

# General Terms and Conditions of Sale of Siloanlagen Achberg GmbH & Co. KG

- for use in business transactions with companies -

## **1. Scope of application**

1.1 The following general terms and conditions of sale of Siloanlagen Achberg GmbH & Co. KG (referred to as the Contractor) apply to all contracts concluded between them and the Client for the supply of goods, installations, repairs and other services (hereinafter also: the 'Contract Items'). The general terms and conditions of sale of the Client shall apply only if the Contractor has expressly agreed to them. These general terms and conditions of sale also apply to all future business relations, even if they are not expressly agreed again. Amendments and addenda shall be made exclusively by the managing director(s) or holders of powers of procurement of the Contractor (Management) registered in the commercial register. Oral agreements and declarations by other people, who have not been granted special authorisation for such purposes by the Management shall be valid only if these have been confirmed in writing by the Management.

## **2. Offers, order confirmations, documentations**

2.1 The illustration of products and services of the Contractor in flyers, catalogues, and brochures are non-binding and subject to change. Legally binding contracts are exclusively established through the order confirmation of the Contractor. If the Client does not receive a separate order confirmation, the delivery slip of the Contractor serves as order confirmation.

2.2 The Contractor reserves all property and copyright in cost quotes, drawing and all other offer documents. Without the consent of the Contractor, the Client may neither duplicate the offer documents, also where they are available in written form, nor forward them to third parties. In the event of any violation, the Contractor shall be entitled to payment of a contractual penalty from the Client in the amount of 3% of the net contract sum of the respective order inquiry.

If no offer amount has been fixed, the penalty for each violation shall be € 500.00. If the order is not awarded, the entire set of documents must be returned without undue delay. Other claims of the Contractor from a violation of this para. 2.2 remain reserved.

### **3. Use of software**

The Contractor grants a simple, non-exclusive right of use in the software provided by the Contractor to the Client by the agreed number of hardware devices for the agreed period. The use of the software in an electronic network is only permitted if this has been so agreed in advance with the Contractor. If the Client changes their hardware devices, the software must be erased from the previously used hardware. The Client is obliged to compile two backup copies of the software received and to store them carefully; other duplications are permitted only subject to the prior written consent of the Contractor. Any sublease of the software by the Client is not permitted.

### **4. Prices, cost quotes, reimbursement of expense**

- 4.1 Prices are quoted in euros. Price changes are permitted, if the period between conclusion of the contract and the agreed delivery date is more than six weeks. If wages, material costs or market-consistent procurement prices change in the period between the order confirmation until completion of the delivery, the Contractor is entitled to reasonably increase the price in accordance with these cost increases. The Client is entitled to withdraw from the contract only if the price increase exceeds the increase of the consumer price index determined by the German Federal Statistical Office between the order and the delivery by more than 5%.
- 4.2 Prices are net ex works, excluding value-added tax at the rate applicable on the date of delivery, customs duties, freight, packaging and insurance costs. Prices apply for the individual order, not retroactively or for future orders. Reorders are deemed to be new orders.
- 4.3 If the costs of a repair increase by more than 15% in relation to the previous cost quote of the Contractor, the Contractor must obtain the consent of the Client for the repair without undue delay after the cost increase has become apparent.

### **5. Delivery period, partial deliveries**

- 5.1 For the delivery dates and delivery periods (period between order confirmation and delivery date), the Contractor's order confirmation is binding.  
The delivery period shall be reasonably extended if
- a) if the Client does not communicate all technical data required for the order-compliant production of the Contract Item (especially for a production drawing) to the Contractor without undue delay after the receipt of the order confirmation;
  - b) the production drawing prepared in accordance with the data of the Client (lit. a) and the plans are not approved in writing at the latest by expiry of half of the delivery period, unless the production drawing and the plans were not transmitted to the Client at least two weeks before expiry of half of the delivery period due to a fault of the Contractor;

- c) if the Contractor, through no fault on their part, is not supplied in time and in full with any of the materials required for the production of the Contract Item, or
- d) the Contractor is not able to comply with the delivery period due to force majeure (e.g. due to natural disaster or civil unrest) or similar events (e.g. industrial action).

