



## General Terms and Conditions of Supply and Installation of the Körber Supply Chain Group

These Terms and Conditions apply to offerings of supplies and services of the Contractor in relation to the supply and installation of material handling systems or parts thereof and to any related Quotation made by or any Agreement concluded with the Contractor.

Unless expressly accepted by the Contractor in writing, any of the Customer's general terms and conditions (in particular any purchasing terms), as well as any other legal provisions in other documents of the Customer in relation to an Agreement (such as specifications, data sheets, technical documentation, advertising materials, orders, order confirmations and/or shipping documents) which change or conflict with these Terms and Conditions, shall not become binding upon the Contractor or part of any Agreement. The above applies also in case of a direct or indirect, express or implied reference to other terms and conditions in any offer, order, confirmation or other contractual document in relation to an Agreement or in other contractual documentation. Contractor expressly objects to any such other terms and conditions.

In cases of conflict between the specific provisions of the Quotation or the Agreement and these Terms and Conditions, the Quotation or Agreement shall prevail.

Capitalized terms shall have the meaning ascribed to them in the last Section of these Terms and Conditions.

### Section 1 Scope of Agreement

- 1.1 The Contractor will supply, execute, complete and install the Works in conformity with the Agreement.
- 1.2 The Customer at its own discretion may exercise in writing any of the "Optional Items" marked as such in the Technical Specifications within the time limits specified therein and in any case early enough to allow for a timely planning, engineering, supply and installation by Contractor. Upon the Customer exercising the option and Contractor confirming this, the relevant optional items shall become part of the Works and Contractor shall undertake the related work at the prices listed in the Technical Specifications.
- 1.3 The Contractor shall provide at its own cost special tools, equipment, instruments and machines, labor and materials and other facilities required for the Works. The Contractor shall further ensure that it provides manpower, equipment and material resources that are sufficient for the Works and to achieve the Milestones.
- 1.4 Works performed may be inspected by the Customer or any person authorized by the Customer during normal business hours. Inspection are to be preannounced with reasonable notice, may not interrupt Contractor's activities regarding the Works.
- 1.5 Where the Customer reasonably determines that any of the Works are defective or are not in accordance with the Agreement until Acceptance (or if applicable Preliminary Acceptance), the Parties shall discuss in good faith means of rectification and mitigation, while Contractor remains entitled to and responsible for determining how the Works are ultimately executed.
- 1.6 The scope of the Works is to be determined at the time of the conclusion of the Agreement. In particular, any subsequent (a) changes in laws and regulations mandatorily applicable to the Works, (b) changes in agreed or mandatorily applicable standards and norms or (c) binding instructions issued by a relevant authority which are not attributable to Contractor's fault, are not included in the scope.
- 1.7 With respect to the Contractor's obligations for the supply of materials, the Contractor must ensure that the supplied materials conform to the specification and design requirements stipulated by the Customer.

### Section 2 Contract Price and Tax

- 2.1 The Contract Price shall be the price for the Works as per the Quotation.
- 2.2 Subject to applicable tax law or binding instructions from competent fiscal authorities:
  - 2.2.1 The Contract Price and any other prices agreed in the Agreement are net amounts, excluding any Value Added Tax (VAT) or any local equivalent (e.g. sales tax, excise tax, goods and services tax, consumption tax and always to include duties, levies, imposts or similar governmental indirect tax assessments, collectively "Indirect Taxes"). Indirect Taxes shall be borne by the Customer. The Contractor shall therefore charge the Indirect Taxes to the Customer in addition to the Contract Price or the relevant price to the extent required by applicable tax laws.
  - 2.2.2 Customer shall promptly provide to Contractor its VAT identification number(s) for (a) the country where Customer has established its business and/or (b) any other country where Customer has a permanent establishment and which is relevant for the Works. Contractor shall not be liable for any Indirect Taxes arising from Customer's incorrect indication of the VAT identification number. Customer shall use the Works for Customer's business use at the Site in accordance with the provided VAT identification number(s). To the extent required by applicable tax laws Customer will provide to Contractor certification on the entry of goods into EU Member State of destination ("Entry Certificate").
  - 2.2.3 All payments, including payment of remuneration and advances, are made based on VAT invoices. All invoice shall meet requirements to fulfil the applicable tax laws, including:
    - Contractor's details: name (including form of incorporation) and address, VAT number, IBAN code and bank account number and name of bank
    - Customer's details: name and address (complete legal entity name and registered office address), VAT number
    - Delivery address
    - Invoice number
    - Reference to the Agreement
    - Description of services or supplies invoiced incl. relevant documentation
  - 2.2.4 Invoices issued by the Contractor should be delivered to the Customer's address stated in the Quotation.
  - 2.2.5 The Customer is only allowed to apply withholding tax on payments if this is required for a certain part of the Works under applicable tax law. Customer will provide Contractor with documentation evidencing payment of such taxes.

All and any other payments will be made free and clear of and without deduction or withholding for or on account of any and all taxes, levies, duties, and charges or similar governmental assessments imposed by law. The same applies if the Contractor is exempted, in whole or in part, from withholding tax due to a valid (partial) certificate of exemption issued by the relevant tax authority.

