

KIOXIA Europe GmbH

General Terms and Conditions of Sale and Delivery

1. Scope of Application, Form Requirements

- (1) These general terms and conditions of sale and delivery ("**GTCS**D") shall apply to all deliveries and services by KIOXIA Europe GmbH, registered with the commercial register of the local court of Düsseldorf under HRB 81002 ("**KIOXIA**"), if and to the extent that they have become part of the contractual relationship between KIOXIA and the respective contractual party ("**Customer**").
- (2) This is in particular the case when these GTCS D are expressly designated as being a component part of the contract and also where KIOXIA refers to these GTCS D, whether as enclosure to or printing on quotations or confirmations of orders, or whether by notice of the link https://europe.kioxia.com/content/dam/kioxia/en-europe/terms/asset/KIE_GTCS D.pdf where the wording of these GTCS D can be viewed.
- (3) These GTCS D apply at least to future orders by that Customer on a verbal basis without written confirmation of order if reference is made to these GTCS D in the invoice or the delivery note for the initial delivery.
- (4) The legal relationship between the Customer and KIOXIA is governed by these GTCS D, unless explicitly agreed otherwise in writing. Changes and additions must be made in writing. General terms and conditions of the Customer or requests for amendments by the Customer to these GTCS D do not apply between KIOXIA and Customer, even if KIOXIA has not expressly objected to Customer's general terms and conditions and/or requested changes and amendments in individual cases. If the Customer does not agree to these GTCS D, it must object to them in writing.
- (5) Legally relevant declarations and notifications of KIOXIA or the Customer with regard to the legal relationship (e.g. offers, acceptance of offers, setting of a deadline, withdrawal) shall be made in writing, i.e. in written or text form (e.g. letter or email).

2. Conclusion of Contracts

- (6) Orders issued by Customers shall become binding on KIOXIA only upon KIOXIA's written confirmation of the order. Any communication made by KIOXIA which has not been expressly confirmed by KIOXIA in writing, shall be deemed non-binding and subject to any change. Communication made by KIOXIA to the Customer outside the scope of a written and expressly binding offer or written confirmation of an order of the Customer is according to the will of the parties only intended to enable the Customer to issue a binding offer and shall be deemed to be a mere invitation to the Customers to make a binding offer ("**Invitation to Treat**"). An Invitation to Treat shall not be binding for and on behalf of KIOXIA. Such Invitation to Treat may include information regarding the subject matter of the order, price, delivery period and terms of delivery, which are necessary for the Customer to finally decide if to issue a binding offer.
- (7) The contract between KIOXIA and Customer shall be concluded and becomes binding upon receipt of KIOXIA's written confirmation of order by Customer, unless the parties have executed a written contract signed by both parties. The contract or confirmation of order shall provide information relating to the delivery item, price, delivery date and delivery terms. If Customer's order deviates from KIOXIA's Invitation to Treat or binding offer, the order shall only be valid if this is expressly confirmed in writing by KIOXIA.

3. Prices

- (8) Prices apply as fixed prices in the agreed currency and they are CIP (Incoterms 2020) unless otherwise expressly agreed.
- (9) Information on weight, dimensions, capacity, price, performance, quality and other properties contained in catalogues, brochures, circulars, advertisements, illustrations and price lists etc. or resulting from samples shall only be binding if express reference is made to such information in the offer and/or order confirmation.

- (3) If the agreed prices are based on KIOXIA's list prices and the delivery is to be made more than three (3) months after the conclusion of the contract, KIOXIA's list prices valid at the time of delivery shall apply, in each case an agreed discount (if any) shall still apply.
- (4) KIOXIA shall be entitled to adjust prices appropriately if cost reductions or increases occur after conclusion of the contract, in particular due to changes in labor costs, e.g. due to collective bargaining agreements, changes in (raw) material prices, changes in logistics prices or significant market price fluctuations. In this case, the price adjustment shall be made to the extent that the costs for KIOXIA are reduced or increased. These will be proven to the contractual partner upon written request.

