

# **General Terms and Conditions of Purchase of the Kwizda Group for Kwizda Holding GmbH, Kwizda Leasing GmbH, Büsscher & Hoffmann GmbH, Kwizda Pharma GmbH and Kwizda Agro GmbH ("GTCP – Kwizda") Status August 2024**

## **1. GENERAL / SCOPE OF APPLICATION**

- 1.1. These General Terms and Conditions of Purchase (GTCP) for Goods and Services (both collectively referred to as "Services") form the contractual basis for every legal transaction concerning the purchase of Services concluded by Kwizda Holding GmbH, Kwizda Leasing GmbH, Büsscher & Hoffmann GmbH, Kwizda Pharma GmbH and Kwizda Agro GmbH as purchaser ("Kwizda") with a contractual partner ("Supplier"). They shall be deemed to have been confirmed and agreed by the Supplier (i) upon confirmation of the order by the Supplier or (ii) at the latest upon commencement of the delivery/service by the Supplier. Deviations from or additions to these GTCP shall only apply if they have been expressly accepted by Kwizda in writing and only for the specific legal transaction. In particular, acts of fulfilment of the contract, payment for the subject matter of the contract or silence on the part of Kwizda shall not be deemed to constitute consent to any provisions deviating from these GTCP.
- 1.2. Insofar as an individual agreement or a framework agreement or the purchase of the service falls within the scope of a framework agreement between Kwizda and the Supplier, the provisions of this individual agreement or framework agreement shall take precedence over any provisions to the contrary in these GTCP. This priority of application of the individual or framework agreement concluded between Kwizda and the Supplier also applies in particular if Kwizda subsequently refers to the validity of its GTCP in a specific order.
- 1.3. General terms and conditions of the Supplier which are attached to its offer or offer confirmation or to which reference is made in any other way are not accepted by Kwizda under any circumstances and are therefore not effectively agreed.
- 1.4. The GTCP can be viewed online at <https://www.kwizda.at/wp-content/uploads/General-Terms-and-Conditions-of-Purchase-of-the-Kwizda-Group.pdf> and can be downloaded and printed out.
- 1.5. The Supplier undertakes to comply with the current version of the Kwizda Supplier Code of Conduct, which is available at [Supplier-Code-of-Conduct-Kwizda-Holding-V1.4.1-1.pdf](#). The Supplier Code of Conduct is an integral part of these GTCP.

## **2. OFFERS**

- 2.1. Offers, cost estimates, plans, test certificates for technical equipment and the like shall always be prepared by the Supplier free of charge, irrespective of the preparatory work required.

- 2.2. The deliveries/services offered by the Supplier must include all necessary materials, ancillary work, equipment and all other services necessary for the fulfilment of the offer, which are required for the complete fulfilment of the contract, even if these are not expressly stated in the offer or contract.
- 2.3. By submitting its offer, the Supplier declares that all prerequisites for the fulfilment of its delivery/service have been met and is liable for this. Once the offer has been submitted, the Supplier can no longer claim that the documents submitted by Kwizda for the preparation of the offer were unclear or incorrect.

### **3. CONCLUSION OF CONTRACT**

- 3.1. The contract shall be deemed concluded if Kwizda confirms the Supplier's offer by means of a written order and the Supplier has not objected to the order in writing within ten (10) working days from the date of the order, stating the specific points of objection; an order confirmation from the Supplier with reference to the Supplier's General Terms and Conditions shall not fulfil the aforementioned objection requirements.
- 3.2. Any deviating acceptance of an order by Kwizda, in particular in the form of an order confirmation with reference to the Supplier's general terms and conditions, shall be regarded as a new offer and requires written confirmation by Kwizda.
- 3.3. All declarations of intent and declarations to exercise the Supplier's rights of organisation, in particular notices of termination, reminders and setting of deadlines, must be made in writing (e-mail is permissible) to be effective and must be addressed to the respective Kwizda company.

