

**General Terms and Conditions for deliveries and services of KDDI
Deutschland GmbH**

1. Scope

1.1 The provision of services and the delivery of goods, by KDDI Deutschland GmbH (hereinafter referred to as KDDI) shall be subject solely to the terms and conditions stated hereinafter. In placing the order or accepting the services, the customer accepts these terms and conditions.

1.2 The customer shall be informed of any change to these General Terms and Conditions. If KDDI changes these General Terms and Conditions to the customer's disadvantage and if the customer is a consumer, the customer shall be entitled to terminate the Agreement without notice within one month after being notified of the changes to the Agreement to be agreed separately between the customer and KDDI. If the customer does not make use thereof, the change of the Agreement shall become effective upon expiry of the respective month.

2. Conclusion and purpose of the Agreement

2.1 Any offers made by KDDI, especially as regards the scope of the services, the prices and the delivery dates, and related documentation shall not be binding until made in writing. The customer shall accept changes in color and form as far as this is reasonable. Any drawings, figures, as well as indications on measurements, weight or performance scope shall not be binding and shall only be used for information purposes, unless it is explicitly laid down that they are of binding nature.

2.2 KDDI shall be reserved the right not to accept the order/service obligation.

2.3 The content and scope of the services shall be regulated in each particular case by a written order and/or service agreement.

2.4 Each order shall require a written confirmation by KDDI Deutschland stating in detail the services to be performed and/or products to be delivered, the place of performance/delivery, time schedule, price, hourly rates, etc. Upon the shipping out of the goods or provisioning of services by KDDI, the order shall be automatically deemed accepted by KDDI.

3. Acceptance of goods and services

3.1 Once the goods have been delivered and installation services and/or configuration services have been provided, the customer shall verify that the goods are functioning and/or that the equipment has been properly connected and services are available. The customer shall then confirm the contractual condition of the goods and services by signing a service note.

3.2 The customer shall be informed in writing within a reasonable period of time of any change to the performance stipulations as far as they are known to KDDI. In order to adjust to technical and economic developments and to maintain the quality standards of the services, KDDI shall have the right to change the configuration of the services during the term of the Agreement. KDDI shall have the right to appoint subcontractors to perform the services, unless agreed otherwise with the customer.

3.3 In the event that KDDI shall default in the performance of the services provided or the goods delivered, KDDI shall be granted a reasonable grace period of not less than 14 calendar days set by the customer to fulfil the contractual obligations.

4. Delivery periods and service dates

4.1 A delivery period shall only be binding, if agreed in writing. An agreed delivery date for delivery and service shall commence upon the date of the order confirmation. Unforeseen events which cannot be influenced by KDDI shall extend the delivery period by the time of the duration of the hindrance plus and appropriate start-up time. If it must be expected that the hindrance will not be eliminated within an appropriate period of time, KDDI shall be entitled partially or fully to withdraw from the Agreement. Claims for damages may not be made in cases of delayed delivery of goods and services.

4.2 In case of non-compliance with a delivery date that has been explicitly guaranteed in writing, the customer shall grant KDDI an additional grace period of at least 14 days. If the service is not performed or the goods are not delivered within this period, the customer shall have the right to withdraw from the agreement.

4.3 KDDI reserves the right to make partial deliveries.

4.4 Delivery dates of goods and services shall only be binding when the customer has, in his or her area of influence, met all conditions required for the delivery of goods or performance of the services by KDDI.

5. Prices and terms of payment

5.1. With regard to entrepreneurs, KDDI is entitled to reasonable price adjustments, if delivery of goods or the provision of the services take place more than two (2) months after conclusion of the Agreement and if in the meantime prices have increased, for instance due to increased wage rates or other cost increases. If KDDI increases prices by more than 25%, the customer may terminate the Agreement without adherence to a time period within one month after notification of the price increase. If the customer is a consumer, price adjustments become valid six weeks upon notification. The

consumer may terminate the Agreement without adherence to a time period within one month after notification of the price increase.

5.2 The customer shall pay the amount of the invoice issued by KDDI on the basis of the order confirmation, otherwise on the tariffs announced to the customer upon conclusion of the Agreement.

5.3 Unless agreed otherwise in the Agreement, prices are net prices in Euro, subject to VAT and any other applicable taxes and payable without deduction within the term indicated.

5.4 Unless agreed otherwise in the Agreement, for goods the prices shall be excluding transportation costs and package.

5.5 The customer's payment is deemed to have been made only when it is credited to an account that KDDI specifies. KDDI is authorized to demand direct-debit authorization from the customer for the monthly fees.

5.6 Objections to the amount of the invoice must be submitted by the customer in writing immediately, but no later than 4 (four) weeks after the invoice date. Failure to submit timely objections is considered as acceptance.

