

General Terms and Conditions of Purchase

General Terms and Conditions of Purchase for Deliveries and Services

1. General, scope

1.1 The following General Terms and Conditions of Purchase for Deliveries and Services are an integral part of the orders for deliveries and services (uniformly referred to as "Services") of OLKO-Maschinentechnik GmbH (hereinafter referred to as the "Principal"). They apply to companies, legal entities under public law and special funds under public law (hereinafter: "Contractor").

1.2 Upon receiving these General Terms and Conditions of Purchase for Deliveries and Services, the Contractor agrees that they are exclusively valid for the respective order as well as for potential subsequent transactions. If special agreements that vary from these General Terms and Conditions of Purchase for Deliveries and Services are entered into for a specific order, these General Terms and Conditions of Purchase for Deliveries and Services shall apply on a subordinate and supplementary basis.

1.3 The validity of the Contractor's varying general terms and conditions is hereby opposed, including in the event that they are communicated to the Principal in confirmation letters or in any other way.

2. Offer, subsidiary agreements, unlawful advertising

2.1 Verbal subsidiary agreements as well as the exclusion, amendment and/or supplementation of these General Terms and Conditions of Purchase for Deliveries and Services are subject to express written confirmation by the Principal to be deemed valid.

2.2 Use of orders for reference and/or advertising purposes shall be subject to prior written consent by the Principal.

3. Drawings, models, tools

The Principal reserves all proprietary rights and/or copyrights and/or other industrial property rights to all illustrations, drawings, models, samples, calculations, construction plans and other documents made available or paid for by the Principal to implement the order; these documents may only be used for work in conjunction with completing the order and may not be reproduced and/or made available to third parties without express written consent by the Principal. They are to be returned to the Principal free of charge and without request once the order has been completed. The Contractor shall be liable to the Principal for all damage caused by culpable infringements.

4. Responsibility for technical details

The Principal's approval of drawings, calculations and other documents shall not affect the Contractor's sole responsibility with regard to the subject matter of performance. This also applies to proposals, recommendations and other collaboration on the part of the Principal.

5. Inspections

Following prior notification in good time, the Principal and/or its employees and/or third parties it states shall have access at any time to the Contractor's production facilities and/or those of its subcontractors to check, inter alia, the production status, use of suitable materials, deployment of the necessary skilled workers and proper performance of the ordered work. Such inspections shall be performed without any legal effect with regard to possible acceptance; an inspection shall neither replace an acceptance nor limit in any way the sole responsibility of the contractor with regard to its services, in particular no objection of contributory negligence on the part of the Principal can be derived from this.

6. Spare parts

The Contractor assures that spare and wear-and-tear parts shall be available for each order for a period of at least 10 years following the end of the warranty period.

7. Transporting dangerous goods, labelling dangerous goods, packaging

7.1 It is the Contractor's responsibility to check before accepting an order whether the items specified in the order and/or their components are to be classified as dangerous goods (e.g. paints, adhesives, chemicals or flammable, oxidising, explosive, combustible, toxic, radioactive, corrosive or self-heating goods) in the country of origin, country of destination and/or all transit countries. In such cases, the Contractor shall inform the Principal without delay and comprehensively. At the latest by way of its written order confirmation, the Contractor shall send to the Principal the binding declarations required by law for their dispatch, correctly completed and signed with legally binding force.

7.2 With regard the packaging, labelling and declaration of dangerous goods, the Contractor undertakes to observe the respective nationally and internationally applicable regulations, in particular the Sea Freight Dangerous Goods Regulation - Sea IMDG Code Air Freight UNICAO IATA RAR US-Dot Rail EVO/RID as well as the Dangerous Goods Regulation - Rail Road ADR as well as the Dangerous Goods Regulation - Road General Dangerous Goods Regulation; any varying and/or additional national regulations of the respective country of destination must also be observed if the country of destination was stated in the order.

7.3 The Contractor shall be responsible for any damage that occurs as a result of incorrect information in the binding declarations or because existing regulations were not observed in the handling (packaging, shipping, storage etc.) of dangerous goods.

7.4 The Contractor shall take back packaging material for the Principal free of charge.

8. Export licence

The Contractor undertakes to inform the Principal in writing without delay whether and to what extent government export licences are required for the order in full or in part or if similar legal or official requirements need to be met or are subject to US export restrictions.

9. Prices, pricing, terms and conditions of payment, default

9.1 The agreed contract prices have binding force. They are to be understood as not including the statutory turnover tax.

9.2 Unless expressly agreed otherwise in writing, prices shall be FCA (named place) in accordance with INCOTERMS 2020.

9.3 Unless expressly agreed otherwise in writing, payment shall be made on the 25th day of the month following the complete and proper execution of the contract and receipt of the invoice less 3% trade discount or within 90 days without deductions.