### **4. USE OF SUBCONTRACTORS, DUE DILIGENCE, MONITORING**

- 4.1. The Supplier shall not be entitled to sub-licence or sub-contract its contractual obligations, even in part, to others without the prior written consent of Kwizda.
- 4.2. Even in the event that Kwizda gives its consent pursuant to section 4.1. (i) Supplier shall nevertheless remain fully liable for the performance of its obligations under this Agreement; (ii) Supplier shall impose such obligations on all subcontractors approved under these GTCP in the award of the subcontract as are consistent with the material obligations under these GTCP; (iii) Supplier shall be responsible for all costs and other charges, if any, incurred in connection with such sublicence or subcontract; and (iv) Supplier agrees to establish and maintain an ongoing programme of monitoring of all approved subcontractors during the term of the Agreement. In the event that a warning or risk arises during the monitoring programme, Supplier shall notify Kwizda in writing as soon as possible and in any event no later than seven (7) days after the warning/risk arises.
- 4.3. The Supplier represents and warrants that it has implemented an adequate and appropriate due diligence process to evaluate potential sub-licensees/subcontractors and that this due diligence process has been applied to the sub-licensee/subcontractor for which consent is to be obtained and that this process has not produced any negative results.

- 4.4. The Supplier acknowledges and agrees that failure to comply with or breach of this clause 4 shall constitute a material breach of these GTCP and Kwizda shall be entitled to terminate/cancel the Contract/Purchase Order by written notice with immediate effect without any compensation whatsoever.
- 4.5. The Supplier undertakes to ensure that its subcontractors also comply with the Kwizda Supplier Code of Conduct and to provide evidence of this at Kwizda's request.

## **5. PROHIBITION OF ASSIGNMENT**

The Supplier may not assign its contractual rights and obligations without Kwizda's prior written consent. Such consent shall be at the sole discretion of Kwizda.

## **6. RESPONSIBLE PROCUREMENT, RISK MANAGEMENT IN RELATION TO THIRD PARTIES**

- 6.1. The Supplier expressly agrees that Kwizda may disclose information about the Supplier (including, if necessary, personal data) to agents / third parties that Kwizda engages for the purpose of conducting and facilitating assessments in relation to its Third Party Risk Management Processes ("TPRM Assessment"). Supplier (i) shall reasonably co-operate with all Kwizda Group Companies and all Risk Management Officers in conducting due diligence and assessments forming part of the TPRM Assessment, including responding to all questionnaires ("Third Party Questionnaire"); (ii) will permit Kwizda Group Companies and/or Risk Management Officers to conduct a pre-contractual audit in relation to the risk areas falling within the scope of the TPRM as identified in the Kwizda Supplier Code of Conduct and provide all reasonable assistance and co-operation to facilitate such audits; and (iii) confirms that records, documents and similar information provided for the purposes of a TPRM assessment/audit(s) may be retained in compliance with applicable law.
- 6.2. The Supplier undertakes to carry out the due diligence processes required by the Kwizda Supplier Code of Conduct and to report regularly on compliance with the standards set out therein.

## **7. TERMS OF DELIVERY**

- 7.1. Dates and deadlines announced or agreed by the Supplier are binding. Partial deliveries are generally not permitted unless Kwizda has expressly agreed to them in writing in advance.
- 7.2. If the Supplier foresees circumstances which could prevent him from delivering or performing on time or in the agreed quality, the Supplier must notify Kwizda immediately in writing. In the event of late delivery, Kwizda shall be entitled to withdraw from the contract or to insist on delivery, even if the Supplier has fulfilled his obligation to notify Kwizda.
- 7.3. If agreed dates or deadlines or the quality or quantity of the subject matter of the contract are not met, the statutory provisions on default shall apply (even if the Supplier complies with the duty of notification). In the event of a delay in delivery and/or performance,

Kwizda shall be entitled to demand a penalty of 1% of the total order value from the Supplier for each week of delay, up to a maximum of the total order value. Kwizda expressly reserves the right to claim further damages.

- 7.4. Deliveries are deemed to have been fulfilled when the delivery/service is accepted at the agreed place of delivery at the agreed time of delivery and with all agreed or usually assumed documents. Only at this point in time does the risk pass to Kwizda.
- 7.5. The deliveries must be accompanied by appropriate shipping documents which clearly state the designation, type (e.g. hazardous goods) and quantity of the delivered products and any storage and operating instructions as well as safety and hazard information must be supplied with the goods without being requested to do so and, if necessary, any further measures required in connection with the handling of the delivered goods must be pointed out. In the event of non-compliance with these provisions, Kwizda shall be entitled not to accept deliveries and to return them at the Supplier's expense and risk, or the Supplier shall indemnify Kwizda in the event of claims by third parties in connection with missing information from the Supplier.
- 7.6. The unconditional acceptance of a delayed, defective or incomplete service does not constitute a waiver of the claims to which Kwizda is entitled under this title. The acceptance of the delivery or service is subject to the reservation of freedom from defects with regard to quantity, quality and timeliness. Confirmation of receipt of delivery or payment of the invoice shall not constitute acceptance by Kwizda.
- 7.7. The Supplier undertakes to use appropriate packaging that complies with the applicable regulations and is safe and suitable for the selected means of transport; where applicable, all packaging must be discharged via a system participant in accordance with the Packaging Ordinance.

