

I. Scope

The following terms and conditions apply to all contracts for the supply of goods and assembly services concluded between Elling Refractory Solutions GmbH, hereinafter referred to as the e-r-s, and the client. They also apply to all future business relationships with commercial customers, even if they have not been expressly agreed upon again. Different terms and conditions of the client, which have not been explicitly accepted by the e-r-s, are not binding for the e-r-s, even if the e-r-s does not explicitly oppose to them. The following terms and conditions shall also apply if the e-r-s carries out the order without reservations, knowing of contradictory or deviating terms and conditions of the client.

All agreements concluded between the client and the e-r-s for the execution of orders are made in writing under contracts concluded for this purpose.

II. Offer and conclusion of contract

An order is only processed upon receipt of a written order, in which the recipient of invoice must be clearly identified. Oral orders are not accepted. Where several payment steps have been agreed upon, the value of any of them as a unit item shall not exceed the limit for commodity credit insurance. The payment stages should also be agreed in such a way that, as a result of the agreed payment dates, the limit is not exceeded between particular stages. If, as a result of the progress of construction works or other circumstances, it turns out that the limit has been exceeded, the principal will make payments in instalments.

If no agreement is reached on this matter, the contractor has the right to suspend the works at the expense of the principal until the next payment is received.

The client's order, which should be qualified as a proposal to conclude a contract, can be accepted by the e-r-s within two weeks by sending an order acceptance confirmation without reservations.

Offers submitted by the e-r-s are non-binding and not applicable unless explicitly stated as binding.

Taking into account the size of the order and its execution, the e-r-s reserves the right to request appropriate advance payments or installment payments from the client, and to make the provision of further services depend on receipt of such payments.

The e-r-s reserves the right of ownership to all illustrations, drawings, calculations, plans, as well as all other documents that submits to the client as part of the order. They are covered by the e-r-s copyright and, where applicable, other protective rights. The client may only pass on these documents to third parties with the written consent of the e-r-s, regardless of whether they are marked as confidential or not.

III. Payment conditions

Prices of the e-r-s are valid in EURO ex works including VAT in the statutory amount, unless otherwise agreed upon. The prices do not include transport costs.

Our trade receivables are ceded to Deutsche Factoring Bank on an ongoing basis. Repayment of the debt can only be made by transfer to an account at Bremer Landesbank.

Invoices shall be payable without deductions and costs as soon as the client receives the invoice, unless another payment date is specified in the order acceptance confirmation.

In the event of a delay in payment, statutory regulations shall apply.

In the event of non-performance or delay of payment, the e-r-s has the right to withhold the documentation of the works performed or deliveries made until the client has fulfilled its obligations.

The client is only entitled to a compensation, also in the case when defects or counterclaims have been established, only if the counterclaims have been lawfully confirmed, recognised by the e-r-s or are undisputed. The client is entitled to exercise the right of retention, only if its counterclaim is based on the same contractual relationship.

IV. Deadlines for delivery and performance of services

Unless otherwise agreed, delivery is ex works Klötze factory.

Delivery times or dates which have not been expressly agreed as binding shall be considered non-binding. Delivery time stated by the e-r-s is only counted after the technical issues have been clarified and the client has fulfilled all its obligations in a correct and timely manner.

The e-r-s is liable to the client in the event of a delay in the performance of the service in accordance with statutory provisions, if this delay constitutes a breach of the contract as a result of intentional actions or gross negligence on the part of the e-r-s, its representative or subcontractor. If the delay in the performance of service is not caused by a breach of the contract as a result of intentional actions or gross negligence on the part of the e-r-s, the liability of the e-r-s is limited to a foreseeable, typical damage.

If the e-r-s, including its representatives or subcontractors, is liable for a culpable breach of a substantial contractual obligation, the e-r-s shall be liable in accordance with statutory provisions, provided that also in this case the liability for damage is limited to a foreseeable, typical damage.

Any further liability for any delay in the performance of services caused by the e-r-s is excluded. In addition, claims and statutory rights of the client, which it may have in addition to the compensation claim due to a delay in performance of services caused by the e-r-s remain unaffected.