If the Customer has to apply withholding tax on a certain amount, the Parties shall cooperate during all stages of the process of withholding taxation and income taxation with best endeavors, in particular with regard to the Contractor's efforts to benefiting from applicable double taxation agreements and reclaiming any paid withholding tax. This includes in case of any mandatory tax deduction that the Customer shall furnish to Contractor any available documents relating to such deduction and proving the remittance of the taxes withheld to the relevant authorities.
  - 2.2.6 Parties shall be authorized to any disclosure of the Agreement to a Party's affiliate and to file a copy of the Agreement



with any governmental authorities, if this is required under applicable tax laws.

**Section 3 Review, Approval**

- 3.1 As far as provided for in the Project Schedule, the layouts, drawings and other functional specifications in relation to the Works as comprised in the Technical Specifications are subject to detailed review and finalization by the Contractor, which process is to be supported by Customer with best endeavors.
- 3.2 Contractor shall provide the finalized documents for Customer's review not later than agreed in the Project Schedule.
- 3.3 The Customer's review period shall not exceed 10 Working Days from the date on which the documents are provided to the Customer. During the review period the Customer may:
  - 3.3.1 Give approval with or without any comments, or
  - 3.3.2 deny approval, with comments reasonably identifying the parts or components that do not comply with the Agreement including full explanation. Denial of approval and associated comments shall apply only to the related submitted design documents or parts of these design documents.
- 3.4 Upon a denial by Customer in accordance with the Agreement, the Contractor shall, as soon as technically possible, amend all the necessary design documents according to the comments made by the Customer, and resubmit them for further review according to the above stipulations. The Customer shall not make any comments to the previously not commented parts or components during the review of the resubmitted documents. In case of a denial by the Customer that is not in accordance with the Agreement (in particular because Customer's request is outside the scope of the Works), the denial shall be deemed a request for a Variation by Customer according to Section 10.
- 3.5 Upon expiry of the review period, and as far as no comments are received by the Contractor to the design document or parts thereof, the Customer shall be deemed to have approved the submitted design documents. Any part of those documents, which contents were neither expressly rejected nor commented or are not directly related to the comments issued, shall be deemed as approved.
- 3.6 In the event of any change in the design and/or drawings of the Works being required due to the Customer's fault, the Contractor shall be entitled to recover from Customer all related losses, damages, costs and/or expenses arising from such change of design and/or drawings.

**Section 4 Delivery, Passing of Title and Risk**

- 4.1 The delivery terms for supplies related to the Works shall be as per the Incoterm stated in the Quotation (if not stated: FCA) according to the most recent version of the Incoterms, currently Incoterms 2020.
- 4.2 Partial and early deliveries are permitted as far as reasonable to achieve the Project Schedule.
- 4.3 Contractor shall retain ownership in any supplied equipment until Customer has paid the entire Contract Price.
- 4.4 The Contractor shall be responsible for the Works during the installation, testing and commissioning of the Works. The transfer of risk of any accidental damage or loss of delivered products or the entire Works, which is neither Parties' fault, occurs upon Acceptance (or if applicable Preliminary Acceptance).

**Section 5 Documentation**

- 5.1 The Contractor shall prepare and deliver the Documentation in the following form:

- 5.1.1 Format: Electronic files
- 5.1.2 Language: English (and as required by applicable law)
- 5.2 The Contractor shall own all rights to the Documentation and shall grant Customer a non-exclusive right of use in the Documentation for the agreed or reasonably foreseeable purpose which is assignable or sub-licensable only to Affiliates of Customer or a third party that acquires the Works from Customer in the ordinary course of business.

**Section 6 Commencement, Project Schedule**

- 6.1 Contractor shall commence the Works in accordance with the Project Schedule and as soon as Customer has provided all required official permits and approvals from competent authorities and has made due payments according to the Payment Schedule.
- 6.2 Project Schedule contains a preliminary version of the Project Schedule, which shall be discussed between and developed and finalized by the Parties in good faith. Sections 3.2, 3.3 and 3.5 shall apply accordingly.

**Section 7 Customer Contributions, Interfaces**

- 7.1 The Customer is obliged to the contributions as set out in the Quotation or as otherwise agreed, e.g. in an agreeable document on the division of work or an interface list. The contributions are a prerequisite for Contractor to perform the Works.
- 7.2 With regard to interfaces between the Works and the works of other contractors engaged by the Customer in relation to the Works, the Contractor shall be responsible for supporting all interfacing works, subject to any ambiguity, conflict and/or inaccuracy arising from such interfaces, which could not have been foreseen by Contractor and which had not been reasonably disclosed to Contractor prior to the signing of the Agreement, are attributable to the Customer. Customer shall deliver to Contractor all required detailed information concerning interfacing equipment, systems or infrastructures for the development of the detailed design by Contractor and for the execution of the Works.

**Section 8 Site Access and Site Conditions**

- 8.1 The Customer will procure, in due time, for Contractor staff and its representatives, suppliers or sub-subcontractors all necessary permissions and authorizations to work on the Site.
- 8.2 Contractor will inform the Customer of the normal working time. Until Acceptance (or if applicable Final Acceptance) has occurred, Contractor will be permitted free access to Site to perform Works on extra hours or extra shifts on any calendar day whenever considered necessary or adequate by Contractor to accomplish the agreed time plan.
- 8.3 The Customer shall be exclusively responsible for all costs arising of the extra labor hours of its representatives.
- 8.4 The Customer will make available free of charge, on all construction areas, the necessary area needed for building up and storing equipment and support facilities for the forecasted teams, materials and warehouses including sewage, water, compressed air with adequate pressure and electricity with adequate power. The area for site construction and facilities shall be provided and maintained clean from natural obstacles and ready for the Works.
- 8.5 The Site shall have security services during all period of the execution of the Works. These security services must be provided in a twenty-four-hour period, seven days per week, at Customer's expenses.



