

Standard Terms and Conditions

General

1. These Standard Terms and Conditions shall apply to all contracts (hereinafter called "Contracts") for the supply of goods and the performance of installation, commissioning, repair and maintenance services by Klingenburg GmbH (hereinafter called "the Vendor"). The standard terms and conditions of the Purchaser shall not apply. This also applies if the Vendor has not expressly objected to such standard terms and conditions of the Purchaser.
2. No oral collateral agreements have been reached. No agreements between the Vendor and the Purchaser, including any such agreements reached orally, shall be binding until and unless confirmed by the Vendor in writing.

I. Prices

1. All offers are subject to change; cost estimates are not binding. Unless otherwise agreed, all prices quoted or agreed shall be ex works, not including packing, carriage or erection. All quoted prices are net prices, which will be subject to applicable VAT.
2. In the event that the agreed delivery date is more than two months after the date on which the Contract was concluded, and in the event that, after such period, wages, material expenses or the purchase prices payable by the Vendor increase, the Vendor shall be entitled to increase the prices payable under the Contract by an amount which is equal to such cost increases. In the event that the Vendor makes use of this right to adjust prices, the Purchaser shall not be entitled to terminate the Contract by reason of any such price increase unless such price increase exceeds an increase in the general cost of living by 100 % between the date of the Contract and the delivery of the goods.

II. Delivery Periods

1. The stated periods for delivery are not binding, unless a fixed delivery period has been explicitly agreed. In the event that a fixed delivery period has been agreed in individual cases, this period shall commence on the date of dispatch of the confirmation of Contract, but not before the Vendor has received any documents and approvals to be provided by the Purchaser. Furthermore, this period shall not commence before any agreed advance payment has been received.
2. The Purchaser shall be deemed to have delivered goods within the agreed period if the Purchaser notifies the Vendor that the goods are ready for dispatch within said period or if the goods actually leave the Vendor's plant within said period.
3. The period agreed for the delivery of goods under the Contract shall be extended in the event of industrial disputes, including strikes or lockouts, and of unforeseeable obstacles to delivery which are beyond the reasonable control of the Vendor. This applies, for example, to business disturbances beyond the Vendor's control and delay in the delivery to the Vendor of major materials, always provided that such obstacles have a demonstrable impact on the delivery of goods under the Contract. The same shall apply in the event of such circumstances and obstacles affecting the Vendor's suppliers. The agreed delivery time shall be extended by the duration of such circumstances and obstacles. Such circumstances and obstacles shall also be deemed to be beyond the control of the Vendor if they occur during a delay which has already taken place. The Vendor shall notify the Purchaser of the beginning and end of any significant obstacles to delivery as soon as it is evident that these obstacles will have an impact on the agreed delivery period.
4. always provided that the Purchaser can reasonably be expected to accept such partial deliveries, taking into account the Purchaser's best interest.

III. Scope of Delivery

1. The scope of delivery by the Vendor under the Contract shall be as defined in the written confirmation of the Contract issued by the Vendor.
2. During the delivery time agreed under the Contract, the Vendor shall be entitled to make modifications to the design or shape of goods to be supplied under the Contract which serve to improve the state of the art or which become necessary as a result of changes in statutory requirements, always provided that such modifications do not constitute a significant change to the goods concerned and that the Purchaser can reasonably be expected to accept such modifications.

IV. Termination Cost

In the event of the termination of the Contract by the Purchaser without good cause, the Vendor shall be entitled to require the Purchaser to pay 10 % of the price agreed under the Contract in consideration of the cost incurred by the Vendor in processing the Contract and loss of profit by the Vendor. The Vendor reserves the right to claim the reimbursement of higher loss as the Vendor proves to have suffered by reason of such termination. The same applies in the event of the termination of the Contract by the Vendor with good cause on the grounds of a circumstance for which the Purchaser is responsible. The Purchaser shall be entitled to prove that the loss or damage suffered by the Vendor by reason of such termination was lower than said figure of 10 %.