Furthermore, the delivery period is reasonably extended if the Client does not submit the plans, administrative approval or other data to be provided by them in time or in full to the Contractor, changes their requirements for the approved production drawings and plans of the Client or fails to make a due advance or down payment.

5.2 In case of delivery delays caused by intent or gross negligence, the Contractor shall be liable in accordance with statutory provisions. Liability of the Contractor in case of gross negligence is limited to the contract-typical, foreseeable damage, unless one of the exceptions stipulated in sentence 5 of this provision applies. In addition, the liability of the Contractor for compensation based on a delivery delay is limited to 10% of the value of the Contract Item (in case of repairs: the repair costs). Any further claims of the Client are excluded - even after a period set for the Contractor for the performance. These limitations do not apply in case of liability for a loss of life, personal injury or a breach of essential contractual obligations. Essential contractual obligations are obligations, the violation of which would jeopardise or preclude the purpose of the contract, i.e. the agreed delivery or repair of the Contract Item. The aforementioned provisions do not lead to any modification to the burden of proof to the detriment of the Client.

5.3 Partial deliveries are permissible if reasonable for the Client.

5.4 If the Client is in default of acceptance of the Contract Item, the Contractor may charge the Client for a storage fee of 1% of the price of the Contract Item for each month of the acceptance default. Without prejudice to sentence 1, Silos incurs storage costs of €25.00 per day for volumes of at least 10 m<sup>3</sup>. The Client remains entitled to show that the Contractor has incurred no or less extensive damage. The Contractor is entitled to demand higher compensation in individual cases upon producing proof. The Contractor shall be entitled to otherwise dispose of the available Contract Items after a previously set deadline for acceptance has elapsed. In this case, the delivery to the Client will be made within a reasonably extended period.

## **6. Transfer of risk**

6.1 The Contractor delivers in principle ex works. If the Client requires the shipping of the Contract Item (e.g. to their establishment), the associated risk shall pass to the Client as

soon as the Contractor has handed the delivery item to the transport company. The Contract Item will be insured, e.g. against transport damage, only upon written request of the Client, which must be received by the Contractor at the latest 14 days before the date of shipping.

- 6.2 If the Client commissions the Contractor to assemble a system, install the Contract Item or perform repairs, the risk shall pass to the Client upon completed acceptance. The Client is obliged to express acceptance within a period of 12 working days since receipt of the written instruction of the Contractor. If acceptance is not made within the deadline set by the Contractor for reasons for which the Contractor is not responsible, acceptance is deemed to have been made upon expiry of the deadline. The Client shall not be entitled to refuse acceptance based on non-material defects.

## **7. Cooperation of the Client**

- 7.1 The Client is obliged to submit public permits and other test certificates, or expert opinions required by third parties (e.g. certificates of TÜV [German technical audit service] or other experts) for the erection and operation of the Contract Item in time and at their own expense. The Client shall bear the costs for all measures and materials, which the Contractor is obliged to provide in addition to the scope of performance in terms of the order confirmation based on an administrative regulatory requirement.
- 7.2 For the assembly of the Contract Item or for repairs, the Client must provide - at their expense and if necessary - the following to the Contractor:
- a) the facilities required for the assembly, including the foundation and scaffolding;
  - b) heating, lighting, electricity, water, gas, including connections for the assembly work;
  - c) suitable spaces for storing the Contract Item and the assembly tools, which must be adequately secured against theft and damage;
  - d) special tools and cleaning agents required for cleaning;
  - e) social rooms for the deployed employees of the Contractor;
  - f) ladders, mobile scaffolds, lifting equipment and forklifts;
  - g) briefing about the safety rules and requirements for the devices made available by the Client;
- 7.3 The Customer must inform the Contractor without prompting about the static and geological properties of the assembly or operating sites of the Contract Item or create, at their expense, the relevant static and geological prerequisites for the set-up of the Contract Item. Furthermore, the Customer must inform the Contractor without prompting about electric and

other lines, which are or might be located in the area affected by set-up and assembly site of the Contract Item.