- 8.6 The Customer will make available free of charge at the Site a place for Contractor to make deposit of construction waste, with proper containers at a maximum distance of 100 meters from the erection location, and will make his duty to produce proper documentation and ensure its delivery to any waste treatment plant, recycling plant or landfill according to local applicable legislation.
- 8.7 In case of any delay in handing over the Site for starting the installation, the safety and security of material and storage of material at site shall be under the responsibility of the Customer.
- 8.8 The Customer shall provide the conditions, which it is responsible for, according to the DOW throughout the project until Acceptance (or if applicable Final Acceptance).

#### **Section 9 Software License**

- 9.1 The Customer shall, unless otherwise specified herein, have the permanent non-exclusive right to use and maintain the Software for the agreed and reasonably foreseeable operation of the System. The right of use shall only be assignable and sub-licensable in the ordinary course of business to any affiliate of Customer or to a buyer of the System.
- 9.2 In case the Works comprise Software to be provided and implemented by an affiliate of Contractor as a subcontractor of Contractor (for example a warehouse management system), the Affiliate's software licensing terms shall apply.
- 9.3 As far as Software is owned by a third party, Contractor shall assign the relevant software license or sublicense that Software in accordance with the software licensing terms of the relevant third party.
- 9.4 Contractor shall not be obliged to disclose any source code of the Software.

#### **Section 10 Variations**

- 10.1 The Contractor shall carry out Variations which are required because of (a) changes in laws and regulations mandatorily applicable to the Works, (b) changes in standards and norms if those are expressly agreed or otherwise mandatorily applicable to the Works or (c) binding instructions issued by a relevant authority which are not attributable to Contractor's fault and made after the conclusion of the Agreement. Such Variations shall be deemed to have been requested by Customer. The Parties have to notify each other without undue delay if they become aware of such a change or instruction.
- 10.2 The Customer may further request, and Contractor may suggest Variations in writing at any time until Acceptance Certificate (or if applicable Preliminary Acceptance Certificate).
- 10.3 Within a reasonable period upon receipt of a request for a Variation from Customer or in its own suggestion for a Variation, Contractor shall inform Customer of the impact of the Variation on the Contract Price and the Project Schedule, thereby making an offer for that Variation on the basis of the template for Variation agreed between the Parties or (if not agreed) on Contractor's current standard template for Variations to be provided by Contractor from time to time. The Customer shall reimburse the reasonable costs incurred by Contractor in examining the Variation and preparing the offer on a time and material basis if Customer has requested the Variation or it is a Variation according to this Section on Variation.
- 10.4 The Customer shall respond to the Contractor's offer within 10 Working Days by either signing and accepting it or rejecting it. If the Customer fails to comply with this notice period and also has not provided notice to Contractor that it needs

additional time of up to 10 Working Days for the decision, the Contractor's offer shall be deemed rejected.

- 10.5 As long as a Variation has not been agreed, the Works shall be considered unchanged and the Contractor may decide in its reasonable discretion to suspend the affected parts of the Works by giving notice to the Customer. Customer shall bear any reasonable cost (incl. reasonable overhead) incurred by Contractor during the time and as a result of the suspension, if the Customer has requested the Variation or it is a Variation according to this Section on Variation.

- 10.6 The Parties may exceptionally agree on a simplified process for Variations up to an individual value of EUR 20,000.00 (or local currency equivalent) by means of a list of additional and reduced costs to be signed or otherwise verified (for example by email-confirmation) by the Project Representatives. Contractor may claim and invoice any positive balance according to this list at the end of each month.

#### **Section 11 Suspension**

- 11.1 In case of any suspension or postponement of the Works or part of the Works requested by the Customer or required for reasons not attributable to the Contractor (e.g. binding instructions issued by a relevant authority), the Contractor shall stop the Works upon being directed to do so by the Customer.
- 11.2 The effects on cost and losses and on the Project Schedule shall be considered and agreed as a Variation. As long as not agreed otherwise according to these Terms and Conditions, any cost or losses (incl. reasonable overhead, cost of pausing and remobilizing the Works and profit) incurred by Contractor caused by the suspension or postponement shall be borne and reimbursed by the Customer, subject to the Contractor being obliged to reasonably mitigate such cost or losses.

