



General Terms and Conditions of Business

§ 1

Scope of Application

1. The following general terms of business are valid for all business relations between Hans-Jürgen Keil Anlagenbau GmbH & Co.KG (hereinafter referred to as "the Contractor") and its business partners (hereinafter referred to as "the Purchaser").
2. The Purchaser shall be notified in writing of any modifications by the Contractor to these terms and conditions of business. They shall be deemed to be approved unless the Purchaser objects in writing. The Purchaser must send the written objection to the Contractor within two weeks after communication of the modifications.
3. The Purchaser's terms and conditions are deemed to be part of the contract only if the Contractor expressly consents to the application thereof in writing prior to or at conclusion of the contract and if this protective clause is canceled in writing prior or at conclusion of the contract.
4. The acceptance of the Contractor's services shall be regarded as acknowledgement of these terms and conditions, if the Contractor's reference to its terms of business is clearly identifiable and if the Purchaser does not expressly contradict their validity. A general objection in the Purchaser's own terms and conditions of business shall not be deemed as sufficient.
5. As a supplement, the closing text, consisting of the special provisions in our proposals and quotations, shall apply. The closing text covers the Contractor's specifications of scope, terms, conditions and exclusions, defining the schedule for work, detailing costing and payment terms, itemizing materials and/or resources, defining delivery, price increase, excusable delay, liability and warranty. In the event of conflict between the general terms and conditions and the closing text, the special provisions shall apply.

§ 2

Deliveries of Goods and Services

1. Our written order confirmation shall be decisive for determining the extent of our delivery of goods and/or service obligations. The object of the delivery shall be set down in the order confirmation.
2. We reserve the right to introduce design modifications and delivery changes of goods and/or services as long as the changes are not substantial and do not prejudice the known interests of the Purchaser with regard to its intended purpose of use at the time of issuance the order.
3. Subsidiary agreements require written form for their validity. This requirement of written form may only be renounced by a written agreement of both parties.

§ 3

Delivery and Delivery Times

1. Meeting the deadlines for the deliveries of goods and/or services requires that all the necessary documents shall be supplied by the Purchaser, including required permits, approvals and other provisions of material must be available on time, that the Purchaser has satisfied the payment conditions and that possible obligations and advance duties have been fulfilled and that all other, especially technical, preconditions for the execution of an order are in place. If these prior conditions are not fulfilled on time, an adequate extension of the deadline will follow.
2. The period shall be deemed observed:

- On deliveries without erection or installation if the goods to be delivered are shipped or picked up within the time limit. If there is a delay of delivery due to reasons attributable to the Purchaser, the period shall be deemed observed at notification for readiness of shipment within the agreed period of time.
 - On deliveries with erection or installation, as soon as this is carried out within the agreed period of time.
3. This period shall be reasonably extended during actions in the context of legal industrial disputes, especially strikes and lockouts or other disruptions of operation, mobilization, war, riot, rejects in case of an important work piece, delays in the delivery of essential parts and raw materials and any other events which were unforeseeable or uninfluenceable for the entrepreneur, if these obstacles lead to or contribute to the non-fulfillment of the schedule. The aforementioned circumstances shall not be attributable to us even if they should occur during an already existing delay.
 4. If the equipment or parts thereof are stored due to a delay caused by the Purchaser for a period of time covering more than 4 weeks on the entrepreneur's premises, the entrepreneur is entitled to invoice the Purchaser for the usual storage fees for the duration.
 5. Delivery free warehouse means delivery without unloading on the understanding that the road in which the delivery is to take place is suitable for heavy goods vehicles. Should the delivery vehicle leave the drivable access road at the Purchaser's instruction, the Purchaser shall be liable for all and any loss or damage so resulting. The unloading is to take place without delay and it shall be carried out by the Purchaser in an appropriate manner. The contracting party shall be invoiced for any waiting times.
 6. Force majeure, requirements set by the authorities and other circumstances, for which the Contractor is not at fault, or any acts of God, release the Contractor for the duration of their effects from the delivery and the duty to execute the order. The Contractor has the right to withdraw from the contract, if the Contractor cannot be reasonably expected to perform for the above reasons. This does not entitle the Purchaser to damages.
 7. In case of an impossible or delayed delivery, insofar as this is due to willful intent or gross negligence, including willful intent or gross negligence of the Contractor's representatives or vicarious agents, the Contractor shall be liable according to the statutory provisions. The liability is in cases of gross negligence limited to typical contractual, foreseeable damage. The Purchaser's right to withdraw from the contract shall remain unaffected.
 8. The Contractor's liability due to delayed performance shall be, apart from the cases in sentence 1, for the compensation next to the performance limited to a total of 10 % and for compensation instead of performance to a total of 10 % of the performance value. Further claims of the Purchaser due to delayed performance shall be – even after a reasonable grace period granted to the Contractor – excluded. These regulations shall also apply for any refund or compensation for futile expenses. The provisions of this paragraph shall not apply where liability is accepted for damages arising from injury to life, the body or health or from the violation of substantial contractual obligations. Typical contractual obligations shall be deemed to be those contributing to the performance of the contract whose due fulfillment the Purchaser may rely upon. A change in the burden of proof to the disadvantage of the Purchaser is not connected with the preceding provisions.

