

General Supply Terms (GST) of OLKO-Maschinenteknik GmbH

1. General, Scope

1.1 The following GST are a material part of the performance of supplies and services by OLKO-Maschinenteknik GmbH. They apply to entrepreneurs, legal persons under public law and special funds under public law (Customer).

1.2 In receiving these GST without objection, the Customer declares that it agrees that the respective performance and any follow-up business will be governed solely by these GST. If special agreements deviating from these GST are reached for a particular performance, these GST shall apply subordinately and additionally.

1.3 The validity of deviating general terms and conditions of the Customer is hereby rejected even in the case that they are given to us in letters of confirmation or in any other manner.

2. Offer, Offer Documents

2.1 Unless otherwise indicated therein, our offers are subject to confirmation.

2.2 The nature and extent of the performances will be governed by our written confirmation of order. In the case of an offer with a specified time limit, our offer will apply if accepted by the Customer before the deadline expires. Contracts and other agreements will only become binding upon our written confirmation.

This shall apply mutatis mutandis for any verbal secondary agreements and/or guarantees.

2.3 Documents pertaining to our offers, such as illustrations, drawings and specifications of weights and measures, are merely approximate unless expressly designated as binding.

2.4 We reserve title to all illustrations, drawings, models, specimens, calculations and other documents, in particular those designated "confidential", that we have prepared in connection with an order; this shall apply mutatis mutandis for our copyright and other property rights. They may not be transmitted to third parties and/or duplicated without our prior written consent.

3. Prices, Payment and Netting

3.1 In the absence of any written agreement to the contrary, our prices ex warehouse or works, including loading but excluding packaging, shall apply. They are exclusive of VAT at the prevailing rate.

3.2 In the absence of any written agreement to the contrary, our invoices will be due for payment without deduction free our specified paying agent immediately following receipt.

3.3 The Customer may only set off against those claims or payments on its account that are undisputed in writing or have been declared legally valid.

3.4 If the Customer is in arrears with agreed payments or if there are circumstances which, applying the customary banking standards, suggest a material deterioration in its assets and/or its credit rating, after a reasonable period of grace has elapsed without result we will have the right to render outstanding performances only against payment in advance or the furnishing of the customary banking collateral or, in the case of default, to withdraw from the contract or demand compensation in lieu of performance.

We will also have the right to prohibit the resale of any services already performed under reservation of title (section 6).

4. Delivery Period

4.1 Delivery periods are only approximate unless expressly indicated in writing as binding.

4.2 Observance of the delivery period presupposes that the Customer has fulfilled its contractual obligations.

4.3 The delivery period will commence upon dispatch of our confirmation of order, but not before receipt of the documents, permits and approvals to be procured by the Customer and not before receipt of an agreed down payment. The deadline will be met if the object of performance has left our plant or readiness for dispatch has been notified by the time it expires.

4.4 The delivery period will be reasonably extended upon the occurrence of force majeure and all unforeseen hindrances for which we are not responsible to the extent that such hindrances demonstrably have an influence on the completion or delivery of the object of performance, such as interruptions to operation, labour disputes, disruptions of means of transport, lack of material/energy or the non-culpable scrapping of an important supply part. This shall also apply if these circumstances occur at our suppliers or at their upstream suppliers.

We shall not be at fault for such circumstances even if they arise during an existing delay.

We will inform the Customer as soon as possible of the start and end of such grounds for hindrance.

4.5 If delivery is delayed at the Customer's instigation, we will charge the storage costs we have incurred, commencing one month after notification of readiness for dispatch, even if storage is in one of our own plants, but at least 0.5% of the invoice amount for the performance or - in the case of part performances - of the pro rata invoice amount for each month.

We reserve the right to assert further claims, but the Customer is at liberty to demonstrate that we have suffered no or a much lower loss as a result of the delay.

4.6 In the cases of paragraph 4.4, after a reasonable period of grace has elapsed without result we will also have the right to dispose of the object of performance elsewhere and to supply the Customer over a reasonably extended period.

5. Passage of Risk

5.1 The price risk (passage of risk) shall pass to the Customer not later than with dispatch of the object of performance, even if we have assumed additional services such as shipping costs and/or carriage and/or erection. This shall apply mutatis mutandis for part performances. At the Customer's request we will insure the respective shipment at its expense against theft, breakage, transport, fire and water damage and other insurable risks.

5.2 If delivery is delayed as a result of circumstances for which the Customer is responsible, the price risk shall pass to the Customer from the day the Customer is notified of readiness for dispatch. However, at the Customer's request and at its expense we will be obliged to take out the insurance it requests pursuant to paragraph 5.1.

5.3 Notwithstanding its rights under section 7, the Customer may refuse to take receipt of our performances only in the case of material defects.

5.4 Part performances shall be permitted.

6. Reservation of Title

6.1 The object of performance shall remain our property (reserved goods) until such time as all claims arising from the business relationship with the Customer, regardless of their legal grounds and including future or contingent claims, including those from contracts concluded simultaneously or in the future, have been settled. This shall apply even if payments are made on particularly designated claims.

We will only be entitled to take back or seize our reserved goods if we withdraw from the contract.

6.2 Any modification or processing of the reserved goods will be for us as manufacturer within the meaning of section 950 of the German Civil Code (BGB), without imposing any obligation on us. The modified/processed goods will be regarded as reserved goods within the meaning of these terms. If the reserved goods are processed or inextricably mixed with other items not belonging to us, we shall acquire joint title to the new item in the proportion of the invoice value of the reserved goods to the invoice value of the other items used at the time of the processing or mixing. If our reserved goods are combined or inextricably mixed with other movable objects to form one single item and the other item is to be regarded as the main item, the Customer shall transfer the pro rata joint title to us insofar as the main item belongs to it.