#### **Section 12 Project Schedule Extensions**

- 12.1 A reasonable and fair extension (including any reasonable times for pausing and remobilizing the Works) shall apply to the Project Schedule in case of interruptions or delays of the Works caused by the following events or circumstances:
- 12.1.1 Any act or omission attributable to Customer or third party contractors engaged by Customer;
- 12.1.2 Variations to technical conditions, the scope of Works, schedule or site conditions, provided that such changes impacts the ability to carry out the Works;
- 12.1.3 Disruption to Contractor's Works caused by site occupation by the Customer, its agents or others on site, as any delays in access to Site creating an impact in the agreed time schedule;
- 12.1.4 Force Majeure events;
- 12.1.5 Abnormal weather conditions that affect the normal execution of the Works such as extraordinarily heavy rains, winds, high or low temperatures;
- 12.1.6 Variations or other changes to the design of the goods or services bindingly requested by authorities;
- 12.1.7 Suspension of the Works by reasons not attributable to the Contractor (if not agreed specifically as a Variation);
- 12.1.8 Changes in laws/standards not reasonably foreseeable by Contractor 28 days prior to the tender submission and any changes in laws/standards occurring during project execution;
- 12.1.9 Any underground- or ground-condition discovered after the commencement of the Works not reasonably foreseeable by Contractor; or



12.1.10 Delay in providing sufficient information to start the Works, caused by subsequent instructions or lack of instructions from the Customer, industrial disputes or other causes whatsoever beyond Contractor's reasonable control.

**Section 13 Acceptances, Shortfall Compensation**

- 13.1 Acceptance (or if applicable Preliminary Acceptance) shall be a mandatory prerequisite for Customer to beneficially use the System.
- 13.2 After Contractor has carried out the installation and commissioning and has achieved Completion, Acceptance (or if applicable Preliminary Acceptance) shall take place. Acceptance (or if applicable Preliminary Acceptance) shall comprise of the tests, criteria and processes specifically agreed in the Technical Specifications.
- 13.3 Only in case of major non-compliances or major defects shall Customer be entitled to reject any acceptance in relation to this Agreement. All non-major cases of non-compliances or defects will be listed in an open issues list and Contractor will remedy such non-compliances and defects as soon as possible. Contractor is entitled to reasonably request Customer to stop the System in order to solve open issues. Acceptance processes may be carried out with remote support as far as reasonably practicable for Contractor and agreeable for both Parties.
- 13.4 Acceptances (and if applicable in particular Preliminary acceptance and Final acceptance) shall be deemed to have occurred and declared in the following cases, whichever occurs first, but subject always to a reasonable notice period to be set by Contractor in writing:
  - 13.4.1 The Customer rejects the relevant acceptance not in accordance with the Agreement or refuses to cooperate in or fails to fulfill its obligations regarding the relevant acceptance process; or
  - 13.4.2 the Customer ultimately refuses to continue the execution of this Agreement or the Works without being entitled to, or
  - 13.4.3 in the specific case of Preliminary Acceptance (if applicable): The System or parts thereof are placed into essentially permanent, commercial operation by the Customer before signing the Preliminary Acceptance Certificate.
- 13.5 If not agreed otherwise or expressly excluded in the Technical Specifications, Contractor is entitled to decide by written notice to the Customer to compensate the Customer for a shortfall in Throughput according to the following provisions, if the System, in spite of reasonable efforts of the Contractor to rectify the shortfall, does not achieve the Throughput in the course of an acceptance process and provided that the shortfall does not exceed 6 (six) %. The compensation shall be by way of a price reduction and such price reduction shall be in lieu of Contractor's duty to remedy the shortfall and non-compliance to achieve Throughput. If Contractor gives written notice that it makes use of this right, Customer is entitled to a price reduction for each full percentage point of shortfall below the agreed Throughput in the amount of 0.25% of the Contract Price. The total maximum reduction is 1.5%. In case Contractor exercises its rights hereunder, further claims for rectification of the shortfall, price reduction, compensation, damages or other rights and remedies (including termination rights) for reason of shortfall in Throughput are excluded.

**Section 14 Warranty**

14.1 The Contractor warrants that the Works are free of defects and correspond with the agreed specifications described in the Agreement and in particular in the Technical Specifications

- 14.2 In order that the Works and Documentation shall be in the conditions required by the Agreement (fair wear and tear excepted) by the end of the warranty period, the Contractor shall:
  - 14.2.1 complete any work which is outstanding on the date stated in an Acceptance Certificate (or if applicable Preliminary Acceptance Certificate), within such reasonable time as is instructed by the Customer (or if not instructed within an objectively reasonable time), and
  - 14.2.2 execute all work required to remedy defects or damage by repair or replacement in Contractor's discretion, as may be notified by the Customer on or before the end of the warranty period.
- 14.3 All defect rectification works shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:
  - 14.3.1 the design of the Works, other than a part of the design for which the Customer or any third party contractors engaged by Customer are responsible (if any),
  - 14.3.2 the Works or any parts thereof not being in accordance with the Agreement,
  - 14.3.3 improper installation attributable to the Contractor, or
  - 14.3.4 failure by the Contractor to comply with any other obligation of this Agreement.
- 14.4 Contractor shall not be obliged to carry out defect rectification works if and to the extent that the work is attributable to:
  - 14.4.1 Acts or omissions of Customer or third parties attributable to Customer, in particular third party contractors engaged by Customer,
  - 14.4.2 Customer failing to notify the defect immediately in writing,
  - 14.4.3 improper transportation or storage of or any accidental damage to the delivered items after the transfer of risk,
  - 14.4.4 improper operation or treatment of the delivered items, failure to comply with the operating instructions, operating conditions or service- and maintenance-intervals or by the use of improper materials or replacement materials,
  - 14.4.5 fair wear and tear (e.g. consumables), or
  - 14.4.6 modifications or repairs made to the System or parts thereof without Contractor's consent or third party spare parts.
- 14.5 If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by the Customer.
- 14.6 If the Contractor fails to remedy any defect or damage within a reasonable time, a date is to be fixed by the Customer in writing, on or by which the defect or damage is to be remedied. If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor as per the above provisions or the remedy is impossible or grossly unreasonable from Contractor's commercial perspective, the Customer may (at its option):
  - 14.6.1 carry out the work himself or by others, in a reasonable manner and at the Contractor's cost and the Contractor shall pay to the Customer the costs reasonably incurred by the Customer in remedying the defect or damage;
  - 14.6.2 determine a reasonable reduction in the Contract Price taking into account all relevant circumstances; or



