

# General Sales and Contract Terms and Conditions

These terms and conditions shall apply to the sale and delivery of all Kiwa's services and products to customers. The terms and conditions are an integral part of a framework agreement, purchase agreement, purchase order and any other document that constitutes the customer's order for a service or product.

## DEFINITIONS

### "Additional Work"

Refers to all work ordered by the Customer that goes beyond the scope of the agreed Assignment.

### "The Agreement"

The agreement (framework agreement, purchase agreement, quotation, purchase order), including appendixes, entered into between the parties containing a description of the ordered service or product and the detailed terms of the parties' respective rights and obligations towards each other.

### "The Assignment"

The service or product which Kiwa under the Agreement shall deliver to the Customer.

### "Control Object/-s"

The object/-s of which Kiwa has been assigned to inspect or test.

### "The Customer"

The company that orders a product or service from Kiwa, regardless of whether delivery is to be made to the Customer or to a third party designated by the Customer.

### "General Terms and Conditions"

The conditions imposed by this document.

### "Kiwa"

Refers to Kiwa Sweden AB and any other company within the Swedish part of the Kiwa Group specified in the Agreement.

### "Personal Data"

Refers to personal data handled by Kiwa in connection with the Agreement in accordance with GDPR.

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## 1. Applicability and Interpretation Preference

- 1.1. In the interpretation and application of the agreed terms between Kiwa and the Customer, the following order of priority shall apply:
  - a) Preference shall be given to the Agreement. To the extent the Agreement contains appendixes, they shall prevail in the order stated in the Agreement alternatively their numbering.
  - b) The General Terms and Conditions in their valid version. The valid General Terms and Conditions are available on Kiwa's website, [www.kiwa.se](http://www.kiwa.se). In cases where the Agreement is written in English, the English version of the General Terms and Conditions shall apply.
  - c) The industry's General Conditions of Contract (ABK) in current version.
  - d) Applicable Swedish laws and regulations.

## 2. Kiwa's Undertaking

- 2.1. Kiwa shall perform the Assignment in accordance with the Agreement.
- 2.2. If the Agreement does not contain provisions on how to perform the Assignment, Kiwa shall take the measures Kiwa deems appropriate and reasonable to complete the Assignment.
- 2.3. Kiwa shall perform the Assignment in a professional manner and respect the care and accuracy that is consistent with the extent, complexity and purpose of the Assignment.
- 2.4. Kiwa shall in each Assignment follow the rules, laws and general regulations that apply to the respective Assignment.
- 2.5. With the exception of the cases where an appropriate control format standard prescribes different order regarding subcontractors, Kiwa is, without prior approval of the Customer, entitled to use subcontractors.
- 2.6. If subcontractors are used, Kiwa shall be responsible for the performed work in the same way as if the Assignment was performed in its entirety by Kiwa.

### **3. The Customer's Undertaking**

- 3.1. The Customer undertakes to ensure that all for the Customer's business applicable laws and regulations are complied.
- 3.2. Customer undertakes to ensure that Kiwa is able to perform the Assignment in the agreed way and in agreed time. Customer undertakes to provide Kiwa with the documents and the evidence required for Kiwa to perform the Assignment.
- 3.3. It is the Customer's responsibility to ensure that the Control Object/-s is made available in such a way and to such an extent that the Assignment can be performed.
- 3.4. The Customer is responsible for the safety during work on the Customer's premises and / or involving the Customer's property. For example, the Customer shall coordinate safety measures and inform Kiwa's staff of all applicable safety regulations prior to commencement of the Assignment. The Customer must also take all necessary measures to ensure that the working environment is safe and in accordance with current legislation. The Client shall permit Kiwa to conduct a risk assessment. Should the risk assessment identify any security deficiencies, Kiwa shall have the right to suspend the assignment until such deficiencies have been rectified.
- 3.5. The customer is responsible for informing Kiwa in writing of any changes in the scope of the assignment. For any work that Kiwa, in part or completely, has carried out before the changes came to Kiwa's knowledge, Kiwa shall be entitled to compensation for the part of the Assignment that had time to complete before the change came to Kiwa's knowledge. Compensation shall be paid according to the price list in force at any given time. In addition to compensation for the work, Kiwa is entitled to compensation for any costs that has been required for the execution of the assignment, such as travel expenses or other expenses related to the assignment.  
If the change means that the scope of the assignment changes when, e.g. conducting recurring inspection, Kiwa has the right to revise the price list.
- 3.6. The customer is responsible for payment of invoices according to point 7 below. However, the customer has the right to designate a third party in writing (to the party to whom delivery actually took place) as invoice recipient. However, if the third party does not complete payment according to the issued invoice, the Customer is fully responsible for payment of the due amount, including late payment interest. The invoice recipient designated by the Customer does not have the right to dispute issued invoices on behalf of the Customer.

