

General terms and conditions

Article 1 - General

1.1 - These General Terms And Conditions (“Terms”) shall govern all offers by or to any entity of the KGC NETWORKS Group (“KGC NETWORKS”) and every agreement (“Contract”) between KGC NETWORKS and a member (“Member”) whereby such Member obtains products (“Products”) and/or services (“Services”) from KGC NETWORKS and resells these Products and Services. With respect to sales of services and/or products into the European Union, KGC Networks shall mean the entity KGC Networks Luxembourg SARL who has the exclusive right to sell into the EU market. Notwithstanding anything to the contrary in these Terms, the relationship between KGC NETWORKS and Member shall also be subject to the KGC NETWORKS Compensation Plan. Such KGC NETWORKS Compensation Plan provides for a bonus system awarded to qualifying Members.

1.2 - Subject to Article 1.1 above, these Terms shall govern a Contract to the exclusion of all other terms and conditions (including without limitation those of the Member), regardless of whether Member is the offeror under a Contract and of whether Member’s offer contains terms and conditions different in any manner from these Terms.

1.3 - A quotation by KGC NETWORKS to Member, unless expressly stated to the contrary, is an invitation to Member to make an offer to enter into a Contract. Such KGC NETWORKS quotations may be withdrawn by KGC NETWORKS at any time prior to formation of a Contract.

1.4 - KGC NETWORKS will signal acceptance of an offer to enter into a Contract by
(i) confirmation e-mail to Member; or
(ii) by delivery to Member of the Products ordered or performance of services ordered (as the case may be).

1.5 - Subject to Article 1.1 above, no Contract shall be subject to any terms and conditions except for these Terms unless KGC NETWORKS agrees thereto in writing and KGC NETWORKS shall not be deemed to accept such other terms and conditions nor to waive any of these Terms by not expressly objecting to variant provisions contained in any purchase order or other communication of the Member.

1.6 - No offer to enter into a Contract, which offer has been accepted by KGC NETWORKS or by Member, may be cancelled or changed by Member unless KGC NETWORKS agrees to this in writing. All Contracts are presumptively governed by these Terms, whether acceptance is by KGC NETWORKS or by Member.

1.7 - KGC NETWORKS reserves the right to make any changes in the specifications when required to conform with applicable statutory requirements and/or which do not materially affect the quality or performance of the Products or the quality of Services provided.

1.8 - KGC NETWORKS also expressly reserves itself the right to terminate a Member should the Member no longer comply with these Terms or should the conditions for termination of a Member of the KGC NETWORKS Compensation Plan be fulfilled.

Article 2 – Payment

2.1 - Unless otherwise agreed in writing, Member shall make payment in full, without set-off or counterclaim, within 30 (thirty) days of the date of order. Payment shall be made by credit card in the currency and to the account stated in the relevant online payment form.

2.2 - Prices payable are indicated in EUROS. Conversion of these prices into any other currency displayed in the relevant online order note are purely indicative.

Article 3 - Member's Breach of Obligation

3.1 - Without prejudice to any other rights and remedies available to KGC NETWORKS, KGC NETWORKS shall be entitled to treat any Contract as repudiated and/or suspend deliveries of Products or performance of Services without liability to Member and to claim damages from Member, and if any Products or Services have been delivered or performed (as the case may be) but not paid for, the price shall become immediately due and payable notwithstanding any other previous agreement or arrangement if:

- (i) Member fails to pay the amounts due or to make any alternative payment arrangement accepted by KGC NETWORKS; or
- (ii) Member breaches its obligations under a Contract and does not remedy such breach within the period required by KGC NETWORKS for such remedy; or
- (iii) KGC NETWORKS reasonably apprehends that any of the aforementioned is about to occur in relation to Member or any other matter which in KGC NETWORKS's opinion may prejudice its rights against Member.

