

GENERAL TERMS AND CONDITIONS

THE GÖHLER CORPORATE GROUP

I. GENERAL INFORMATION

1. Our deliveries and services are exclusively based on our General Terms and Conditions. They also apply in the respectively current version to future transactions between the contracting parties, without requiring a repeated reference to these General Terms and Conditions.
2. These General Terms and Conditions will be deemed accepted at the latest on receipt of the delivery or services. We hereby object to any acknowledgements by the customer making reference to its own general terms and conditions.
3. If individual provisions of these General Terms and Conditions should be or become fully or partly invalid, the validity of the remaining provisions shall not be affected by this.

II. OFFER AND CONCLUSION OF THE CONTRACT

1. Our offers are subject to change. Contract closings and agreements shall become binding only upon our written order confirmation or our delivery. In case of the latter, the invoice shall replace the order confirmation. Additions, modifications and side agreements shall become binding only by our written confirmation.
2. Invoices, illustrations, dimensions, weights or other service data contained in brochures, circulars, price lists, other publications or in our quotation and/or the related documents are only relevant as approximate values. They include assurances only if they have been expressly referred to as such in writing.
3. We reserve the ownership, copyrights, and other rights to the documents relating to the quotation; they may be made accessible to third parties only with our consent.
4. We reserve the right to make changes and improvements regarding the structure, material use and design, insofar as the purpose of the contract is not altered significantly and the modification does not appear to be unacceptable to the customer.

III. PRICES

1. All prices apply without special written agreement to the scope of service and/or performance listed in the order confirmation ex-works of the supplier, without assembly, freight, packaging or insurance costs. The statutory value added tax is not included in our prices. It is indicated separately on the invoice in the statutory amount as at the date of the invoice. The deduction of discounts requires a separate written agreement.
2. The indicated prices are based on the cost factors as applicable at the time of the order confirmation. They apply for a period of 4 months from the conclusion of the contract up until the performance of the delivery and service.
3. Cost estimates are non-binding.
4. Agreed flat prices for assembly work do not include surcharges for any overtime, work at night or work on Sundays and holidays, which may become necessary. These costs can be charged in addition.

IV. PAYMENT AND DEFAULT

1. Unless stated otherwise in the order confirmation, the invoice total shall be due in cash without deductions, for payment to our paying agent within 10 days from invoicing.
2. Bills will be accepted only upon prior agreement and only for payment. Discounts and expenses for bills plus value added tax shall be borne by the buyer at the rates charged by commercial banks.

3. If the customer comes to be in default of payment or if it does not fulfil its payment obligations in any other way, e.g. if a cheque or bill of exchange is not encashed, we shall have the right to call all receivables from the customer due for payment immediately, without regard for any extension agreements with the term of accepted bills of exchange not due yet. We shall furthermore have the right to perform deliveries or services only against prepayment or security deposit from the customer.

4. Offsetting against counterclaims shall be permissible only if the counterclaim is uncontested or established as final and absolute. Enforcement of a right of withholding is excluded if the counterclaim does not result from the same contractual relationship.

V. DELIVERY PERIOD

In the event of default with an agreed delivery date, the buyer shall set an appropriate grace period.

VI. TRANSFER OF RISK AND SHIPMENT

1. The shipment shall be made at the customer's cost and risk. The risk shall transfer to the customer on the date on which the goods are given to the hauler, whereas at the latest when the goods are despatched from our plant.

2. The method of shipment and packaging will be chosen by us. Except for pallets, no transport packaging or any other packaging pursuant to the packaging ordinance will be taken back. The buyer is obligated to ensure disposal of the packaging at its own cost.

3. Our deliver/service will be deemed completed upon commissioning for trial operation. It will be deemed accepted on expiration of 12 days following the written notice of the completion of the performance. The customer shall be informed separately of this period in the notice.

VII. WARRANTY FOR DEFECTS

1. All deliveries and services shall be inspected immediately by the customer for defects, completeness, and consistency with the contract.

2. We have the right to perform the warranty by reworking or by replacement delivery. The right shall remain reserved for the customer to request a reduction of remuneration (reduction) or to withdraw from the contract at its choice if the reworking or replacement delivery fail. The customer cannot demand a withdrawal from the contract for construction services. We shall pay damage compensation only if we or one of our vicarious agents have fault for intent or gross negligence. In the event of an injury to life, body or health, we shall compensate damages for all cases of fault.

3. The period for property defects is 12 months.

4. Any warranty is excluded for delivery of used items or replacement parts.

VIII. LIABILITY

1. In all cases in which we are obligated to pay for damages or expenses, in deviation from the foregoing terms, we shall be liable based on contractual or legal grounds of claims only to the extent that our managerial employees or vicarious agents have fault for gross negligence or injury to life, body or health.

2. Liability independent from fault pursuant to the Product Liability Act shall remain unaffected. Liability for culpable breach of essential contractual duties shall likewise remain unaffected; liability shall be limited to this extent, however, to the damage that is predictable and typical for the contract, except in the cases of clause 1. A reversal of the burden of proof to the disadvantage of the buyer is not tied to the foregoing provision.