4. Terms of Payment

- (1) Invoices from KIOXIA are due for payment within thirty (30) days from the date of the invoice. The Customer is automatically in default without any further reminder, on expiry of this payment period. Default interest shall amount to nine (9) % p.a. above the respective base interest rate. KIOXIA expressly reserves the right to assert further damages.
- (2) Any (potential) rebates, bonuses and discounts granted by KIOXIA shall lapse if the Customer is in default with due payment.
- (3) The standard method of payment shall be bank transfer except the Parties expressly agreed otherwise in writing. In case KIOXIA priorly agreed to bills of exchange and cheques, they are only accepted by KIOXIA on account of performance and are only valid as payment after (full) redemption of the respective amount. A collection fee may be charged after the second reminder letter. The Customer may only set counter-claims off to the extent that they are acknowledged by KIOXIA or determined by final, binding judicial decision.
- (4) KIOXIA shall be entitled to perform outstanding deliveries only against advance payment or provision of security if, after conclusion of the contract, circumstances become known to KIOXIA which are likely to substantially reduce the creditworthiness of the Customer and as a result of which payment of KIOXIA's outstanding claims by the Customer under the respective contractual relationship (including under other individual orders to which the same framework agreement applies) may be at risk.

5. Delivery, Delay, Passing of Risk

- (1) Delivery times/dates for deliveries and services ("**Delivery Periods**") promised by KIOXIA are always only approximate and not legally binding. This does not apply if a fixed delivery period is expressly agreed in writing. Promised or agreed Delivery Periods shall be calculated from the date of the order confirmation by KIOXIA, in the case of delivery against advance payment from the date of receipt of payment, but at the earliest from the date of final agreement on the (technical) specifications to be clarified with the Customer. The Delivery Periods shall only commence when all necessary documents and other specifications for the execution of the relevant order have been provided to KIOXIA.
- (2) KIOXIA shall not be liable for the impossibility or delay of deliveries, insofar as these circumstances are (i) due to force majeure or other events not foreseeable at the time of the conclusion of the contract, and (ii) for which KIOXIA is not responsible (e.g. operational disruptions of all kinds, fire, natural disasters, pandemics, weather, floods, war, riot, terrorism, transport delays, strikes, lawful lockouts, lack of labor, energy or raw materials, the failure of suppliers to deliver, or to deliver correctly or on time, delays in the granting of any necessary official permits, official/sovereign measures or prohibitions [e.g. sanctions, embargoes or other export control regulations]), and/or if this contract will lead or could lead to the imposition of penalties or sanctions (e.g. secondary sanctions). In case of such events, the Delivery Periods shall be automatically extended by the duration of the event plus a reasonable start-up period. KIOXIA shall inform the Customer as soon as reasonably possible of such events and at the same time inform the Customer of the expected new Delivery Periods. Insofar as such events make it significantly more difficult or impossible for KIOXIA to deliver and the disruption is not only of a temporary nature, KIOXIA shall be entitled to withdraw from the contract. Insofar as the Customer cannot reasonably be expected to accept the delivery as a result of the delay, it may withdraw from the contract by means of an immediate written declaration to KIOXIA.
- (3) Delivery is made CIP (Incoterms 2020) agreed destination. The risk shall pass to the Customer in accordance with the rules of CIP, that is, on transfer of the goods at the agreed destination. If delivery is delayed at the request of the Customer or for other reasons for which KIOXIA is not responsible,

the risk shall pass to the Customer at the time originally intended for delivery CIP. In case of refusal of acceptance, KIOXIA may have the goods stored at the expense and risk of the Customer.

- (4) KIOXIA is entitled to partial deliveries, if (a) a partial delivery is of use to the Customer within the scope of the contractual purpose, (b) the provision of the remaining deliveries is ensured, and (c) the partial delivery does not result in significant additional expenses for the Customer.

6. Retention of Title

- (1) Goods paid fully in advance are not subject to any reservation of title. In all other respects KIOXIA reserves the title to all goods delivered by KIOXIA until full payment has been received ("**Reserved Goods**"). If the Reserved Goods are processed or transformed by the Customer (section 950 German Civil Code), it shall be understood between the parties that this processing is always carried out for KIOXIA as manufacturer in the name and for the account of KIOXIA and that KIOXIA directly acquires ownership or - if the processing or transformation is carried out from materials of several owners or if the value of the newly created object is higher than the value of the Reserved Goods - co-ownership (fractional ownership) of the newly created object in the ratio of the value of the Reserved Goods (gross invoice value) to the value of this newly created object. In the event that for any reason no such ownership or co-ownership acquisition should occur with KIOXIA, the Customer hereby assigns to KIOXIA its future ownership or (in the aforementioned ratio) co-ownership of the newly created object as security; KIOXIA hereby accepts this transfer. If the Reserved Goods are combined with other items not belonging to KIOXIA within the meaning of section 947 of the German Civil Code or mixed or blended within the meaning of section 948 of the German Civil Code, KIOXIA shall acquire co-ownership of the newly created item in the ratio of the value of the Reserved Goods (gross invoice value) to the value of the other combined, mixed or blended items at the time of combination, mixing or blending; if the Reserved Goods are to be regarded as the main item (*Hauptsache*), KIOXIA shall acquire sole ownership (section 947 para (2) of the German Civil Code). If one of the other goods is to be regarded as the main item, the Customer hereby assigns to KIOXIA, insofar as the main item belongs to him, the proportional co-ownership of the unitary item in the aforementioned relationship. KIOXIA hereby accepts this transfer. The goods subject to sole ownership or co-ownership of KIOXIA according to the above provisions shall be kept by the Customer for KIOXIA free of charge.
- (2) The Customer may resell Reserved Goods only in the course of its regular business. In this case, the Customer hereby assigns all claims arising out of such resale, whether the goods have been processed or not, to KIOXIA. Notwithstanding KIOXIA's right to claim direct payment, the Customer shall be entitled to receive payment on the assigned claims.