6.3 The Customer may neither pledge the reserved goods nor assign them as security without our prior written consent. The Customer must notify us in writing without undue delay of any attachments or other interventions by third parties.

The Customer has the right to sell the reserved goods in the ordinary course of business. Installation in the ground or in facilities connected with buildings or use by the Customer in order to fulfil other contracts will be regarded as equivalent to resale.

The Customer hereby assigns to us all claims in the amount of the invoice value of the reserved goods which the Customer accrues against the purchaser or third parties from the resale of reserved goods. If the Customer sells the reserved goods together with other items not supplied by us, assignment of the claim from the resale will only apply in the amount of the values of the respectively sold reserved goods as shown on our invoice. In the event of the resale of items to which we have joint title interests pursuant to paragraph 6.2, assignment of the claim will apply in the amount of these joint title interests. The assigned claims will serve as security to the same extent as the reserved goods.

6.4 The Customer has the right to collect claims arising from a resale until we revoke this right, which we may do at any time. The Customer does not under any circumstances have the right to assign these claims elsewhere. It will be obliged on request to advise its purchasers of the assignment to us and to make available to us the documents and information required in order to assert the claims.

6.5 Should the value of the collateral provided for us exceed our claims by more than 20% in total, at the Customer's request we will be obliged to release collateral of our choice to that extent.

6.6 We will have the right to insure the reserved goods against theft, breakage, fire, water and other damage at the Customer's expense if the Customer does not demonstrate that it has such insurance in place itself.

7. Warranty, Liability, Declaration Periods for the Customer

7.1 Warranty claims of the Customer presuppose that it has duly fulfilled its statutory duties to inspect and to give notification of defects; we must be informed in writing without delay of any defects found.

7.2 Should our performance have defects, we may at our option renew performance by rectifying the defect or delivering a perfect substitute. Only if this were to fail repeatedly or be unreasonable and if the defect is more than minor will the Customer have the right to withdraw or demand a reduction in price in accordance with statutory provisions; it will have claims to compensation in accordance with paragraph 7.6 ff.

7.3 The Customer must give us reasonable time and opportunity to rectify and/or provide a substitute. Only in urgent cases, such as a risk to operational safety or to avoid disproportionately greater losses, or if attempts at renewed performance fail repeatedly or renewed performance is not reasonable, will the Customer have the right to rectify defects itself (self-help).

If such a complaint or self-help proves to be justified, we will bear the reasonable expenses incurred in order to rectify the defect. This is without prejudice to rights under section 478 (2) BGB.

7.4 No warranty is provided for losses occurring on the grounds of unsuitable or improper use, deficient assembly or start-up by the Customer or third parties, wear and tear, deficient or negligent treatment, unsuitable operating resources, replacement materials, deficient construction work, unsuitable foundations, chemical, electrochemical or electrical influences, unless we were responsible for them.

This shall apply mutatis mutandis for the case that the Customer or third party performs modifications or repair work on the object of performance without our prior consent.

7.5 The warranty period is 12 months from the passage of risk. This period is a limitation period and also applies for claims to compensation for consequential losses. This shall apply mutatis mutandis for deficiencies in title. The statutory limitation period applies for claims based on tort. If the performance is intended for a building and if it caused the deficiency of the latter, the warranty period will be 5 years. This is without prejudice to sections 438 (3), 479 and 634a (3) BGB.

7.6 For all claims brought against us for compensation and reimbursement of expenses on account of breaches of duty for which we are responsible, regardless of the legal grounds, in the case of ordinary negligence we will only be liable for a breach of cardinal duties endangering the purpose of the contract. In other respects our liability for ordinary negligence is excluded.

7.7 In the case of liability pursuant to paragraph 7.6 and no-fault liability, we will only be liable for the typical and foreseeable loss. The Customer may not bring any claim for vain expenses. We will not be liable for loss of production, lost profit or other indirect losses.

7.8 Compensation for all other material and/or financial losses shall be limited in amount to our contractually agreed remuneration.

If our performance has caused further material and/or financial losses and our performance is an upstream performance for performances of the Customer for third-party clients, we will only be liable up to the amount of one tenth of the share corresponding to our share of the performance in the overall performance of the Customer for the third-party client.

7.9 These limitations of liability shall apply to the same extent in favour of our institutions, legal representatives, executive and non-executive staff and other vicarious agents and servants.

7.10 These limitations of liability will not apply in the case of strict liability, where there is liability for loss of life, physical injury or damage to health, if a particular condition is guaranteed or in the case of malicious failure to disclose a defect.

7.11 If the Customer has the right to demand compensation in lieu of performance or to withdraw from the contract, it will at our request be bound to declare within a reasonable period of time whether and in what way it will make use of these rights. If it does not declare within the time allowed or insists on performance, it will only have the right to exercise these rights after a further reasonable period of grace has elapsed without result. This shall apply mutatis mutandis should it turn out while a period of grace set by the Customer is running that we are unable to meet it.

8. Place of Jurisdiction and Choice of Law

8.1 If the Customer is a full merchant, a legal entity under public law or a federal special asset, or if it has its registered office outside the Federal Republic of Germany, our registered office shall be the sole place of jurisdiction for all disputes arising from this contractual relationship.

However, we shall also have the right to bring an action at the head office of the Customer.

8.2 The laws of the Federal Republic of Germany prevailing for the legal relations of domestic contractual partners shall apply without exception; the applicability of the UN Sales Convention is hereby excluded.

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