V. Packing and Despatch

The packing supplied by the Vendor for goods supplied under the Contract shall become the property of the Purchaser and shall be paid for by the Purchaser. The amount invoiced by the Vendor in respect of packaging shall be the actual cost of such packaging which is not reimbursed to the Vendor. In the event that the Vendor has taken on shipment of the goods under the Contract, the mode of shipment shall be selected at the discretion of the Vendor, taking into account the purpose of the Contract and the best interest of the Purchaser, unless a specific mode of shipment has been agreed. Goods shall be shipped at the cost, risk and expense of the Purchaser. Any carriage, freightage, insurance premiums, charges and fees including duty on documents shall be paid by the Purchaser.

VI. Acceptance and Transfer of Risks

1. The Purchaser shall be obligated to accept the goods supplied under the Contract. Unless shipment or delivery by the Vendor has been agreed, goods shall be delivered in Gladbeck. The Purchaser shall be obligated to collect the goods within a period of fourteen days within receipt of notification that said goods are ready for collection. As soon as the Purchaser is notified that the goods are ready for collection, the risk of the loss or deterioration of goods shall be transferred to the Purchaser.
2. In the event that the Purchaser fails to collect the goods within fourteen days of the receipt of notification that said goods are ready for collection, the Vendor shall grant the Purchaser a further, reasonable grace period for collecting said goods and, if the Purchaser fails to collect said goods within said grace period, to terminate the Contract or to claim damages of the Purchaser instead of the services. The Vendor shall not be obligated to grant the Purchaser a grace period for collecting the goods in the event that the Purchaser definitely and finally refuses to take delivery of the goods. Any further legal claims shall remain unaffected.
3. If delivery by the Vendor has been agreed, the risk of the loss or deterioration of goods shall be transferred to the Purchaser upon the acceptance of said goods by the Purchaser. If shipment by the Vendor has been agreed, said transfer of risks shall take place when the goods are handed over to the freight forwarding company. In the event that the Purchaser declares that it is not prepared to accept any goods, the risk of the accidental loss or deterioration of said goods shall be transferred to the Purchaser upon such declaration.
4. Unless otherwise agreed between the Vendor and the Purchaser, the Purchaser shall take delivery of goods ordered by the Purchaser for delivery on demand within a reasonable period of time but no later than twelve months following confirmation of the Contract by the Vendor. In the event that the Purchaser fails to take delivery of any such goods in good time, the Vendor shall be entitled, at the option of the Vendor, either to store such goods, ready for shipment at the risk, cost and expense of the Purchaser or to ship such goods without having received any shipment request from the Purchaser. In addition, the Vendor reserves the right to charge the Purchaser for said goods as if they had been delivered.

VII. Confidentiality and Proprietary Rights

The Purchaser shall not disclose to any third party or use for any purpose other than for the purposes of the Contract any drawings, documents, computer software or industrial secrets supplied to the Purchaser by the Vendor under the Contract. In the event of any breach of this provision by the Purchaser, the Vendor shall be entitled to claim compensation from the Purchaser and to terminate the Contract. The Purchaser shall be solely responsible for ensuring that any special designs ordered by the Purchaser do not infringe any proprietary rights held by third parties and shall indemnify and save harmless the Vendor from any claims made by third parties in connection with such infringements.

VIII. Right of Termination

1. The Purchaser shall be entitled to terminate the Contract or to change the terms of payment under the

Contract in the event that there is deterioration in or there is demonstrable doubt concerning the creditworthiness of the Purchaser. In any such event, the Purchaser shall not be entitled to claim damages of the Vendor. In the event of such termination of the Contract, the Vendor shall be entitled to require the Purchaser to pay 10 % of the price agreed under said Contract in consideration of the cost incurred by the Vendor in processing the Contract and loss of profit by the Vendor. The Vendor reserves the right to claim further damages for loss as is suffered by the Vendor by reason of such termination. The Purchaser shall be entitled to prove that the loss or damage suffered by the Vendor by reason of such termination was lower than said figure of 10 %.

