

General Terms and Conditions for Contracts on the Performance of Works agriKomp GmbH

last updated: 09. November 2009

These terms and conditions are a translation only of the original German terms and conditions for the performance of works of agriKomp GmbH. In case of any divergency the original German version shall prevail.

I. Scope of application

The following terms and conditions of trade are an integral part of all offers and declarations regarding the acceptance of contracts by agriKomp GmbH, and shall constitute the basis of all deliveries and services by agriKomp GmbH, including consultancy services and information.

Deviating general terms and conditions used by the customer shall be excluded, even if we have not expressly objected to such terms.

Supplementary and follow-up orders shall also be subject to the present terms and conditions of trade; in such cases, they shall become effective at the latest at the time of acceptance of the delivery or service concerned.

II. Contents of the contract

The respective offers and performance descriptions/specification sheets and the present additional contract terms shall apply to the agriKomp GmbH contracts on the provision of works. In all other respects, the provisions of the BGB (Bürgerliches Gesetzbuch, German Civil Code) regulating works contracts shall apply.

The German construction contract procedures (Vertragsordnung für Bauleistungen) shall only apply if agreed in writing in a specific contract.

Supplementary oral agreements shall only be valid if they have been confirmed in writing.

agriKomp GmbH reserves the right to carry out technical modifications when executing the order, provided that they result from progress in technical developments or that they prove to be advantageous in view of the facility's performance capabilities.

III. Prices

The prices specified in the offer are plus statutory value added tax, unless value added tax is expressly listed separately. Should the statutory VAT rate increase after the conclusion of the contract, agriKomp GmbH shall have the right to request payment of the increased VAT rate.

IV. Delivery dates, delivery, passing of the risk

Implementation shall commence on the construction commencement date specified in the offer; a binding completion date is expressly not part of our obligations, and can only be agreed upon in a separate written declaration.

In cases of force majeure and other unforeseeable, exceptional circumstances, or circumstances beyond agriKomp GmbH's scope of responsibility, e.g. difficulties during the procurement of material, disturbance of operations, strikes, lock-outs, lack of means of transport, administrative interventions, difficulties in energy supply etc. - even if they are incurred by sub-suppliers -, the completion period shall be extended by the duration of the impairment plus a reasonable start-up time, provided that such circumstances prevent agriKomp GmbH from the timely fulfilment of its obligations. If said circumstances make the delivery or service impossible or unreasonable, without fault or negligence on the part of agriKomp GmbH, agriKomp GmbH shall be released from its obligation of completing the work. If the completion period is extended due to the above mentioned circumstances, or if agriKomp GmbH is released from the obligation to complete the work, the customer shall not be entitled to base any damage claims on the above.

This shall not affect the customer's right to withdraw from the contract after fruitless expiry of a set reasonable period of grace. The risk shall pass to the customer on the

day of acceptance of the work. This shall also apply to a partial acceptance, provided that such is possible in view of the nature and characteristics of the work. Should the customer not request acceptance, the service shall be deemed to have been accepted upon expiry of twelve working days after written notification of the completion. Commissioning shall replace acceptance. The above regulations shall also apply to a partial acceptance. Acceptance may not be refused or delayed because of insignificant defects.

If the provision of the work is delayed upon the customer's request or due to reasons within the customer's scope of responsibility, the risk for this period of time shall pass to the customer. Any additional costs incurred by agriKomp GmbH in such cases shall be borne by the customer.

V. Construction and maintenance of facilities

The following provisions shall apply to all types of installation, assembly and maintenance, unless agreed otherwise in writing:

The customer must render the preparatory services specified in the offer, at its costs, obtain the necessary legal permissions for the work, and make the agreed number of construction assistants available, according to the instructions by agriKomp GmbH. The customer shall also make available the building material, energy and water required for the work, including the necessary connections up to the point of use, heating, and general lighting, shall provide sufficiently sized, suitable, dry and lockable rooms for storage of the machine parts, equipment, material, tools etc. at the place of installation, and shall provide adequate working and break rooms for the assembly personnel, including sanitary facilities. The customer shall furthermore take the necessary measures in order to protect the assembly personnel and agriKomp GmbH's assistants in the performance of its obligations. The cus-

tomers shall provide the necessary information regarding the location of concealed electric cables, gas and water pipes or similar installations, and the required structural data, in good time prior to the commencement of work.

