
**TERMS OF USE
SAP ARIBA PORTAL
ALFRED KÄRCHER SE & CO. KG**

1. SCOPE OF APPLICATION; CHANGES

- 1.1 These Terms of Use (hereinafter referred to as "**ToU**") govern the interaction via Kärcher's SAP Ariba Portal (hereinafter referred to as "**System**") between Alfred Kärcher SE & Co. KG, Alfred-Kärcher-Straße 28-40, 71364 Winnenden (Germany) (hereinafter referred to as "**Kärcher**") and a potential or existing supplier of Kärcher which has to be a legal entity (hereinafter referred to as "**Supplier**").
- 1.2 Kärcher intends to use the System for some or all of the following purposes: supplier registration, supplier qualification, strategic sourcing, contract management (e.g. create, negotiate and manage procurement and procurement-related contracts and, in general, for communication with Supplier.
- 1.3 Kärcher and each Kärcher Subsidiary (as defined in clause 2) have the right to use the System for its own purposes as described in clause 1.2. Any reference to "Kärcher" in these ToU shall therefore mean Kärcher or any Kärcher Subsidiary as far as the use of the System for these purposes is concerned.
- 1.4 The System is operated by Kärcher, it is based on the SAP Ariba platform which is hosted, maintained and operated by SAP Deutschland SE & Co. KG on Kärcher's behalf. The contractual relationship between Kärcher and Supplier for the use of the System shall exclusively be governed by these ToU. Any additional terms that Supplier might have concluded with Ariba, Inc., SAP Deutschland SE & Co. KG or any other third party, in particular for the use of the SAP Ariba Network, have no legal effect on the contractual relationship between Kärcher and Supplier. The use of the SAP Ariba Network is outside the scope of the System and these ToU and therefore outside the responsibility of Kärcher. However, the prior conclusion of a third-party contract by Supplier granting it the right to use the SAP Ariba Network is a condition precedent (*aufschiebende Bedingung*) for Supplier to qualify for the conclusion of these ToU and use the System.
- 1.5 Kärcher wishes to have all communication, e.g. in relation to a Sourcing Event or in relation to contract management purposes with Supplier, to be processed via the System unless Kärcher informs Supplier differently.
- 1.6 Kärcher is entitled to change or amend these ToU at any time in the future. Kärcher will inform Supplier in advance about changes or amendments to these

ToU. Supplier can object to the change or amendment in writing within four weeks after receipt of the notification. If Supplier does not object to the changes or amendments to these ToU in writing within this period, the change or amendment shall be deemed to be agreed. Kärcher shall inform Supplier about the right of objection and the legal consequences of Supplier's omission to exercise it along with the notice announcing the intended changes or amendments.

2. DEFINITIONS

In these ToU the following words and expressions shall have the following meaning:

Bidder Agreement entails both the RFI and RFP Rules;

Business Day means any weekday in one or several of the countries in which the System is available, except Saturdays and Sundays (or, as regards Islamic countries, either Thursdays and Fridays or Fridays and Saturdays, as applicable) and national public holidays in the relevant country where Kärcher operates;

Confidential Information has the meaning as defined in clause 17.1 of these ToU;

Data Breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or unauthorized access to, data transmitted, stored or otherwise processed;

Force Majeure Event means any event affecting the performance by the respective Party of any obligations under these ToU arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the respective Party, which occur after the Signing Date and which were not reasonably foreseeable at the Signing Date and whose effects are not capable of being overcome without unreasonable expense or loss of time to the Party concerned, including any abnormally inclement weather, flood, lightning, storm, hurricane, earthquake, tsunami, subsidence, structural damage, epidemic, pandemic or other natural physical disaster, or any other acts of God, inability or difficulty in obtaining fuel, power or raw materials, war, military operations, riot, crowd disorder, strike, other general labor disputes, civil commotion, acts of terrorism, lock-out, changes in law, acts of third party providers not under the control of either Party, acts of government, natural disasters, unavailability of IT infrastructure, general shortages of energy and materials, accidents, fire or explosions, but shall not include lack of funds or events caused by the Party whose performance is affected by the relevant event;

Framework Supply Agreement means a framework agreement, establishing the terms of the working relationship between a Supplier and Kärcher or a Kärcher Subsidiary for deliveries of goods, products or services from Supplier to Kärcher or a Kärcher Subsidiary, respectively;

Kärcher Group means Kärcher and Kärcher Subsidiaries;

Kärcher GTP means the General Terms and Conditions of Purchase of Kärcher, in the version as available under [<https://www.kaercher.com/int/inside-kaercher/company/supplier-area/purchasing-terms-conditions.html>] at the Signing Date;

Kärcher Subsidiaries means all companies in which Kärcher is directly or indirectly involved as a majority or minority shareholder;

Intellectual Property Rights, IPR or IP shall mean patents, trademarks, service marks, logos, trade dress, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and all rights or forms of protection having equivalent or similar effect anywhere in the world and registered includes registrations and applications for registration;

Local Kärcher GTP means general terms and conditions of purchase that have been individually agreed between the respective Kärcher Subsidiary and Supplier in writing;