## **8. PRICES, INVOICING, TERMS OF PAYMENT**

- 8.1. All prices are fixed prices, are exclusive of VAT and, unless otherwise agreed, include all costs and ancillary costs of the Supplier (e.g. costs for quality management, functional and quality tests, assembly, installation, maintenance, packaging) as well as transport and any necessary authorisations and insurance, and are free place of destination.
- 8.2. Exchange rate and currency fluctuations as well as bank charges shall be borne by the Supplier.
- 8.3. The fixed prices exclude additional claims due to wage or material price increases or similar. Price increases on the part of the Supplier are only possible after written agreement with Kwizda.
- 8.4. Payment shall be made in accordance with the agreed terms of payment as per the order/offer, otherwise within 60 days net, in each case from the date of receipt of the invoice by Kwizda.
- 8.5. Payment does not constitute acceptance of the service or acknowledgement of the contractual fulfilment of the service. In particular, payments shall not be deemed to be a waiver of the assertion of defects and (warranty or compensation) claims.

- 8.6. Any assignment or set-off by the Supplier requires the prior written consent of Kwizda.
- 8.7. Kwizda is entitled to offset the Supplier's claims against counterclaims that Kwizda has against the Supplier without further agreement or to offset them unilaterally accordingly.
- 8.8. Advance payments made by Kwizda shall be kept separate from the Supplier's other assets and shall not be mixed or commingled with the Supplier's other assets.

## **9. INSURANCE**

- 9.1. The Supplier must take out adequate transport insurance at his own expense and pay any customs duties.
- 9.2. The Supplier is obliged to have adequate public liability insurance in relation to the volume of the order and the risks associated with the provision of the service and must provide Kwizda with evidence of its existence at Kwizda's request before commencing fulfilment of the contractual services.

## **10. WARRANTY / LIABILITY**

- 10.1. The Supplier warrants and guarantees (abstract guarantee pursuant to Section 880a half-sentence 2 ABGB) that all services a) are provided in accordance with all applicable regulations (including GMP, GDP, GLP, GCP, if applicable), legal requirements and requirements of authorities and professional organisations and standards; b) correspond to the state of the art; c) are free from defects; d) with all specifications and all standards expressly agreed in offers or individual agreements with Kwizda, or e) comply with the usual and customary market standards.
- 10.2. The warranty period is two (2) years. It begins with the acceptance of the goods or with the provision of the service in accordance with these, in the case of hidden defects only from the discovery of the defect by Kwizda.
- 10.3. The defectiveness of deliveries and services at the time of handover or execution shall be rebuttably presumed if the defectiveness becomes apparent within the warranty period. Kwizda shall notify the Supplier in writing or verbally of any defects that were not already objected to at the time of acceptance as soon as they become known, but at the latest within the agreed warranty period. The obligation to give notice of defects under commercial law (§ 377 UGB) is expressly waived.
- 10.4. Should the services be defective, the Supplier shall, at Kwizda's discretion, either replace the defective service or repair it as quickly as technically possible and restore the defect-free, agreed condition within a reasonable period of time from notification of the defectiveness. If the Supplier is unable to restore the condition in conformity with the contract within a reasonable period of time, Kwizda shall be entitled to demand a price reduction or to terminate the contract and to reclaim the amount paid to the Supplier for the delivery or service in question in the course of cancellation. Kwizda shall also be entitled to cancel the order/contract in whole or in part immediately. If the Supplier does not begin to remedy the defect immediately after being requested to do so, Kwizda shall be entitled in urgent cases, in particular to avert acute danger or avoid major damage, to

remedy the defect itself or have it remedied by a third party at the Supplier's expense (substitute performance).