7. Intellectual Property

- (1) Any and all rights in and to the work results produced by KIOXIA for the Customer within the scope of the contract shall remain property of KIOXIA.
- (2) The contract entered into with the Customer shall not result in any assignment or licensing of rights, unless explicitly agreed upon in writing.

8. Warranty (*Gewährleistung*)

- (1) The statutory provisions shall apply to the Customer's rights in the event of defects to quality and defects of title (*Sach- und Rechtsmängel*), unless otherwise or additionally stipulated in these GTCS.
- (2) In accordance with statutory provisions, KIOXIA warrants that goods delivered to the Customer are free from defects to quality and defects of title and comply with applicable and agreed specifications. In case specifications have not been explicitly agreed for goods, the applicable specifications available on KIOXIA's web-pages at the time of concluding the sales contract (if any) shall become part of the sales contract.
- (3) Unless expressly agreed otherwise, (a) goods and services of KIOXIA have to comply exclusively with the legal requirements applicable in the Federal Republic of Germany and (b) the Customer alone is responsible for the integration of KIOXIA's goods into the technical, structural and organizational conditions existing at his premises or in his products (system integration responsibility of the Customer). The parties agree that wear and tear and damage to the goods typical of use and age do not constitute defects of quality.

- (4) The Customer is obliged to inspect delivered goods immediately after delivery to him or to a third party designated by him and to report any apparent defects (*offene Mängel*) without undue delay (*unverzüglich*) within two (2) working days after delivery at the latest. If the defect is a hidden defect (*verdeckter Mangel*) that could not be detected during an inspection customary for the type of good and industry, the Customer is obliged to report such defect within three (3) working days after detection of the defect at the latest. However, if this last designated defect was already recognizable to the Customer at an earlier point in time than that of discovery during normal use of the goods, such earlier point in time shall be decisive for the beginning of the aforementioned period of notice. If the Customer fails to properly and timely inspect and/or notify defects, warranty and other liability of KIOXIA for the affected defect is excluded, unless KIOXIA has fraudulently concealed the defect (*arglistig verschwiegen*).
- (5) Insofar as the Customer has claims against KIOXIA due to the defectiveness of goods, KIOXIA shall, at its discretion - which shall be determined at its reasonable discretion - remedy the defects free of charge or deliver goods free of defects (together hereinafter referred to as "**Supplementary Performance**"). The Customer shall give KIOXIA the reasonable time and opportunity to carry out the Supplementary Performance which appears necessary at its reasonable discretion. The right of KIOXIA to refuse Supplementary Performance under the legal requirements remains unaffected. Claims of the Customer for Supplementary Performance shall become statute-barred twelve (12) months after delivery of the goods.
- (6) If the Supplementary Performance has failed or a reasonable period of time to be set by the Customer for the supplementary performance has expired without success or is dispensable according to the statutory provisions, the Customer may withdraw from the contract (*vom Vertrag zurücktreten*) or reduce the price in the ratio in which the value of the good in a defect-free condition would have been to its actual value at the time of conclusion of the contract. In the case of an insignificant defect (*unerheblicher Mangel*), however, there is no right to withdraw from the contract. The Customer's rights to claim damages and reimbursement of needless expenses incurred due to the defectiveness of the goods shall be governed by section 9.