5.7 If after the conclusion of an Agreement, KDDI becomes aware of a considerable deterioration in the customer's financial circumstances, especially, if the customer falls behind in payment, KDDI shall be entitled to require prepayment or a security deposit before providing any services or deliveries. In such case, KDDI shall be entitled to interrupt its contractual services until the customer has paid his/her due debts.

5.8 The customer may only set off KDDI's claims, if the customer's claims are not contested or have been legally established. The same shall apply to the right of retention.

5.9 Any claims for repayment by the customer shall be credited to the customer account or offset with the next demand due, unless the customer demands a different procedure.

6. Additional charges

6.1 Unless stated otherwise in the Agreement, the customer shall pay for travel expenses and hotel costs of the employees of KDDI that are required to provide the contractual services.

6.2 Unless provided otherwise, the customer shall pay for auxiliary materials and consumables as well as materials that are subject to general wear and that usually need to be exchanged several times during the service life of the facility.

6.3 Normal office hours are Monday to Thursday from 09:00 a.m. to 05:00 p.m. and Fridays from 09:00 a.m. to 03:30 p.m. Additional payment for work performed outside normal office hours shall be subject to KDDI's hourly rates.

7. Beginning of the Agreement, contractual term

7.1 The contractual relationship shall enter into effect on the date of written confirmation of the respective order by KDDI. Service agreements shall be concluded for an indefinite period commencing on the date on which the service is made available, unless the order provides for a different beginning and/or term. The minimum contractual period is stipulated in the Agreement. Unless agreed otherwise, the Agreement shall be automatically renewed for additional contractual terms, unless written notice of termination is given not later than 30 calendar days prior to the expiration thereof.

7.2 KDDI's right to terminate the Agreement with immediate effect for important reasons shall remain unaffected. In particular, KDDI may, without prejudice to any other rights or remedies, terminate the Agreement by giving a written notice to the customer with immediate effect, if any of the following events should occur:

- if the customer fails to make any payment to the other when due under the Agreement and such failure continues for more than fourteen (14) days after receipt of a written notice specifying the default;
- if the customer fails to perform any other provision of the Agreement which failure remains uncorrected for more than thirty (30) days after receipt of a written notice specifying the default;
- if the customer files a petition in bankruptcy, or if a petition in bankruptcy is filed against it, or if the customer becomes insolvent, bankrupt, or makes a general assignment for the benefit of creditors, or goes into liquidation or receivership;
- if the customer ceases or threatens to cease to carry on business or disposes of the whole or any substantial part of its undertaking or its assets;
- if control of the customer is acquired by any person or group not in control at the commencement date first above written.

7.3 No failure or delay of one party to require the performance by the other of any provision of the Agreement shall in any way adversely affect such party's right to require full performance of such provision after that.

- No waiver by one party of a breach of any provision of the Agreement shall be taken to be a waiver by such party of any succeeding breach of such provision.

- No waiver by either party will be valid unless given in an appropriate writing signed by it.

8. Customer obligations

8.1 The customer shall grant KDDI access to its premises and to the equipment on any working day during its regular business hours.

8.2 The customer shall not use the services and/or KDDI network for unlawful or other inappropriate purposes or by means of causing any damage or interruption on them.

8.3 The customer shall not use the service and or KDDI's network for the transmission of any material which is in violation of any law or regulations.

8.4 In cases where the customer causes damage on the service or network of KDDI, the customer shall be responsible towards KDDI for the damage incurred by the customer. The customer has the right to prove that no damage at all or a lower damage occurred.

8.5 The customer will inform KDDI immediately of malfunctions and safety defects for which KDDI is liable and shall grant KDDI the opportunity to examine the damage and the reasons thereof.

8.6 The customer shall inform KDDI without delay of any change to name, address, legal status or bank account as well as any intended change of installation place.

8.7 During the contractual term, the customer shall insure the facility against all customary risks e.g. against fire, lightning, overvoltage, induction, short circuit, theft, tap water, machine breakage, transport at the offer value indicated in the offer. The customer shall be liable for any consequential charges that are due to such damage. Moreover, the customer shall conclude an employer's liability insurance and, if required, a low voltage insurance.

8.8 Any claims of the customer – excepts those which are based on tort – are subject to a statute of limitation of one year after detection of the damage and, at the latest, of three years from the damage incident.

9. Liability

9.1 Liability of KDDI, its legal representatives, and vicarious agents shall be limited to damages due to a violation of its contractual duties caused by intent or gross negligence, except for the violation of life, body, and health.

9.2 In case of slight negligence, liability shall be limited to the violation of important contractual duties, as well as those obligations that are decisive for Customer protection; any exceeding claims by the Customer, in particular for indirect damage, such as lost profit, third party claims, data loss, etc. shall be excluded.

