

# PURCHASE ORDER TERMS & CONDITIONS

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## DOCUMENT CHANGE HISTORY

DATE	AUTEUR	MODIFICATIONS	REVERENCE DU DOCUMENT
JUN-12	E. BOTEY	ORIGINAL	CGA/TCP KONTRON MODULAR COMPUTERS REV. 0
JUN-12	E. BOTEY	MODIFICATIONS ON CHAPTER 7	CGA/TCP KONTRON MODULAR COMPUTERS REV. 1
JAN-14	E. BOTEY	MODIF. ON CHAPTERS 6,7,8,10	CGA/TCP KONTRON MODULAR COMPUTERS REV. 2

## 01. PURPOSE

The purpose of these Purchase Order Terms & Conditions ("T&C") is to define the standard terms and conditions applicable to the purchase order ("Order") issued by KONTRON MODULAR COMPUTERS S.A.S. ("the Purchaser") to the Supplier, whether said Order concerns the supply of goods or software or the provision of services ("Supply"). They override any other terms and conditions of the Supplier and in particular its Terms and Conditions of Sale if any.

The Order comprises, in order of precedence: (1) the purchase order itself (Supply description, price, delivery time, etc.) ; (2) any additional terms and conditions; (3) Agreement duly signed with the Purchaser and the Supplier, (4) these TCP and (5) any document specified on the Order

Any deletion, revision, or addition to these terms and conditions by Seller is ineffective unless agreed to in writing by the Purchaser.

## 02. THE ORDER

The Order is the materialization of the commitment to purchase binding the Supplier and the Purchaser, whatever the paper form, electronic medium or name (order, call for delivery, etc)

The Order enters into effect on receipt by the Purchaser of the acceptance without reservation of the Order, made by acknowledgement of receipt of the Supplier. Any starting of the execution of an Order by the Supplier amounts to tacit overall acceptance of the whole of the Order.

By the acceptance of the Order, the Supplier acknowledges having received all the information permitting its execution.

It is the Supplier's responsibility to request the additional information that it believes to be necessary for the execution of the Order.

Any modification of the Order must be the subject of a protocol accepted by the two parties.

## 03. PRICES

The price stated in this Order are firm, fixed and non revisable. Unless otherwise specified in the Purchase order they are free of all taxes except value added tax, duties and levies, carriage and packaging costs, and are to be read as referring to Supplies delivered as provided for in Articles 6 and 7 below.

Prices include all information, components, services and documentation required to fulfill the Order.

## 04. INVOICING / PAYMENT

Invoices are to be sent to the accounts department of the establishment whose address is shown on the Order.

Invoices must state the number of the Order, the number of the Order line, the complete description, the number of articles, the serial number, the currency applicable to the Order, the CEC (Export Control Codes), the dates and references of the delivery form and the price specified for each Supply.

A separate invoice shall be drawn up for each Order, in particular in the event of grouped deliveries.

All the payments shall be made subject to the compliance of the Supplies with the specifications and conditions of the Order accepted by the Supplier.

The Purchaser will pay Supplier the price in accordance with the payment terms and the currency set forth in the Purchase Order following the latest of the following three dates:

Acceptance of the Supply and its documentation as well as the support files, as provided for in Article 7;

Purchaser's receipt of a properly prepared invoice;

Requested Delivery date in the Order.

The Purchaser reserves the right to offset any amounts due to it by the Supplier against any amounts it may owe the Supplier with respect to the Order.

In the event of payment delay by the Purchaser, the Supplier can apply penalties to the Purchaser that are calculated according to a rate equal to one and half times the statutory interest rate applicable in France

## 05. EXECUTION TIMES

The contractual times stipulated in the Order accepted by the Supplier are binding and constitute a material element of the Order.

Except in the event of force majeure, any late delivery of an order shall give the right to the Purchaser to the payment of a penalty of 5% of the amount of the waited Supply per week late.

These penalties are not in full discharge of the obligations and do not constitute all-inclusive compensation for the prejudice suffered by the Purchaser. The application of the penalties is independent from the other sanctions to which the default of the Supplier may give rise.

The Purchaser shall send a detailed list of the late deliveries and of the amounts of the penalties calculated. The Supplier shall make its remarks within fourteen (14) days from receipt of the list, in the absence of which the penalties shall be deemed to have been accepted by the Supplier.

## 06. DELIVERY

Unless otherwise specified in the Purchase order, Every delivery shall be made carriage and packaging free and free from any costs.