### **4. Security-classified facility**

- 4.1. In cases where the customer has a facility that is security-classified, Kiwa reserves the right to charge for costs for carrying out a security clearance of the personnel who will work at the customer's facility. Cost according to the currently valid price list.

### **5. Additional work**

- 5.1. Kiwa is not obliged to perform any Additional Works requested by the Customer unless the Customer submits a written order which is confirmed by Kiwa. For Additional Work, the terms and conditions set out in the Agreement shall apply.
- 5.2. If during the execution of the Assignment Kiwa deems that Additional Work is required which should be performed appropriately with the Assignment, Kiwa shall request the Customer's instructions. If Kiwa does not receive such instruction within a reasonable time, Kiwa is entitled to perform such Additional Work at the Customer's expense, provided that the price of the Additional Work is reasonable in relation to the price of the Assignment or the Additional Work cannot be postponed without danger of serious damage to the Customer.
- 5.3. The Customer is obliged to pay for Additional Work or other addendums in addition to the Assignment, in accordance with the Agreement and the associated price list. In the absence of an indication of the cost of the Additional Work in the Agreement, the Customer shall pay the compensation requested by Kiwa, provided that the price may be considered reasonable and in accordance with industry standards.

### **6. Rates**

- 6.1. The prices stated in the Agreement applies for the Assignment. If no price is stated in the Agreement, Kiwa's current price list shall apply.
- 6.2. Kiwa is entitled to change its price list. Changes take effect one month after the change has been communicated with the Customer.
- 6.3. Unless otherwise agreed, rates shall be paid in SEK and VAT will be added.
- 6.4. Unless otherwise stated in the Agreement, the prices quoted only include the price for Kiwa's work, i.e. the quoted prices do not include travel time, travel costs, accommodation and subsistence expenses, or costs for equipment, materials and accreditation fee.

### **7. Terms of Payment**

- 7.1. Unless otherwise stated in the Agreement, Kiwa is entitled to invoice the Customer as soon as Assignment

is completed. In case of a continuous Assignment, in which the work is performed over more than one (1) month, Kiwa is entitled to invoice at the interval Kiwa deems appropriate.

- 7.2. An invoice is due thirty (30) days after the invoice date. Should the parties disagree about any part of the invoice, the Customer is not entitled to withhold non-disputed amount.
- 7.3. In case of anticipated non fulfilment of payment by the Customer, Kiwa may cancel the Assignment, withhold minutes or certificates until the Customer has paid or provided security for his payment.
- 7.4. In the event of late payment, a yearly interest on overdue payment will be charged corresponding to the reference rate plus eight (8) percentage points in accordance with the Swedish Interest Act (Sw. Räntelagen).
- 7.5. Should late payment cause Kiwa to incur costs for reminders, debt collection or other legal measures, Kiwa is entitled to reimbursement from the Customer.

