTM's Code of Conduct (CoC), or of a separate written (23.2) agreement between the parties (e.g: NDA, Quality Assurance Agreement, Terms and Conditions for Tooling, etc.)
 - Other circumstances that jeopardize the proper and planned production process of KTM and its preparations, which fall within the supplier's sphere of responsibility
- 18.2. Ordinary termination is expressly excluded.
- 18.3. In the event of an extraordinary termination by the supplier, the proportionality of the relocation costs and units still to be produced (ongoing supply of spare parts) must be taken into account, whereby the allocation of the relocation costs to the KTM parts price should not exceed 10 (ten) % of the parts price.

19. THIRD PARTY PROPERTY RIGHTS, OTHER RIGHTS

- 19.1. The supplier hereby agrees to be responsible for ensuring that the contractual use of its delivery items (manufactured on the basis of its drawings and/or its know-how) does not infringe on the protective rights of third parties – even if the granting of such rights has only been applied for. The supplier hereby agrees to indemnify and hold harmless KTM and its subcontractors against all claims resulting from an infringement of such protective rights and shall provide KTM with the necessary authorizations (licenses) at its own expense.
- 19.2. The contracting parties shall inform each other without delay of any infringements of protective rights or related risks. At KTM's request, the supplier 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 these in any other way.
- 19.3. 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 government authorities.
- 19.4. The supplier shall grant KTM or its representatives access to the documents, instruments, books and records relating to the relevant supply contract after an appointment, at mutually convenient time, has been arranged. The supplier shall keep records for at least 10 (ten) years after the last delivery of the delivery items to KTM.
- 19.5. 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 supplier 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 an agreement to the contrary.
- 19.6. Development services, which are content of an agreement are always part of a superior project. The project management of projects and the development as well as technical and organizational control



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function of several subprojects and development stages always are in the responsibility of KTM. The awarding of such development services takes place under explicit standards defined by KTM. This is an indication for internal operating research achievements according to § 108c Abs. 2 Z.1 Austrian Income Tax Law and are therefore government-sponsored research efforts for KTM.

20. SPARE PARTS

- 20.1. The supplier shall supply KTM upon request with sufficient quantities of the delivery items for use as spare parts for a period of 10 (ten) years after receipt of the goods of the last delivery of the series production for KTM.
- 20.2. The price stated in the last applicable supply contract or delivery schedule shall apply, in addition to any miscellaneous costs for special packaging.

21. COMPLIANCE

KTM is committed to compliance with all legal norms and to value-based corporate activity. The supplier must therefore comply with KTM's compliance guidelines and hereby agrees to sign the Code of Conduct (CoC) and comply with the rules and principles of conduct contained therein.

22. GOVERNING LAW, PLACE OF JURISDICTION OR ARBITRATION AGREEMENT

- 22.1. Supplier with its registered office within the EEA or Switzerland:
 Austrian law shall apply exclusively, excluding the conflict of laws rules of private international law and the UN Convention on 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.
- 22.2. Supplier with its registered office outside the EEA or Switzerland:
 All 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, Austria. The applicable substantive law shall be Austrian law.

23. FINAL PROVISIONS

- 23.1. In writing shall mean exclusively either signed by both parties, or by fax, e-mail, or electronic data interchange (EDI).
- 23.2. Amendments to these purchasing conditions shall only be valid if they are specifically and mutually agreed, in writing, and signed by both parties.
- 23.3. In the event that one or more subcontractors are commissioned, the supplier shall transfer all the obligations arising from the existing 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.
- 23.4. 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 an event, a provision that is closest to the legal and economic purpose of the invalid provision shall be deemed to have been agreed.
- 23.5. The supplier shall inform KTM immediately of any changes in its ownership structure.
- 23.6. There are two versions of Terms and Conditions for Purchase Production Material. The original version in German language and the translated English version (present version). In the event of difficulties in the linguistic interpretation of this translated version, only the German version shall be used as the authentic version.

Place, date

Place, date

KTM AG

Supplier