

General terms and conditions

ESTET STAHL- UND BEHÄLTERBAU GMBH

1. Preamble

1.1. For our deliveries and services and for making payments to us, the following delivery and payment terms apply exclusively; if relevant provisions are absent here, then the Austrian law shall be applicable. Differing terms and conditions of the contract partner are valid only if we explicitly accept them in writing. By accepting goods, the contract partner accepts our delivery and payment terms, under the exclusion of his terms and conditions.

1.2. The following provisions on the delivery of goods apply mutatis mutandis for services as well.

1.3. For installation work, our installation conditions apply additionally.

2. Conclusion of contract

2.1. The contract shall be deemed concluded, when we send a written order confirmation upon receiving the order.

2.2. Changes and amendments to the contract require written confirmation in order to be valid.

2.3. Our approval and sample consignments that are sent in the scope of orders shall be considered to be approved if they are not returned within eight days.

2.4. Our offers are non-binding. Documents about our offers, such as drawings, figures, measurements, weight indications, performance and consumption details only contain approximate information. We reserve the right to make design-related changes.

2.5. If import and export licenses or foreign exchange permits or similar approvals are required for the performance of the contract, the contract partner must make every reasonable effort to obtain the necessary licenses or approvals in time if he is responsible for procuring them.

2.6. The contract is based on contracted labour, any guaranteed flat rates or fixed prices exclusively apply to the precisely specified main service; if additional services and ancillary services are required, then these must be paid for separately at appropriate prices.

3. Credit assessment

3.1. The client gives its explicit consent to transfer its data only for the purpose of creditor protection to the official creditor protection associations, such as the Kreditschutzverband von 1870 (KSV) (credit protection association).

4. Plans, documents, material

4.1. Information in our catalogues, brochures, circulars, advertisements, illustrations and price lists etc. about weight, dimensions, capacity, prices, services etc. are only relevant if an explicit reference is made to these values in the order confirmation.

4.2. The contract partner guarantees that performance of the contract is permitted with regard to patent law, competition law, and copyright law and other civil and commercial law provisions, as well as with regard to administrative provisions, such as building regulations and trade regulations, and that the contract partner has all the necessary approvals and permits or that he will procure these in good time before starting work.

4.3. Documents provided by the contract partner, such as plans, static calculations etc., are not checked if a separate price or separate service item has not been agreed for this.

4.4. The implementation of all plans and projects submitted to us is done exclusively at the risk of the contract partner.

4.5. For processing, using average quality materials is sufficient; it is the responsibility of the contract partner to specify better materials, processing methods, and tolerances for particularly stressed parts, if it is necessary.

5. Our intellectual property

5.1. Plans, sketches, cost estimates, samples and other documents provided by us or developed because of our contribution, shall remain our intellectual property.

5.2. Our explicit consent must be taken for using such documents outside of the intended purpose in any way, particularly for distributing, reproducing, circulating, publishing, presenting, providing, and even copying extracts of these documents.

5.3. Furthermore, the client is obligated to maintain confidentiality towards third parties regarding knowledge that the client has gained from the business relationship.

6. Packaging

6.1. In the absence of any other agreement,

a) the specified prices do not include packaging;

b) packaging will be done according to customary methods, to prevent damage to goods under normal transport conditions on the way to the destination, at the expense of the contract partner and the packaging can only be returned if there is an agreement for that.

7. Transfer of risk

7.1. Risk is transferred to the contract partner as soon as the delivery item leaves our plant; the same applies to partial deliveries or if we are providing other services, for example shipping costs or transport, installation or assembly.

7.2. If shipping is delayed for reasons for which we are not responsible, then the risk is transferred to the contract partner once the readiness for delivery is notified.

8. Performance of contract, shipping, and delay

8.1. The delivery period starts when the order confirmation is sent, the assembly or repair period starts when the equipment is handed over. However, this period does not start before the documents, approvals, or permits to be procured by the contract partner are provided, or before advance payments are made by the contract partner. The delivery deadline is met if the delivery item has left the plant before the deadline expires or if we have notified readiness for delivery till then.

8.2. These deadlines shall be extended correspondingly as a result of unforeseen obstacles of any kind that are beyond our control, for example breakdowns, labour disputes, delays in delivery of important raw materials or parts etc., provided that these obstacles are a significant reason for the delays in meeting deadlines. Such obstacles annul the consequences of a delay for which we are responsible, until the obstacle is removed. The beginning and end of such obstacles shall be notified promptly. We have the right to withdraw completely or partially from the contract if such obstacles occur; in that case, the contract partner cannot assert damage claims.