- 7.4 The Customer shall clean the Contract Items before commissioning and remove especially any chips, welding residue and other remaining manufacturing residue.

## **8. Security interests of the Contractor**

- 8.1. The Contract Item remains the property of the Contractor until all their claims against the Client from the business relationship have been satisfied.

- 8.2 As long as a retention of title is effective, the Client is prohibited from pledging the Contract Item or transfer the Contract Item as a collateral. Resale of the Contract Item is restricted to resellers as part of the ordinary course of business, and only under the conditions that the equivalent value of the goods is paid to the Client. The Client must also agree with their customers that they shall acquire property only after this payment is made. The Buyer is obliged to insure the goods of the Contractor subject to retention of title for the duration of the retention of title against fire, theft, water and other damage. The Buyer herewith assigns any claims under such insurance against property damage insurance to the Contractor, who herewith accepts the assignment.

- 8.3 The Buyer is authorised to process the Contract Item and to combine or mix it with real estate or with movable property. Processing, mixing or combining (hereinafter jointly referred to as: 'Processing' and in conjunction with the Contract Item: 'Processed') is made on behalf of the Contractor, who shall designate the item resulting from the Processing as 'New Goods'. The Customer shall store said New Goods on behalf of the Contractor with the due care of a merchant.

Upon processing with other goods not belonging to the Contractor, the Contractor obtains co-ownership of the New Goods in a share calculated based on the ratio of the value of the processed, mixed or combined Contract Item to the value of the other processed goods at the time of the processing. If the Client acquires sole ownership in the New Goods, the Contractor and the Client concur that the Client shall grant the Contractor co-ownership in the New Goods at the ratio of the value of the Processed Contract Item to the other processed goods at the time of processing.

- 8.4 In case the Contract Item or the New Goods have been sold, the Client shall hereby assign their claim against the customer from the resale, including all ancillary rights, to the Contractor as collateral, without requiring further special declarations. However, the

assignment shall only apply to the amount corresponding to the price of the goods invoiced by the Contractor. The part of the claim assigned to the Contractor shall be paid out as a matter of priority.

- 8.5 If the Client combines the Contract Item or the New Item with land or movable property, the Client thereby assigns, without requiring further special declarations, also their claim obtained as remuneration for the combination, with all ancillary rights, to the Contractor as collateral in the amount of the ratio of the value of the Contract Item or the New Item to the value of the other combined goods at the time of combination.
- 8.6 Until further notice, the Contractor shall be entitled to collect the receivables assigned in terms of this No. 8 (Security interests of Contractor). The Client is obliged to transfer payments made towards the assigned receivables up to the amount of the secured claim without undue delay to the Contractor. The Contractor is entitled to revoke the Client's authorisation to collect the receivables for a compelling reason, especially in case of payment arrears, suspension of payments, opening of insolvency proceedings, protest of a bill or justified indications of excessive debt or impending insolvency on the Client's part. The Contractor may also, after a prior notice of caution and subject to a reasonable period, disclose the assignment of the receivables as collaterals, monetise the assigned receivables and demand that the Client disclose the assignment of the receivables as collateral to the Client's customers.
- 8.7 If the Contractor shows prima facie proof of a legitimate interest, the Client is obliged to provide the information required by the Contractor to assert their rights against the Client's customers to the Contractor and to hand over the necessary documents.
- 8.8 In the event of liens, seizures, or other disposals or interventions of third parties, the Client shall inform the Contractor without undue delay.
- 8.9 If the feasible value of all security interests to which the Contractor is entitled exceeds the amount of all secured claims by more than 10%, the Contractor shall release, at the request of the Client, part of the security interests; the Contractor shall be entitled to choose which one of several security interests is to be released.
- 8.10 In the event of a breach of duty by the Client, in particular in case of payment arrears, the Contractor is entitled to demand the return of the Contract Item or New Item even without a notice period, and/or withdraw from the contract; the Client is obliged to return those goods. The request for the return of the Product/New Item goods does not constitute a declaration of

withdrawal on the part of the Contractor, unless this is expressly stated so.