9. Liability for Defects

- (1) Unless otherwise stated in these GTCS, KIOXIA shall be liable for breach of contractual and non-contractual obligations in accordance with statutory provisions.
- (2) KIOXIA is liable - for whatever legal reason - without limitation for damages and the replacement of needless expenses, which are based on an intentional or grossly negligent breach of duty by KIOXIA or by one of its legal representatives or vicarious agents (*Erfüllungsgehilfen*).
- (3) The limitations of liability resulting from this section 9 shall not apply to KIOXIA's liability for injury to life, limb or health, if KIOXIA has fraudulently concealed a defect, has given a guarantee for the quality of the goods or has assumed a procurement risk. Furthermore, any mandatory legal liability, in particular from the German Product Liability Act, remains unaffected.
- (4) KIOXIA shall not be liable in the event of a merely ordinary or simple negligent (*einfach oder leicht fahrlässig*) breach of duty by KIOXIA or one of its legal representatives, employees or vicarious agents, insofar as this does not relate to a breach of essential contractual obligations. Essential contractual obligations are such obligations whose fulfilment makes the proper execution of the contract possible in the first place and on whose compliance the Customer regularly relies and may rely upon.
- (5) In the case of paragraph (4) of this section 9, the liability of KIOXIA is limited to the amount of the contract-typical damage foreseeable at the time of contract conclusion. Indirect damage and consequential damage resulting from defects in the goods supplied shall also only be subject to compensation insofar as such damage is typically to be expected when the goods supplied are used for their intended purpose.
- (6) The customer is obligated to immediately notify KIOXIA in writing of any damage or loss for which KIOXIA is liable or to have KIOXIA record such damage or loss.
- (7) Contractual and non-contractual claims for damages or claims for reimbursement of needless expenses of the Customer which are based on a defect in the goods shall become statute-barred twelve (12) months after delivery of the goods, unless a longer period of limitation is mandatorily provided for

by applicable statutory law, in particular by sections 438 para. (1) No. 1, para. (3), 444, 445b of the German Civil Code. Customer's claims for damages in cases of paragraphs (2) and (3), shall become statute-barred exclusively upon expiry of the statutory limitation periods.

- (8) As far as the liability of KIOXIA is excluded or limited according to the above regulations, this also applies to the liability of its organs, legal representatives, employees, staff and vicarious agents.

10. Trade Control Compliance

- (1) In relation to the items or information or services supplied by KIOXIA, the Customer undertakes to comply strictly with all applicable laws and regulations regarding trade controls, economic sanctions, embargoes, and anti-boycott rules, including, but not limited to, those of the European Union and its Member States, Japan, or the United States (collectively, the "Trade Control Laws"). This includes, but is not limited to, the Customer undertaking to obtain all necessary approvals, licenses or implicit or explicit consents for any dealings, including but not limited to exports, in relation to such items or information or services. With respect to economic sanctions or embargoes imposed against a state by any jurisdiction other than the European Union, Germany or the United Nations, the present section 10 (1) only applies in so far as sanctions or embargoes have also been imposed against that state by the United Nations Security Council, the Council of the European Union, or the Federal Republic of Germany.
- (2) The Customer undertakes that no information, items, or services provided in the framework of the present GTCSD are intended to or will be used, exported or re-exported directly or indirectly, in their entirety or in part, for any use directly or indirectly related to i) weapons of mass destruction, including, but not limited to, chemical, biological or nuclear weapons or other nuclear explosive devices or missiles capable of delivering such weapons; or ii) a military end-use.
- (3) KIOXIA is entitled to withdraw from the contract in whole or in part in case i) of any violations by the Customer of the applicable Trade Control Laws and/or the present section 10; or ii) necessary approvals, licenses or implicit or explicit consents are not provided to KIOXIA in due course prior to dispatch of the goods by KIOXIA.

11. General Provisions

- (1) Should a provision of these GTCSD or any other agreements concluded between the parties be or become invalid, the validity of the remaining provisions of the contract shall not be affected. The contractual partners shall be obliged to replace the invalid provision by a provision that comes as close as possible to the economic effect of the invalid provision.
- (2) The Customer is obliged to comply with all laws and regulations affecting him and the business relationship with KIOXIA.
- (3) If one of the contracting parties suspends payments or if insolvency proceedings against its assets or out-of-court settlement proceedings are applied for, the other party is entitled to withdraw from the contract for the unfulfilled part.

12. Place of Performance, Place of Jurisdiction and Applicable Law

- (1) The place of performance for all obligations of the parties in connection with orders placed by the Customer shall be Düsseldorf, Germany and for deliveries the place of performance is the location from which dispatch to the Customer takes place.
- (2) The laws of the Federal Republic of Germany shall apply exclusively, excluding its conflict of laws provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG).
- (3) Exclusive place of jurisdiction for all disputes of the contracting parties arising from or in connection with this contractual relationship is Düsseldorf, Germany.