Article 4 - Intellectual Property Rights

4.1 - Member acknowledges that all intellectual property rights comprised in the Products and Services (including without limitation, any patent, registered design, copyright, design right, trade mark, business name, application to register any of the aforementioned rights, technical data, trade secret, unpatented know-how and right of confidence, and any other intellectual property right of any nature whatsoever in any part of the world) ("Intellectual Property Rights") are, as between Member and KGC NETWORKS, the property of KGC NETWORKS and that Member is authorised to use the same only in connection with the use of Products pursuant to any Contract and Member agrees that it shall not infringe such Intellectual Property Rights or acquire or obtain any right, title or interest therein.

4.2 - If, pursuant to any Contract, any Intellectual Property Rights in or relating to the Products or Services are developed by KGC NETWORKS, Member, or both, such rights shall immediately upon creation vest in and be owned absolutely by KGC NETWORKS and Member hereby assigns all such Intellectual Property Rights to KGC NETWORKS and agrees to comply with all reasonable requirements to enable KGC NETWORKS to protect its rights under this Article 4.2.

Article 5 - Confidentiality

5.1 - Member shall keep confidential all confidential information and know-how received from KGC NETWORKS and shall not disclose such information or know-how to third parties without express written permission from KGC NETWORKS. Member shall not use such information and know-how for any purposes other than those contemplated under the Contract pursuant to which such information was received unless such information is public knowledge (other than by breach of this Article), lawfully received by Member from a third party having a right to disclose such information, or is required to be disclosed by a court of competent jurisdiction.

Article 6 - Force Majeure

6.1 - KGC NETWORKS shall not be liable to Member for any loss or damage which Member may suffer as a direct or indirect result of the supply of Products or the performance of Services that is prevented, hindered, delayed or rendered uneconomic by events of force majeure beyond KGC NETWORKS' reasonable control ("an event of force majeure").

6.2 - Any obligations of KGC NETWORKS under any Contract will be suspended for the period of the event of force majeure. If the event of force majeure extends beyond 60 (sixty) days, either party may terminate the Contract on immediate notice without any liability to the other, except that Member shall remain liable for payment to KGC NETWORKS for value rendered prior to termination.

Article 7 - Prices, Ancillary Cost and Delivery

7.1 - Unless otherwise agreed to in writing, the price of Products and Services is inclusive of any applicable VAT. However, all prices quoted are exclusive of ancillary costs such as shipping and delivery costs. Despite the fact that these costs are ancillary to the main supply (the product delivery), these costs will be quoted separately. With respect sales of services and/or products into the European Union, all shipping and delivery costs between KGC Networks and Member will reflect local shipping and delivery only.

7.2 - The total price to be paid by Member including shipping and delivery costs shall be indicated to Member either

- (i) in the confirmation e-mail from KGC NETWORKS to Member pursuant to Article 1.4 above; or
- (ii) in the private space of Member upon completion of the order of the products or services. In the case of a conflict, the total purchase price indicated in the confirmation e-mail pursuant to Article 1.4 above shall prevail.

7.3 - KGC NETWORKS reserves the right to increase the price of Products and Services to reflect increases in costs to KGC NETWORKS beyond its control including but not limited to increases in the price of raw materials, general increase in prices, changes in currency exchange rates, labour and other manufacturing costs (including those arising from changes in legislation). Such increases in price shall not be deemed a repudiation of the applicable Contract.

7.4 - Unless otherwise agreed to in these Terms or in writing, Products shall be delivered Carriage and Insurance Paid To (Incoterms 2000) to Member's address identified on Member's order, or specified in the Contract. As an alternative, Member may upon order of the Products request that delivery of the Products shall be made Carriage and Insurance Paid To (Incoterms 2000) to one of the depots offered by KGC NETWORKS.

7.5 - The risk of loss of, or damage to, Products shall pass to Member upon receipt.

7.6 - Any delivery or performance dates quoted by KGC NETWORKS are approximate only and KGC NETWORKS shall not be liable for any delay in delivery of Products or performance of Services howsoever caused and time shall not be of the essence.