§ 4

Price and Payment

1. All quotations are non-binding and subject to confirmation.
2. The prices shall be calculated "ex works", excluding packaging and transport. The prices for the goods and services to be delivered in Germany include the value added tax at the rate in effect.
3. The 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 entrepreneur shall be entitled to increase its price up to the amount of the actual additional costs accrued.
4. If no specific terms and conditions of payment have been agreed upon, our invoices are to be settled as follows: the payments are due within 14 days without any deductions and free of transaction charges to the Contractor's designated account in Hunteburg; one-third on receipt of our order confirmation, one-third with the notice of readiness for delivery and one-third at the end of the assembly work.
5. The customs duties and other customs-related expenses as well as the processing and transaction fees in all international sales of the Contractor are to be settled by the Purchaser.

6. The Purchaser shall be entitled to offset claims or to retentions rights only if and when his counterclaims have been finally determined by a court of law, are undisputed or have been acknowledged by the Contractor in so far a consideration resulting from the contractual relationship is affected, especially
- On the basis of a counterclaim, if it is a result of a non-cash claim that entitles the Purchaser to a refusal of performance. The Purchaser shall be allowed to exercise its right of repayment only in so far its counterclaim is based on the same contractual relationship.

§ 5

Reservation of Title

1. The Contractor shall retain title of the object of delivery until all payments due under the contract have been received.
2. The Purchaser is entitled to resell the delivery item in the ordinary course of business. The Purchaser shall already now assign to the Contractor all claims in the amount of the invoice amount, arising for it from the resale to a third party. The Contractor shall accept the assignment. The Purchaser shall be authorized to collect the claim after the assignment. The Contractor reserves the right to collect the accounts receivable itself as soon as the Purchaser fails properly to fulfill its payment obligations and is in default of payment.
3. If goods are processed together with items not belonging to the Contractor, the Contractor shall acquire co-ownership of the new item in the ratio of the value of the goods delivered by him to the value if the other processed items. The same shall apply if the delivery item is mixed with other items not belonging to the Contractor.
4. In the event of seizures or other action of third parties, the Purchaser shall notify the Contractor immediately in writing so that the Contractor can file legal action according to § 771 ZPO (German code of civil procedure). In case the third party should not be able to refund the judicial and extra-judicial costs to the Contractor according to § 771 ZPO, the Purchaser shall be liable for the amount Contractor's deficient amount.