8.3. If the agreed deadlines or the extended deadlines (according to the above paragraph) are delayed by more than eight weeks, then the contract partner has the right, after giving a grace period of at least fourteen days and notifying it by registered letter, to withdraw from the contract; in such a case the contract partner cannot assert damage claims.

8.4. If a penalty agreement is concluded in the contract with the contract partner, then he is owed damages amounting to 0.5% per full week, at the maximum 5% of the value of the delivery item which cannot be used in time or appropriately due to the delay; for other services 5% of the remuneration for the service. However, we are only liable for damages in case of gross negligence. Any other claims for damages are excluded. Furthermore, any damage claims as a result of delays caused by our sub-suppliers are excluded.

8.5. Deliveries are shipped at the risk and expense of the contract partner. We reserve the right to decide the shipping method and route excluding any liability. We will buy transport insurance only on behalf of and for the account of the contract partner.

8.6. It will be decided at our discretion whether the delivery items will be delivered packed or unpacked.

8.7. We are entitled to make partial deliveries.

8.8. Fulfilment of the contractual obligations by the contract partner is the pre-requisite for our compliance with deadlines.

8.9. If deliveries are delayed because of a reason for which the contract partner is responsible, then the contract partner must pay the storage costs for storage in our plant, at the minimum 25% of the invoice amount every month. We are also entitled to give a grace period of 14 days at the maximum to the contract partner, and after this period elapses without any effect, we can either choose to dispose of the delivery item in some other manner and to effect delivery to the contract partner later with a reasonably extended period, or to withdraw from the contract and to demand compensation for damages due to non-fulfilment of contract. In the latter case, we are entitled, without having to furnish any proof, to demand 15% of the delivery remuneration as damages; with proper proof we can demand compensation for further damages. For factory services, the contract partner must provide us with the required staff and the necessary equipment and auxiliary material (e.g. winches, rails, electricity etc.) in time and free of charge, even if installation is included in the price or if a flat-rate price has been agreed for this. If sub-structures are required, then their construction must be completed before our technicians arrive. Moreover, the contract partner must take the necessary safety measures to protect personnel and property. We will not be liable for the staff, equipment, and auxiliary materials made available to us.

8.10. The contract partner shall bear the foundation risk.

9. Price

9.1. Unless agreed otherwise, ex works prices are applicable without packaging and loading, excluding the value added tax. If delivery has been agreed in the service, then the prices are specified without including charges for unloading and further transport.

9.2. The prices are based on the effective costs when the pricing was done. If these costs change by the date of delivery, then these increased/reduced prices shall be borne by the contract partner.

9.3. If the contract is concluded without a price being set, then the sales price applicable on the day of delivery will be charged.

10. Payment

10.1. Payments are to be made, without any deductions, and free of transaction charges within 30 days of the invoice date. We reserve the right to decide which claims or parts of claims will be settled with the payments of the contract partner.

10.2. Payments must be made according to the agreed payment terms. Unless other payment deadlines have been agreed according to our written order confirmation, half the purchase price is due on receipt of the order confirmation and the remainder when we indicate that the order is ready for shipment.

10.3. The contract partner is not entitled to withhold payments due to warranty claims or any other counter-claims that we have not accepted.

10.4. If the contract partner is in default of an agreed payment or any other obligation, then we can either insist on fulfilment of the contract and

- a) suspend the performance of our own obligations until the outstanding payments are made or other obligations fulfilled,
- b) extend the delivery period appropriately,
- c) declare the entire outstanding purchase price to be immediately due,
- d) provided that there is no reason to exonerate the contract partner in terms of Art. 11,

charge default interest from the due date at the rate of 7.5% above the respective base interest rate of the Austrian National Bank, however at least 12% p.a. of the total claim. Other consequences of default of payment are not precluded hereby, or withdrawal from the contract after having granted a reasonable grace period.

10.5. If after the expiry of the grace period in accordance with 8.4, the contract partner has still not made the overdue payment or fulfilled the pending obligation, then we can withdraw from the contract by giving written notice. At our request, the contract partner must return us the goods that have been delivered, and pay us compensation for any depreciation in the value of the goods and reimburse us for all reasonable expenses incurred by us for the performance of the contract. With regard to undelivered goods, we have the right to

provide finished or machined parts to the contract partner and to charge the corresponding share of the sales price for this.

10.6. Until the contract partner has met all financial obligations, we shall retain title to the object of purchase. The contract partner must fulfil the necessary formal requirements for preserving the reservation of title. In the event of attachment or any other claim, the contract partner is required to assert our reservation of title and to notify us immediately.