2. The Purchaser shall be entitled to terminate the Contract if the Vendor exceeds the agreed delivery date by one month and fails to deliver the goods under the Contract within such reasonable additional grace period as is allowed by the Purchaser.

IX. Notification of Defects, Warranty

1. According to § 377 HGB [German Commercial Code], the Purchaser is obligated to inspect the goods supplied immediately upon the receipt by the Purchaser of a notification by the Vendor that said goods are ready for delivery, or, in the case of delivery or shipment, immediately upon receipt of the goods, and to inform the Vendor of any defects without delay. In the event that defects become apparent at a later stage, the Purchaser shall inform the Vendor of said defects immediately upon discovery of said defects.
2. The warranty obligations of the Vendor in connection with the goods covered by the Contract shall be as follows:
 - a) The Vendor shall repair, free of charge to the Purchaser, defects in the goods occurring within **one year** of the transfer of the risks associated with said goods to the Purchaser. In the event that the Vendor is unable to remedy any such defect in two attempts, or in the event that the Purchaser cannot reasonably be expected to tolerate any further attempt on the part of the Vendor to remedy any such defect, the Purchaser shall be entitled to terminate the Contract or to claim abatement of the price payable under the Contract.
 - b) The Vendor shall be under no warranty obligations whatsoever with respect to defects caused by improper use, incorrect installation or commissioning, improper or incorrect handling by the Purchaser or any third party, normal wear and tear, the use of unsuitable consumables, replacement materials supplied by the Purchaser, incorrect construction work, installation on an unsuitable site or chemical, electrochemical or electrical effects, except where the Vendor is responsible for any such defect. **The Vendor shall be under no warranty obligations whatsoever with respect to any defect caused by failure to comply with the maintenance instructions issued by the Vendor.**
 - c) The Vendor shall be under no warranty obligations whatsoever with respect to defects, damage or the consequences of defects caused in whole or in part by modifications or repairs to the goods supplied under the Contract made without the prior permission of the Vendor. The Purchaser shall not carry out any repair work on the goods supplied under the Contract without the prior permission in writing of the Vendor.
 - d) The Vendor shall be entitled to refuse to remedy defects while the Purchaser is in breach of its obligations under the Contract.
 - e) The warranty obligations of the Vendor in respect of goods produced by third parties shall not extend beyond the warranty obligations of the supplier of such goods to the Vendor.

X. Limitation of Liability

1. The Vendor shall not be liable for violation of its duties, except where these violations arise from the wilful act or gross negligence on the part of the Vendor or where the Vendor has failed to comply with material contractual obligations or where these violations concern damage to life, body or health, or where these violations concern warranties or claims arising from the Produkthaftungsgesetz [Product Liability Act]. The same applies to violations of duties on the part of our agents or legal representatives.
2. In addition, the Vendor shall only be liable for foreseeable damage; the Vendor is not liable for consequential harm caused by a defect.