## **9. Payments of the Client**

9.1 All payments shall be made directly to the Contractor. Invoices of the Contractor are payable on the 7th day after their receipt by the Client; the transmission protocol of the Contractor's fax device shall serve as proof of receipt of the invoice.

Upon expiry of payment deadline and absent payment by the Client, the Client shall be in default without further declaration. Without prejudice to further claims of the Contractor for the Client's default, the Client shall pay interest on the overdue invoice amount during the period of default at the rate of 8 percentage points above base rate according to section 247(1) of the German Civil Code [BGB].

9.2 Payments shall be made by bank, giro or postal transfer. The date of credit to the Contractor's account determines the timeliness of the payment. Payments will always be used to settle the oldest due debt item first, plus any accrued interest and costs on arrears. Payments by cheque are not acknowledged as payment as long as the cheque has not been redeemed. The issue of a bill of exchange is only permitted with the prior express consent of the Contractor.

9.3 In case of payment arrears, the Contractor reserves the right to withhold any ordered Contract Items or repair services until all overdue invoices have been settled.

9.4 The Client's right to set-off with counterclaims is excluded unless the set-off is based on an undisputed or finally and non-appealably established claim. The Client may withhold due payments only the underlying right of retention is undisputed or has been established with finally and non-appealable effect.

## **10. Client's claim for defects**

If the Contractor delivers a defective product or defective performance, the Client is entitled to subsequent performance in accordance with the following, final (subject to No 11 of these General terms and conditions) provisions:

### **10.1 Material defects**

- a) The Client shall inspect has any delivery, including partial deliveries, immediately after receipt with the due care of a merchant to establish if the delivery is proper and complete; visible defects must be notified without undue delay, but not later than 8 days after receipt of the delivery; concealed defects must be notified without undue delay after their discovery,



otherwise the delivery shall be deemed to have been approved as contract-compliant.

The Client shall have no claim for defects in the case of only insignificant deviations from the agreed quality and/or only insignificant impairment of usability.

- b) The Contractor shall repair at their discretion defective parts or replace them with functional parts (subsequent performance).

The cost of subsequent performance shall be borne by the Contractor, unless the costs are caused by the fact that delivered goods were transported to a place other than the establishment of the Client, unless the transport of the goods to that other location is consistent with their contractual use.

- c) The Client shall allow the Contractor a reasonable period for subsequent performance. If at least two of the Contractor's attempts at subsequent performance have failed, the Client is entitled to withdraw from the contract or reduce the agreed price proportionate to the use impairment caused by the defect. The legal instances of the dispensability of setting a deadline shall remain unaffected.
- d) The Client shall not be entitled to subsequent performance if subsequent performance can only be achieved at disproportionate cost. Claims for defects are excluded for natural wear, improper handling or use, incorrect assembly or commissioning by the Client or a third party, improper maintenance, unsuitable geological conditions, or unintended chemical, electrochemical or electrical effects on the Contract Item.

## 10.2 Legal defects

- a) If the intended use of the Contract Item by the Client leads to a violation of intellectual property rights or intellectual property rights within the territory of the Federal Republic of Germany, the Contractor is obliged to eliminate the reason for the infringement by either - at their choice - modifying the Contract Item in a manner that no longer infringes any proprietary rights, or obtaining the right to use the affected proprietary right.

If the legal defect cannot be eliminated, or only a disproportionately high cost, the Contractor may refer the Client to the latter's right to withdraw from the contract. The Contractor shall indemnify the Client for any liability for the infringements of proprietary rights within the Federal Republic of Germany acknowledged by the Contractor or established as final and non-appealable.

- b) The exhaustively listed rights of the Client in case of an infringement of proprietary rights or copyright pursuant to No. 10.2 lit. a) apply only subject to the condition that
- the Client informs the Contractor with separate without prompting about the assertion of the infringement,
  - the Client provides the Contractor with all information, also in writing, about the asserted infringement without undue delay and at their own expense,
  - the Client assists the Contractor in their legal defence against the asserted



infringement, or allows the Contractor sufficient opportunity to remedy the infringement,

- the Client reserves all legal defence options for the benefit of the Contractor and does not acknowledge any breach of law without the prior consent of the Contractor, and
- the infringement was not caused by improper use or unauthorised modification of the Contract Item by the Client or a third party.