10.7. The contract partner cannot withhold payments or offset these against counter-claims that are disputed by us.

10.8. For factory services (installation, repairs, maintenance and other such work), we shall charge the hourly rates and materials-prices applicable upon completion of such factory services; travel and waiting times are counted as working hours. For overtime, working at night, working on Sundays and holidays, surcharges stipulated by us will be charged. Travel expenses, accommodation and daily living expenses will be charged separately.

10.9. Any other claims, than those specified in Art. 10, by us against the contract partner due to default of the contract partner are excluded.

11. Guarantee

11.1. We do not provide guarantee for normal deviations or for deviations tolerated by the applicable standards with regard to measurements, weight, and quality.

11.2. Any defects in the delivery items must be reported immediately upon being discovered, at the latest within 48 hours along with the invoice date and number and the delivery note, otherwise the delivered items shall be deemed approved. In the notice of defect, the defective delivery item must be mentioned, what the defect consists of in detail, and under what concomitant circumstances the defect occurred. Every single defect must be described precisely. Costs incurred due to unjustified or improper notice of defects must be reimbursed to us.

11.3. We shall only be liable for defects in the delivery item which occur within six months of transferring the risk, due to a reason that occurred before this period. For multiple shift operations or for all other services (e.g. assembly, repair, maintenance, delivery of replacement parts etc.) the guarantee period is three months.

11.4. To the extent that we provide a guarantee, we can choose to either replace the defective item or its defective part with a fault-free item or part, or repair the item or part, or give a credit note to the contract partner corresponding to the price reduction. The guarantee obligation is not prolonged by the exchange of defective items or parts. Any parts exchanged become our property. We shall not reimburse costs for defects remedied by the contract partner or a third party.

11.5. At our request, the delivery item or its part must be sent to us immediately, free of freight charges and duties, failing which the guarantee obligation shall expire.

11.6. Fulfilment of the contractual obligations by the contract partner is the pre-requisite for the guarantee.

11.7. Our guarantee obligation is valid only for defects that occur during normal use with compliance of the stipulated operating conditions. The guarantee obligation particularly does not apply to defects due to: incorrect assembly by the contract partner or his representatives, incorrect maintenance, incorrect repairs or repairs carried out without our written approval, or changes made by a third party or third party's representatives, or normal wear and tear.

11.8. We are liable for those parts of goods which we have sourced from sub-contractors, only to the extent of guarantee claims that we are entitled to from the sub-contractors. If goods are produced by us based on construction specifications, drawings or models received from the contract partner, our liability does not extend to the correctness of the construction but only to the conformity of the construction to the contract partner's specifications. In these cases, the contract partner must indemnify and hold us harmless in case of any property rights infringements. We do not accept guarantee when taking over repair orders or for reworking or modifying old or third party goods, or for the supply of used goods.

11.9. From the start of the guarantee period, we assume no liability beyond that which is specified in this article, not even for defects, the cause of which has occurred prior to the transfer of risk.

12. Claims for damages and product liability

12.1. All other claims made by the contract partner or by third parties, mainly claims for compensation of damages of any kind, are excluded, unless, the damages were caused by us intentionally or through gross negligence. Such claims can only be enforced judicially within six months of the damage occurring, and in any case no later than two years after the transfer of risk.

12.2. The object of purchase only offers the level of safety that can be expected as a result of approval regulations, operating instructions, and our regulations concerning the handling of the object of purchase, especially with regard to any specified checks, and other instructions given.

12.3. If delivery items are produced by us based on construction specifications, drawings or models received from the buyer, our liability does not extend to the correctness of the construction but only to the conformity of the construction to the contract partner's specifications.

12.4. If we are held liable by third parties for production and delivery based on drawings, samples, models or other documents handed over by the contract partner, then the contract partner must indemnify and hold us harmless.

12.5. Our liability for material damages on the basis of the Product Liability Act, in the respective version applicable when the contract was concluded, is excluded along with all rights of recourse. The contract partner is obligated to strictly follow all the provisions for protecting against hazards, all technical provisions, operating instructions and instructions for use, and all electrical engineering provisions when using the equipment and other products delivered by us, and to allow only authorised skilled personnel to operate the equipment.

12.6. The contract partner must impose the exclusion of liability and the obligations in point 12. para. 5 on his buyers, and request them to further impose this exclusion of liability and these obligations on their buyers.

12.7. Moreover, the contract partner commits to notify us immediately about cases of liability and to hand over the necessary documents to us.