IX. RESERVATION OF TITLE AND SECURITY

1. Products shall remain our property up until the complete payment of the purchase price. For on-account payments, the reservation of title serves as security for the balance of our claims, notably also if the customer has made payments based on specifically designated claims. If the customer is a general merchant, the reservation of title shall remain in effect up until the complete settlement of the total payables arising from the business relationship, including any contingent liabilities entered in the customer's interest.
2. Processing or conversion of goods that have been delivered by us and which are still our property shall always take place on our behalf, without any liabilities arising for us from this. If our ownership expires in consequence of mixing or combination, it is agreed on this date already that we shall acquire the co-ownership of the new object in proportionate value, which shall be assessed based on the amount of the invoice value.
3. On the signing of the contract, the customer shall assign to us by way of security all claims in its entitlement for any sale, treatment, processing, and combining of the goods delivered by us, including all balance claims resulting from on-account agreements. This shall also apply to other claims against third parties, which arise for the customer in connection with the goods. We hereby accept the assignment. The assignment shall be limited in amount to the delivery value of the goods delivered according to our invoice. The customer is obligated to disclose the assignment on payment default on our request. In that case, the customer shall be obligated to make the required information and documents available to us. We shall also be entitled to disclose the assignment ourselves to the customer's debtor in this case and request it to make payments to us.
4. The delivered goods may be neither pledged nor otherwise transferred by way of security without our agreement. Should third parties attempt to get control over the goods that are subject to the reservation of title, the customer shall be obligated to point out our ownership and inform us without delay.
5. In the event of any actions by the customer contrary to the contract, in particular in the event of a payment delay, we shall be entitled to claim our reservation of title and demand the immediate surrender of the goods subject to the reservation of title. The assertion of our reservation of title does not represent a withdrawal from the contract.
6. If the value of the security provided by the customer exceeds our claim overall by more than 20%, we shall be obligated to release securities at the customer's choice.

X. TERMS OF ASSEMBLY

The buyer shall provide our assemblers a lockable room free of charge for the storing of materials, tools, and items of clothing.

XI. PREPARATION OF THE CONSTRUCTION SITE AND WORK PROCESS

1. Unless agreed otherwise, the buyer shall transfer all materials from the arrival station and store them carefully and protected from the effects of weather until the assembler arrives.
2. The digging of tank pits and pipe ditches, the storing of tanks in the construction pits, foundations, openings, pipe ducts, drainage systems, supply lines, and paintwork shall be a responsibility of the buyer, unless these services are part of our contract, and they must be completed timely enough so that the assembly can be started directly upon the arrival of the assembler. The tanks must be secured against floatation in case of groundwater, rainwater or surface water. The security measures required for this purpose shall therefore be initiated by the buyer. We generally reject any liability.
3. Early recall of the assembler or any stays on site caused by the buyer or the construction management shall be borne by the buyer. The buyer shall ensure heating, lighting, and security services for the construction site, and the timely procurement of equipment, machinery and supplies in all cases.

4. It shall be up to the buyer to purchase insurance for such risks. The received materials shall be handed over to the assembler in their packaging for the purpose of an inventory check. Exclusively our drawings and our instructions given to the assembler shall be decisive for the implementation of the plant. If the buyer wishes to deviate from this, our prior written approval is required.

XII. COMMISSIONING OF THE PLANT

1. Our assemblers are obligated to test the plants or exchanged components in the case of service work in depth directly upon the completion of the assembly and demonstrate their regular functioning in operation. The acceptance of the plant will be deemed completed by this. If the demonstration can only be performed at a later point for reasons outside of our responsibility, we shall be paid separately for the expenses incurred by the assembler making a repeated service call.

2. Both Parties shall recognise the demonstration of new plant components in regular operation or their acceptance by the authority independently of each other as proof of the implementation of the plant being in accordance with the contract, so that any defects claimed at a later point can never trigger claims with retroactive effect.

3. The commissioning of the plant or its replaced components in the case of service work includes the plant's configuration as appropriate to the operating conditions and the instruction of the operating personnel. The provision of materials and supplies for necessary tests shall be a responsibility of the buyer.

XIII. TANK REVISION

1. An inspection of the inner tank walls for damages is included in the services for tank cleaning. The test shall be performed conscientiously, whereas any liability regarding existing damages and damages becoming apparent at a later time on the tank and any related consequential damages shall be excluded (in particular, damages pursuant to the WHG [Water Resources Law]). The protection measures proposed or applied in the case of discovered corrosion damages correspond to the current state of technology. We do not assume any liability for damages occurring nonetheless.

2. Leak tests shall generally be performed at the risk and liability of the tank operator. We warrant appropriate performance according to the guidelines known to us.

XIV. PLACE OF PERFORMANCE AND PLACE OF JURISDICTION

1. The place of performance for deliveries and payments – also for bills accepted – is the place of the contractor's headquarters. The contractor is the company of the Göhler group of companies, which drafts the respective quotation or corresponding order confirmation. The address is stated in the quotation or order confirmation. The business sites of the Göhler group of companies can be found at www.goehler.de.

2. If the customer is a general merchant or corporation of public law, the place of jurisdiction is agreed to be the place of the contractor's headquarters. A customer, who is not a general merchant, may be sued at this place of jurisdiction, if it does not maintain a domestic residence or place of abode, or if such is unknown at the time when the lawsuit is filed.

3. Exclusively the law of the Federal Republic of Germany applies to all agreements and legal transactions between the customer and us. The standardised laws on the international sale of movable goods and the conclusion of international sales contracts for movable goods do not apply.

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