Kontron General Purchase Order Terms & Conditions

The following terms and conditions shall apply to all contractual relationships between the seller (the “Seller”) and the buyer (“Kontron”); they shall also apply to all additional supplies and contracts for services. These terms and conditions form an integral part of each purchase order.

Any different or additional terms in Seller’s acceptance of this offer are hereby objected to Kontron will not accept conflicting conditions of the Seller, notwithstanding that Kontron may not have objected expressly to such conflicting conditions nor that Kontron may have made reference to them. Such terms, if any, are hereby referred to the Seller’s sole risk and responsibility.

1. PRICES AND TAXES. Unless otherwise specified, the prices set forth in a purchase order include all applicable national and local taxes.

2. INVOICES. Seller will submit invoices in duplicate showing the following information: purchase order number; description of item; piece or quantity of item; unit prices; each applicable tax; extended totals; and any other information specified elsewhere herein. A delivery note must accompany each invoice. Payment of invoice will not constitute acceptance or receipt by Kontron; payment shall be subject to adjustment for misprints, errors, or defects in the goods or other failure of Seller to meet the requirements of a purchase order. Kontron reserves the right to set off any amount owed to Supplier, or withhold payment for goods not provided in accordance with the Order and/or specifications. Kontron’s standard payment terms are 120 days from the date of delivery on Kontron’s premises.

3. SUPPLIER’S RETENTION OF TITLE. Title in the goods shall transfer to Kontron upon delivery, unconditionally and without regard to whether or not Kontron has purchased the price, however, if in an individual case any retention of title on the part of the seller has been agreed, an (i) expanded, (ii) extended for resale, processing or modification, or (iii) assigned retention of title shall be excluded, such that the retention of title shall apply only until the goods delivered to Kontron in the given case have been paid and only with respect to the respective goods delivered. Where the goods delivered to Kontron are subject to processing, alteration, combination, or transformation by Kontron, then title shall remain in the Seller until such matters are completed and the result of such processing, alteration, combination, or transformation is in the possession of Kontron. Any action taken in violation of such action acquire co-title or full title to the end product in accordance with statutory provisions.

4. PACKING AND SHIPMENT. Kontron will pay only for quantities ordered. Over shipments will be held by Kontron at Seller’s risk and expense for a reasonable time awaiting shipping instructions. Return shipping charges for excess quantities will be at Seller’s expense.

5. PACKING AND SHIPMENT. Unless otherwise specified, when the price of a purchase order is based on FOB, Kontron, such pricing is only for the net weight and net volume quoted, and no charges will be allowed for packing, handling, transportation, storage or other packing requirements. Unless otherwise specified, Seller will package and pack all goods in a manner which is (i) in accordance with good commercial practice, (ii) acceptable to common carriers, and (iii) in accordance with the requirements of any applicable laws or regulations, and (iv) adequate to secure safe arrival of the goods at the named destination. Seller will mark all containers with necessary lifting, handling, and shipping information and with purchase order numbers, date of shipment, and the names of the consignee and consignor. An itemization, taking the form of a packing list or complete list of contents, will be made prior to the due date or dates shown unless Kontron has given prior written consent.

6. INCOTERMS 2010. The Goods shall be delivered in accordance with INCOTERMS 2010 DDP. To the extent the delivery is made under the Order or Kontron’s place of business if no other point of delivery has been specified by Kontron.

7. WARRANTY. Seller warrants that all goods delivered (i) will be free from defects in workmanship, material, manufacture and rights of third parties, (ii) will comply with the requirements of any applicable regulations, including specifications incorporated herein or samples furnished by Seller, (iii) where design is Seller’s responsibility, will be free from defects in design, and (iv) are new and unused at the date of delivery. Seller further warrants that all goods purchased hereunder will be of merchantable quality and will be fit for the purpose for which they are required, known to Seller fails to comply with such specifications as required by the purchase order. Kontron shall be entitled to inspect and test the goods at any time and place and at Seller’s expense and to require correction to or return or rejection of the said goods by Seller. Seller’s obligations under this warranty shall not affect the rights of Seller to recover from any manufacturer or supplier of any materials, parts, or supplies used in the manufacture or supply of the goods, or any other party responsible for any defect in the goods which may arise from the use or sale of the goods delivered by Seller to Kontron, its agents or customers provided, however, that Kontron must notify Seller of any suit, claim or demand involving such infringement and permit Seller to defend against or settle the same. If any infringement is issued as the result of any such infringement, Seller agrees, at Kontron’s option, (i) to refund to Kontron the amounts paid to Seller for the goods covered by the injunction, or (ii) furnish Kontron with acceptable and non-infringing goods.