Party means Kärcher (including Kärcher Subsidiaries, see clause 1.3) or Supplier, as applicable;

Purchase Contract means the arrangement between a Supplier and Kärcher or a Kärcher Subsidiary for the purchase and delivery of goods, products or services from Supplier resulting from a Sourcing Event and the written acceptance by Kärcher or a Kärcher Subsidiary, respectively, whether based on a Framework Supply Agreement or not;

RFI (Request for Information) means (i) a type of procurement solicitation (in the form of merely requesting information) in which Kärcher asks suppliers to provide specific information (including price, technical capability, compliance or capacity) or (ii) an open enquiry that spans the market seeking broad data and understanding, as the case may be. In general, an RFI is sent to a broad base of existing or potential suppliers for the purpose of conditioning, gathering information, preparing for an RFP, developing strategy, or building a database about the requested information;

RFI Rules means a description of all framework conditions with regard to a specific RFI included in the Bidder Agreement;

RFP (Request for Proposal) means a type of procurement solicitation in which Kärcher invites suppliers to submit a proposal to provide or to quote for a specific product or service,

RFP Rules means a description of all framework conditions regarding a specific RFP included in the Bidder Agreement;

Signing Date means the day both Parties have agreed these ToU;

Sourcing Event means any RFI or RFP, as applicable;

Submission Deadline means the date and time (set by Kärcher in its own discretion) before which a response must be submitted via the System in relation to a specific Sourcing Event;

Supplier Affiliate means any subsidiary or any parent company of Supplier and any subsidiary of any such parent company, current at any given time (and in particular not limited to those Supplier Affiliates existing at the time of conclusion of these ToU);

System means Kärcher's SAP Ariba Portal; and

System Privacy Policy means the privacy policy for the System in the version as available under: [\[https://www.kaercher.com/int/inside-kaercher/company/supplier-area/purchasing-terms-conditions.html\]](https://www.kaercher.com/int/inside-kaercher/company/supplier-area/purchasing-terms-conditions.html).

3. SYSTEM COMMUNICATION; GTC OF SUPPLIER; KÄRCHER GTP

- 3.1 Any reference to Supplier's general terms and conditions shall not be considered and are deemed as not being included in its communication, (i) even if Supplier makes reference to them in its order confirmations, delivery notes or similar documents and Kärcher does not expressly object to them; and (ii) even insofar as they only supplement these ToU. For the avoidance of doubt, the acceptance of deliveries and services provided by Supplier shall not be deemed as acceptance of any of Supplier's deviating terms.
- 3.2 Offers, declarations of intent, responses to an RFP and bids provided by Supplier during a Sourcing Event shall be deemed binding, irrevocable and unconditional upon uploading or sending through the System, unless otherwise stated in these ToU or set out in the Bidder Agreement for the respective Sourcing Event.
- 3.3 Kärcher shall not be committed to any course of action as a result of any communication between the Parties via the System.
- 3.4 Notwithstanding any other provisions of these ToU, any final acceptance by Kärcher or entering into a binding agreement, including any Purchase Contract, by Kärcher requires a separate written confirmation by Kärcher or a written agreement between the Parties, as applicable. In deviation from clause 29.5, writing in this context requires signature on paper or via an electronic signature solution in accordance with clause 29.3.
- 3.5 Supplier acknowledges and agrees that it has taken note of the Kärcher GTP and that it accepts the Kärcher GTP as an integral part of these ToU. The Kärcher GTP shall apply and be binding unless there is a valid Framework Supply Agreement or Local Kärcher GTP in place between Kärcher and Supplier which explicitly excludes or substitutes the Kärcher GTP.

4. PROVIDED DATA, INFORMATION AND CONTENTS

- 4.1 Supplier guarantees full IPR to and the availability of all data, information, and contents provided to Kärcher, either submitted by itself or through its users. Supplier hereby grants Kärcher usage rights as reasonably required for the respective Sourcing Event to such data, information and content and further guarantees that the use of the provided data, information and content pursuant to the rules set out in these ToU will not constitute a breach of any third-party rights, laws or regulations.
- 4.2 Supplier shall immediately inform Kärcher of any Data Breaches and shall closely align with Kärcher on the further steps to remedy the effects of such Data Breach.
- 4.3 Supplier acknowledges that the System remains the property of SAP Deutschland SE & Co. KG, is licensed to Kärcher and is protected by copyright or other IPR.
- 4.4 Kärcher shall not be responsible for any links or other applications that are provided or embedded in the System or are accessible together with the System. Supplier acknowledges that such links or other applications may be subject to third party terms to which Supplier shall adhere to when using such other applications or being redirected via links to other webpages.
- 4.5 For the avoidance of doubt, Kärcher shall not be obliged to keep documents, contracts or other content that Supplier has provided to Kärcher via the System, stored in the System or elsewhere. Supplier shall not be entitled vis-à-vis Kärcher to request disclosure of any such documents, contracts or other content unless required under applicable law.

