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General Terms and Conditions of Sale

1. Scope of Delivery and/or Services

- 1.1 For the scope of the delivery and/or services, our confirmation of order in writing shall be authoritative.
- 1.2 Design, deliveries and services are subject to changes insofar as the said changes will not impair the essential and well-known interests of the Buyer regarding its intended application of the above at the time of placement of order.
- 1.3 In order to be effective, all supplementary agreements to these General Terms and Conditions of Sale shall be in writing. This requirement of an explicitly written form shall only be annulled by a mutual agreement in writing by both parties.
- 1.4 Hans-Jürgen Keil Anlagenbau GmbH & Co. KG shall retain unrestricted title and exploitation rights in quotations and cost estimates, drawings and other documents. Access to third parties may not be given without our prior written consent. Drawings and other documents pertaining to the quotations shall be returned without delay to Hans-Jürgen Keil Anlagenbau GmbH & Co. KG, hereafter called the "Seller", at its request, if a contract has not been awarded, or when a contract has been ended.

2. Delivery Time

- 2.1 In order to follow the schedule and keep the deadlines for the deliveries and/or services, it is necessary that all documents be submitted to the Seller on time, including all required approvals, releases or other provisions, and that the Buyer comply with the terms of payment including the Buyer's obligation to pay in advance if the contract contains an advance payment provision, and that all other supplementary requirements by the Seller, especially of technical nature, have been met. Unless these preconditions have been fulfilled in due time, a reasonable extension of the time limit will be applicable.
- 2.2 The time limit is deemed to have been observed
- 2.2.1 at deliveries, excluding assembly or mounting, if the goods to be delivered have been forwarded or picked up to be shipped within the time limit. Should the delay of the delivery be caused by the Buyer, the time limit is held to have been observed by the Seller when the Buyer has been notified of the readiness for dispatch within the agreed time limit;
- 2.2.2 at deliveries, including assembly or mounting, as soon as this takes place within the agreed time limit.
- 2.2.3 The time limit shall be reasonably extended at actions taken connected to labor disputes, especially strikes and lock-outs or other business shutdowns, mobilizations, war, riots, rejects of an essential piece of work, delayed deliveries of important raw materials and parts and due to other unpredictable events not foreseeable by the Seller if these obstacles should lead to a failure to comply with the schedule and the deadlines, or are contributing causes of the same. The Seller is not liable for the above circumstances if they develop during a delay of the deadline.
- 2.4 In case any equipment or parts thereof are stored due to delays by the Buyer at the Seller's premises over a period of time longer than six (6) weeks, the latter will be authorized to collect payment from the Buyer for the generally accepted storage charges that the Seller is entitled to.

3. Price and Payment

- 3.1 The Seller's quotations are all without non-binding and subject to change without notice.
- 3.2 The Seller's prices shall be calculated "ex works", excluding packaging and transport. The prices for the goods and services delivered in Germany include the value added tax at the rate in effect.
- 3.3 The Seller's prices reflect the current material prices at the time of contract award. Should the expense factors, e.g. the applicable standard wages or the material prices change prior to the agreed delivery time of the goods and services, the Seller shall be entitled to increase its price up to the amount of the actual additional costs accrued.
- 3.4 Unless any specific terms and conditions of payment are given, the Seller's invoices are to be settled as follows: the payments are due within 14 days without any deductions and free of transaction charges to the Seller's designated account in Hunteburg; one-third with order, one-third with the notice of readiness for delivery, and one-third at the end of the assembly work.
- 3.5 The customs duties and other customs-related expenses as well as the processing and transaction fees in all international sales of the Seller are to be settled by the Buyer.

4. Reservation of Title

- 4.1 The Seller shall retain title in the object of delivery and all in other obligations arising out of the contract towards the Buyer until all payments due under the supply contract have been received. Any processing and handling of the object of delivery as well as its connection with any external objects/substances by the Buyer or a third party shall confer rights in the processed and/or handled object on the Seller.
- 4.2 The Seller has the right to have the object of delivery insured against losses due to theft, damage, fire and water at the expense of the Buyer in case the Buyer shows no evidence of having taken out an insurance policy.
- 4.3 The Buyer shall not be entitled to pledge the object of delivery, nor to a transfer of title, for the purpose of securing a debt. The Buyer shall immediately notify the Seller in the event of seizure, attachment or other orders for disposal by third parties by sending copies of the relevant documents (e.g. a pledge MOM) to the Seller. The Buyer shall indemnify the Seller in respect of any costs of the intervention incurred by the Seller.
- 4.4 Should the Buyer breach the contract, especially by delaying payments due, the Seller shall be entitled to take back the object of delivery after reminding the Buyer, and the Buyer shall be obliged to turn over the object of delivery. The assertion of the retention of title as well as the seizure of the object of delivery by the Seller are not considered as rescission unless the Instalment Act is not applied.