All deliveries from other countries are made in accordance with INCOTERMS 2010 standards and definitions and the DAP is mutually agreed as INCOTERM used by the MANUFACTURER

All deliveries must be made during regular business hours and at the location specified in the Order. In particular, any delivery can be refused if it is not accompanied by one delivery form per Order on the Supplier's headed paper, stating the number of the Order and the Supply delivered, its gross and net weight and the country of manufacturing and its CEC (Export Control Code). If specified in the Purchase order, a certificate of compliance is requested for each delivered Supply. All requested documents should be in a pouch attached outside the package.

## 07. COMPLIANCE–REFUSAL–ACCEPTANCE

In the event where the Supply has to be manufactured by the Supplier, the Supplier has to respect all the requirements written in the latest version of the document AQ.LI.100 and/or AQ.LI.101.

The Suppliers undertakes the full responsibility to purchase components or goods only through authorized sources by the brands and the Suppliers will collect the entire traceability of the bought products.

### Special Processes

The Supplier must identify and provide the Purchaser with the list of special processes implemented in the manufacturing of the purchased goods, and demonstrate control of these processes if required by the Purchaser.

A Special Process means an operation whose compliance cannot immediately or economically be audited (e.g., a compliance check requiring destruction: paintwork, surface treatment, gluing, varnishing, torquing, sheathing, crimping, manual soldering, wave soldering, BGA components soldering).

The Supplier is obliged to deliver a Supply in accordance with its technical documentation, with its offer or quotation and the specifications of the Order accepted.

It is solely responsible for carrying out all the tests necessary to ensure this compliance before delivery of the Supply

The Purchaser, who may be accompanied by any person appointed thereby, may at any time make any controlling visit that it considers necessary to the premises on which the Supplies are to be performed, during normal working hours, in order to ensure the correct performance by the Supplier, of its contractual obligations..

The inspection made on the premises of the Supplier by the Purchaser or by its customer or any other authorized party can in no event release the Supplier from its liability.

When the Supplier is certified according to a Quality Assurance system (ISO, AQAP, IRIS etc.) or qualified by the Purchaser, the Purchaser reserves the right to terminate according to the provisions of Article 20 in the event of loss of the said certification or qualification.

All of part of the Supply that is the subject of standardization (AFNOR, MIL, etc.) must be delivered in absolute accordance with these standards.

Furthermore, the Supply must comply with the national and European regulations concerning hygiene, safety and the environment (notably as regards dangerous substances and preparations, waste (packaging), electricity, electromagnetic / ionising / optical radiation, vibrations, etc).

The return of a Supply that does not comply shall be made by the Purchaser carriage collect to the address of the Supplier. Any Supply refused shall then be considered as not having been made.

## 08. TRANSFER OF OWNERSHIP AND RISKS

Whatever the Incoterm used for the shipment, the Supplier shall retain the ownership of the Supplies until their actual delivery to the site of the Purchaser.

The transfer of the risks takes place according to the provisions of the DAP Incoterm, whether the delivery is coming from abroad or from France.

## 09. ADDITIONAL COSTS FOR NON-COMPLIANCE

In the event of noncompliant delivery of the Order, the administrative costs associated with such noncompliance shall be passed on to the Supplier

The administrative expenses incurred in the return of the noncompliant Supply, with the exception of carriage charges. The Supplier remains fully responsible for any other cost or damage sustained by the Purchaser and/or its customers as a result of the noncompliance of the Supply delivered.

The Purchaser shall send a detailed list of the noncompliant Supplies and the costs it has calculated. The Supplier shall furnish its remarks within fourteen (14) days of receipt of the list, failing which the amounts shall be deemed to be accepted by the Supplier.

## 10. WARRANTY

The Supplier guarantees that the Supply complies with its technical documentation, its quotation and the specifications of the Order.

The contractual term of the guarantee is sixty (60) months from the date of delivery.

The guarantee consists of the replacement or the repair of the Supply free of charge (parts and labour).

The Supplier shall bear all the corresponding costs as well as the insurance and the freight charges for all the transports of the equipment exchanged under the guarantee.

The Supplier undertakes to provide the replacement or the repair within fifteen (15) business days from the sending of the defective Supply.

The initial basic guarantee of sixty (60) months is preserved in all cases.