## **8. Liability for default or delay**

- 8.1. Kiwa is only liable for damages caused to the Customer during the performance of the Assignment, if the Customer can show that the damage occurred as a result of the Assignment not being performed in the agreed manner or if Kiwa otherwise has shown a lack of professionalism.
  - 8.2. Nothing in the Agreement or these General Terms and Conditions shall be construed as if Kiwa assumes or accepts the responsibilities the Customer has under any laws, ordinances or regulations (such as liability for penalty fees, injunctions, fines or other fees).
  - 8.3. Kiwa is not liable for fault or negligence which occur as a result of the Customer's failure to fulfil its undertaking or failure caused by that the Customer has supplied incorrect or incomplete information, the Customer not making the Control Object/-s available or faults arising out of circumstances beyond Kiwa's control.
  - 8.4. If the Customer would like to claim that fault or negligence has occurred, such claim must be made without unreasonable delay after the defect is discovered or should have been discovered, and in any event no later than fourteen (14) days after the completion of the Assignment. The complaint shall be in writing and contain a description of the claimed defect. If a complaint is not made in time, the Customer loses his right to make any claim in respect of the defect.
  - 8.5. If Kiwa has received a correct notice under paragraph 8.4 and Kiwa in its own assessment has established that they are responsibility for the fault or negligence, Kiwa is entitled to either rectify the defect without charge or pay reasonable compensation to the Customer to rectify the defect.
  - 8.6. In addition to Kiwa's obligation to pay compensation to the Customer to rectify the fault or negligence, Kiwa shall compensate the Customer for any direct damages caused by the improper or negligent execution of the Assignment. Liability for indirect damages only applies where the Customer can prove that Kiwa caused the damage intentionally.
  - 8.7. Kiwa is only liable for defects which appear within twelve (12) months after the Assignment has been completed.
  - 8.8. Kiwa shall have no liability for defects other than those stipulated in paragraphs 8.1-8.6. Kiwa's liability is limited to the total compensation that Kiwa was entitled to charge for the current Assignment, however in no event more than SEK 2 000 000.
  - 8.9. An Assignment that is not performed in accordance with an agreed time schedule shall be considered to be delayed insofar as the delay is a result of circumstances for which are in the control of Kiwa. In the event of such delay, Kiwa shall present a rectification period which may not exceed five (5) working days, indicating when the Assignment will be completed. To the extent that the Assignment is not performed within the specified time, the Customer is entitled to, at Kiwa's expense, have a third party to perform the Assignment. Obligation to pay compensation under this paragraph requires that the Customer has mitigated its costs and the third party's cost for completing the Assignment is reasonable.
  - 8.10. An Assignment shall never be deemed to be delayed insofar as the Assignment relates to an inspection or test of a Control Object/-s for which there is a statutory inspection interval or test interval as long as the Assignment is carried out within the legal deadline. Kiwa is never obliged to monitor the Customer's legal inspection intervals or testing intervals.
  - 8.11. Should a risk assessment performed by Kiwa as stipulated in clause 3.4 disclose security shortcomings resulting in a suspension of work, Kiwa shall be authorized to recover costs associated with overhead and time incurred.
- ## **9. Late cancellations from and non-announced cancellations from the customer**
- 9.1. Assignments that refer to Inspection and testing services may be canceled up to 48 hours before the start of the assignment. Cancellations that take place later than 48 hours before the start of the assignment, alternatively non-announced cancellations, will be charged with the full fee and overheads.

## **10. Term and Premature Termination**

- 10.1. Unless otherwise agreed in the Agreement, the Agreement is valid until further notice and can be terminated by either party with six (6) months' notice period.
- 10.2. Either party may, by written notice to the other party, terminate the Agreement immediately if (i) the other party materially fails in his obligations under the Agreement and fails to remedy within thirty (30) days written notice thereof, or (ii) if the other party is declared bankrupt, goes into liquidation or is otherwise considered to be insolvent.
- 10.3. If the Customer breaks its undertakings as set out in paragraph 3 above and the deficiency is so material that the Assignment, according to Kiwa's reasonable assessment, cannot be performed according to the Agreement, Kiwa has the right to immediately terminate the Agreement. Kiwa shall then be entitled to compensation for worked hours and costs that may have arisen, such as travel expenses.
- 10.4. If the Customer terminates the Agreement, Kiwa is entitled to compensation for the parts of the Assignment which already have been performed or prepared before the termination. Compensation for Kiwa's work is payable under the current Kiwa's price list. In addition, Kiwa is entitled to compensation for expenses that may have arisen, such as travel expenses.
- 10.5. If the Agreement is terminated by Kiwa, Kiwa is entitled to compensation if the Assignment is performed in whole or in part and can be considered to be of benefit to the Customer, even if not completed. If the parties cannot agree on which compensation to be paid, Kiwa shall always be entitled to compensation for its proven direct costs.