- 10.5. The Supplier warrants and guarantees (abstract guarantee pursuant to § 880a halvesentence 2 ABGB) that the manufacture, import, storage, sale or use of goods/services does not infringe any rights of third parties, in particular industrial property rights such as trademark, design and patent rights or other intellectual property rights. The Supplier shall provide Kwizda with the service free of third-party rights which could impair Kwizda's contractually owed legal position. The Supplier shall fully indemnify Kwizda in the event of a claim by third parties due to an alleged infringement of their rights in connection with the services provided by the Supplier.
- 10.6. The Supplier shall be liable for all damages caused by him and their consequences as well as costs incurred. If claims for damages are asserted, the provisions of civil law pursuant to §§ 1293 ff ABGB shall apply.
- 10.7. The Supplier shall be liable for all vicarious agents. The statutory limitation period is three (3) years from the date of knowledge of the damage and the damaging party.
- 10.8. Violations of the Kwizda Supplier Code of Conduct are considered a material breach of contract and entitle Kwizda to terminate the contract immediately.

## **11. CONFIDENTIALITY AND DATA PROTECTION**

- 11.1. The Supplier undertakes to treat the information received from Kwizda and the content of the contract ("Confidential Information") as strictly confidential, not to make it accessible to any third parties, not to publish it and to use it exclusively within the scope of the contractual purpose.
- 11.2. The Supplier undertakes to oblige its employees and other vicarious agents to maintain confidentiality.
- 11.3. The confidentiality obligation shall remain in force even after termination of the contract.
- 11.4. The Supplier undertakes to comply with the applicable version of the data protection law. In particular, the Supplier warrants that it guarantees fulfilment of all legal requirements as the controller or processor.
- 11.5. Corresponding information on data protection in accordance with Art. 13 and 14 GDPR can be found in Kwizda's privacy policy, available at <https://www.kwizda.at/datenschutz/>.

## **12. FORCE MAJEURE**

- 12.1. In the event of force majeure, such as war, war-like events, natural disasters and inter-company strikes, Kwizda shall be released from its obligation to accept delivery for the duration of the disruption and shall also be entitled to withdraw from the contract without the Supplier being entitled to any claims against Kwizda as a result.
- 12.2. Cases of force majeure that prevent the Supplier from fulfilling its obligations shall require immediate written notification to Kwizda and confirmation by the competent chamber of

commerce. For the duration of such events, the contractual obligations shall be deemed suspended. Kwizda reserves the right to withdraw from the contract in this case.

### **13. PROVISIONS**

Specifications, samples and other documents and aids provided by Kwizda are, unless otherwise notified in writing, the sole intellectual and physical property of Kwizda and Kwizda reserves all rights in this respect. Supplies may only be used for the agreed purpose, may not be reproduced or made accessible to third parties or published without the prior written consent of Kwizda and must always be treated as strictly confidential.

### **14. COMPLIANCE**

- 14.1. The Supplier confirms and undertakes to comply at all times with all applicable laws, regulations and official requirements, in particular those relating to bribery, corruptibility and the acceptance and granting of advantages, and to have and maintain the necessary authorisations relevant to its respective obligations under these GTCP. The Supplier undertakes to refrain from direct advertising measures towards employees of Kwizda.
- 14.2. The Supplier undertakes to comply with all compliance requirements set out in the Kwizda Supplier Code of Conduct.

### **15. CLIMATE PROTECTION AND ENVIRONMENTAL RESPONSIBILITY**

The Supplier undertakes to comply with the environmental standards set out in the Kwizda Supplier Code of Conduct.

### **16. APPLICABLE LAW**

All legal transactions concluded on the basis of these GTCP, as well as the GTCP themselves, shall be exclusively governed by Austrian law, and not by the UN Convention on Contracts for the International Sale of Goods. Furthermore, legal norms that refer to the law of other countries are excluded.

### **17. JURISDICTION**

Any and all disputes arising from or in connection with the business relationship between the Supplier and Kwizda, in particular from or in connection with these GTCP, shall be subject to the exclusive jurisdiction of the courts in Vienna, Innere Stadt. Kwizda reserves the right to also call upon the courts at the supplier's place of jurisdiction at its own discretion. The terms and conditions of the UN Sales Convention are excluded by mutual agreement.