5. OBLIGATIONS OF SUPPLIER

- 5.1 Supplier shall register and provide that its designated users of the System shall register on the System in order to become eligible for System access and participation in Sourcing Events upon passing the Supplier qualification assessment according to clause 7.1. Further, Supplier shall designate and notify to Kärcher a main account who manages the other accounts on Supplier's side and on Supplier's behalf.
- 5.2 Supplier guarantees that all its users who are accessing and using the System are entitled to lawfully act on behalf of Supplier, including the provision of legally binding offers or the authority to exchange and sign business correspondence.
- 5.3 Notwithstanding clause 5.2, all actions taken under Supplier's users' credentials are always deemed to be actions taken on behalf of and authorized by Supplier.

- 5.4 Supplier shall be responsible for all actions of its users and all actions taken under Supplier's users' credentials. To this end, Supplier shall ensure, inter alia, that: (i) login credentials are not misused; (ii) users are well-trained to use the System, also in case of System updates; (iii) all technical requirements to use the System are met; and (iv) UserID's and passwords are referring to an individual user and are not transferred to other users or any third parties.
- 5.5 Supplier shall notify Kärcher without undue delay in case of identified misuse of the System or breaches of the rules of the respective Sourcing Event or these ToU.
- 5.6 Supplier hereby obliges itself:
 - 5.6.1 not to provide, present or design any information supplied to the System in a manner that would lead to an inaccurate, misleading or discriminating presentation of information being displayed;
 - 5.6.2 not to use any software, routine or device to interfere or attempt to interfere electronically or manually with the operation or functionality of the System, including uploading or making available files containing corrupt data or viruses via whatever means;
 - 5.6.3 not to download, reproduce, transmit, sell or distribute, in whole or in part, in any form or fashion, the contents and the information available on the System or received via the System without Kärcher's specific and express written permission and for any purpose other than for permitting access to the System and for using the System as otherwise reasonably required and for the purposes of the respective Sourcing Event;
 - 5.6.4 not to engage in any illegal – including, but not limited to, any form of anticompetitive – act, omission, agreement, whether oral or in text form, with third parties or correspondence in the context of any Sourcing Event or any other process involving Kärcher or any Kärcher Subsidiary; and
 - 5.6.5 to be responsible for any unauthorized, false or fraudulent response to any invitation to participate in a Sourcing Event that is submitted to the System or to Kärcher via the System by or on behalf of Supplier.
- 5.7 Supplier shall avoid disruption of the System, and shall not upload any fraudulent, illegal, obscene or harassing contents. Kärcher shall be entitled to delete such content from the System, without prejudice to its other rights as set out in these ToU, the underlying Framework Supply Agreement or any alternative contract arrangement to the Framework Supply Agreement set out in clause 3.5.

- 5.8 Supplier shall for the term of these ToU keep complete, consistent and accurate records on the performance of its obligations under this clause 5 and shall, during any Sourcing Event on which Supplier participates, grant Kärcher upon Kärcher's request access to these records.

6. SUPPLIER REPRESENTATIONS AND WARRANTIES

Supplier represents and warrants that

- 6.1 all information its users provide via the System are true, correct and complete, not misleading and accurately represent Supplier's capabilities;
- 6.2 it has the right, through actual ownership or otherwise, to provide any product or service that is the subject of any response made by it to any invitation to participate in a Sourcing Event;
- 6.3 it has the ability to sell the goods, products or services at the prices and terms offered in any response made by it to any invitation to participate in a Sourcing Event and according to the relevant criteria specified by Kärcher in the relevant invitation to participate in a Sourcing Event; and
- 6.4 any declarations made or obligations entered into by one or more of its users are attributable to it and that it will not contest the authorization of a user.

7. SUPPLIER REGISTRATION AND QUALIFICATION ASSESSMENT; SYSTEM ACCESS

- 7.1 In order to get access to the System, Supplier must pass the Supplier registration process. For this purpose, Kärcher may, in its sole discretion, provide a link to Supplier through which Supplier can undertake a System registration. For the registration, Supplier shall, inter alia, provide basic company data, such as name, contact persons, tax ID & bank data and sign the Kärcher Code of Conduct in accordance with clause 18.
- 7.2 In order to be eligible for an award as a result of Sourcing Events in accordance with clause 14, Supplier must pass the Supplier qualification assessment of Kärcher. For this purpose, Kärcher may, upon Supplier's successful completion of the Supplier registration process described in clause 7.1 and in Kärcher's sole discretion, provide a link to Supplier through which Supplier gets access to a qualification questionnaire. In the qualification questionnaire, Supplier must provide information about, inter alia, its company, quality management and sustainability and agree to the Kärcher Quality Assurance Agreement and Declaration of Constituent Substances (KN050.032). Kärcher cautiously evaluates the information provided by Supplier and grants Supplier access to

the System, including the possibility to be awarded in Sourcing Events, upon successful assessment.

- 7.3 The quality standards considered by Kärcher during the Supplier qualification assessment are, inter alia, the following:

- 7.3.1 Quality Assurance Agreement;
- 7.3.2 Declaration of Constituent Substances (KN050.032);
- 7.3.3 Code of Conduct;
- 7.3.4 Quality Management System (favourably ISO 9001);
- 7.3.5 State of the art professional standards and good commercial practices ordinarily observed by prudent merchants operating in the same or similar business areas as Supplier.