XI. Retention of Title

1. The Vendor shall retain title to goods supplied by the Vendor to the Purchaser until the Purchaser has fully settled the Vendor's claims. In the event that, as a result of further processing, the goods become material part of a new product, the title shall also apply to the Vendor's co-owner's share in the new product.
2. The Purchaser shall sufficiently insure said goods against damage by fire, burglary, theft and water for such time as the Vendor retains title thereto. The Purchaser assigns to the Vendor all claims which will arise with regard to the insurance in the event of damage, insofar as these claims refer to goods to which the Vendor retains title, up to the amount payable under this Contract.
3. The Purchaser is authorized to sell or process the delivered goods in the course of its normal business even before payment to the Vendor becomes due. The Vendor reserves the right to revoke this authorization for an important reason, in particular if there is a delay in payment on the part of the Purchaser, or if the Purchaser is in arrears with such payment, or in the event of the institution of bankruptcy proceedings against the Purchaser's assets. Where goods to which the Vendor retains title are sold by the Purchaser whether after processing or without further processing, the Purchaser hereby assigns to the Vendor by way of security such part of any amounts which may become due to the Purchaser in respect of the sale of such goods. Again, the Vendor reserves the right to revoke this authorization for an important reason, in particular if there is a delay in payment on the part of the Purchaser, or if the Purchaser is in arrears with such payment, or in the event of the institution of bankruptcy proceedings against the Purchaser's assets.
4. The Purchaser shall not pledge or otherwise assign by way of security goods supplied under the Contract to which the Vendor retains title.
5. In the event that there is a delay in payment for the goods under the Contract on the part of the Purchaser, or if the Purchaser's financial circumstances deteriorate significantly, the Vendor is entitled to demand from the Purchaser to return to the Vendor the goods to which it retains title.
6. The Purchaser shall notify the Vendor promptly in the event of the attachment or other infringement by any third party of goods to which the Vendor retains title. The Purchaser shall take all necessary measures to protect the Vendor's title to the delivered goods from infringement or loss. If requested to do so by the Vendor, the Purchaser shall provide the Vendor with all such documents and information as the Vendor may require for asserting its rights to the title or related claims to compensation. The Purchaser shall bear all expenses incurred by the Vendor in order to lift the creditor's attachment and to recover the goods concerned, insofar as the intervention against the measure was successful and the expenses could not be collected from the third party involved.

XII. Payment

1. All invoices issued by the Vendor shall be due and payable within 30 days of date of issue without any deduction, or within ten days of date of issue with a discount of 2 % of the total amount of the invoice including value added tax. The Purchaser shall not be entitled to deduct discount from the amount of any invoice in the event that any previous invoices issued by the Vendor to the Purchaser are overdue. Invoices for repair works and maintenance services shall be payable upon date of issue without any deductions.
2. Payments made by cheque or bill of exchange shall only be deemed to have been made when the amount due has been credited to the account of the Vendor. The Vendor will only accept bills of exchange by prior written agreement. In the event of payment by bill of exchange, the customary discount and collection fees charged by banks will be invoiced to the Purchaser.
3. Should the Purchaser fail to pay any invoice of the Vendor on the date when it is due, the Vendor shall be entitled to claim interest from the Purchaser at a rate of 8 percentage points p.a. above the applicable discount rate. The Vendor reserves the right to assert higher interest damage.
4. The Purchaser shall not be entitled to exercise any right of setoff or retainer except in respect of an uncontested claim or a claim for which an enforceable judgement has been rendered.
5. The Purchaser can set off the claim only in cases where the Purchaser has an uncontested claim or a claim for which an enforceable judgement has been rendered.

XIII. Place of Performance and Venue for Disputes

1. Unless explicitly agreed otherwise, the place of performance of the Vendor's duties shall be Gladbeck.
2. In the event of any disputes arising out of or in connection with Contracts between the Vendor and the Purchaser, the venue for disputes is Gladbeck, if the Purchaser has the status of a merchant entered in the commercial register (Vollkaufmann) or is a public body with the status of a legal person or a special estate in the public sector. The Vendor reserves the right to institute proceedings against the Purchaser at the Purchaser's place of venue.
3. Contracts, including these Standard Terms and Conditions, shall be governed by and construed and interpreted in accordance with the law of the Federal Republic of Germany. The Uniform Law on the International Sale of Goods shall not apply even if the Purchaser has its registered offices outside Germany.

XVI. Miscellaneous Provisions

1. The Purchaser shall not be entitled to assign its rights and obligations under the Contract without the written permission of the Vendor.
2. If any of the provisions of these Standard Terms and Conditions is or becomes invalid or void, the other provisions of these Standard Terms and Conditions shall remain in full force and effect.