- 14.6.3 if the defect or damage deprives the Customer of substantially the whole benefit of the Works or any essential part of the Works in a way that a further operation of the System is clearly not reasonably practicable for the Customer considering also the legitimate interests of the Contractor and the high complexity of the Works, terminate the Agreement as a whole, or in respect of such essential part. Without prejudice to any other rights, under the Agreement or otherwise and subject to Section 15, the Customer shall be entitled to recover all sums paid for the Works or for such part (as the case may be) and the cost of dismantling the same, clearing the Site and returning materials to the Contractor.
- 14.7 Until the end of the warranty period, the Contractor shall have the right of access to all parts of the Works and to records of the operation and performance of the Works, except as may be inconsistent with the Customer's reasonable security restrictions.
- 14.8 The search for and determination of defects shall be at the sole risk and cost of Customer.
- 14.9 When a defect has been rectified by Contractor, the replaced or repaired part of the Works shall be subject to the same warranty terms as described above for an additional one year upon completion of the rectification, but not longer than in total 36 months after commencement of the initial warranty period as stated above.
- 14.10 Provided that Contractor is not liable for willful misconduct, fraud, gross negligent misconduct, personal injury or death, or in other cases in which a limitation or exclusion of liability is not permitted under the law applicable to the Agreement and Contractor is not liable according to compulsory statutory product liability provisions, the warranties provided herein state Contractor's entire liability regarding warranty and defects and Customer's sole and exclusive warranty claims for all defects incl. latent/hidden defects.

#### **Section 15 Limitation of Liability**

- 15.1 Notwithstanding anything to the contrary stated herein (except only for Section 15.2),
- (a) any Party's liability for damages shall only arise in cases of that Party's fault,
- (b) neither Party shall be liable for loss of use of any Works, loss of profit, loss of any Contract, loss of production or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Agreement or the Works,
- (c) the total and aggregate liability assumable by Contractor under the Agreement shall in no event exceed an amount equal to 50% of the Contract Price.
- 15.2 Paragraphs (b) and (c) of Section 15.1 shall not apply as far as any liability arises from willful misconduct, fraud, gross negligent misconduct, personal injury or death, or in other cases in which a limitation or exclusion of liability is not permitted under the law applicable to the Agreement.

#### **Section 16 Delay in Performance, Liquidated Damages**

- 16.1 If the Contractor fails to achieve Acceptance (or if applicable Preliminary Acceptance) and such delay is attributable to Contractor's fault and Customer is adversely affected by that delay, the Contractor shall, after expiration of a grace period of 10 Working Days as of receipt of a written default notice of Customer, pay the Customer an amount equal to 0.1% of the Contract Price per each Working Day of delay, up to a total maximum of 5% of the Contract Price as liquidated damages.

The liquidated damages are Customer's sole and exclusive remedy for delay in the Works subject only to willful misconduct and gross negligence on behalf of Contractor and those specific other rights and remedies for delay as specifically agreed herein.

- 16.2 Liquidated damages shall become due upon the Acceptance Certificate (or if applicable the Preliminary Acceptance Certificate / PAC) is signed or after Customer has exercised its rights under Section 16.3 and can only be claimed within a claim period of 30 days thereafter and are otherwise forfeited.

- 16.3 If the Contractor fails to achieve Acceptance (or if applicable Preliminary Acceptance) by more than 30 Working Days and such delay is solely attributable to Contractor's fault, the Customer may terminate the Agreement in respect of such parts of the Works which are attributable to the delay after expiration of a final termination period of 90 Working Days upon receipt of Customer's final written notice. This shall be Customer's only right to terminate the Agreement due to delay, in particular Section 17 shall not apply to delay.

#### **Section 17 Termination for cause**

If not expressly provided otherwise herein, each Party may only terminate the Agreement on written notice if the other Party fails to comply with a material term of the Agreement in a way that renders the continuous execution of the Agreement by all means unacceptable and unreasonable, subject to the failing Party having been notified in writing of the nature of the failure and, if curable, has been provided with a reasonable period of time to cure the failure. Any other termination right according to applicable law shall be excluded.

#### **Section 18 Insurance**

- 18.1 The Contractor shall maintain and will provide the Customer upon request with evidence of a business liability insurance policy with coverage of EUR 3 million per loss event, up to a maximum of EUR 6 million per insurance year.
- 18.2 The Contractor shall maintain and will provide upon request evidence on an assembly insurance covering the Works from the start of work on Site until Acceptance (or if applicable Preliminary Acceptance) against loss or damage for which the Contractor bears the risk in accordance herewith.