For the avoidance of doubt: Kärcher can in its sole discretion decide whether the Supplier qualifies for full System access. Fulfilment of the above quality standards does not grant the Supplier any right or claim to full System access.

- 7.4 Kärcher is entitled to block Supplier's access to the System in case of termination of these ToU, violation of obligations under these ToU by the Supplier or confidentiality breaches, in whole or in part as well as temporarily or permanently. In case Kärcher blocks Supplier's account, Kärcher will duly inform Supplier. With the blocking of System access the Supplier's right to use the System ends for the duration of the blocking.
- 7.5 Kärcher will consider the legitimate interests of Supplier when deciding to block Supplier's System access, especially if there are indications that Supplier is not responsible for a breach of these ToU. Kärcher will lift the block as soon as the reason for the block no longer applies.

8. GRANTING OF RIGHTS TO USE THE SYSTEM

- 8.1 The right of Supplier to use the System, including the data and documents released by Kärcher to Supplier via the System, is non-exclusive, non-sublicensable, non-transferable and limited to the duration of the contractual relationship between the Parties under these ToU. The right of use extends exclusively to the users namely registered by Supplier. Supplier may only use the System to respond to an invitation to participate in a Sourcing Event or for any other communication with Kärcher in accordance with these ToU and any further rules expressed and presented in the System and is limited exclusively to the purposes set out in these ToU.
- 8.2 When using the System, Supplier shall not: (i) copy, translate, disassemble, decompile, reverse engineer, or otherwise modify, in full or in part, or make any

derivative works of the System or parts thereof (except to the extent permitted by mandatory law); (ii) use the System in breach of applicable law, in particular Supplier will not transmit any content or data that is unlawful or infringes any IPR of third parties; (iii) circumvent or endanger the operation or security of the System.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 Any IPR owned or held by Kärcher which may during the term of the contractual relationship between the Parties under these ToU be used by Supplier in the context of any Sourcing Event subject to the terms of these ToU shall remain the property of Kärcher and Supplier shall not have any rights or interest therein, except for the right to use such IPR to the extent absolutely necessary for the use of the System.
- 9.2 In no event may Supplier use or permit others to use Kärcher's IPR as a reference or otherwise without the explicit prior written consent of Kärcher.
- 9.3 The obligations set out in this clause 9 shall remain in force notwithstanding the expiry or termination of the contractual relationship between the Parties under these ToU for whatever reason.

10. SOURCING EVENT

- 10.1 Kärcher reserves the right to configure the System as it deems appropriate for each Sourcing Event from time to time in its sole discretion. The selected configuration settings for a Sourcing Event shall be visible on the System to invited suppliers. Supplier acknowledges and agrees that by participating in a Sourcing Event via the System, Supplier shall be bound by these configuration settings for the purpose of participating in the particular Sourcing Event.
- 10.2 Except as expressly set out otherwise in the rules for a Sourcing Event, Kärcher reserves the right – in its sole discretion – at any time prior to the Submission Deadline to (i) suspend and re-open or cancel a Sourcing Event, or (ii) extend the Submission Deadline, or (iii) amend, delete, add to, or otherwise modify the details and rules of a Sourcing Event, in whole or in part, by publication of a respective notification through the System.

In case of a suspension and subsequent re-opening of a Sourcing Event such Sourcing Event will resume on the basis of Supplier's last response as recorded by the System. Kärcher shall not be responsible for or liable directly or indirectly, financially or otherwise to pay or reimburse any Supplier, for exercising any of its rights set out in these ToU.

- 10.3 In addition to clauses 3.3 and 3.4, Kärcher shall not be committed to any course of action as a result of (i) issuing any invitation to participate in a Sourcing Event; (ii) an invitation to submit any proposal in respect of a Sourcing Event; (iii) communicating with a Supplier in the context of a Sourcing Event; or (iv) any other communication between Kärcher and any other party via the System.
- 10.4 Subject to clause 3.3, by issuing an invitation to participate in a Sourcing Event, Kärcher shall not be bound to accept any response and Kärcher reserves the right in its sole discretion to award or not to award a Purchase Contract in the context of any Sourcing Event.
- 10.5 Kärcher is entitled to exclude Supplier in Kärcher's sole discretion from any Sourcing Event and at any time without giving reason.

11. SUPPLIER'S RESPONSE TO SOURCING EVENTS

- 11.1 Supplier shall examine the entire documentation including attachments made available in the System in the context of Sourcing Events.
- 11.2 Supplier shall provide all items of information requested by Kärcher for a Sourcing Event. Incomplete or corrupt documentation or the submission of documentation containing viruses or malware identified or blocked by the system shall entitle Kärcher to, in its sole discretion, invalidate or reject a Supplier's response to the Sourcing Event.
- 11.3 All responses to any invitation to participate in a Sourcing Event must be submitted solely through the System within the timelines specified in the rules for the respective Sourcing Event.
- 11.4 Supplier shall be entitled to submit one or more responses within the timelines applicable to the respective Sourcing Event. Unless otherwise expressly specified in the rules for the respective Sourcing Event or in these ToU, the last response submitted within the given timelines shall have precedence over previous submissions and shall be the response that is to be considered by Kärcher in the evaluation and award process for the respective Sourcing Event.
- 11.5 Notwithstanding clause 11.4, Supplier shall keep any responses valid and binding for a period of a minimum of eight (8) weeks from the deadline for the submission as specified in the rules for the respective Sourcing Event.
- 11.6 Supplier undertakes that its responses to Sourcing Events will not contradict these ToU or the applicable Bidder Agreement. Unless explicitly otherwise provided for in relation to a specific Sourcing Event, contradicting parts of a response will not be considered and are deemed as not being included in the Supplier's response.