7.7 - Where Products are to be delivered in instalments, delivery by KGC NETWORKS of any one or more of the instalments not in accordance with pre-determined delivery and/or performance dates shall not entitle Member to repudiate the Contract.

7.8 - If Member fails to take delivery of Products (other than by reason of KGC NETWORKS's fault) then, in addition to the other rights and remedies available to KGC NETWORKS, KGC NETWORKS may

- (i) store the Products until actual delivery and charge Member for the reasonable costs of storage, or
- (ii) sell the Products at the best price readily available and (after taking into account all reasonable storage and selling expenses) account to Member for the excess over the Contract price or charge Member for any shortfall below the Contract price.

Article 8 - Retention of title and risk

8.1 - Notwithstanding delivery and the passing of risk in any Products, title in them shall not pass to Member and shall remain in KGC NETWORKS until KGC NETWORKS has received full payment for the price of such Products, as well as any other amounts due in connection with any Contract by Member. Member hereby grants to KGC NETWORKS a security interest in and to all Products held by Member until such Products are fully paid. This security interest shall expire and be released automatically and without need of further action upon payment in full for the Products (unless such security interest has been perfected through recording, in which case KGC NETWORKS shall take all steps necessary to ensure that the security interest is properly released following payment in full).

8.2 - Until payment in full, Member shall handle such Products so as to enable them to be identified as the property of KGC NETWORKS.

8.3 - In the event of any failure on the part of Member to pay to KGC NETWORKS, or if KGC NETWORKS has substantial reasons to believe that Member may so fail, KGC NETWORKS reserves the immediate right of repossession of any Products to which it has retained title exercisable at any time after delivery of the Products. Member shall bear all costs incurred by KGC NETWORKS in connection with the recovery.

Article 9 - Warranties

9.1 - Subject to the limitations on its liability set out in these Terms, and unless otherwise agreed to in writing, KGC NETWORKS warrants that the Products shall be free from defects in materials and workmanship, for the shorter of the following two periods

(i) a period of 12 (twelve) months following the date of delivery; or

(ii) a period ending on the expiry date indicated on the relevant Product. KGC NETWORKS warrants that the Services shall be performed with reasonable skill and care, unless otherwise agreed in writing. Save as aforesaid, all conditions, warranties and representations, express or implied, whether by statute or otherwise in relation to the Products and Services are hereby expressly excluded.

9.2 - KGC NETWORKS shall be under no liability under this warranty in respect of any defect in the Products:

(a) caused by external sources as well as circumstances attributable to Member;

(b) arising from normal wear and tear or abnormal dosage or abnormal usage;

(c) arising from the use by Member of the Products in an inappropriate or improper manner, including without limitation failure to follow instructions or operating guidelines;

(d) if Member fails to give notice of any claim in respect of any Products which is based on a breach of the warranty above within three (3) business days of discovery of the breach.

Article 10 - Complaints

10.1 - On delivery of Products and on completion of performance of the Services, Member shall inspect the Products for defects and the results of the Services for compliance with any specification.

10.2 - Member shall report, in writing, any defects or deficiencies that are discovered by such inspection to KGC NETWORKS within 7 (seven) business days of delivery, performance or completion (as the case may be), but in any event within the relevant warranty period as stated in Article 9.1.

10.3 - Any dispute with respect to an invoice must be submitted to KGC NETWORKS in writing within 8 (eight) days from the date of the invoice, with each invoice being incontestable thereafter.

10.4 - Where any valid claim in respect of Products or Services which is based on breach of the warranty in Article 9 within the warranty period is notified to KGC NETWORKS within the required period set out above, KGC NETWORKS may, in its discretion replace or re-perform the Products or Services (as applicable) free of charge, or refund to Member the price payable (or an appropriate part of the price) for such Products or Services, but shall have no further liability to Member.