9.4 In the case of agreed instalment payments, only receipt of the invoice shall be authoritative for the start of the period unless rendering certain services and/or the provision of securities have been agreed as prerequisites.

Invoices for services for which the Principal has given an assurance to a third party, of which the Contractor is aware, shall only fall due when and insofar as the Principal has received payment from the third party for the services or for parts thereof. If the Principal has made available security to the third party due to possible defects, this shall only apply if the Contractor makes security to the Principal in the corresponding amount. Any agreed payments on account shall not release the Contractor from its obligation to list and settle all services in a specified final invoice.

9.5 Default shall only occur following the due date based on an express reminder.

9.6 The Principal shall not be in default of payment if it is mistaken in good faith about the existence of a defence raised against the Contractor's claims for remuneration or an asserted right of retention.

9.7 If default in payment by the Principal is due to simple negligence, interest on arrears shall be limited to the base interest rate (Section 247 BGB (German Civil Code) unless the Contractor proves that it has incurred greater damages as a result of the delay.

9.8 Payments by the Principal shall in no way constitute an acknowledgement of professional and fault-free performance within the meaning of acceptance.

10. Setting off, right of retention, Group setting off

10.1 The Principal shall be entitled to setting off and retention rights to the extent provided for by law.

10.2 The Principal shall also be entitled to setting off and retention rights on account of such claims which it has against companies which are affiliated with the Contractor within the meaning of Section 15, AktG, (German Company Law).

10.3 Disputes about the amount of remuneration to be paid to the Contractor shall not entitle the Contractor to suspend its services in full or in part, including temporarily.

11. Delivery time, delayed delivery

11.1 The delivery time stated in the order has binding force. Early deliveries and/or partial deliveries are subject to express written consent by the Principal.

11.2 The Contractor undertakes to inform the Principal in writing without delay if circumstances arise or become apparent which indicate that the delivery time cannot be met.

11.3 In the event of a delay for which the Contractor is responsible, the Contractor undertakes to pay a contractual penalty of 0.5% of the total, net, contract price for each working day or part thereof, but not more than a total of 5% of the total, net, contract price. This shall not affect the Principal's further-reaching rights and claims, in particular for damages; a forfeited contractual penalty shall be offset against a claim for damages. The Principal need not reserve the right to claim the contractual penalty at the time of acceptance; rather, it may claim it up to the time of final payment.

11.4 In addition and irrespective of its other rights, and following expiry of a reasonable additional period it has set or if the performance is no longer of interest to the Principal as a result of the delay or in the event of imminent danger or to avoid further damage or in the event of urgency, without having set an additional period, the Principal may make arrangements to have the performance not yet performed by the Contractor performed by a third party at the Contractor's expense. In any case of substitute performance by the Principal, the Contractor shall, at its own expense, obtain on behalf of the Principal all information required for this purpose and hand over documents in its possession as well as procure the corresponding rights of use for any own or third party property rights existing therein to the extent required for the substitute performance or shall, without delay, render the Principal exempt from claims arising from such third party rights. Upon entering into this contract, the Contractor states its consent to the use of its property rights in the substitute performance by the Principal or third parties it commissions. The claim for payment of the contractual penalty, which has already arisen up to the time the order is placed with the third party shall be honoured in any case.

12. Assignment of claims

Claims against the Principal may only be assigned following its prior, written, consent. This does not apply to assignments within the scope of an extended reservation of title. This does not affect Section 354a HGB (German Commercial Code).

13. Passing of risk

The Contractor shall bear the risk in accordance with the terms of delivery it has agreed to in each case in accordance with sub-section 9.2.

14. Documents

The Contractor undertakes to state the Principal's order number as well as the contractually agreed markings in all shipping documents and/or delivery notes, otherwise any consequences (e.g. further delays, additional costs) shall be borne solely by the Contractor.

15. Guarantee, notification of defects, recourse

15.1 The Contractor guarantees that its services comply with the recognised rules and the latest technological developments as well as the standards, regulations and norms existing in the Contractor's country and in the country of destination (including safety, occupational health and accident prevention regulations), that they have the agreed properties, that they have the guaranteed properties and that they are also otherwise free of material defects and defects in title.

15.2 The Principal undertakes to inspect the performance immediately for any quality and/or quantity defects in accordance with the circumstances and the climatic and other requirements at the respective place of use and then provide notification of any defects without delay once identified.