- 11.7 If a Supplier's response is late, incorrect, incomplete, misleading or inaccurately represents Supplier's capabilities as a result of a Force Majeure Event, it lies in Kärcher's sole discretion to consider such response timely, correct, complete, not misleading or accurately representing Supplier's capabilities.

12. REQUEST FOR INFORMATION (RFI)

- 12.1 An RFI shall be limited to communication between Kärcher and Supplier regarding Supplier qualification or additional sourcing business.
- 12.2 An RFI may not be structured or standardized in any way.
- 12.3 In addition to these ToU, Kärcher may in its sole discretion publish Bidder Agreements via the System. By responding to an RFI, Supplier is deemed to unconditionally and irrevocably accept the terms and conditions of these Bidder Agreements.
- 12.4 Any response by Supplier to an RFI shall be legally binding for Supplier, but not be construed as constituting a legally binding offer directed towards Kärcher to conclude a Purchase Contract.

13. REQUEST FOR PROPOSAL (RFP)

- 13.1 RFP are structured requests, based on templates and standards established by Kärcher.
- 13.2 In addition to these ToU, Kärcher may in its sole discretion publish Bidder Agreements via the System. By participating in the respective Sourcing Event, Supplier is deemed to unconditionally and irrevocably accept the terms and conditions of these Bidder Agreements.
- 13.3 The configuration settings for an RFP as defined by Kärcher in the Bidder Agreement may determine, inter alia, the Submission Deadline(s), goods, products or services and volume forecasts as well as the applicable process set up for the respective RFP. The defined configuration settings for an RFP will be displayed for Supplier on the System prior to the RFP.

14. NOTIFICATION OF AWARD

- 14.1 Kärcher shall not be obliged to answer to any response to an RFI or RFP or to accept any response to an RFP.
- 14.2 If Kärcher, in its sole discretion, decides to accept a response to an RFP, Kärcher may, in its sole discretion, notify Supplier in writing or through the

System. In case Kärcher decides to notify the Supplier, such notification of an award will be made by Kärcher to Supplier after the Submission Deadline for the respective Sourcing Event and following the evaluation of Supplier's response to the Sourcing Event by Kärcher and shall include information, inter alia, about the subject and content of the award.

- 14.3 In accordance with clauses 3.3 and 3.4, the notification of an award via the System only constitutes Kärcher's intention to accept Supplier's offer on Kärcher's terms and conditions as either specified in the respective Sourcing Event or in the Framework Supply Agreement or in Kärcher's GTP. The conditions on which the award is based are non-binding for Kärcher, in particular with regard to the amount and period indicated in the response of Supplier to an RFP. For the avoidance of doubt, in order for a notification of an award to become legally enforceable against Kärcher, a separate written confirmation of acceptance by Kärcher or a written agreement between the Parties, as applicable, is required.

15. ORDERING PROCESS

Kärcher may, at its sole discretion, place orders outside of the System with Suppliers that have received an award according to clause 14. For this purpose, Kärcher places a written order (email shall suffice) to Supplier outside the System communication with reference to the award granted to Supplier. Supplier shall be obliged to accept any such order that meets the conditions of the award and provide an order confirmation to Kärcher without undue delay.

16. CONTRACT MANAGEMENT

- 16.1 Kärcher may also, at its sole discretion, negotiate and conclude contracts with registered Suppliers via the System. Examples for contracts that may be concluded via the System include, but are not limited to:

16.1.1 the Framework Supply Agreement including its respective Annexes;

16.1.2 Quality Assurance Agreement;

16.1.3 Declaration of Constituent Substances (KN050.032);

16.1.4 Price Agreement;

16.1.5 NDA;

16.1.6 Tool Loan Agreement;

16.1.7 Letter of Intent (LoI).

- 16.2 In case Kärcher decides to negotiate and conclude a contract via the System, Supplier will receive a contract draft via the System for review and comments.

Changes to the initial draft need to be clearly marked by Supplier (e.g. via the "Track Changes"-mode in Microsoft Word) and are binding for Supplier. Changes will be reviewed and finalized by Kärcher. After an agreement has been reached, the contract signing process will be conducted either in written form or via electronic signature.

17. CONFIDENTIALITY

17.1 The Parties shall treat all Confidential Information of the other Party that is made known to them in connection with or while executing this contractual relationship between the Parties under these ToU, as strictly confidential and use it only for the contractually agreed purposes.