The costs of professional disposal of installed parts or components which must be removed or replaced, required for reasons of environmental protection, shall be borne by the customer.

VI. Payment

Payment shall be effected according to the schedule for payment by instalments specified in the offer. Payments are due at the dates listed therein, immediately after issue of the invoice. In case of the customer's default of payment, interest pursuant to section 288 BGB shall be charged, without prejudice to the assertion of further damages. Payments may only be effected to agriKomp GmbH itself, unless agriKomp GmbH has issued deviating instructions.

Should agreed prepayments not be effected in good time, agriKomp GmbH shall have the right to delay further activities up until payment has been made. Cheques, bills of exchange and other commercial papers will only be accepted on account of performance, subject to the usual reservation concerning their encashment and discounting, and against acceptance by the customer of all costs associated with the encashment. Expenses incurred for discounting and bills of exchange shall be borne by the customer, and shall be due for immediate payment.

In case of partial performance, agriKomp GmbH shall have the right to request corresponding partial payments.

Should the customer withdraw from the contract or should he cancel the construction contract without any grounds having been provided for this, or should agriKomp GmbH declare withdrawal or cancellation of the contract for reasons within the customer's scope of responsibility, the customer undertakes to reimburse agriKomp GmbH for the costs incurred at such time, and to com-

pensate agriKomp GmbH for lost profits.

The customer shall only have the right to set off against counterclaims which are undisputed or have been determined in a legally binding manner.

VII. Reservation of title

All products remain the property of agriKomp GmbH up until all claims from the contract have been fulfilled. The customer is obligated to refrain from any impairment of our property with regard to the reserved-title goods, and shall promptly inform agriKomp GmbH of any interventions by third parties. Any costs incurred in this context shall be borne by the customer.

VIII. Claims and rights based on defects

The customer's warranty claims shall become time barred one year after acceptance of the work. The period of limitation as set out in section 634 a subsection 1 No. 2 BGB (German Civil Code) for buildings and for planning and supervisory services during the construction of buildings shall remain unaffected.

Agreements in the individual contract shall take priority.

In case of unjustified complaints, agriKomp GmbH reserves the right to request reimbursement of its incurred expenses.

IX. Liability

Any claims not expressly granted within the present terms and conditions, in particular damage claims based on impossibility of performance, default of performance, infringements upon collateral or pre-contractual obligations, tort and claims for compensation of consequential damage shall - with the exception of claims for damages which relate to health effects, human injury or loss of life - be excluded, unless they are based on an intentional or grossly negligent violation of the contract, committed by agriKomp GmbH, one of its legal representatives or by one of the persons assisting in the performance of its contractual obliga-

tions. agriKomp GmbH's liability for cases of negligence shall furthermore be limited to the damage which was foreseeable at the time of the conclusion of the contract.

To the same extent, agriKomp GmbH shall, in the cases described above, not be liable for loss of profit or monetary damage incurred by the customer, for instance in connection with a malfunctioning of the facility. The aforesaid shall not apply if the violation of obligations relates to material contractual "cardinal obligations"; in such cases, liability shall not be restricted by these terms and conditions.

X. Governing law, place of performance and place of jurisdiction

The legal relations shall be governed by the law of the Federal Republic of Germany. If the contract constitutes a part of the commercial activities of a business, Ansbach, Germany, shall be the agreed place of jurisdiction.

XI. Miscellaneous

The offers and planning documents of agriKomp GmbH are protected by copyrights and may neither be copied nor forwarded without prior written consent. In case of infringements, the customer shall be obligated to compensate agriKomp GmbH for the damage incurred. agriKomp GmbH shall have the right to use other reliable companies in the fulfilment of its obligations.

Should one of the above provisions not be legally valid, this shall not affect the validity of the remaining provisions.