§ 6

Due Dates – Interest Rates – Default Charges

1. In case of payment after the agreed period allowed for payment, a default interest at the statutory rate is to be paid to the Contractor. Any further claims for damages shall remain unaffected.
2. As long as the Purchaser is in default of payment, the Contractor shall not be obliged to deliver any further goods or services, irrespective of the legal grounds of the delivery obligation.
3. Should a considerable deterioration in the financial circumstances of the Purchaser occur, commencement of insolvency proceedings shall be applied for, so that the Contractor can claim compensation for all outstanding deliveries during discontinuance of the period allowed for payment, cash payment or other sufficient security against delivery of the delivery item.
4. Should the delivery be delayed by fault or at request of the Purchaser, or should the Purchaser be in default of acceptance on due date, he shall be obliged to pay the purchase price and any further costs caused by the delay. The Contractor shall handle the storage of the delivery item starting 14 days after the notification of the readiness for shipment at the risk and costs of the Purchaser in these cases.
5. If security for the payment of the purchase price has been provided for by a bank or another third party and the delivery item cannot be delivered
due to circumstances not attributable to the Contractor, the Contractor is also entitled to collect the remaining purchase price still pending in total from the bank or from another third party against proof of evidence for the storage of the delivery item. Any necessary storage shall be carried out at the expense and risk of the Purchasers. The date on which the delivery item is stored by the Contractor shall be deemed as the date of delivery. All delivery documents and other documents to be handed over by the Contractor must immediately be handed over to him by the issuer of these documents, to enable him to receive payment by a bank or by another third party.

§ 7

Transfer of Risks

1. The risk is transferred to the Purchaser even if free of transport charges has been agreed upon:
 - On deliveries when the items to be delivered have been brought to the distribution center or picked up to be delivered. Customary packing shall be used. The transport costs and risks shall be transferred over to the Purchaser.
 - After deliveries with subsequent set-up or assembly on the premises of the Purchaser, on the day of the take-over, provided that

the take-over follows finished and ready-to-operate installation or set-up directly. Should the Purchaser decline the acceptance of the proposal, the risk shall be transferred to the Purchaser for the time of the delay after 10 days from this proposal.

- If the transport, delivery, or the begin of erection and/or assembly work is delayed at request of the Purchaser or due to reasons attributable to the Purchaser, the risk will be transferred to the Purchaser. The entrepreneur is willing to provide insurance coverage that the Purchaser expressly desires at its request and expense.

§ 8

Installation

1. The prerequisite for our installation to be carried out is a clean and neat condition of the site. The possibility to erect single equipment parts must be guaranteed.
2. Electrical power, water and pressurized air are to be placed free of charge at our disposal.
3. Masonry, painting, mortising, and roofing do not belong to our delivery scope, unless an order for the above work is specifically placed in written form and such an order is accepted.
4. We are not liable for any damage that has been caused by the subsequent construction work or indirectly caused after delivery of our equipment. The Purchaser is obliged to notify us of all unknown special conditions prior to the installation work, especially of risk-aggravating factors, e. g. increased risk of fire during welding work, and to take sufficient safety and security precautions at its own expense.
5. If payment of the services has been agreed upon hourly rates, the time sheets are handed over to the Purchaser to be signed always on the next working day. Should the Purchaser not sign these within 5 working days, they shall be deemed as approved.

§ 9

Installation at Fixed Price

1. Should a fixed price have been agreed upon, a corresponding adjustment of the fixed price concerning any alteration of the cost factors shall made by the Contractor prior to the completion of the installation and assembly work. The value added tax shall be added to the Contractor's price for the delivery ex works. As a rule, the Contractor shall have the right to increase the agreed price if the costs for raw material, energy, collective-agreement wages and salaries, freight costs, customs duties, fees etc. have increased during the time between order placement and delivery when any such price increase makes the delivery more expensive. The Purchaser shall be previously informed about the price increase; he may object in writing within a period of seven days after receipt of notification of the price increase. In the case of objection, the Contractor shall have the choice between withdrawal from the contract or delivery to the price originally agreed upon. The Contractor shall immediately inform the Purchaser of his decision. If the Contractor chooses to withdraw from the contract, all other claims of the Purchaser shall be excluded.
2. If the Purchaser impedes or prevents the installation or commissioning of the equipment or if there is considerable impediment or prevention as a result from force majeure, the fixed price is no longer binding. If no new fixed price is agreed upon, the Purchaser shall be charged on a time and material basis.
3. If the delivery or performance becomes subsequently impossible, the Purchaser shall replace Contractor any incurred expenses, costs and any other direct and indirect damages in relation of the worth of the installation work conducted so far to the total value of the installation work and pay the Contract a reduced price.