17.2 The duty of confidentiality does not apply:

17.2.1 to those employees, staff and external advisors who are directly involved in the execution of the contract ("need to know" principle). Such persons shall – to the extent permitted by applicable law, also for the time after they leave the company – be contractually obliged to confidentiality by the respective Party, unless they are already bound to a duty to confidentiality by law;

17.2.2 if the respective other Party has agreed to the disclosure of Confidential Information on a case-by-case basis;

17.2.3 to employees of other companies of the Kärcher Group that have a legitimate interest in the Confidential Information.

17.3 "Confidential Information" shall mean business secrets within the meaning of sec. 2 no. 1 German Trade Secrets Act (*GeschGehG*) and other confidential information of an economic, legal, financial, technical or fiscal nature which relate to the business activities, customers or employees of the Parties and which are designated as such or are by their nature to be regarded as confidential, irrespective of whether and how it is documented or embodied.

17.4 Reverse engineering (sec. 3 (1) no. 2 *GeschGehG*) is not allowed, i.e. the Party receiving Confidential Information from the other Party is prohibited from imitating or copying, investigating, dismantling, decompiling or testing Confidential Information in order to obtain (other) Confidential Information without the prior written consent of the Party disclosing the Confidential Information.

17.5 The term "Confidential Information" does not include information which (i) are in the public domain or are or become publicly accessible (unless as a result of a breach of these ToU by the informed Party or one of its representatives); (ii) was already lawfully at the disposal of the informed Party without a

confidentiality duty before it received the information from the informing Party; or (iii) was received by a third party who is entitled to disclose this information without restriction. The existence of one of the above exceptions must be proven by the Party seeking to rely on it.

- 17.6 If a Party is required by applicable laws to make Confidential Information of the other Party available to a public authority, it shall be authorized to do so. The scope of disclosure will be kept as small as possible; the other Party shall be informed without delay and, if possible, before the Confidential Information is released to the public authority.
- 17.7 If any Confidential Information of Kärcher has become known to Supplier, Supplier will, upon termination of the contractual relationship between the Parties under these ToU, immediately and at its own expense, at the discretion of Kärcher either surrender all Confidential Information available to Supplier outside the System (including all embodiments, data carriers and copies) to Kärcher or destroy them, and will prove this to Kärcher. This does not apply if and to the extent that Supplier has a legal obligation to keep Confidential Information (to be proven by Supplier).
- 17.8 The confidentiality obligation under this clause 17 will remain in effect for a period of five years upon termination of the contractual relationship between the Parties under these ToU, or for the duration of Supplier's legal obligation to retain Confidential Information according to clause 17.7 last sentence, whichever period is longer.

18. KÄRCHER CODE OF CONDUCT FOR SUPPLIERS

- 18.1 Supplier undertakes to comply with the Kärcher Code of Conduct for Suppliers, which is published at <https://www.kaercher.com/int/inside-kaercher/company/supplier-area/purchasing-terms-conditions.html>. In the course of Kärcher's Supplier qualification assessment according to clause 7, Supplier must express its approval for the Kärcher Code of Conduct for Suppliers by either providing a signed copy to Kärcher (electronic signature according to clause 29.3 shall suffice) or otherwise expressing its consent by means that are expressly accepted by Kärcher (e.g. ticking a respective Checkbox).
- 18.2 Supplier undertakes to ensure, through suitable measures, that Supplier's employees are familiar with and observe the requirements set out in the Kärcher Code of Conduct for Suppliers.
- 18.3 Supplier undertakes to effectively communicate the Kärcher Code of Conduct for Suppliers to its suppliers, sub-suppliers and service providers when placing orders of relevance to Kärcher and to require it to be appropriately observed by

such third parties. In the event of refusal or non-compliance by such third parties Supplier shall promptly inform Kärcher.

19. DATA PROTECTION

- 19.1 The Parties undertake to comply and provide that their employees, agents and subcontractors comply at any point in time with all applicable data protection laws in connection with the performance of their obligations under these ToU, inter alia the General Data Protection Regulation (regulation (EU) 2016/679).
- 19.2 Supplier is responsible for the fulfilment of information obligations under data protection law, in particular in accordance with Art. 13, 14 GDPR, vis-à-vis its own employees and third parties engaged by it.
- 19.3 Supplier ensures that it is entitled to process all personal data entered into the System and that it has obtained the relevant consents of the persons concerned in advance where necessary.
- 19.4 For the purposes of processing personal data of Supplier and its users by Kärcher, the System Privacy Policy shall apply and shall form an integral part of these ToU.

