

General Terms & Conditions

General Terms and Conditions of Kessler und Luch Entwicklungs- und Ingenieurgesellschaft mbH & Co. KG

Subsidiary company of AVECO Holding AG

The following translation of the General Terms and Conditions may be used for informational purposes only and do not bind the Company or have any legal effect whatsoever.

Gen. Terms & Conditions K+L State: January 2013

1 General – Scope

1.1 All deliveries and services shall be governed solely by these terms and conditions. This shall also apply to any other future conclusion of a business transaction, even if it is not explicitly mentioned.

Any General Terms and Conditions of a customer opposing to our Terms and Conditions or differing from them shall not be recognized, even if we have not objected to them explicitly after receiving them. This shall not apply if we have accepted them expressly in writing.

1.2 Oral agreements, promises and guaranties made by our staff without legal or transaction power of representation shall not be binding unless confirmed by us in writing.

1.3. Our Terms and Conditions shall exclusively apply to business entities in terms of § 310 (1) of the German Civil Code (BGB), § 14 of the German Civil Code (BGB).

2 Quotation – quotation documents

2.1 Our quotations shall be binding within 4 weeks from the date of quotation, unless the quotation contains another term of acceptance.

2.2 We shall retain the property rights and copyrights in all quotations and relating technical documents. The same shall apply to the documents which we hand over to the customer while executing the order. The documents may not be copied, reproduced, disclosed to third parties in any other form or used for other purposes without our explicit written consent. The documents shall be returned immediately if the order is not given or if it is terminated.

3 Scope of services

3.1 We reserve the right to technical modifications while executing the order, provided that such modifications are due to progress of technical development or prove to be useful in individual cases in the interest of the capacity of the equipment or of components and it is reasonable for the customer.

3.2 The customer shall obtain all the approvals which result from the respectively valid DIN and GEFMA guidelines (especially for construction, transport, water, and industrial approvals) and which are needed for business management and construction of technical systems in buildings.

All fees and costs related to these approval and inspection procedures shall be paid by the customer.

4 Prices

4.1 All prices are net cash prices plus the respectively valid statutory value added tax.

4.2 The prices are valid for the work realization during the agreed working time. At other times, when the work realization is necessary due to requirements of the customer, the service provision will be charged separately.

4.3 In case of salary and wage increasing being the result of price changes provided by the parties having jurisdiction to change prices, we increase the initially used hourly rate directly using the same proportional relation, we also increase the prices to be charged upon the hourly rates correspondingly.

This shall apply correspondingly to the new cost-increasing regulations in terms of taxation and/or social legislation as well as to increasing of material prices by our suppliers. The determining point for the increasing is the effective date of the pertinent laws, ordinances and tariff provisions. The determining point for increasing of material prices is that date when the supplier increases its sale prices towards us.

4.4 The terms in clause 4.3 shall apply within the scope of long-term obligations only to the extent that we are not obliged to fulfill the order within four months after conclusion of contract. Clause 4.3 is not valid for contracts with defined fixed price periods during the commitment period.

4.5 The customer will be charged for additional work on the basis of rates and prices agreed in the contract. Concerning services that are regulated neither in the contract nor in an additional agreement, our normal price lists at the time of providing additional services shall apply.

5 Payments, set-off, reservation of proprietary rights

5.1 Unless otherwise agreed, payments are due and to be made as follows:

one third of the order amount with order, another third of the order amount upon delivery of the main materials upon the customer's request, up to 95 % of the order amount after a trial commissioning of the facilities by the contractor, the final payment immediately after receipt of the final invoice.

5.2 If the payment due date is exceeded, the customer is in default 10 days after work execution and after receipt of the invoice/payment schedule or after receipt of services.

If the payment due date is exceeded, or in case of default we shall be entitled to charge interest of 8 percentage points above the legal base lending rate. We shall explicitly reserve the right to assert claims against further loss.

5.3 Cheques and bills of exchange shall only be accepted as conditional payment. The customer will be charged expenses and other charges.

5.4 The customer has no right of set-off and no right of retention unless his counter-claims are adopted indisputably or legally.

5.5 We shall be entitled to set-off against all claims that the customer for whatever reasons may have against us or against other companies of AVECO Holding AG. This shall also apply when one party has agreed on payment in cash and the other on payment in bills of exchange or any other form of agreed conditional payment. If necessary, these agreements shall only refer to the balance. Should these claims have different maturities, our claims shall be respectively due for payment at the latest by the deadline of our liability and shall be settled at the value date.

5.6 Maturity dates shall be complied with even if transport, delivery, installation, commissioning, delivery acceptance, or service is delayed for reasons for which the customer is responsible. Payments shall also be made if insignificant components are missing, provided that the use of delivery and service is not impaired or simple alterations of deliveries and services prove to be necessary.

5.7 If, after conclusion of the contract, it becomes apparent that our pecuniary claim is at risk due to an insufficient financial capacity of the customer, we shall be entitled to the rights in accord with § 321 of the German Civil Code (BGB) (defense of uncertainty / Unsicherheitseinrede).