5. Transfer of Risks

- The risk is transferred to the Buyer even if free of transportation charges (CPT) deliveries have been agreed upon:
- 5.1 on deliveries when the items to be delivered have been brought to the distribution center or when they have been picked up to be delivered. Customary packing shall be used. The transportation costs and risks are transferred over to the Buyer;
- 5.2 after deliveries with subsequent set-up or assembly on the premises of the Buyer, on the day of the take-over, provided that the take-over directly follows finished assembly or set-up and the equipment meets the functional criteria for the operability. Should the Buyer decline the acceptance, the risk for the delayed acceptance shall be transferred over to the Buyer after 14 days from the notification of the take-over;
- 5.3 if the transportation, delivery, or the begin or erection or assembly work is delayed due to the request of or due to reasons caused by the Buyer, the risk shall be transferred to the Buyer. The Seller agrees upon providing the insurance coverage required by the Buyer at the request and expenses of the Buyer.

6. Assembly

- 6.1 The prerequisite for the assembly work to be carried out is a clean and neat condition of the site. The possibility for the Seller to carry out its assembly work must be guaranteed by the Buyer.
- 6.2 Electrical power, water and pressurized air are to be placed free of charge at the Seller's disposal.
- 6.3 Masonry, painting, mortising, and roofing work shall not be part of the Seller's services unless an order for the above work is specifically placed in written form by the Buyer and the order is accepted by the Seller.
- 6.4 Any damage that has been caused by the subsequent construction work or indirectly produced after the delivery of the Seller's equipment shall not be covered by the Seller. The Buyer is obliged to notify the Seller of all unknown special conditions, in particular of circumstances connected with risk-increasing hazards such as increased risk of fire during welding work, and to ensure sufficient safeguarding at the Buyer's own expense.

7. Assembly at A Fixed Price

- 7.1 Should a fixed price have been agreed upon, a corresponding adjustment of the fixed price concerning any alteration of the cost factors shall be made by the Seller by the completion of the assembly work.
- 7.2 Should the Buyer impede or prevent the progress of the assembly work or the commissioning of the equipment, or if any unforeseeable occurrence of the Force Majeure should cause any considerable impediments to or prevent the progress of the assembly work, the agreement on the fixed price shall no longer be binding. Unless an new

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fixed price is stipulated, the costs shall be calculated to reflect the actual expenses.

7.3 Should the subsequent assembly work be impossible to be accomplished by the Seller, the Buyer shall be obliged to pay in recompense the costs of the assembly work accomplished, the said payment being reduced to an amount commensurate with the total price of the assembly costs.

8. Liability and Defects

The Seller is liable for defects including guaranteed but yet missing features as follows:

8.1 All those parts or services that are unusable, or considerably impaired in their serviceability, due to circumstances prior to the transfer of risk, in particular due to faulty construction, inferior material, or deficient design are to be improved, re-delivered or rendered anew by the Seller, free of charge and according to the choice of the Seller within 24 months (a deviating warranty, e.g. according to the German Construction Contract Procedures¹, is expressly to be agreed upon) from the day of the transfer of risk. Written notice of any recognizable objections to such deficiencies must be immediately given to the Seller by the Buyer, but no later than within eight (8) days following the discovery.

8.2 The Buyer shall grant the Seller the required time and the opportunity to remedy any such defect. Should the Buyer deny the Seller the opportunity to remedy such defects, the Seller shall no longer be held liable for any of the defects.

8.3 Only in the event of imminent danger or threat to occupational safety that must be immediately disclosed to the Seller by the Buyer, or, by virtue of the Seller's prior written agreement, the Buyer is entitled to remedy the defect himself or have the remedial work performed by a third party and to charge the Seller for a reasonable reimbursement.

8.4 As to any essential third-party products, the Seller's liability is limited to the assignment of the products liability in the first instance, where the Seller is entitled to filing a product liability claim for damages against suppliers of third-party products. The defects liability of the Seller does not arise until the unenforceability of the claims of the above scope has been determined.