Any replacement or repair, even partial, of/to a Supply affected by a defect shall give rise to the application of a new warranty period covering the Supply concerned for a period of sixty (60) months from the date of the repair or replacement

## 11. SYSTEMATIC DEFECTS

In the event where the Supplies should present Systematic Defects, the Purchaser shall immediately inform the Supplier of the recording of the epidemic phenomenon. The Purchaser shall provide all the information necessary to assist the Supplier to reproduce the systematic defects.

The Supplier undertakes, at its expense, to:

- (a) conduct the analyses of the root cause as soon as possible.
- (b) send to the Purchaser a weekly progress report on the progress of the analysis of the root causes,
- (c) propose a plan for corrective action or modifications to all or part of the Supply to the Purchaser within thirty (30) days,
- (d) take, after acceptance by the Purchaser, the corrective action or make the modifications to the Supplies delivered. The methods of updating the Supplies set up within the customer systems shall be stipulated between the Purchaser and the Supplier in such a way as to disturb the operational availability as little as possible.
- (e) apply the modifications approved to all the future supplies to be delivered
- (f) update the associated documents and product codes
- (g) guarantee the traceability of the possible versions of the Supply during the updating of firmware or equipment.

The Supplier must use its best efforts to solve the systematic defects. This obligation applies throughout the term of this contract.

## 12. PRODUCTION CONTINUITY

The Supplier undertakes to take all measures necessary to guarantee to the Purchaser the continuity of production of the Supply for a period of 8 years from the first Order.

Furthermore, the Supplier undertakes to conserve the information allowing the guaranteeing of the traceability of manufacturing and control operations during the said period

The Supplier shall immediately inform the Purchaser of any major change to the product, in particular, a change of a physical, mechanical or electronic feature, whether this change affects the functioning of the Supply or not. In the event of a major change, the Purchaser shall have the right to require a change in the product code from the Supplier to ensure the traceability thereof. At the time of a major change, the Purchaser can require the continuity of production of the product for a period of 12 months at the revision index preceding the change.

The Supplier shall constitute sufficient stocks of components to meet its obligations. It shall keep any tool or dossier necessary for the production of the Supplies in a good state of use.

## 13. OBSOLESCENCE

In the event of obsolescence of components forming part of the Supply, the Supplier shall inform the Purchaser on receipt of the notice from its suppliers.

If the Supplier decides to stop the marketing of the Supply because of Major obsolescence, the Supplier shall formally notify the Purchaser by specifying the date of the end of the useful life of the Supply and the nature of the Major Obsolescence. The Purchaser undertakes to honour the orders of the Purchaser for a period of 12 months from the formal notification.

The Supplier undertakes, at its expense, to constitute for the execution of its manufacturer's guarantee a sufficient safety stock and to propose a replacement solution with a commitment to backwards compatibility in terms of functions and performance of the Supply.

## 14. SUBCONTRACTORS AND SUPPLIERS

Unless expressly stipulated to the contrary, the Supplier is responsible concerning the choice of its subcontractors and suppliers. In any event, the Supplier remains liable for overseeing the latter and is solely answerable and liable for the proper execution of the Order.

The Supplier undertakes to pass on the Purchaser's contractual requirements to its subcontractors and suppliers, and in particular the obligations with respect to insurance, continuance of manufacture, obsolescence, special processes, industrial changes, confidentiality, compliance with standards, etc...

## 15. MODIFICATION OF SPECIFIC SUPPLIES

If changes or modifications should take place in the features of the Supply, the Supplier undertakes to notify the Purchaser thereof as soon as possible and to propose to it a solution with full backwards compatibility with the Supply, in terms of functions, performance, connexions and mechanical interfaces. The Supplier must obtain the Purchaser's prior written consent before making any changes to the form, operation, processes, components, technical specifications or appearance of the Supplies.

## 16. TOOLS AND GOODS IN SUPPLIER'S CUSTODY

Tools produced by the Supplier on the Purchaser's behalf and wholly or partly at the Purchaser's expense ("Specific Tools"), as well as goods, including Supplies in the course of repair and tools made available by the Purchaser, must be used solely for the purposes of the Order. The Purchaser acquires ownership of the Specific Tools as they are produced. The Specific Tools and goods shall be identified and marked as the property of the Purchaser. The custody and maintenance of such goods and Specific Tools shall be provided by the Supplier at its own expense and risk. To this end, the Supplier shall subscribe all necessary insurance policies and furnish satisfactory evidence of same to the Purchaser. The Supplier shall maintain up to date manufacturing specifications and control records for the Specific Tools. Such documents must ensure the identical reproducibility of the said Specific Tools. The Supplier undertakes to return the Specific Tools, goods and documents to the Purchaser in good condition upon the first request.