The e-r-s is entitled to make partial deliveries and services at any time, if this is acceptable to the client.

If the client fails to conduct acceptance of works, the e-r-s is entitled to claim compensation for the arisen damage and reimbursement of any additional costs. The same applies if the client culpably violates its duty to cooperate. With the occurrence of a delay in acceptance of works or the debtor's delay, the risk

of accidental deterioration and accidental loss passes to the client.

V. Risk transfer - shipment/packaging

Loading and shipping takes place without insurance at the client's risk. The e-r-s will make every effort to take into account the wishes and interests of the client with regard to the way and method of shipment; if, due to the client's instructions, additional costs arise, they will be borne by the client - even if free delivery is agreed upon.

If the shipment takes place at a later time on request or due to the fault of the client, the e-r-s will store the goods at the cost and risk of the client. In this case, a notification of readiness to dispatch is equivalent to dispatch.

The e-r-s reserves the right to make over- or under-deliveries up to plus/minus 10% of the total quantity customary in business transactions, if the client has been informed about these deviations and if they are acceptable from the point of view of the client's interest. The actual delivery quantity at the agreed price will be invoiced.

The following deviations may occur when ordering a certain quantity of goods.

- b.a. Less than 20 pieces to 2 pieces
- b.b. from 20 to 100 pieces to 5%
- b.c. from 100 to 1 000 pieces to 3 %.
- b.d. more than 1 000 units to 2 %

VI. Guarantee/responsibility

The e-r-s is liable for physical defects of things in the following way:

All parts or services which show a physical defect during the limitation period - irrespective of the duration of use - shall be subject to repair, replacement or re-delivery free of charge at the client's choice, provided that the cause of the defect already existed at the time when risk passes.

Warranty claims for physical defects of the goods shall become time-barred after the period of 12 months passes from the moment of acceptance confirmation. This provision does not apply if the act, e.g. in accordance with §§ 438 section 1 point 2, 479 section 1 and 634a section 1 point 2 of the BGB (German Civil Code) provides for longer periods and in cases of exposure of life, body or health as a result of intentional or grossly negligent breach of duty by the e-r-s and malicious concealment of the defect. The statutory provisions concerning the suspension of the limitation period, interruption and resumption of time limits shall remain unaffected.

The client is obliged to immediately notify the supplier in writing of physical defects of the goods, § 377 HGB (German Commercial Code).

If defects are found, the client's payments may be withheld to a reasonable extent in relation to the existing physical defects of the goods. The client is only entitled to withhold payment if defects are reported, the existence of which is undisputed. If the notification on defects was unjustified, the e-r-s has the right to demand reimbursement from the client.

The client must ensure the opportunity for the additional service to be provided within a reasonable

time.

If the additional service provision within the meaning of § 440 sentence 2 BGB fails, the client is entitled to withdraw from the contract or reduce the remuneration.

Claims for defects do not apply in the case of slight deviations from the agreed quality, slight deterioration in performance, natural wear and tear or damage occurring after the transfer of risk due to improper or negligent handling, excessive loading, unsuitable operating materials, defective construction works, unsuitable building site or special external influences, which are not provided for in the contract, as well as in case of unique software errors. If the client or third parties carry out inappropriate modifications or repair works, no claims for defects and their consequences shall be made against them.

The client's claims for expenses incurred for the provision of additional service, in particular transport, travel, labour and material costs, are excluded if these expenses increase because of the subsequent relocation of the delivery item to a location other than the client's registered office, unless such relocation is in accordance with the intended use.

The client's recourse claims against e-r-s pursuant to § 478 BGB (entrepreneur's recourse claim) only exist if the client has not made any agreements with its recipient that go beyond the statutory claims for defects.

In other cases, section VII shall apply to claims for damages. (Other compensation claims). Further claims of the client against the e-r-s and its representatives for a physical defect or claims other than those regulated in this section are excluded.

VII. Other compensation claims

Claims for damages and reimbursement of expenses incurred by the client (hereinafter referred to as "damages claims"), irrespective of the legal basis, in particular for breach of contractual obligations and tort, are excluded. The liability for assembly services as regulated in these General Terms and Conditions of Supply and Sale remains unaffected.