In such a case we shall be entitled to declare all claims from the current business relationship with the buyer which are not subject to a statute of limitations as due. Moreover, the defense of uncertainty shall also apply to all further deliveries and services resulting from the business relations with the customer.

5.8 We reserve the ownership to all equipment and goods delivered by us until full payment.

5.9. Goods subject to reservation of proprietary rights may not be pledged to third parties and their ownership cannot be transferred by way of security to third parties until full payment of the secured claims. The customer shall inform us immediately if and when there is any accesses of third parties to the goods subject to the reservation of proprietary rights.

6 Obligations of the customer

6.1 The customer is obliged to hand over to us the documents, plans, drawings, operational safety rules, technical instructions, operational manuals as well as maintenance and repair instructions needed for the execution of services free of charge, complete and on time.

6.2 The customer shall provide us with free access to all places related to the contract as well as to water, energy, and telecommunications connections. Connection and consumption costs shall be at the customer's expense.

6.3 The customer is obliged to provide the necessary conditions for safe, smooth and proper execution of our work. This shall apply particularly to necessary official authorizations as well as notices on particular dangers by the customer such as for example the dangers of internal transport, crane works, risks of falling and explosion dangers if they have to be taken into account when performing our activities.

When the customer or any third party as well as we perform services, the customer shall take responsibility for coordination of the individual work processes.

6.4. If the customer fails to fulfill the cooperation duties or if we are prevented from carrying out our work owing to circumstances originating from the customer's sphere then we may demand additional costs caused hereby in addition to the remuneration.

In this case we shall deduct any expenses which we ultimately save or which we have been able to acquire through other orders. Our right of termination in accord with clause 4 remains unaffected.

7 Termination of the contract

7.1 We shall be entitled to terminate the contract with immediate effect and to stop all work immediately if there is an important reason.

In particular an important reason is given if:

- the customer has suspended his payments, enforcement proceedings have been taken against him or insolvency proceeding is pursued, or
- the customer repeatedly does not fulfill his cooperation duties.

In these cases we shall be entitled to agreed compensation in full for the hitherto realized services. We shall reserve the right to assert a claim in case of further damages.

8 Acceptance

8.1 The customer is obliged to inspect and to accept our work and self-contained partial services immediately after their completion. The services with insignificant defects shall also be accepted.

8.2 Acceptance shall be deemed to have occurred if the customer does not accept the work within a reasonable period fixed by the contractor although he is obliged to do so. This also applies to partial services.

9 Warranty

9.1 Warranty claims of the customer always presume that the customer complains immediately when the defect is detected and gives us an opportunity to verify the defect.

9.2 Warranty claims for the supplied goods presume in particular that the customer informs us about the defect in writing immediately, not later than seven days following delivery. Hidden defects shall be reported to us immediately after their detection by immediate termination of the possible processing and performance.

9.3 In case of defect we shall be entitled at our choice to either repair the defective goods (improvement) or to deliver new goods or to redo the work (subsequent delivery).

9.4 If the subsequent performance fails, the customer shall be entitled at his choice to cancel the contract or to ask for reduction thereof. If the defect is not considerable, he is only entitled to claim the reduction.

9.5 The limitation period for warranty claims shall be one year from the date of risk transfer, unless a longer period is stipulated by law. For our liability due to intentional and grossly negligent breaches of duty, as well as the liability for culpable injury to life, limb or health, and for mandatory liability in accordance with the product liability law, the statutory limitation periods shall apply.

9.6 The recourse rights shall remain unaffected in accordance with § 478, 479 of the German Civil Code (BGB).

10 Liability

10.1 We shall be liable without limitation in case of grossly negligent injury to life, limb or health, of deceitful concealment of defect or in case of breach of guarantee as well as in accordance with mandatory regulations.

10.2 We shall be liable in accordance with the statutory provisions when the customer claims damages caused by grossly negligence including grossly negligence of our representatives or vicarious agents. If we have violated essential contractual obligations (e.g. obligations that the contract imposes on us in accordance with its content and purpose or obligations the performance of which is indispensable for the proper execution of the contract and upon whose compliance the customer normally relies and is entitled to rely), we are also liable for ordinary negligence in accordance with the statutory provisions. Liability for damages shall be in any case limited to foreseeable, typical damages.

10.3 Liability for damages beyond the previous provisions in clauses 10.1 and 10.2 shall be excluded.

This shall also apply for indirect consequential damage if this limitation does not conflict with any mandatory legal provisions or liability for intentional or gross negligence, or if this does not infringe on a significant contractual obligation.

10.4 The above limitations shall also apply inasmuch as the customer instead of claiming compensation for damage demands reimbursement of useless expenditure instead of service.

11 Miscellaneous

11.1 The law of the Federal Republic of Germany shall apply; application of United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

11.2 If an individual clause of the Terms and Conditions is held to be invalid, this shall not affect the validity of the remainder hereof.

11.3 The customer is aware that we save his data but this data may be used only in compliance with currently legally valid data-protection stipulations.

11.4 For all disputes arising from this contract also for documents, bills of exchange and cheques - the registered office of our head office is the venue of jurisdiction. We are entitled to pursue legal action against the customer at any other admissible court of jurisdiction.