## 17. FORCE MAJEURE

Whichever party claims force majeure shall inform the other party to this effect in writing, with documentary evidence, within two (2) working days after the occurrence of the case of force majeure and specify its foreseeable duration.

In particular, labour conflicts (excluding general strikes), rationing, and price rises for raw materials are not considered cases of force majeure.

In the event where the hindrance of the Supplier due to force majeure should last more than thirty (30) days, the Purchaser shall have the right to automatically pronounce the termination of the Order by sending a registered letter with acknowledgement of receipt.

## 18. DEFERRED DELIVERY

The Purchaser can request the Supplier to defer the delivery of Supplies for a maximum period of six (6) months with no other formality and cost penalty for the Purchaser.

## 19. TERMINATION FOR CONVENIENCE

The Purchaser may terminate the Order for convenience, in whole or in part, as of right and fifteen (15) days' notice, merely by sending a registered letter acknowledgement of receipt. On receipt of the notice, the Supplier undertakes to proceed with only those operations involved in liquidating the Order. The liquidation calculation shall include: (a) to the Supplier's debit: the sums paid as an advance, deposit and/or set payments, whether partial or balance payments, the amount of penalties due, etc.; (b) to the Supplier's credit: the value of delivered and accepted Supplies, and expenses actually incurred that cannot be used for other customers, and duly accepted by the Purchaser. Under no circumstances may the Supplier receive an amount higher than that it would have received in the event of fulfillment of the Order.

## 20. TERMINATION FOR BREACH

If the Supplier fails to discharge any one of its obligations under the Order, and after a formal request to remedy the failure within eight (8) days has been sent by registered letter with acknowledgement of receipt, the Purchaser may pronounce the termination as of right of the Order or any part thereof. Such termination shall be carried out without prejudice to the application of late - delivery penalties or any right or remedy the Purchaser may claim due to the breach.

The Supplier undertakes to transfer, at no cost, to the Purchaser or to any third party chosen by the Purchaser, all resources (including all licenses) required to fulfill the Order.

## 21. INTELLECTUAL PROPERTY

Subject to third party rights, each Party retains the intellectual property rights that predate the effective date of the Order.

The Purchaser is sole owner of all results and associated intellectual property rights arising out of or deriving from fulfillment of the Order and in particular :

Industrial rights : When inventions or results that can be protected under industrial property rights are produced within the framework of the Order, the registration of industrial property titles is carried out exclusively by the Purchaser, at its initiative, on its own behalf and at its own expense.

Copyright : The Supplier assigns and the Purchaser acquires all proprietary rights on creations that can be protected by copyright ("Works") within the framework of the Order, as and when they are created, exclusively and definitively throughout the term of legal protection, worldwide, on any support medium (paper, magnetic, digital, etc. and in particular in the form of source and binary codes and the associated documentation in the case of software). The Supplier thus assigns the rights to use, reproduce, represent, disseminate, adapt, translate, modify, commercialize, exploit byproducts of, and reassign the said Works.

Non infringement warranty: The Supplier guarantees the Purchaser and/or its customers of free enjoyment of the Supplies covered by the Order.

To this end, the Supplier undertakes to assume all consequences, and all expenses and risks borne by the Purchaser and/or its customers that may arise from any third party claim and/or action because of an alleged infringement of intellectual property rights.

Should a court of law or an arbitrator, even within the framework of an expedited or preliminary judicial proceeding, deem that the Supplies constitute an infringement, the Supplier undertakes without delay and at its risk to obtain the rights for the Purchaser and/or its customers to continue using the Supplies in accordance with the terms and conditions of the Order, or failing this to modify the Supplies or replace the offending Supplies with equivalent supplies, with the Purchaser's prior written consent.

The Purchaser reserves the right to produce itself, or to have a third party produce equivalent Supplies to the offending Supplies, at the Supplier's expense. To this end, all patents, licenses, technical data and manufacturing specifications shall be transferred to the Purchaser at no cost and with no restrictions so that the Purchaser can discharge its obligations to its customers.

## 22. EXPORT CONTROL

Before the entry into effect of this Order, the Supplier shall notify the Purchaser, in the "Commodity Export Classification" form duly filled in and signed by the Manufacturer, as to whether all or some of the Supplies, including their technical documentation, are subject or not to any regulations whatsoever concerning export control.