This does not apply to cases of mandatory liability, e.g. in accordance with the German Product Liability Act, cases of wilful intent actions, gross negligence, for injury to life, body or health, or for breach of essential contractual obligations. However, a claim for damages for breach of essential contractual obligations (cardinal obligations) is limited to contract-typical, foreseeable damages, unless there has been wilful or gross negligence or damage to life, body or health. This does not mean reversing the burden of proof to the detriment of the client.

If the client is entitled to claims for damages in accordance with section VII, these shall become time-barred on the expiry of the limitation period applicable to claims for material defects in accordance with section VI. In the case of claims for damages under the Product Liability Act, statutory regulations of limitations apply.

VIII. Reservation of ownership

Until the payment of all amounts due to the e-r-s from the client, now or in the future, the delivered

goods (reserved goods) remain the property of the e-r-s. In the event of actions of the client that breach the contract, e.g. a delay in payment, after the next set payment period has expired unsuccessfully, the e-r-s is entitled to take back the reserved goods. Taking back the reserved goods does not constitute withdrawal from the contract. Withdrawal from the contract shall be notified separately. The e-r-s then has the right to redeem the reserved goods. The cash-flow income is then used to offset the amounts due from the client, whereby the e-r-s is entitled to settle and deduct from the income a reasonable amount for additional cash-flow expenses.

The client is obliged to handle the reserved goods carefully and insure them at his own expense against fire, water and theft according to the purchase price. The client will carry out all possible maintenance and inspection works at its own expense and in a relevant period of time.

The client is entitled to sell and/or use the reserved goods in commercial transactions, as long as is not in arrears with payments. Using the reserved goods as the subject to pledge or collateral is not permitted. The client already now assigns to the e-r-s in full all claims arising from the resale or any other legal basis with regard to the goods reserved as collateral. The e-r-s hereby accepts the waived claims. It authorizes the client to collect the assigned claims on its own on account of its assigned claims. The collection authorisation may be revoked at any time if the client does not duly fulfil its payment obligations.

The processing or transformation of the reserved goods by the client takes place in any case on behalf of the e-r-s. If the reserved goods are processed with other items not belonging to the e-r-s, the e-r-s shall acquire co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount) to the other processed items at the time of processing.

The same provisions shall apply to a new item resulting from processing as to the reserved goods. If the reserved goods are inseparably mixed with other items not belonging to the e-r-s, the e-r-s shall acquire co-ownership rights to the new item in the ratio of the value of the reserved goods (final invoice amount) to the other mixed items at the time of mixing. If, as a result of the mixing, the client's item is to be considered as the main item, the client and the e-r-s agree that the client will transfer to the e-r-s the proportionate co-ownership of this item; the e-r-s hereby accepts this transfer. The client retains the resulting ownership or co-ownership of the item for the e-r-s.

If third parties have access to the reserved goods, in particular in the event of seizure, the client will indicate the retention of title to the e-r-s and inform the e-r-s immediately so that it can enforce its property rights. If a third party is not able to reimburse the e-r-s for the judicial or extra-judicial costs incurred in this context, the client is obliged to bear these costs.

The e-r-s undertakes to release the collateral, to which it is entitled to, to the extent that the possible value of the collateral exceeds the amount of secured receivables by over 10%, and the selection of the collateral to be released remains at its discretion.

IX. Installation services

1. Construction services in the field of refractory construction are construction services of special character. These are partial services, the complete implementation of which is a prerequisite for the operation of the entire installation.
2. Available construction methods in refractory construction are only slightly covered by DIN standards.

The lining of the system is a wear element, depending on the operation of the installation.

3 Offers and contract services are carried out in accordance with the latest technical standards and are based on information provided by the client, in particular with regard to the following points:

- a. Process engineering
- b. Operating temperature
- c. Medium
- d. Specific peak loads during operation
- e. Starting and stopping procedures

4. Installations are made by qualified fitters based on the e-r-s technical offers.

5. Additional work and installation costs are calculated in accordance with the implementing documents. Changes ordered by the client, requiring additional work, will be accounted for separately.