9.3 Except for the violation of life, body, and health as well as in case of gross negligence or intent by KDDI, its representatives, of vicarious agents, the obligation of KDDI to pay damages shall be restricted to the typically foreseeable damage, in any case, however, to the amount covered by its liability insurance.

9.4 Furthermore, KDDI shall not be liable for damages to the extent the Customer could have prevented the damage by taking appropriate measures, in particular program and data security measures, provision of proper training to the respective users, as well as safeguarding by way of back-up procedures. Damage compensation for the restoration of destroyed data shall be limited to the cost of reproducing such data from back-up copies to be made by the Customer on a daily basis.

9.5 All claims for fulfilment of contractual duties shall become statute-barred after two years. Statutory claims shall become statute-barred one year from the date of becoming effective, unless a shorter statutes of limitation is provided by law or the claims was caused by intent, gross negligence, fraudulent misrepresentation or tort by KDDI, its employees, or its vicarious agents.

9.6 The liability of KDDI under the Product Liability Act shall remain unaffected.

10. Warranty

10.1 If the customer is an entrepreneur, KDDI shall – at its own choice – rectify any defects shown on the good delivered or services provided by supplying missing goods or equivalent replacement goods (in case of the delivery of goods) and/or by subsequent improvement measures or replacements (in case of the provisioning of services). Any warranty for used goods shall be excluded.

10.2 If the customer is a consumer, KDDI shall – at the customer's choice – rectify any defects shown on the good delivered or services provided by supplying missing goods or equivalent replacement goods (in case of the delivery of goods) and/or by subsequent improvement measures or replacements (in case of the provisioning of services). If the consumer insists on a rectification which ensues disproportionately high costs for KDDI, KDDI may refuse the kind of rectification chosen by the consumer. If any of such measures are carried out in the customer's premises, he/she shall grant KDDI unrestricted access to the respective premises.

10.3 The written notice of defects shall reach KDDI, in the case of obvious defects, immediately upon delivery, at the latest after two weeks in case of entrepreneurs and after two months in case of consumers, or, in case of defects that are not obvious defects, immediately after the defect has become apparent.

10.4 Warranty claims shall not be applicable for natural wear or damage arising upon delivery or service provisioning due to improper use or to any external event that is not laid down in the Agreement as well as non-reversible software errors.

10.5 Unless agreed otherwise, the warranty period for entrepreneurs shall be one year commencing upon the delivery of the goods and/or acceptance of the service. For consumers, the warranty period for the delivery of goods shall be two years commencing upon delivery and/or acceptance. For used goods, the warranty period shall be one year from delivery, in case of consumers. The warranty for spare parts shall remain with the manufacturer of the goods.

10.6 If the customer demands the provisioning of warranty services/repairs, he/she shall submit an appropriate proof in form of a delivery note or an invoice issued by KDDI. If products no longer have warranty status, the customer shall be informed that the repair can only be performed against payment.

10.7 In case of consumers, any transportation charges required for warranty repair shall be effected at the cost and risk of KDDI. In case of entrepreneurs, the transportation charges from the entrepreneur to KDDI shall be at the costs and risk of the entrepreneur and those from KDDI to the entrepreneur at the costs and risk of KDDI. Repair goods shall always be transported in the original packaging in order to avoid damage. KDDI shall assume no liability for damages that are due to improper packaging. The transportation of goods that are not subject to warranty shall always be effected at the customer's costs and risk.

10.8 If data storage medias or devices with such medias are handed over to KDDI for repair or service by the customer, the customer shall delete all data that is subject to the Data Protection Act and shall secure the hard disc data. Any recovery of data and programs after repair works shall not be part of the warranty service.

10.9 If it becomes obvious during the execution of the repair works that the goods under warranty period show no defect, the remuneration for test expenses shall be subject to the applicable price list. Services that are no warranty services shall be generally liable for costs and require a separate order. Any repair work or other services provided shall be subject to the applicable hourly rates and spare part price list.

10.10 The customer has the right to claim the annulment of the Agreement or a price reduction, if attempts of rectification of defects fail. Any claims of warranty for defects that could have been noticed before installation or manufacture are void after processing and installation. Further claims of the customer shall be excluded, especially in the case of consequential damage cause by a defect, if they do not result from the lack of the agreed quality or the quality warranted by the supplier. This does not apply in case of intent or gross negligence on the part of KDDI.

11. Reservation of title

11.1 Until fulfilment of all claims resulting from the business relationship, KDDI shall retain title to the sold articles and license rights in intellectual property rights arising from these contracts.