20. WARRANTY; LIMITATION OF LIABILITY

- 20.1 Supplier must give notice of every breach to Kärcher in writing without delay and with a detailed description of the reason.
- 20.2 Kärcher is only liable for intent and gross negligence, malice and for injury to life, body and health as well as mandatory statutory liability according to the German Product Liability Act. Sections 523 and 524 of the German Civil Code (BGB) apply accordingly to material defects (*Sachmängel*) and defects of title (*Rechtsmängel*).
- 20.3 As far as the Supplier is obliged to pay to Kärcher a remuneration instead of clause 21.2 and regarding the services against payment (i) Kärcher shall - be fully liable for damage in the event of intentional conduct or gross negligence, in case of culpable injury to life, body and health and mandatory statutory liability such as under the German Product Liability Act; (ii) in case that Kärcher simply negligently breaches essential contractual obligations, i.e. principal obligations which enable the proper execution of these ToU and upon which the Supplier therefore relies and may rely, Kärcher assumes liability on the merits; in such case Kärcher's liability shall be limited to damage which is typical for the breach committed and can reasonably be foreseen by the Supplier.
- 20.4 Any further liability of Kärcher shall be excluded.

20.5 The limitation of Kärcher's liability set forth in the preceding clauses shall also apply in favour of Kärcher's statutory representatives, executives and vicarious agents.

20.6 The claiming Party shall, in relation to any loss or damage that may give rise to a claim under these ToU against the other Party, take all reasonable steps to avoid or mitigate that loss or damage, including by pursuing any relevant third party, or claiming under any relevant insurance policy or bond in respect of the loss or damage.

21. INDEMNITY

21.1 Supplier shall indemnify and hold harmless Kärcher in full and at first request for any damage and costs (including legal and other professional advisers fees) in connection with all third-party claims (including lawsuits, administrative claims, regulatory actions and other proceedings) that are related in any way to (i) any culpable violation of Supplier's obligations under these ToU; (ii) Supplier's violations of any applicable law, ordinance or regulation or government authorization or orders; (iii) Supplier's violation of applicable data protection law; or (iv) any claim that Kärcher violates any third-party IPR using IPR provided by Supplier.

21.2 The indemnity claim of Kärcher according to clause 21.1 is excluded to the extent that the infringement of rights has been culpably caused by Kärcher.

22. FORCE MAJEURE

22.1 The Parties shall not be liable for delay or failure to perform any of their obligations under these ToU in so far as the performance of such obligation is prevented by a Force Majeure Event.

22.2 Either Party shall notify the other Party immediately in writing upon the occurrence of a Force Majeure Event and shall use all reasonable endeavours to continue to perform its obligations for the duration of such Force Majeure Event. Any Party whose failure to perform results from a Force Majeure Event shall further take all reasonable steps to mitigate any costs arising out of the Force Majeure Event.

23. TERM; TERMINATION

23.1 The contractual relationship between the Parties under these ToU shall become effective on the Signing Date and shall be concluded for an unlimited period of time.

- 23.2 Either Party may ordinarily terminate these ToU with effect to the end of any full calendar month by giving the other Party three (3) months prior written notice. Supplier's right to ordinarily terminate these ToU shall be excluded as long as there is a valid Framework Supply Agreement in place between Kärcher and Supplier.
- 23.3 Furthermore, either Party may terminate the contractual relationship between the Parties under these ToU with immediate effect for good reason, in particular, if the other Party commits a material breach of any provision of these ToU, the Kärcher Code of Conduct for Suppliers or applicable Bidder Agreement, and, if such breach is remediable, fails to remedy that breach within a period of two (2) weeks after having been notified by the other Party to do so.
- 23.4 For the purposes of clause 23.3, a material breach of the Kärcher Code of Conduct for Suppliers exists in the event of (i) instances of child labour under Conventions 138 and 182 of the International Labour Organization which are established by an authority, court or specialized independent organization; (ii) instances of forced labour pursuant to Conventions 29 and 105 of the International Labour Organization which are established by an authority, court or specialized independent organization; (iii) instances of corruption established by an authority or court; and (iv) instances of violations of applicable environmental laws and regulations which are established and sanctioned by an authority or court.
- 23.5 Kärcher may in addition to clause 23.3 terminate the contractual relationship between the Parties under these ToU with immediate effect if
- 23.5.1 bankruptcy or composition proceedings are opened with final effect against the assets of Supplier or such petition in bankruptcy is dismissed due to insufficient assets;
 - 23.5.2 a change of control occurs with respect to Supplier, meaning any third party shall become the owner, directly or indirectly, of shares representing more than 50% of the aggregate voting power of Supplier;
 - 23.5.3 Supplier objects to changes, amendments or modifications to these ToU that have been made by Kärcher in accordance with clause 1.6; or
 - 23.5.4 the third-party contract of Supplier granting it the right to use the SAP Ariba Network is terminated.
- For the avoidance of doubt, the reasons under this clause 23.5 do not qualify as important reasons for Supplier within the meaning in clause 23.3.
- 23.6 For the avoidance of doubt: Any termination of these ToU shall only terminate the contractual relationship between the Parties governed by these ToU (i.e. the use of the System) and shall have no effect whatsoever on any other contracts

concluded between the Parties via the System or otherwise (e.g. Framework Supply Agreements or Purchase Contracts).

24. COSTS

- 24.1 Unless these ToU or any Bidder Agreement, as applicable, expressly provide otherwise, all costs incurred by a Party in the context of any Sourcing Event or other communication over the System to which these ToU are applicable shall be to each Party's own account.
- 24.2 Supplier acknowledges that Sourcing Events may provide for a fee to be paid by Supplier or for certain costs being allocated to Supplier. Any such fees will be communicated prior to or within a Sourcing Event and acknowledged and agreed by Supplier in writing.