5.1 Costs include:

- a. Fitters' remuneration during normal working hours
- b. Fitters' travel expenses
- c. Possible allowances and overnight stays

5.2 In the case of assembly works for a flat-rate price, the following conditions apply, which the client must provide:

- a. Construction site is freely accessible, without obstacles caused by the works of other contractors.
If the fitters are forced to transport materials on the construction site due to difficult conditions, the time spent on this is charged at hourly rates.
- b. Electricity and drinking water quality must be available and supplied free of charge.
- c. The use of additional scaffolding or lifting vehicles requires special arrangements.

5.3 Costs do not include:

- a. Costs of subsequent changes, both in terms of material and resulting from additional time
- b. Additional work not included in the original offer.

5.4 In case of delays / interruptions in the project implementation not caused by the e-r-s, the e-r-s reserves the right to interrupt and resume work within a maximum of 10 days.

This applies both to delays in the start of the project and to interruptions in the implementation.

X. Guarantee/responsibility for installation services

In accordance with § 13 point. 4 VOB/2 (general terms and conditions of construction contracts) the limitation period for claims for defects for the parts of combustion plants that come into contact with fire and insulate exhaust gases is one year. This period starts upon the acceptance confirmation.

If acceptance of a fully completed service is delayed for reasons beyond the control of the contractor, the period of limitation begins with the first warm-up, but no later than two months from the date of the call for acceptance.

As a contractor, the e-r-s is obliged to pay compensation in accordance with § 13 point 7 sentence 1 of the VOB/B only in the framework of the construction service it provides. The e-r-s shall only be liable for damages in excess of this scope if the defect was caused deliberately or through gross negligence.

Normal wear and tear and such external changes that are irrelevant to the operation of the installation, as well as damage resulting from improper handling of the installation by the client or third parties during drying, commissioning, shutdown or operation of the installation are not subject to claims for defects.

In the case of claims for defects, the client must prove that the operating conditions described in the contract have been observed.

XI. Default

1) If the client fails to perform, not performs its obligations on time or improperly, the e-r-s reserves the right to cancel all orders and contracts with immediate effect by notifying the client in writing. The e-r-s is entitled to do so if:

- a. the client's financial situation will deteriorate so permanently as a result of its insolvency that claims for the e-r-s remuneration from the contractual relationship will be threatened,
- b. The client shall not fulfil its obligations resulting from these General Terms and Conditions of Delivery and Sale and shall not fulfil them in spite of another request with setting a new date by the e-r-s.
- c. the client will not make payment on the basis of the invoice in accordance with the applicable payment terms and conditions, or there will be a change in the direct or indirect ownership of the client, if, under this agreement, such change is detrimental to the interests of the e-r-s. Cancellation of orders or contracts in accordance with this paragraph shall apply in addition and shall not imply an exclusion or reduction of other rights that the e-r-s is legally entitled to.

XII. Force majeure

Force majeure is defined as such circumstances and events which cannot be prevented despite careful and careful management of the company. The action of any force majeure, unforeseeable disruption in operation, communication or dispatch, damage caused by fire, floods, unpredictable strikes, energy problems, shortages of raw materials, epidemics, official decrees, seizures, arrests or other obstructions, unless caused by the e-r-s, which limit, delay, hinder or prevent the production, dispatch, receipt or operation, on a permanent basis and according to the scale of the disruption relieve from the obligation to deliver or receive.

XIII. Warranty statement

Advice provided by or on behalf of the e-r-s by its employees on the quality, composition, service and characteristics of goods or services shall be considered a guarantee only if agreed in writing.

XIII. Applicable law/applicable court

1. Legal relations between the parties with regard to all contracts based on these General Terms and Conditions of Supply and Sale shall be governed by German laws.
2. For all disputes arising from contracts between the parties, also with regard to the effectiveness of these contracts or these General Terms and Conditions of Supply and Sale, the competent court is the court with its jurisdiction over the city of Klötze.

