

General Terms and Conditions of Purchase of Green Mountain KMW Data Center GmbH for Deliveries and Services (as of May 2023)

Scope

Orders placed by Green Mountain KMW Data Center GmbH ("DCG", "Data Center Company") are subject to these Terms and Conditions of Purchase and any additional conditions specified in the order.

These General Terms and Conditions of Purchase apply exclusively. Conflicting or supplementary general terms and conditions of the contractor (Supplier) shall only become part of the contract if DCG has expressly agreed to their validity in writing. This requirement for written consent applies in every case, even if DCG accepts deliveries or services with knowledge of the Supplier's terms without reservation.

These Terms apply also to all future transactions without the need for repeated reference.

1. Conclusion of Contract

1.1 DCG is only bound by written orders. Verbal, telephone, or otherwise deviating agreements become binding only upon written confirmation by DCG. The written form also applies to unilateral declarations and any exercise of rights of performance determination. The written form requirement may only be amended in writing.

1.2 The Supplier must immediately confirm acceptance of the order in writing, including the order number in all correspondence.

1.3 For construction or installation activities, Supplier must familiarize themselves with on-site conditions during a joint site inspection. Failure to do so excludes claims for additional compensation or deadline adjustments unless conditions were objectively unrecognizable.

2. Prices and Price Changes

2.1 Prices stated in the DCG order are fixed prices unless expressly agreed otherwise and are exclusive of VAT, delivered free to destination including packaging and delivery costs.

2.2 Any price change due to modifications must be communicated immediately in writing and requires written approval before execution.

2.3 Overtime, Sunday or holiday work requires DCG's prior approval.

3. Deliveries and Services / Acceptance

3.1 Delivery dates are binding. Supplier must immediately notify DCG of foreseeable delays.

3.2 Work services require formal acceptance with protocol. Use or commissioning during test operation does not constitute acceptance. Acceptance fiction under § 640(2) BGB applies only if all services including documentation are complete and Supplier sets a 14-day acceptance deadline with notice of consequences.

3.3 Non-performance or defective performance entitles DCG to set a deadline for remedy and withdraw upon failure.

- 3.4 Supplier must comply with all relevant statutory and technical regulations.
- 3.5 Supplier is responsible for obtaining required permits at their own expense.
- 3.6 Place of performance is DCG's site in Mainz unless agreed otherwise.
- 3.7 Retention of title in favor of third parties is excluded.
- 3.8 Measurement must be jointly documented and signed after completion of services.
- 3.9 Supplier must dispose of waste properly and at their own cost.
- 3.10 Force majeure and unavoidable events release DCG from timely acceptance obligations and allow deadline extensions. After three months DCG may withdraw.

4. Shipping

- 4.1 All documents must reference DCG's order number and item numbers.
- 4.2 Transport risk and insurance lie with Supplier.
- 4.3 If not officially weighed at dispatch, DCG's weight determination is binding. Fees borne by Supplier.

5. Warranty

- 5.1 DCG's review of documents does not affect Supplier's sole responsibility.
- 5.2 Supplier guarantees state-of-the-art, defect-free performance and freedom from third-party rights.
- 5.3 Warranty period: 5 years for buildings and related planning/supervision; otherwise 2 years unless longer periods apply. Fraudulent concealment follows statutory periods. Period starts at final acceptance.
- 5.4 DCG may choose repair or replacement. Legal rights remain unaffected. Supplier must perform remedial work immediately, including overtime if needed. Failure allows DCG to remedy defects itself at Supplier's cost. Repeated defects require design/material changes and restart of warranty period. Supplier indemnifies DCG from third-party claims.
- 5.5 Supplier must support DCG in defending IP infringement claims, provide licenses or replacement solutions, and indemnify DCG from established claims and costs.

6. Payment

- 6.1 Supplier may submit interim invoices if agreed. Final invoice must include all documentation.
- 6.2 Payment within 14 days with 2% discount or 30 days net. Interim payments do not constitute acceptance.
- 6.3 Assignments require prior written consent except for monetary claims under §354a HGB.
- 6.4 Offsetting allowed only with undisputed or legally established claims.

7. Liability

7.1 Supplier liable for all breaches unless proving no fault.

7.2 Supplier liable for agents.

7.3 Supplier indemnifies DCG from all third-party damage claims.

7.4 Supplier responsible for all construction site safety measures and indemnifies DCG fully.

8. Use of Subcontractors

8.1 Supplier must notify DCG of subcontractors. DCG may reject for good cause.

8.2 Supplier may not use temporary workers or personnel lacking valid permits.

8.3 Supplier must comply with AEntG and MiLoG and obligate subcontractors accordingly.

8.4 Breach allows DCG to set deadline and terminate without notice if unmet, claiming damages or commissioning a third party at Supplier's cost.

8.5 Supplier indemnifies DCG for claims under AEntG §14 or MiLoG §13.

9. Construction Withholding Tax

Applies per §§48–48d EStG. Supplier indemnifies DCG for any tax claims.

10. Confidentiality / Use of Documents / References

10.1 Supplier must keep all information confidential even after contract end except in defined exceptions.

10.2 Documents may not be used or shared beyond contract purpose without consent.

10.3 All DCG information remains DCG property. No retention rights.

10.4 Reference use requires DCG's prior written consent.

11. Governing Law and Jurisdiction

11.1 German law applies exclusively; CISG excluded.

11.2 Exclusive jurisdiction is DCG's registered office for commercial suppliers; DCG may also sue at Supplier's domicile.