#### **Section 19 Subcontracting**

The Contractor may subcontract any portion of the Works without the prior written approval of the Customer, as long as the Customer has not rejected a subcontractor for good cause in writing.

#### **Section 20 Health and Safety, Environmental Protection**

- 20.1 The Contractor shall comply with all relevant safety and security requirements agreed or mandatorily applicable pursuant to applicable law and regulation. The Customer may, upon reasonable notice to the Contractor audit the Contractor's compliance with this clause and the Contractor shall cooperate with the reasonable requests of the Customer in connection with such audit.
- 20.2 The Contractor has the responsibility to obtain relevant work permit to carry out the Works at the Site.
- 20.3 The Contractor shall throughout the progress of the Works have full regard for applicable health and safety laws and regulations mandatorily applying at the Site and relevant to the Works.



## Section 21

### Force Majeure

- 21.1 If a Party is or will be prevented from performing any of its obligations under the Agreement by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 Working Days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.
- The Party shall, having given notice, be excused of such obligations for so long as such Force Majeure prevents it from performing them. Notwithstanding any other provision of this Section, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Agreement.
- 21.2 Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Agreement as a result of Force Majeure, e.g. by allowing and enabling partially remote contract execution (remote services, remote acceptance), as far as this is reasonably possible for Contractor. The Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.
- 21.3 If the Contractor is prevented from performing any of its obligations under the Agreement by Force Majeure of which due notice has been given, and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled to an extension of time according to Section 12, and payment of any such Cost.
- 21.4 If the execution of substantially all the Works in progress is prevented for a continuous period of 84 Working Days by reason of Force Majeure of which due notice has been given, or for multiple periods which total more than 140 Working Days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Agreement. In this event, the termination shall take effect 7 Working Days after the notice is given, and the Contractor shall stop the Works and remove from Site.
- Upon such termination, the Contractor shall be entitled to receive from Customer a compensation reflecting the value of the Works done which shall include:
- (a) the amounts payable for any Milestone achieved prior to termination and otherwise constitute a reasonable compensation for the work carried out,
  - (b) if not covered by (a), the cost of materials ordered for the Works which have been delivered to the Customer, or of which the Contractor is liable to accept delivery: these materials shall become the property of the Customer when paid for by the Customer, and the Contractor shall place the same at the Customer's disposal,
  - (c) any other cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works,
  - (d) the cost of removal of temporary Works and Contractor's equipment from the Site and the return of these items to the Contractor's Works in its country (or to any other destination at no greater cost); and
  - (e) the cost of repatriation of the Contractor's staff and labor employed wholly in connection with the Works at the date of termination.

## Section 22

### Confidentiality, Use of Anonymous Data

- 22.1 If a Party receives Confidential Information (in such role, "Recipient") from the other Party (in such role, "Discloser"), then Recipient shall protect such Confidential Information from disclosure to third parties by exercising at least the same degree of care it uses to protect its own similar information, and in any event not less than reasonable care. The Parties agree to use Confidential Information only in connection with the Agreement. Therefore, any decompilation, disassembling, reverse engineering or comparable process in relation to any part of the Works is not permitted.
- 22.2 The foregoing obligations shall not apply to any Confidential Information that (a) is or becomes available to the public, other than by breach of a duty by Recipient; (b) is in the rightful possession of the Recipient without an obligation of confidentiality; or (c) is independently developed by Recipient without use of or reference to Confidential Information of Discloser. Confidential Information may be disclosed by Recipient as required by a court or governmental authority of competent jurisdiction, provided that prior to any such disclosure Recipient provides Discloser with prompt written notice so that Discloser may seek an appropriate protective order. The obligations under this Section shall survive for a period of two years following the return or destruction of the Confidential Information.
- 22.3 Notwithstanding any language to the contrary elsewhere in the Agreement, Customer authorizes Contractor and its Affiliates (and their successors and assigns, contractors and Contractor Business Partners) to store and use Customer's business contact information wherever Contractor and its Affiliates do business, in connection with the Works.
- 22.4 Contractor may (a) collect, develop, create, extract, compile, synthesize, analyze and commercialize statistical benchmark and other information related to the performance, operation and use of the Works and (b) use data from the Works in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (subsections (a) and (b) are collectively referred to as "Service Analyses"). Contractor may make Service Analyses publicly available; however, Service Analyses will not incorporate any customer data or Confidential Information in a form that could serve to identify Customer or any individual. Service Analyses do not constitute personal data. Contractor retains all intellectual property rights in Service Analyses.

## Section 23

### Intellectual Property Rights

- 23.1 Where delivered items or parts thereof or any results of the Works or Services are protected by patents, copyrights or other industrial property rights, Contractor shall remain the sole owner and beneficiary of such and shall grant Customer a non-exclusive and (save for transfers to an purchaser of the Site) non-transferable right to use the same for all purposes agreed or reasonably foreseeable hereunder.
- 23.2 The Contractor shall at its own cost indemnify the Customer against and from any other third party claim for an IP Violation which arises within three years upon Acceptance (or if applicable Preliminary Acceptance) and is a direct consequence out of or in relation to (a) the Contractor's design, manufacture, construction or execution of the Works, or (b) the proper use of the System in accordance with the Agreement.
- 23.3 The Customer shall indemnify the Contractor against and from any third party claim related to an IP Violation which is a direct consequence of (a) the Contractor's compliance with the Customer's instructions or (b) the System or parts thereof



being used by the Customer for a purpose other than that agreed or reasonably foreseeable or (c) the System or parts thereof being used by the Customer with any third party product, except if disclosed prior to the conclusion of the Agreement.