10.5 - Where Member wishes to return Products to KGC NETWORKS in connection with a claim under Article 10.4, Member may do so only with KGC NETWORKS's prior written permission and shipping or other instructions. Member shall be responsible for all costs of transport and associated costs, unless the Member's complaints are accepted. Products shall at all times remain for the account and risk of Member.

10.6 - Timely complaints by the Member do not relieve Member of the obligation to pay for and accept delivery of all Products or Services ordered.

Article 11 - Liability

11.1 - If KGC NETWORKS, through its own fault, fails to deliver Products, its liability shall be limited to that set out in Article 10.4.

11.2 - Nothing in these Terms shall exclude or limit KGC NETWORKS's liability for fraud or for death or personal injury caused by its negligence or any other liability to the extent that the same may not be excluded or limited by law.

11.3 - Subject to Articles 11.2 and 11.4, KGC NETWORKS does not accept and hereby excludes any liability for negligence.

11.4 - Without prejudice to Article 11.2, KGC NETWORKS shall be under no liability by reason of any representation, warranty condition or other term, whether express or implied by statute or otherwise or of any statutory provision for contribution or of any statutory duty or under the express or implied terms of a Contract, for any loss (including loss of profit, data, income, business, revenue or goodwill, costs, expenses or other claims) damage or injury of any kind, direct or indirect, howsoever arising and whether or not caused by the negligence of KGC NETWORKS, its employees or agents except as expressly provided in these Terms.

11.5 - Subject to Article 11.2 and Article 11.3, KGC NETWORKS's maximum aggregate liability arising out of or in connection with a Contract whether arising in contract, tort (including negligence) or otherwise shall at all times be limited to the amount invoiced under such Contract.

11.6 - Subject to the foregoing provisions of this Article 11 or where otherwise expressly stated in these Terms, KGC NETWORKS shall not be liable in respect of a defect in the Products or any deficiencies in the Services where the same have not been notified to KGC NETWORKS within the period specified in Article 10.2 (provided the same were discovered on inspection in accordance with that Article) or within the relevant period specified in Article 9.1.

Article 12 - Data Protection

12.1 - Member explicitly acknowledges and agrees that KGC NETWORKS may process (e.g. collect, procure, store, use, modify) and transfer the personal data of Member submitted to KGC NETWORKS by Member in connection with a Contract or with the KGC NETWORKS Compensation Plan (“Personal Data”) to the extent necessary for the delivery of Products, for the Performance of Services, for the processing of Member files or for the administration of the KGC NETWORKS Compensation Plan. Member acknowledges and agrees that the transfer of Personal Data as stated above includes the transfer of Personal Data to

(i) any third party engaged in the execution of a Contract, in managing the Member files or in the administration of the KGC NETWORKS Compensation Plan and

(ii) to any other Member, regardless where such third party or Member are resident.

Article 13 - Right of Cancellation

13.1 - Within a period of sixty (60) days after delivery of Products, Member shall be entitled to return part or all of the relevant Products to KGC NETWORKS. Such return shall be in accordance with reasonable commercial practice. The return shall be performed subject to KGC NETWORKS’ prior shipping or other instructions, the relevant Products shall be returned in their original packaging and the expenses of such return (including but not limited to administrative fees) shall be borne by Member. If such return takes place within the time period as stated above, KGC NETWORKS shall refund to Member the price already paid by the Member (or if only part of the relevant Products are returned, an appropriate part of the price).

13.2 - If, in KGC NETWORKS’ absolute opinion, the Member repeatedly abuses his/her right to get a refund according to Article 13.1 (i.e. if the Member on purpose orders more Products than he will be able to resell) KGC NETWORKS may at its sole discretion terminate a Member raising such abusive claims. If repeated abusive claims are raised by a Member, KGC NETWORKS may nevertheless decide to refund the Member by setting off the compensation payments due and the refund according to Article

13.3 - Without limitation to the obligation of the Member to bear the expense of any return of Products under Article 13.1 above, KGC NETWORKS reserves the right to waive the administrative fees of a return by a Member under Article 13.1 if in its absolute discretion KGC NETWORKS deems it appropriate to give the waiver.