## **11. Force Majeure**

- 11.1. If Kiwa is prevented from fulfilling its obligations under the Agreement due to circumstances beyond the control of Kiwa and which circumstances could not reasonably have been foreseen at the execution of the Agreement, such circumstances shall constitute ground for discharge.
- 11.2. In the event Kiwa wishes to imply that ground for discharge does exist with reference to paragraph 9.1 above, the Customer shall promptly be notified hereof in writing.
- 11.3. If the Assignment cannot be performed within a period of six (6) months, either party may terminate the Agreement with immediate effect. If the Customer terminates the Agreement with reference to this paragraph, Kiwa shall be entitled to compensation for the part of the Assignment that had been performed or prepared prior to termination.

## **12. Personal Data**

- 12.1. To be able to fulfil its obligations towards its customer's, Kiwa will collect and process Personal Data. Kiwa personal data policy provides more information regarding what Personal Data Kiwa collects, how Kiwa processes such Personal Data and which rights apply to the data subject. Kiwa's personal data policy will at all times be available on Kiwa's website, [www.kiwa.se](http://www.kiwa.se).

## **13. Confidentiality**

- 13.1. The Parties undertake to, neither during the term of this Agreement or thereafter, disclose to any third party confidential information which party received from the other party. All information, technical, commercial or other information regardless material and digital form, shall be considered as confidential. This provision does not, however, apply to information, which is of public knowledge, disclosed with approval of the other party, disclosed due to legal imposition or ordinance, or announced as a result of circumstances related to accreditation or public notices.
- 13.2. The Customer and its employees are hereby obligated to refrain from divulging to third parties any information pertaining to methods related to the Assignment. Any information obtained by the Customer shall not be used for any purposes other than those specifically related to the Customer's own business operations.

## **14. Intellectual Property Rights**

- 14.1. Unless otherwise agreed, Kiwa is the owner of all intellectual property rights whatsoever, including but not limited to copyrights, patents, designs, etc., used in the Assignment.
- 14.2. Unless otherwise agreed, all results arising out of the Assignment which shall be delivered within the Assignment, and all related materials, regardless of form, written or digital, such as reports, drawings, test reports, certificates, computer programs, etc., created in relation to the Assignment shall remain with Kiwa. The customer has the right to results and certificates. The customer may use models, methods, calculations, etc. after written consent from Kiwa. Models, methods, calculations & computer programs may not be shared with third parties.
- 14.3. The Customer undertakes to immediately inform Kiwa about suspected infringements in Kiwa's intellectual property rights.

## **15. Transfer of Rights and Obligations**

- 15.1. Kiwa is entitled to, without the Customer's consent, transfer all or part of its rights or obligations under the Agreement to another company within the Kiwa Group.

- 15.2. The Customer is not entitled, without Kiwa's written consent, to assign all or part of his rights or obligations under the Agreement to any third party.

**16. Dispute**

- 16.1. Any dispute regarding the interpretation or application of the Agreement and these General Terms and Conditions shall be subject to Swedish law.
- 16.2. Disputes, where the value at issue is less than SEK 250,000, shall be settled by the general courts in accordance with applicable Swedish law. If the disputed value amounts to SEK 250 000 or more, the dispute shall be settled by arbitration in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). The seat of the arbitration will be Stockholm.
- 16.3. Notwithstanding the foregoing, Kiwa shall always be entitled to apply to the competent authority for payment of any undue and overdue claim relating to the Assignment.

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[www.kiwa.se](http://www.kiwa.se)