- 23.4 In this Section, "IP Violation" means a violation of any copyright, patent, trade secret or other intellectual property right relating to the Works or System.
- 23.5 If a Party does not notify the other Party of any claim in relation to an IP Violation within 28 days of receiving the claim, this Party is considered to have waived any right to indemnity under this Section.
- 23.6 If a third-party violation claim is made or appears likely and Contractor is the indemnifying Party, then the Contractor shall be entitled, but not required, to modify the System to make it non-infringing, procure any necessary license, or replace the affected item with one that is functionally comparable.

#### **Section 24 Export Control**

- 24.1 The supply of the products or services related to the Works may be subject to domestic and/or foreign statutory provisions and regulations regarding export control or economic sanctions. The Parties acknowledge that such provisions and regulations may change from time to time and are applicable according to the wording valid at the relevant time. Customer and Contractor will adhere to all such provisions and regulations and cooperate with the competent authorities accordingly. The Parties shall not take any action which would be in breach of export control statutory provisions or regulations, including economic sanctions.
- 24.2 If applicable, the products related to the Works may not be sold, supplied, leased or otherwise transferred nor may the services be performed nor may the products or services related to the Works be used for a purpose other than that agreed upon without a necessary export or re-export permit from the competent authorities. Contractor shall use its best efforts to receive the required export permits and shall, upon receipt, furnish Customer with a copy of the export permits for its information. Contractor has the right to withdraw from the Agreement, without incurring any liability for either Party, if the required export permits cannot be obtained or cannot be obtained within reasonable time or, if once granted, are thereafter revoked or modified by the competent authorities.
- 24.3 Contractor has the right at any time to withdraw from the Agreement, without incurring any liability for either Party, if (a) Customer, despite request, does not provide either any or sufficient enough information about the final destination and the end use of the products, (b) Contractor obtains knowledge of an unintended end use or knowledge of any previously unknown person involved in the business and therefore cannot perform the Agreement, including any after sales services due to any export control regulations, (c) the products or services related to the Works are intended for military end use, civil nuclear use or for use in connection with weapons of mass destruction or for missiles capable of delivering such weapons (substantive evidence shall be sufficient to prove this intent) or (d) a possibly illegal or uncensored export or an infringement of applicable embargo rules cannot be fully ruled out or a fundamental change in the appraisal of the commercial risks attached to the business becomes apparent, this could include, amongst others, any listing of Customer, its affiliates, owners or other persons involved on its part in the business on either the consolidated EU or US screening list.

#### **Section 25 Applicable Law, Arbitration**

- 25.1 These Terms and Conditions, the Agreement and any supplies or services provided thereunder shall be governed and construed in accordance with the laws of the country in which Contractor (not a branch office of Contractor) has its registered place of business. The application of the United Nations Convention on Agreements for the International Sale of Goods of April 11, 1980 shall not apply.
- 25.2 All disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. Place of arbitration is the city in which Contractor (not a branch office of Contractor) has its registered place of business. The language of arbitration is English.

#### **Section 26 Miscellaneous**

- 26.1 The Parties are obliged to comply with the Code of Conduct of the Körber Group which can be downloaded at the following website: <https://www.koerber.com/en/compliance-and-code-of-conduct>
- 26.2 Any supplementary agreements, amendments or supplements hereto shall be in writing (save that such agreements, amendments or supplements may not be executed by way of email or any other electronic form). This requirement of writing may be waived only in writing. Any supplementary agreements, amendments or supplements must be signed by a representative of the Parties authorized to do so. Any reference to written form (or "in writing") shall include e-mail.
- 26.3 Any assignment of the Agreement shall require the prior written consent of the other Party, save only for assignment in the ordinary course of business as a consequence of group-internal corporate restructuring processes of a Party.
- 26.4 The Contractor is entitled to retain services under this Agreement in case Customer is in payment default subject to reasonable prior written notice to be set by Contractor.
- 26.5 In the event that any provision of these Terms and Conditions or the Agreement is or becomes in part or in whole ineffective, illegal or unenforceable, the validity of the remaining provisions shall not be affected thereby. The same shall apply in relation to any omissions. Instead of the ineffective, illegal or unenforceable provisions or in order to cover any omission, a provision shall apply which, as far as legally possible, most closely reflects that which the Parties would have wanted in terms of the purpose of the Agreement if the Parties had considered such at the time of concluding the Agreement.
- 26.6 The language of the Agreement as well as any correspondence or other communications between the Parties shall be English.
- 26.7 Any person who is not a party to the Agreement shall have no right whatsoever to enforce the Agreement or any of its terms.
- 26.8 The Parties shall be allowed to reasonably use the project carried out in accordance with the Agreement as customer reference for advertising, announcement, publication or publicity subject to the other Party objecting to this. Any trademark guidelines of a Party are to be complied with.
- 26.9 Nothing herein or in the Agreement has the effect of making the Parties partners, joint venturers or agents of each other or any of their personnel to employees, servants or agents of the other Party and the relationship between the Contractor and the Customer is one of independent contractors.