§ 10

Liability for Defects

1. Any claim based on defects or deficiencies postulate that the contractual partner duly meets his obligations of examination and reproof according to § 377 HGB. the Purchaser shall examine the delivery at random after the delivery and promptly show obvious defects. Concealed defects are to be reported immediately after they have been discovered.
2. Where the subsequent performance fails after the second improvement or rectification trial at the earliest point of time, the Purchaser shall have the right to claim withdrawal from the contract or reduction of price at his own choice. If nothing of the contrary arises (below sections

3, 4 und 5), further claims by the Purchaser – for whatever legal reasons – shall be excluded. The Contractor shall not be liable for any damage not caused to the delivery item itself; the Contractor shall especially not be deemed liable for loss of production, operational disruptions, the costs of any recall action, lost profit or other financial losses of the Purchaser.

3. All those parts or performances that are unusable or whose usability is significantly impaired due to circumstances before the passage of risks, especially because of faulty fabrication, substandard material or poor workmanship within six months (a deviating guarantee obligation is expressly to be agreed upon at the time of the conclusion of the contract) and beginning on the date of the passing the risks, are to be mended at the choice of the entrepreneur free of charge, or to be redelivered or to be provided anew. Notice of the discovery of such defects must be given to the entrepreneur without delay and in writing, within 5 days after discovery at the latest.
4. The Purchaser shall grant the Contractor the required time and the opportunity to remedy any such defect. Should the Purchaser deny the Contractor the opportunity to remedy such defects, the Contractor shall no longer be held liable for any of the defects.
5. Only in the event of imminent danger or threat to occupational safety that must be immediately disclosed to the Contractor by the Purchaser, or, by virtue of the Contractor's prior written agreement, the Purchaser is entitled to remedy the defect himself or have the remedial work performed by a third party and to charge the Contractor for a reasonable reimbursement.
6. As to any essential third-party products, the Contractor's liability is limited to the assignment of the products liability in the first instance, where the Contractor is entitled to filing a product liability claim for damages against suppliers of third-party products. The defects liability of the Contractor does not arise until the unenforceability of the claims of the above scope has been determined.
7. The Purchaser's right to assert its claims for defects expires in all cases six months after receipt of a timely notice of defect. Claims for damages due to injury for life and limb or the impairing of the health caused deliberately or due to gross negligence are exempted from this curtailment.
8. The Contractor does not accept liability for any damage resulting from improper use, any faulty assembly, repair or maintenance by the Purchaser or a third party, or resulting from the normal wear and tear.
9. the liability of the Purchaser applies for the rectification of defects, spare parts deliveries or for the supplementary performance 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. The replaced parts shall be transferred to the Contractor by the Purchaser.
10. The provisions concerning the warranty periods 11.3 and 11.7. do not apply if longer periods are regulated by law.
11. If the Contractor fails to remedy the defect within a reasonable time limit by allowing the additional period of time expire, the Purchaser shall be entitled to the revocation of the contract or to the reduction of the price.
12. The direct costs incurred by the Contractor through the repair and the replacement shall be borne by the Contractor, 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 of technicians and assistants provided by the Contractor. For any other items, The Purchaser shall cover the costs.
13. Any other claims against the Contractor 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. The Contractor shall not be deemed to be liable for production downtimes, operational interruptions, the costs of a possible product recall, lost profit or other damage due to delay in performance by the Purchaser. Dies gilt nicht, soweit in Fällen des Vorsatzes, der groben Fahrlässigkeit, bei Verletzung von Leben, Körper oder Gesundheit zwingend gehaftet wird.