12.8. In case of minor negligence of the contractor, unless article 12.1. is applicable, the compensation for an order sum of up to € 145,000 is limited to € 7,300 at the maximum, and for an order sum of above € 145,000 up to 5% of the order sum, however at the maximum the compensation can be € 365,000.

13. Subsequent damage

13.1. Unless otherwise specified in these conditions, our liability towards the contract partner is excluded for shutdowns, lost profit, downtimes, loss of contracts, or for any other economic or indirect consequential damage.

14. Retention of title

14.1. We reserve the ownership of the delivery item till the complete payment of all the accounts receivable due to us, irrespective of the legal grounds.

14.2. The contract partner may resell the delivery item, even if it has been processed, only in the scope of his business operations in that area; however this authorisation is ruled out if claims from the delivery item are assigned to third parties or are prohibited to be assigned, if the contract partner is insolvent, or if he is in default of fulfilment of his contractual obligations. The contract partner must immediately inform us if the delivery item is used by third parties in any way. Our intervention costs associated with the enforcement of property rights shall be borne by the contract partner.

14.3. The contract partner already transfers his claims and other rights from re-sale, rental, or leasing transactions to us, even if the delivery item has been combined or processed before with other things. If the delivery item is sold or provided for use with other things, without or after combining or processing, then the assigned claims shall be valid only for the amount of the purchase price owed to us. Any other claims for damages are not excluded.

14.4. The contract partner is entitled to collect claims and to assert other rights only to the extent that he fulfils his payment obligations towards us or provided that he is not insolvent.

14.5. If the contract partner acts in breach of contract, particularly in the event of default of payment or inability to pay, then we are entitled to take back the delivery item at any time, while still observing the contractual agreement, or to prohibit its use. Furthermore, we have the right to sell the delivery item that is taken back by us in the open market; after deducting the handling fee of 10% of the realised revenue, the remaining revenue is credited against our outstanding claims.

14.6. If we withdraw from the contract, the contract partner must pay a monthly fee of 5% of the original value of the delivered item, for the period from the transfer of risk until the return of the item. If the depreciation exceeds the usage fee, then the contract partner must compensate the surplus amount.

15. Data protection

15.1. We have the right to store, share, process, and delete personal data of the contract partner in the context of business operations.

15.2. The contract partner commits to maintain absolute confidentiality towards third parties regarding knowledge gained from the business relationship.

15.3. Our data privacy statement published on the homepage of ESTET Stahl- und Behälterbau GmbH shall apply.

16. General provisions

16.1. The contract partner can assign his rights from the contract only after obtaining our written consent.

16.2. The place of jurisdiction for all direct or indirect disputes arising from the contract is the competent Austrian court that has jurisdiction for the place of headquarters of the contractor.

16.3. The contract shall be governed by Austrian substantive law, excluding the United Nations Convention on Contracts for the International Sale of Goods.

16.4. For delivery and payments, the place of fulfilment shall be the place of headquarters of the contractor.

INSTALLATION CONDITIONS

1. Obligation to follow the installation conditions

Installations and deployment of technicians of any kind must be done only based on the following conditions; these conditions are considered to be accepted when the order is placed, and are binding for the contractor and the client. Deviating agreements on individual points need the explicit written approval of the contractor in order to be valid.

2. Supply of materials

The cost of materials required for doing the work and the cost of transporting materials to the work location shall be borne by the client.

3. Working hours

Statutory weekly working hours are considered as normal working hours, the scheduling must be done according to the work rules of the client.

4. Interruption of work

- a) If work is interrupted because of reasons for which the contractor is not responsible and if it necessitates withdrawal or redeployment of the contractor's technicians, then the client is charged the costs incurred due to this.
- b) If technicians are unable to work full shifts through no fault of their own, the normal statutory working hours are still charged.
- c) If the client insists that the installation work should be continued despite adverse weather conditions, the client shall be liable for any damages caused as a result.

5. Surcharges on hourly rates

For work performed under aggravating circumstances (in dirt, with hazards and complications etc.) and for shift work and night shift work, allowances are paid according to the Collective agreement for metal industry workers.

6. Travel time, travel expenses and fare

The travel time, plus travel preparations up to 5 hours each for onward and return journey, is charged as normal working hours. Actual travel expenses of the installation workers shall be borne by the client, as also the expenses for transporting the tools and expenses for obtaining the passport and the visa.