15.3 The Principal shall be entitled to the statutory warranty claims including the rights in accordance with Section 478, BGB (Recourse by the Contractor) without any restrictions. In any case, the Principal may, at its discretion, demand that the Contractor rectify the defect or provide a replacement; the Contractor shall bear all expenses required for the purpose of rectifying the defect or providing a replacement. After informing the Contractor, the Principal shall also be entitled to remedy the defect itself at the Contractor's expense if there is an imminent danger or particular urgency or if a reasonable additional period for remedying the defect has lapsed in vain or if subsequent performance has failed or if this appears to be appropriate in order to minimise the damage. The Principal may demand an advance payment from the Contractor for the necessary expenses it incurs as a result.

15.4 If the Principal is entitled to remedy defects itself in accordance with Section 15.3 above, Section 11.4 shall apply with regard to the Contractor's obligations. All costs incurred in conjunction with the rectification of defects, in particular for disassembly, assembly, travel, freight, packaging, insurance, customs duties and other public charges, inspections and technical acceptance, shall be borne by the Contractor.

15.5 Unless otherwise agreed in writing, the Principal's claims for defects shall become subject to the period of limitations after 36 months, calculated from the passing of risk (Clause 13). If the service is intended for a building and has caused its defectiveness, the limitation period shall be 5 years. This does not affect longer statutory limitation periods. This does not affect Sections 438(3), 479 and 634a(3), BGB, either.

15.6 Insofar and as long as services cannot be used in accordance with the contract as a result of subsequent performance work by the Contractor, their warranty period shall be extended by the duration of this interruption. With regard to services repaired and/or replaced within the scope of the warranty, the limitation period shall begin afresh upon acceptance of the repair or the replacement service, but for no longer than five years, and in the case of construction services no longer than seven years, from the passing of risk.

15.7 The provision of Section 476, BGB, shall apply accordingly, with the period being extended to 18 months.

16. Product liability, exemption, insurance protection

16.1 Insofar as the Contractor is responsible for a product defect or violation of statutory/official safety regulations, the Contractor shall indemnify the Principal against any claims for damages by third parties upon the first written request. Furthermore, the Principal shall be entitled to reimbursement of all expenses it incurs, in particular in conjunction with recall actions initiated by the Principal. The Principal shall inform the Contractor in advance of the type and scope of recall actions, insofar as this is possible and reasonable. The right to assert further-reaching statutory claims is reserved.

16.2 The same shall apply insofar as product defects are attributable to services rendered by subcontractors or the Contractor's subcontractors.

16.3 The Contractor undertake to maintain sufficient insurance against product liability and prove this to the Principal in writing at any time upon request, in particular by way of written confirmation from the Contractor's insurer.

17. Liability for environmental damage

The Contractor shall be liable for all damage arising in conjunction with its services due to infringement of environmental protection regulations (such as, e.g., emission protection laws, waste oil and water management laws, waste disposal laws and/or ordinances issued in this context). In this context, the Contractor shall render the Principal exempt upon first written request from all possible claims for damages by third parties. In addition, it shall pay for any damage incurred by the Principal.

18. Property rights

The Contractor shall ensure that no third party rights are infringed upon in conjunction with implementing the orders. In the event of any claims by third parties, the Contractor shall render the Principal exempt upon first written request from any such claims. The obligation to render exempt relates to all expenses necessarily incurred by the Principal arising from and/or in conjunction with such claims.

19. Subcontracting, partial invalidity

19.1 The Contractor is required to seek prior, written, consent of the Principal to exercise rights of retention against its subcontractors. To avoid the exercise of rights of retention on the part of the Contractor's subcontractors, the Principal is entitled to make direct payments to subcontractors which, insofar as they relate to justified claims of the subcontractor, are deemed to be payment in lieu of performance in relation to the Contractor. Subcontractors' justified claims against the Contractor in accordance with the preceding sentence shall also include claims in respect of which the Principal has erred in good faith as to their existence. In any case, third parties, in particular sub-suppliers and subcontractors, which the Contractor uses to honour its obligations in accordance with the order or which are otherwise involved by it in conjunction with its services, are the Customer's vicarious agents.

19.2 In the event that individual contractual provisions are invalid, this shall not affect the validity of the remaining contractual provisions. In the place of the invalid contractual provisions, the contracting parties undertake to replace them without delay by way of a supplementary agreement with such an agreement that comes as close as possible to the economic outcome of the invalid contractual provision.

20. Place of performance

The place of performance for the Contractor's services is the agreed place of use, for payments of the Principal it is the Principal's place of business.

21. Place of jurisdiction, applicable law

21.1 If the Contractor is a general merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction for all types of proceedings shall be the Principal's place of business. The Principal may also bring legal action against the Contractor at its general place of jurisdiction.

21.2 The law of the Federal Republic of Germany applicable to the legal relationships of domestic contractual partners shall apply without exception. Applicability of the UN Convention on Contracts for the International Sale of Goods is hereby excluded.

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