11.2 The customer shall not pledge the articles or assign them for security. The customer shall immediately inform KDDI of any pledging of the goods, or claims assigned to third persons or any other claims assigned. The customer shall, at any time, inform KDDI of the whereabouts of the articles under reservation.

11.3 The customer shall have no right to sell articles under reservation without the previous written consent of KDDI.

11.4 If the customer sells articles under reservation of title, he/she thereby assigns to KDDI automatically any future claims arising from the further sale of the articles together with any ancillary rights.

12. Acts of God

12.1 KDDI shall be under no liability whatsoever for non-performance in whole or in part of its obligation under the Agreement, which is a result (whether directly or indirectly) of any strike, lock out, fire, flood, inability to obtain materials, breakdown, delay of supplier or carrier, government act and/or regulation or any cause beyond its control (Acts of God).

12.2 If the events of Acts of God persist beyond a period of 6 (six) months, the customer shall be entitled to cancel the order by giving a written notice to KDDI within ten days after the expiry of the 6 months period.

13. Intellectual property rights

The customer recognizes and accepts that inventions, drawings, designs, improvements, know-how and other creations made by it alone or together with others in the performance under the Agreement shall irrevocably and automatically be the exclusive property of KDDI.

14. Data protection and secrecy

14.1 KDDI agrees that it shall – at all times during the term of the Agreement and thereafter - treat as confidential and keep secret all business and commercial information of the Customer acquired by KDDI under the agreement, except for that part of information which, through no fault of KDDI, had already been made public or which KDDI already had in its possession.

14.2 Without the prior written consent of the Customer, KDDI shall not divulge any of the information to any person other than KDDI's own employees or

subcontractors who need to know the same for the purpose of performing their obligations under the agreement.

14.3 KDDI shall observe the relevant data-protection regulations.

15. KDDI's personnel

15.1 In the accordance with the requirements to be performed under the Agreement, KDDI shall assign an adequate number of qualified personnel equipped to perform each of the services.

15.2 KDDI represents and warrants that the personnel assigned to perform the services and deliver the products under the Agreement shall be employed by KDDI in full compliance with all applicable laws and regulations, including labor law and social security regulations.

15.3 KDDI's personnel shall comply with all safety and other regulations applicable in the premises where the services to be performed and with all related reasonable instructions of the owner of such premises.

15.4 If work is performed in the customer's premises, KDDI's employees shall note the daily hours performed on a performance sheet which shall be signed for approval by the authorized representative of both customer and KDDI.

16. Transfer of risk

16.1 If the customer is an entrepreneur, the risk of any accidental loss or damage to the goods delivered shall pass to the customer upon handover of the goods to the customer; if the goods are delivered by a forwarding agent, the risk shall pass to the customer upon handover of the goods to the agent, freight carrier or any other person or institution in charge of the shipment.

16.2 If the customer is a consumer, the risk of any accidental loss or damage to the goods shall always pass to the customer upon handover of the goods to the customer, even if the goods are delivered by a forwarding agent.

16.3 The risk shall also pass to the customer if he/she is in default of acceptance.

17. Protective rights

17.1 If a third party asserts claims due to the violation of industrial property rights or copyrights (hereinafter referred to as protective rights) by the

products supplied by KDDI towards the customer and if the contractual use of the products by the customer is hereby impaired or prohibited, the customer shall inform KDDI immediately and shall not acknowledge the claims raised by the third party or get involved in disputes without KDDI's prior written consent. If the customer stops using the product in order to minimize damage or out of other reasons, he/she shall inform the third party of the fact that such discontinuation does not constitute any acknowledgement of a violation of a protective right.

17.2 The customer shall have no claim due to the violation of protective rights, if the violation is caused by the customer itself, is based on special specifications by the customer, is caused by an application that is not in conformance with the product documentation, or is caused by the fact that the product has been changed by the customer or is used together with products that were not supplied by KDDI.

18. General stipulations

18.1. The Agreement contains the entire agreement between the parties with regard to the subject matter of the Agreement and replaces all previous written or oral agreements.

18.2 Oral side agreements do not exist. Changes and supplements to the Agreement and these conditions must be in writing. A change to the requirement for the written form must also be in writing.

18.3 The customer may transfer claims from the Agreement only with the prior written consent of KDDI.

18.4 If a stipulation of the Agreement and/or these terms and conditions are legally ineffective, in whole or in part, the effectiveness of the remaining stipulations remains unchanged. In this case, the parties will replace the ineffective stipulations with the effective stipulations coming closest to the economic purpose of the ineffective stipulation.

18.5 The contractual relation between the parties shall be subject to the law of the Federal Republic of Germany. If the customer is a merchant, the sole jurisdiction for all disputes arising from the contractual relationship is with the court at Duesseldorf.