8. REMEDIES. The remedies stated herein are in addition to all other remedies at law or in equity.

9. INDEMNIFICATION. Seller agrees to indemnify Kontron, its agents, customers, successors, and assigns against any loss, damage, and liability (including costs and expenses) for actual or alleged violation of any of the terms of this Order or any infringement of the rights of third parties resulting from the sale of the goods delivered by Seller to Kontron, its agents or customers provided, however, that Kontron must notify Seller of any suit, claim or demand involving such infringement and permit Seller to defend against or settle the same. If any infringement is issued as the result of any such infringement, Seller agrees, at Kontron’s option, (i) to refund to Kontron the amounts paid to Seller for the goods covered by the injunction, or (ii) furnish Kontron with acceptable and non-infringing goods.

10. LICENSE. As a condition for participation in a purchase order and without further cost to Kontron, hereby grants to Kontron an irrevocable, non-exclusive, royalty free license to use, sell, manufacture, and cause to be manufactured products embodying any inventions and discoveries made, conceived or reduced to practice by Seller in the performance of the purchase order. Seller will be treated by Kontron as strictly confidential information, will remain Kontron’s property, and will be returned to Kontron on request. The same applies to commercial or technical details and other company secrets. Any such confidential information shall not be made available to third parties without the consent of Kontron.

11. ASSIGNMENTS. No right or obligation under a purchase order (including the right to receive monies due) may be assigned by Seller without the prior written consent of Kontron. Kontron reserves the right to encumber or otherwise assign this purchase order to any other entity.

12. NOTICE OF DELAYS. Whenever any event delays or threatens to delay the timely performance of a purchase order, Seller will immediately notify Kontron of such event and furnish all relevant details. Receipt by Kontron of such notice will constitute a waiver of the non-performance under the Contract.

13. CANCELLATION. Seller, as part consideration for a purchase order and without further cost to Kontron, hereby grants to Kontron an irrevocable, non-exclusive, royalty free license to use, sell, manufacture, and cause to be manufactured products embodying any inventions and discoveries made, conceived or reduced to practice by Seller in the performance of the purchase order. Seller will be treated by Kontron as strictly confidential information, will remain Kontron’s property, and will be returned to Kontron on request. The same applies to commercial or technical details and other company secrets. Any such confidential information shall not be made available to third parties without the consent of Kontron.

14. APPLICABLE LAW. These Terms and Conditions and each purchase order will be governed by the laws of Germany. The provisions of the UN Convention for the International Sale of Goods (CISG) are excluded from this contract. The contractual language is English. The Place of performance is within its legal capacity as the business of Kontron. The competent court of jurisdiction shall be at the place of business of Kontron.

15. RELOCATION. In case seller relocates the business, Kontron must be notified in writing before the move.

16. CONTRACTORS. Unless expressly stipulated to the contrary, the Seller is responsible concerning the choice of its subcontractors and suppliers. In any event, the Seller remains liable for overseeing the latter and is solely answerable and liable for the proper execution of the Order. In case suppliers change any of the subcontractors related to Kontron’s products, a new contract shall be concluded between the new subcontractor and Kontron.

17. CONFORMITY REQUIREMENT. Subsuppliers and sub-tier suppliers are required to inform Kontron in the event of non-conformity has been identified. Arrangements to address the non-conformity will be established between Kontron and the supplier.

18. ACCESS. Suppliers and sub-tier suppliers are required to provide access to their facility to Kontron, Kontron’s customers and regulatory authorities. At any time prior to delivery and during Seller’s business hours, Kontron shall have the right to (i) inspect the goods and Seller’s manufacturing units upon providing reasonable notice.

19. CHANGES. The supplier is required to notify Kontron of any changes in product and/or process definition and, where required, obtain Kontron’s approval.

20. INFORMATION FLOW DOWN. The supplier is required to flow down to sub-tier suppliers the purchase order requirements in the purchasing documents, including key characteristics where required.

21. RECORD RETENTION. All documentation related to Kontron P.O.’s (including sub- contracts) must be retained by the supplier for a period of 10 years.