8.5 The Buyer's right to assert its claims for defects expires in all cases 24 months after receipt of a timely notice of defect.

8.6 The Seller shall not accept liability for any damage resulting from improper use, any faulty assembly, repair or maintenance by the Buyer or a third party, or resulting from the normal wear and tear.

8.7 The liability of the Seller applies for the rectification of defects, spare parts deliveries or for the supplementary performances just as it does for the original deliveries and performances. The defect liability period is extended by the time of an operation interruption concerning those parts that cannot be duly operated due to the rectification of the defect or repair of the same.

8.8 The provisions concerning the warranty periods in 8.1 and 8.5 do not apply if longer periods are regulated by law.

8.9 If the Seller fails to remedy the defect within a reasonable time limit by allowing the additional period of time expire, the Buyer shall be entitled to the revocation of the contract or to the reduction of the price.

8.10 The direct costs incurred by the Seller through the repair and the replacement shall be borne by the Seller, as long as the complaints prove to be justified, the costs of the item to be substituted including the transport and, if specifically required, including the costs of the disassembly and assembly as well as technicians and assistants provided by the Seller. For any other items, the Buyer shall cover the costs.

8.11 Any further claims against the Seller and its vicarious agents are excluded, especially any claims for damages pertaining to such damage which has not been caused to the delivery item itself. This provision does not apply in cases where the claims are based on intentional or gross negligent conduct, or on missing but guaranteed qualities and where there is mandatory liability.

9. Other Claims, General Impossibility, Contractual Modification

9.1 Should the Seller's or the Buyer's incumbent delivery or services prove to be impossible, the general principles of law with the following regulation shall apply:

In case the general impossibility is attributed to the default of the Seller, the Buyer shall be entitled to a legal claim for the damages. However, the Buyer's claim shall be limited to 10% of the value of the item of delivery or services that cannot be appropriately commissioned due to the above general impossibility. Any further claims shall be excluded. This shall not apply in cases of mandatory liability based on intent or gross negligence. The Buyer's right to rescind the contract shall remain unaffected.

9.2 Should unforeseen events substantially change the commercial relevance, or the contents of the delivery or performance, or have a considerable effect on the Seller's operations, the contract shall be reasonably modified in accordance with good faith. If this is economically not justifiable, the Seller is entitled to a rescission of the contract. Should the Seller exercise its right to rescind the contract, the Seller is obligated to notify the Buyer immediately of its decision of a cancellation after having perceived the implications of such action, and even if an extension of the delivery time has been previously agreed upon with the Buyer.

9.3 The Buyer's claims for damages out of positive violation of a contractual duty, neglect of duties during the contractual negotiations, and unauthorized actions shall be excluded. This shall not apply in cases of mandatory liability based on intent or gross negligence of the Seller, or of its legal representative, or its vicarious agent. This limitation of liability applies to the Buyer in a corresponding manner.

10. Software

10.1 Concerning the software and the documentation, an unrestricted and non-negotiable right of use shall be granted for the internal usage while all other rights are exclusively and solely vested in the Seller. The Buyer shall ensure that no third party will have access to the software or documentation without the Seller's prior written agreement.

10.2 Copies may only be produced for the purpose of file archives, replacement, or trouble shooting; the sub-section 10.1 applies accordingly. In case the originals indicate a reference to copyright protection, this reference shall be transferred to the copies by the Buyer. By virtue of the confirmation of order and delivery of the software, the right of use previously mentioned is deemed as granted.

11. Place of Jurisdiction, Applicable Law

11.1 If the Buyer is a registered trader, the exclusive place of jurisdiction shall be the competent court of jurisdiction at the Seller's registered office in the event of any and all legal disputes arising indirectly or directly from this contractual relation between the two parties.

11.2 The contractual relationship shall be subject to the law of the Federal Republic of Germany.

12. Validity of Conditions of the Contract

12.1 Should any of the contractual provisions pertaining to these "General Terms and Conditions of Sale" be or become partly invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions. Any amendment to this contract shall only be valid if it is made in writing and signed by a duly authorized representative of each party. No waiver of this requirement shall be validly made unless made in writing.

12.2 The English version of the "General Terms and Conditions of Sale" is a convenience translation of the original German version. The German version is legally binding. (Status: 2010-03-17)

¹ VOB 'Vergabe- und Vertragsordnung für Bauleistungen'

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