§ 11

Other Claims, General Impossibility, Contractual Modification

1. Should the Contractor's incumbent delivery or performance prove to be impossible, the general principles of law with the following regulation shall apply: In case the general impossibility is attributed to the Contractor, the Purchaser shall be entitled to a legal claim for the damages. However, the Purchaser's claim shall be limited to 5% of the value of the item of delivery or performance that cannot be appropriately commissioned due to the above general impossibility. Any further claims shall be excluded (in addition, see subsection 11.1.). This shall not apply in cases of mandatory liability based on intent or gross negligence. The Purchaser's right to rescind the contract shall remain unaffected.
2. Should unforeseen events substantially change the commercial relevance, or the contents of the delivery or performance, or have a considerable effect on the Contractor's operations, the contract shall be reasonably modified in accordance with good faith. If this is economically not justifiable, the Contractor is entitled to a rescission of the contract. Should the Contractor exercise its right to rescind the contract, the

Contractor is obligated to notify the Purchaser 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 Purchaser.

3. The Purchaser'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 Contractor, or of its legal representative, or its vicarious agent (injury of a person's life, body and health).

§ 12

Software

1. The right to use the software shall be granted in return for a license fee (one-time license fee or on a recurring basis). The Purchaser shall ensure that no third party will have access to the software. The ownership of the software including all essential, contextual parts (source code etc.) is solely vested in the Contractor, and may only be sold upon the Contractor's approval.
2. Software copies may not be produced. An entire backup can be placed at the Purchaser's disposal against payment. The sub-section 12.3 shall apply accordingly. In case the originals indicate a reference to copyright protection, this reference shall be transferred to the copies by the Purchaser. By virtue of the confirmation of order and delivery of the software, the right of use previously mentioned is deemed as granted.

§ 13

Intellectual Property Rights and Industrial Property Rights, Confidentiality

1. All information and files delivered by the Contractor to the Purchaser shall remain property of the Contractor, and must not be copied or disclosed to a third party by the Purchaser, and only be used for the purpose agreed upon. Drawings and other documents that are part of the quotation shall be promptly returned to the Contractor upon request.
2. If the Contractor has delivered goods in accordance with drawings, models, samples or other documents supplied by the Purchaser, the Purchaser shall warrant that these do not infringe with the intellectual property rights of third parties. In the event that third parties do not allow the Contractor to produce and deliver such items by referring to industrial property rights, the Contractor is entitled – without having to check the legal situation – to stop any activity and to demand damages if the Purchaser is at fault. In addition, the Purchaser is responsible to immediately hold the Contractor free from all claims of third parties in this connection.
3. Drawings and other documents as well as data or data storage mediums respectively that are part of the offer shall be promptly returned upon request if the order has not been placed with the Contractor or if the contract is terminated. The data must be immediately and permanently deleted.

§ 14

Final Provisions

1. Verbal side agreements to these General Terms and Conditions of Business do not exist.
2. If any portion of this agreement is held to be or become unenforceable or invalid, this will not affect the rest of the provisions in this agreement.
Instead of the ineffective provision, a provision shall apply that within the scope of what is possible approximates most closely that which the parties intended, taking business aspects into account. The same shall apply if the provisions of this agreement are incomplete or in case of an invalid degree of performance.
3. The contracts (including the GT & CP) between the Contractor and the Purchaser are – as far as legally permissible – are governed by law of the Federal Republic of Germany exclusively to the exclusion of provisions of the private international law and the Vienna UN Sales Convention (CISG).
4. Place of performance of goods and services by the Contractor shall be the Contractor's registered office.
5. In so far as the Purchaser is a registered trader, a legal entity or a special assets fund under public law, the sole legal venue for all disputes arising from
The contractual relationship, including documentary deeds, drafts and checks, shall be the domicile of the contractor.
The same shall apply, in so far as the Purchaser does not have a place of general jurisdiction in Germany, or if the Purchaser has moved its domicile or usual place of residence after conclusion of contract or if the Purchaser's domicile of usual place of residence is unknown at time of at the time the complaint is filed. Notwithstanding these rules, each contracting party is entitled to proceed against the other at the latter's place of residence.

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