Article 14 - Member’s obligations

14.1 - Member shall, at its cost, provide KGC NETWORKS, in a comprehensible and usable form, with all data and information known or reasonably available to Member that is necessary for KGC NETWORKS to perform any Contract.

14.2 - Member is responsible for the use and correct application of the Products and the Services and for the accuracy of the Personal Data provided to KGC NETWORKS.

14.3 - Member shall defend and hold KGC NETWORKS and its affiliated companies harmless from any and all damages, losses, and/or expenses incurred by KGC NETWORKS and/or its affiliates arising directly or indirectly from any and all third party claims that Member’s use of the Products and/or Services infringes the intellectual property rights of any kind whatsoever, including without limitation patent, copyright, or trade secret rights, of such third party.

14.4 - Member understands and agrees that, where applicable for Products subject to individual label licenses, Member’s use of each such Product is and will be regulated by the terms stated on the label license that accompanies each such Product. Compliance with such label licenses shall be accepted by the Member as a precondition to use of each Product.

14.5 - Members purchasing services and/or products supplied to them into the European Union shall comply with all regulatory and tax regulations in their country of establishment. Such Members shall further inform KGC Networks of their correct status for VAT purposes (business versus non-business) and if applicable provide KGC Networks with their VAT ID number in a format verifiable with the European Union VAT Information Exchange System (VIES).

Article 15 - Relationship between Members

15.1 - Member is entitled to resell any Products and Services as agreed with KGC NETWORKS. In this case the present Terms remain fully applicable in the commerce between KGC NETWORKS and Member with reservation to the specifications stated in this Article 15.

15.2 - Member shall ensure that an Intellectual Property Rights clause at the scale as stated in Article 4 and a Confidentiality clause as stated in Article 5 is integral part of contractual agreements between Member and its customers.

15.3 - Member ensures that KGC NETWORKS may process (e.g. collect, procure, store, use, modify) and transfer personal data of the Members' customers submitted to Member by customers in connection with a contract at the scale as stated in Article 12.

Article 16 - Miscellaneous

16.1 - In relation to any Contract and subject to Article 1.2 above, these Terms shall constitute the entire agreement between KGC NETWORKS and Member and supersede any previous agreement or arrangement between them relating to the subject matter of the Contract. Member acknowledges and agrees that in entering into a Contract, it does not rely on and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) which is not expressly set out or referred to in the Contract and the only remedy available to it in respect thereof shall be a remedy for breach of contract, save that nothing in this clause shall limit or exclude KGC NETWORKS's liability for fraud.

16.2 - No modification of, or additions to, the Terms shall be valid unless accepted in writing by KGC NETWORKS.

16.3 - No person other than a party or expressly stated third party beneficiary to the Contract shall be entitled to enforce any term of it save that where an agreement is entered into pursuant to which any rights and/or obligations contained in the Contract are assigned or novated to a third party, nothing in this Article shall, of itself, operate to prevent the assignee from taking the benefit of, and enforcing, any rights so assigned.

16.4 - Computerised registers kept with the information system of KGC NETWORKS or its subcontractors shall be considered as proof of communication, orders and payments.

16.5 - Failure by KGC NETWORKS to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

16.6 - If any provision or part of a provision of these Terms shall be, or shall be found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Terms, all of which shall remain in full force and effect.

16.7 - Member may not assign all or any of Member's rights under any Contract without the prior written consent of KGC NETWORKS. KGC NETWORKS may assign a Contract or any of its rights or obligations thereunder.

16.8 - In the event of differences between the language versions of these General Conditions, the English version shall prevail.

Article 17 - *Applicable law and jurisdiction*

17.1 - All Contracts and these Terms shall be governed by and construed in accordance with Luxembourg law and Member hereby agrees that Luxembourg shall have exclusive jurisdiction save that KGC NETWORKS may bring a claim against Member in any court of competent jurisdiction.