## **11. Client's claims for damages and withdrawal from the contract**

- 11.1 In case of intent or grossly negligent conduct on the part of the Contractor or their legal representatives, vicarious agents or persons used to perform an obligation, the Contractor shall be liable in accordance with statutory provisions.
- 11.2 In all other respects, the Contractor shall only be held liable under the German Product Liability Act [ProdHaftG] for injury of life, body or health or for a culpable violation of essential contractual obligations. Essential contractual obligations are obligations, the violation of which would jeopardise or preclude the purpose of the contract, i.e. the contractually agreed delivery or repair of the Contract Item. Damages for the breach of essential contractual obligations are limited to the contract-typical, foreseeable damage. Also in case of gross negligence, liability is limited to the contract-typical, foreseeable damage, unless one of the exceptions in sentence 2 of this No. 11.1 applies.
- 11.3 Unless the Contractor is held liable for intent or gross negligence, or for a culpable infringement of essential contractual obligations, or for an injury of life, body or health of a person, or according to the Product Liability Act, any liability of the Contractor for damage caused by the Delivered Item to other property of the Client such as loss of profit or other financial losses, is excluded.
- 11.4 The provisions of the Nos. 11.1 and 11.2, above, shall apply to claims for damages in addition to performance and damages in lieu of performance, irrespective of their legal grounds, and in particular due to defects, breach of other contractual obligations or tort. They also apply to the right to reimbursement of expenses incurred and for the liability of the Contractor due to impossibility and default.
- 11.5 The aforementioned provisions do not lead to any change in the burden of proof to the detriment of the Client.
- 11.6 The Client may withdraw in accordance with statutory provisions from the contract only if the breach of the obligation is attributable to the Contractor; in the case of a defect, the statutory

requirements apply exhaustively.

## **12. Product liability and liability for legal defects outside the European Union**

If the Client uses the delivered item outside the territories of the Member States of the European Union, the Client is obliged to indemnify the Contractor for all product liability claims and claims for damages resulting from the infringement of rights (in particular industrial and intellectual property rights).

The same applies if the Client sells the Delivered Item to a customer, who uses the item in a country that is not a Member State of the European Union.

## **13. Statute of limitation**

13.1 The limitation period for claims and rights of the Client for defects to the Contract Item or the assembly and repair work of the Contractor - irrespective of the legal grounds - shall be 1 year delivery of the Contract Item to, or acceptance of the assembly or repair services by the Client.. This also applies to claims for damages of the Client, irrespective of the legal basis of the claim, and irrespective of whether the claim for damages is related to a defect, as well as for claims for reimbursement of futile expenses incurred and or for impossibility of performance.

The limitation period pursuant to this No. 13.1, sentences 1 and 2, shall not apply in case of intent, gross negligence, fraudulent concealment, any - possibly expressly agreed - assumption of a guarantee about the nature of the quality of the Contract Item, as well as for claims for damages due to an injury to life, limb or health or freedom of a person, for claims under the Product Liability Act, or in case of a breach of essential contractual obligations, or for claims in terms of a warranty and claims for damages related to a defect in a building, or in objects that are typically intended for use in a building. Claims in terms of the present No.13.1, sentence 3 and 4, shall be governed by the statutory limitation periods.

13.2 Unless expressly otherwise determined, the statutory provisions on the beginning of the limitation period, the suspension, interruption and recommencement of limitation period remain unaffected.

13.3 The aforementioned provisions do not lead to any change in the burden of proof to the detriment of the Client.

## **14. Place of performance, place of jurisdiction**

14.1 Place of performance for all obligations under the contractual relationship for both Parties shall be registered office of the Contractor. The place of jurisdiction for all disputes arising from the contractual relationship shall be the registered office of the Contractor. However, the

Contractor shall also be entitled to file a lawsuit at the court having jurisdiction at the Client's principal registered office.

14.2 This contract is governed exclusively by German law; the application of the United Nations UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.