25. APPLICABLE LAW; JURISDICTION

- 25.1 The contractual relationship between the Parties under these ToU shall be governed by and construed in accordance with German law, expressly excluding the applicability of all conflict of laws rules. The application of the U.N. Convention on the International Sale of Goods (CISG) shall hereby be excluded.
- 25.2 Exclusive place of jurisdiction for all disputes arising out of or in connection with the contractual relationship between the Parties under these ToU, including its validity, shall be Stuttgart.
- 25.3 For the avoidance of doubt: any choice of law and dispute resolution provisions in the Kärcher GTP, Local Kärcher GTP, any Framework Supply Agreements or other agreements between the Parties remain unaffected by clauses 25.1 and 25.2 that are only applicable to these ToU.

26. ASSIGNMENTS

- 26.1 With the exception of clause 26.2, neither Party may assign any rights or obligations under the contractual relationship between the Parties under these ToU to any third party (assignee) without the explicit prior written consent of the other Party.
- 26.2 Kärcher or any Kärcher Subsidiary shall be entitled to transfer or assign their rights and obligations under the contractual relationship between the Parties under these ToU to any (other) Kärcher Subsidiary or to Kärcher, and vice versa. To the extent that Supplier's consent is required to any such transfer or assignments of right or obligations under applicable law(s), it is hereby granted.

27. ACCESSION TO THESE TOU

If any Supplier Affiliate wishes to accede to the contractual relationship between the Parties under these ToU it shall submit an accession request to Kärcher in writing and such accession shall become effective upon receipt of Kärcher's written acceptance of such accession by the respective Supplier Affiliate, whereas such acceptance shall be in Kärcher's sole discretion.

28. SEVERABILITY

- 28.1 Should one or more provisions of the contractual relationship between the Parties under these ToU be or become invalid or unenforceable, this shall not affect the validity and enforceability of the remaining provisions of the contractual relationship between the Parties under these ToU. The same shall apply if the contractual relationship between the Parties under these ToU does not contain an essential provision. The legal principle contained in sec. 139 of the German Civil Code (BGB), including in the sense of a reversal of the burden of proof, shall not apply.
- 28.2 In place of the invalid or unenforceable provision or to fill a contractual lacuna such valid and enforceable provision shall be agreed upon by the Parties which reflects as closely as possible the commercial intention of the Parties as regards the invalid, unenforceable or missing provision.

29. MISCELLANEOUS

- 29.1 For the use of the System, these ToU shall constitute the only and conclusive agreement between the Parties, superseding and replacing any former agreements between the Parties on this subject matter, whether written or oral. However, these ToU shall not affect, replace or amend any other agreements between the Parties on other subject matters.
- 29.2 Subject to clause 3.4, nothing contained in these ToU or any Bidder Agreement, as applicable, shall be deemed as constituting an obligation or commitment of Kärcher to procure any goods, products or services or any representation by or on behalf of Kärcher.
- 29.3 Notwithstanding clause 1.6, the Parties herewith agree that any document (as particularly listed below in clause 29.4) may, in Kärcher's sole discretion, also be entered into in an electronic form by using an appropriate electronic signature solution being made available by Kärcher and that the documents being executed in such a way shall suffice a written form requirement under these ToU. The Parties agree that they will not challenge a document's authenticity or correctness for the sole reason of being executed or submitted in

such electronic form only. Furthermore, the Parties agree that a copy of a document (including electronic and scanned copies) shall be equivalent to an executed hardcopy and that they will not challenge such document's authenticity or correctness for the sole reason that the document has not been submitted as a hardcopy.

29.4 In case of any conflict between the provisions of these ToU and sourcing documents or any other agreements between the Parties the following order of precedence shall apply to the subject matter of these ToU in decreasing order:

29.4.1 these ToU;

29.4.2 the Framework Supply Agreement;

29.4.3 the Local Kärcher GTP;

29.4.4 the Kärcher GTP;

29.4.5 the Bidder Agreement;

29.4.6 any other specific sourcing provisions or documents set out in relation to the respective Sourcing Event by Kärcher in writing.

Notwithstanding any provision on conflicts and inconsistencies, if any, contained in the Framework Supply Agreement or any other agreement previously concluded between the Parties, the provisions of these ToU shall apply from and after the Signing Date, including, but not limited to, cases of conflicts and inconsistencies. To the extent required with regard to the conflict provisions contained in any such Framework Supply Agreements or other pre-existing agreements, these ToU shall supersede, modify, amend or replace, as the case may be, those former conflict provisions for the subject matter of these ToU.

29.5 Unless explicitly otherwise set forth in these ToU (particularly in clause 3.4), the terms "writing" or "written" shall include email or other forms of electronic communication, in particular via the System.

29.6 Nothing contained in these ToU shall be construed as creating a partnership, joint venture, agency or employee-employer relation, trust or other association of any kind between Kärcher and Supplier.

29.7 The headings in these ToU only serve as orientation and do not affect its interpretation.