7. Measures to be taken by the client

The client must take measures that are necessary for properly starting installation, and for unobstructed performance and proper completion of the installation, at its own expense and risk, in time before the agreed beginning of the installation work. Unless special instructions are given by the contractor, these measures generally include structural set-up of the work site, provision of the necessary equipment, tools, devices, changing and showering facilities and other work tools, the required materials, auxiliary and operating materials, providing the necessary staff etc. All the supplies required by the contractor in this regard shall be charged separately. Since the contractor is only supposed to provide the commonly used hand tools, the special tools and equipment which are brought by the contractor, as a result of the failure of the client to provide them, shall be charged according to a separate agreement to be concluded for this in addition to the costs for two way transport.

8. Insurance and supervision obligations of the client

The client must ensure supervision of all the work tools brought by the contractor and the personal property of the installation workers, the client shall be liable till the completion of the installation work or till the evacuation and dispatch of the work tools and personal property. If these work tools and personal property are damaged, destroyed or lost, the client shall be liable even in case of force majeure. Safety briefings, other hazard warnings must be given by the client. The client must take the necessary fire safety precautions.

9. Documentation

Unless agreed otherwise, the contract partners must maintain daily construction reports. The contractor must keep documenting all the important facts related to the contractual service, such as weather conditions, status of workers and tools, material deliveries, work progress, quality and functional tests, unpredictable additional work, and all other facts. All the events that occur at the place of performance, particularly those that can significantly affect the performance of services, and findings that cannot be reported later or cannot be constructively reported later must be documented. At the request of the client, these daily construction reports must be submitted to him, and the client can read them at the place of fulfilment on every working day. In that case, the client must confirm in writing that he has read the reports. All the entries in the report shall be considered to be accepted by the client, if the client has not submitted a written objection within two weeks of the entry being recorded by the contractor.

10. Liability

The contractor shall be liable for the thorough and proper implementation of the work to be done by his installation technicians. The contractor does not accept any further liability, especially not for indirect consequential damages. The contractor shall not be liable for the personnel, hired staff, and third parties deployed by the client.

11. Additional work in cases of imminent danger

For work that is necessary to fulfil the contract, and for which the approval of the client cannot be obtained due to an imminent danger, the approval of the client shall be considered to be granted. The client must be informed as soon as possible regarding work that is done without approval. Since this involves necessary services by the contractor, the client must accept it and provide remuneration for it. The contractor must charge these services separately and provide detailed information on the additional costs.

12. Certification and acceptance of installation work

Working hours put in by installation workers deployed by the contractor must be certified by the client every week without fail. These certifications shall be the basis for the installation invoices. The client is obligated to certify the completion and handover of the work done by the technicians at the end of work. Minor flaws and night shifts do not release the client from this obligation. The contractor must notify the readiness for acceptance to the client in writing. This notification must contain a date for the acceptance test, which gives the client enough time to prepare for the test or to find a representative for the test. All the costs incurred for the acceptance test (personnel costs, equipment, material costs, tools) must be borne by the client. If the client has been informed well in time by the contractor regarding the date of the acceptance test, and if the client cannot be present on that day or send a representative, then the test will be deemed to be completed on the date of the acceptance test that has been specified in the notification sent by the contractor. Unless agreed otherwise, the acceptance test shall be conducted during normal working hours. The contractor shall take minutes of the acceptance test.

13. Deadlines

If the contractor can foresee that he will not be in a position to complete the work in time, then he must immediately inform this to the client in writing, and if possible specify a prospective date of completion. The contractor has the right to ask for a reasonable extension of the deadline if the cause of the delay is:

- a) circumstances for which the contractor is not responsible, e.g. labour disputes, natural disasters, armed conflicts, general mobilisation, rebellion, seizure, embargo, and restrictions on energy consumption.
- b) Unanticipated renovation work because of legal provisions or special or additional requests of the client.
- c) An act or omission by the client, or other circumstances for which the contractor is responsible (e.g. outstanding payment), or if the client has not fulfilled other obligations.

14. Payment terms

The client is obligated to pay appropriate advance payments or partial payments to the contractor at the contractor's request, before the workers are sent and as part of the installation work, for services to be performed by the contractor subsequently. The installation invoice must be paid in cash, without any deductions, as soon as it is received. If the installation work takes more than one month, then an interim invoice must be sent by the contractor every four weeks and the client must pay it. Withholding payments due to guarantee claims or other counter-claims of the client that are not recognised by the contractor is not permitted.

15. Place of jurisdiction, applicable law, place of fulfilment

- a) The place of jurisdiction for all direct or indirect disputes arising from the contract is the competent Austrian court that has jurisdiction for the place of headquarters of the contractor.
- b) The contract shall be governed by Austrian substantive law, excluding the United Nations Convention on Contracts for the International Sale of Goods.
- c) For delivery and payments, the place of fulfilment shall be the place of headquarters of the contractor.