26.10 Facsimile and email signatures shall be as binding as original signatures for execution of the Agreement.

## Section 27 Definitions

Capitalized terms shall have the following meanings when used herein:

**“Acceptance”** means the specific acceptance to be carried out by the Parties upon Completion as described in the Quotation or Technical Specifications (if acceptance not split into Preliminary Acceptance and Final Acceptance).

**“Acceptance Certificate”** means the protocol to be signed by both Parties upon Acceptance.

**“Agreement”** means the agreement or potential future agreement with respect to the Works between Customer and Contractor including all annexes thereto, which is subject to these Terms and Conditions.

**“Availability”** means the minimum system availability of the System as agreed in the Technical Specifications (if any).

**“Bank Guarantee”** means an irrevocable payment obligation of a major financial institution securing a certain amount under the Agreement, which shall be subject to a fixed validity period (to be renewed if needed).

**“Completion”** means the completion of the installation of the System to a degree that allows Acceptance (or if applicable Preliminary Acceptance), save for functions and elements which are not essential for the operation of the System and minor non-compliances.

**“Confidential Information”** means information of a Party marked confidential or with a similar proprietary legend or that, due to the nature of the information and/or the circumstances under which it was disclosed, should reasonably be assumed to be confidential information of the discloser. Offerings, Documentation, pricing and other financial information, the results of any performance or benchmark tests of the Works, the Agreement, information regarding the Parties’ personnel, and any product plans of a Party provided prior to general announcement are all Confidential Information. Confidential Information includes code, copies, summaries and other derivatives of Confidential Information.

**“Contract Price”** means the amount specified in Section 2 as payable to the Contractor for the Works or such other sum as may become payable as compensation for the Works under the Agreement.

**“Contractor”** means the Körber Supply Chain company which provided the Quotation and/or enters into the Agreement as the contractor of the Works.

**“Customer”** means the third party company which receives the Quotation and/or enters into the Agreement as the customer for the Works.

**“Customer Obligation/s”** means the obligations, works and pre-conditions to be fulfilled by Customer according to the Agreement and the Project Schedule.

**“Documentation”** means the documents related to the System and the operation of the System to be provided by Contractor as set out in the Technical Specifications.

**“DOW”** means the division of work as described in the relevant section of the Technical Specifications.

**“Final Acceptance”** means the specific acceptance following Preliminary Acceptance and the ramp-up of the System if defined and described in the Quotation or the Technical Specifications (if not just Acceptance).

**“Final Acceptance Certificate / FAC”** means the protocol to be signed by both Parties upon Final Acceptance.

**“Force Majeure”** means an exceptional event or circumstance (also if occurring at the Parties’ subcontractors’ or suppliers’ business environments) which is beyond a Party’s control, which such Party could not reasonably have provided against before entering into the Agreement, which, having arisen, such Party could not reasonably have avoided or overcome, and Force Majeure may include, but is not limited to, exceptional events (or a threat of such an event) or circumstances of the kind

listed below, so long as the aforementioned conditions are satisfied: war, hostilities (whether war be declared or not), invasion, pandemic/epidemic outbreak of diseases and any related governmental or non-governmental measures, act of foreign enemies, rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, riot, commotion, disorder, strike or lockout by persons other than the Parties’ Personnel and other employees of the Parties and their subcontractors and suppliers, munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to a Party’s use of such munitions, explosives, radiation or radio-activity, and natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

**“Milestone/s”** means the project milestones agreed included in the Project Schedule and/or attached to the Offer.

**“Party”** means Customer or Contractor and “Parties” means both.

**“Payment Dates”** means the payment dates according to the Quotation or as otherwise agreed between the Parties.

**“Preliminary Acceptance”** means the specific acceptance if so described in the Quotation or Technical Specifications (if not just Acceptance).

**“Preliminary Acceptance Certificate / PAC”** means the protocol to be signed by both Parties upon Preliminary Acceptance.

**“Project Schedule”** means the project time schedule according to the Quotation or as otherwise agreed between the Parties as may be changed by the Parties from time to time if agreeable or required in accordance with the Agreement.

**“Quotation”** means Contractor’s quotation with respect to the Works including all annexes thereto, which is subject to these Terms and Conditions.

**“Site”** means the place where the Works are to be carried out.

**“Software”** means any software product included in the Works.

**“System”** means the system described in the Technical Specifications to be supplied and installed by Contractor under the Agreement as a result of the Works.

**“Technical Specifications”** means the preliminary layout and the preliminary technical and operative details and specifications of the System as attached to or stated in the Quotation, subject to review and approval in accordance with the Agreement.

**“Terms and Conditions”** means these General Terms and Conditions of Supply and Installation of the Körber Supply Chain Group.

**“Throughput”** means the throughput of the System as stated in the Technical Specifications.

**“Variation”** means a change in the Works or Project Schedule agreed by the Parties in accordance with Section 10, which is by way of an addition, omission, substitution or alteration in any way of the design, quality or quantity of the Works or the Project Schedule as described or referred to in the various drawings or specifications that constitute the Agreement.

**“Working Days”** means all normal working days at the registered place of business of Contractor, in particular excluding Saturdays, Sundays and bank holidays.

**“Works”** means the materials, products, Software and services / works to be supplied to Site and provided by Contractor, as defined in detail in the Technical Specifications.