The Supplier declares and guarantees that the information sent to the Purchaser is complete and accurate and undertakes to notify in writing to the Purchaser, as soon as it has knowledge thereof, any change in the regulations capable of altering the export control regime applicable to the Supply.

In the event where the exporting and/or the re-exporting of the Supplies should be subject to the obtaining of a license by the governmental authorities, the entry into effect of this Order shall be subject to the actual issuing of the said license that the Supplier undertakes to provide on receipt to the Purchaser.

In the event where the license should be withdrawn, not renewed or invalidated because of the Supplier, the Purchaser can terminate this Order for breach according to the provisions of Article 17.

The Supplier shall indemnify and shall hold unharmed the Purchaser and its customers for any liability and any damaging consequences resulting from the breach by the Supplier of any one whatsoever of the obligations stipulated in this Article.

## 23. INSURANCE

The Supplier shall insure and/or keep insured with first class insurers for appropriate cover and capital given the risks incurred, any damage whatever the cause thereof as long as it is insurable, caused to its operating assets as well as its third party liability for the damage caused to the Purchaser and to third parties, both before and after the delivery of the Supplies, for the total duration of the existence of the risk.

The Supplier shall produce, before the entry into effect of the Order and at each annual payment date, any insurance certificates issued and signed by its insurers certifying the existence, validity and the adequacy of the cover for the risks and liability stipulated above.

The Supplier undertakes to perform all of its obligations in such a way as to ensure the application of its insurance cover. The Supplier must, in particular, declare to its insurers the exact and complete nature of its activities and pay its premiums.

## 24. CONFIDENTIALITY / ADVERTISING

The Supplier undertakes not to communicate to any persons other than those necessary for the execution of the Order, the documents, specifications, plans and other written and/or verbal information, in any form and/or on any support whatsoever, received during the execution of the Order. The Supplier undertakes to take any measures with its staff and as regards persons and/or companies with which it is in contact so that this restriction is strictly complied with.

The conditions of this Order as well as its existence cannot give rise, in any event and in any form to direct or indirect advertising without the prior, written permission of the Purchaser.

## 25. OFFICIAL SUPERVISION:

Any Order pertaining to a military program may be subject to the official quality assurance of the Délégation Générale pour l'Armement (DGA). Moreover, pursuant to the NATO standardization agreement, a foreign Supplier to a NATO member country shall be supervised, at the request of the DGA's Quality Department, by the national quality assurance authority.

Any Order pertaining to a civil aeronautical program is open to supervision by the French airworthiness authorities (DGAC). French Suppliers outsourcing to non-French companies for civil aviation contracts must apply the provisions of issue GSAC P31 50 "Sous-traitance de production à l'étranger pour un produit français" (Subcontracting Production Outside France for French Products).

Should supervision be engaged by or on behalf of one of the abovementioned authorities, all technical information concerning Orders in progress must be communicated to them and they must be given access to the areas necessary for their supervision. The Supplier undertakes to keep the Purchaser informed of any measures it may be led to take in such a context.

## 26. GOVERNMENT CONTRACTS

In so far as the Order constitutes a subcontract to a government contract, the Purchaser shall inform the Supplier to this effect and the Supplier recognizes and accepts that the statutory requirements, specifications manual, clauses and general terms and conditions governing said government contract also apply to the Order, with such modifications as the circumstances require.

**27. OFF-SET**

Insofar as the Purchaser is subject to offset obligations within the framework of its primary contract, the Supplier undertakes to contribute to same on the basis of its share in the performance of the said primary contract

**28. ASSIGNMENT**

The Supplier is solely responsible to the Purchaser for the performance of the terms and conditions of the Order, which it can neither assign nor transfer to a third party, in whole or in part, without the prior written consent of the Purchaser.

The Purchaser remains free to assign or transfer, in whole or in part, its rights and obligations by virtue of the Order.

**29. APPLICABLE LAW**

The Order is governed by French law, and the parties expressly exclude the application of the United Nations Convention on contract for international sale of goods signed in Vienna on 11th April 1980.

**30. DISPUTE RESOLUTION**

Disputes, controversies or claims arising from or in relation to this Order shall be lodged with the Commercial Court of Toulon (Tribunal de Commerce de Toulon) and solely the French language should be used.

**31. SURVIVAL**

The rights and obligations of the Parties under Articles 9, 10, 11, 12, 13, 16, 21, 22, 23, 24, 26, 27, 29 and 30 shall survive the expiry or early termination of the Order.