

GENERAL CONDITIONS OF BUSINESS KORMANN ROCKSTER RECYCLER GmbH, AUSTRIA

PREAMBLE

- 1.1. The present General Conditions of Business shall apply, save as varied by express agreement accepted in writing by both parties.
- 1.2. The following provisions concerning the delivery of goods shall also apply correspondingly to the performance of services.
- 1.3. For erection and assembly work the pertinent special terms of the Association of Austrian Machinery and Steel Construction Industries shall be applicable in supplement of these general conditions.

2. CONCLUSION OF CONTRACT

- 2.1. The contract shall be deemed to have been entered into when the Vendor, upon receipt of an order, has sent a written acceptance of order.
- 2.2. Modifications of and amendments to a contract shall only be valid if confirmed in writing by the Vendor. Purchasing conditions of the Purchaser shall only be binding upon the Vendor where such purchasing conditions have been separately accepted in writing by the Vendor. Oral undertakings of the Vendor shall only be binding if subsequently confirmed in writing.
- 2.3. The Vendor's offers shall be valid without engagement. The Vendor reserves the right of prior sale.
- 2.4. In cases where import or export licenses, currency authorisations or similar permits are required for the performance of a contract, the party responsible for obtaining such permits shall be obliged to undertake all reasonable efforts so as to obtain the required licenses or permits in due time.
- 2.5. A cancellation fee amounting to 10 % (ten percent) of the purchase price shall, without prejudice to any claim for damages exceeding such amount, be charged, should the Purchaser terminate a contract without good cause.

3. PLANS AND DOCUMENTS

- 3.1. Data concerning weights, dimensions, measures, capacities, performance ratings, terms of delivery, prices, and the like indicated in catalogues, leaflets, circulars, advertisements, illustrated matter, price lists, etc. shall not be binding save to the extent that they are expressly referred to in the acceptance of order.
- 3.2. Drawings, sketches, plans and other technical documentation as well as catalogues, samples, leaflets, illustrated matter and the like shall in any case remain the property of the Vendor. They may not, without the owner's express consent, be utilised, disseminated, reproduced, published, distributed or displayed.

4. PACKAGING

Save as otherwise agreed, prices shall not include packaging. Where the common type of packaging is provided so as to prevent transport damage under normal transport conditions during the shipment of the goods to the agreed place of destination, such packaging shall be at the cost of the Purchaser and returnable only if expressly agreed in a written form.

5. PASSING OF RISK

- 5.1. The moment when the risk passes shall be determined as follows:
 - a. On a sale "ex works", the risk shall pass from the Vendor to the Purchaser when the goods have been placed at the disposal of the Purchaser, provided that the Vendor gives to the Purchaser notice of the date on and after which the Purchaser may take delivery of the goods. The notice of the Vendor must be given in sufficient time to allow the Purchaser to take such measures as are normally necessary for this purpose.
 - b. On a sale "F.O.B.", the risk shall pass from the Vendor to the Purchaser when the goods have effectively passed the ship's rail at the agreed port of shipment.
- 5.2. Where no indication is given in the contract of the form of sale, all goods shall be deemed to be sold "ex works".
- 5.3. The Vendor shall only be obliged to affect insurance where and to the extent that such insurance cover has been agreed in writing.

5.4. In all other respects, the INCOTERMS valid at the date of conclusion of the respective contract shall apply.

6. PERIOD OF DELIVERY

6.1. Save as otherwise agreed, the period of delivery shall commence at the latest of

- a. the date of the acceptance of order;
- b. the date of fulfilment of all technical, commercial and financial preconditions on the part of the Purchaser;
- c. the date of the receipt by the Vendor of such payment in advance of delivery as is stipulated in the contract and/or the date of opening of a letter of credit, if any, required for the transaction in question.

6.2. The Vendor shall be entitled to make partial and advance deliveries.

6.3. Should a delay in delivery be caused by circumstances affecting the Vendor that discharge the Vendor from responsibility as indicated in Art. 10, the Vendor shall be granted a reasonable period of grace for delivery.

6.4. In the event of a delay in delivery caused by fault on the part of the Vendor, the Purchaser shall be entitled to demand specific performance or to terminate the contract after previously granting a reasonable period of grace. In the case of custom-made products, the fact that the Vendor may not be able to use unfinished products for other purposes shall be taken into account when determining the length of the period of grace.

6.5. In the event that performance has, due to a fault on the part of the Vendor, not been rendered during the period of grace granted according to Art. 6.4, the Purchaser shall be entitled to terminate the contract, by notice in writing to the Vendor, in respect of all undelivered goods that cannot be properly used. In this case, the Purchaser shall be entitled to recover any payment which he has made in respect of undelivered goods or goods that cannot be properly used and, to the extent that the delay in delivery was caused by serious default on the part of the Vendor, to recover any expenses properly incurred in performing the contract and up to the date of termination. The Purchaser shall return to the Vendor products that although delivered cannot be properly used.

6.6 Any claims of the Purchaser against the Vendor exceeding the scope indicated in Art. 6 shall be excluded in the case of delay caused by the Vendor.

6.7 Where the Purchaser does not take the goods at the place and time provided for by the contract for any reason other than an act or omission of the Vendor, the Vendor shall be entitled to either demand specific performance or terminate the contract after granting the Purchaser a period of grace to take the goods. In such a case, once the goods have been appropriated to the contract, the Vendor may arrange for their storage at the risk and cost of the Purchaser. The Vendor shall further be entitled to recover any expenses properly incurred in performing the contract and not covered by payments received.

7. PRICES

7.1. Save as otherwise agreed, prices shall be ex Vendor's factory and do not include packaging and loading. Where delivery including shipment is agreed, prices shall not include unloading of the goods and further transport to their place of use.

7.2. In the case of contracts concluded with prices left open, the purchase price valid at the date of delivery shall be charged.

8. PAYMENT

8.1. Payment shall be made in the manner and at the time or times agreed by the parties in a Dealer Agreement. Other terms of payment as deemed necessary from time to time are permissible only as arranged and agreed to in writing by both parties.

8.2. The Purchaser shall not be entitled to retain payments for reasons of warranty claims or other counterclaims not recognised by the Vendor.

8.3. Where the Purchaser delays in making any agreed payment or performing any other obligation, the Vendor shall be entitled to either insist on specific performance and

- a. postpone the fulfilment of his own obligations until such payment is made or such other duty is performed;
- b. demand a reasonable extension of the delivery period;

- c. declare the entire open balance of the purchase price immediately due;
- d. in so far as the purchaser is not able to claim any grounds of release as provided for in Clause 10, recover interest on arrears at the rate of 8% over and above the bank rate charged at that time by the Austrian National Bank, such interest to be charged from the time fixed for payment. The Vendor reserves the right to recover a higher interest on overdue accounts as compensation for loss occasioned by delay. Additionally, the Vendor shall be entitled to recover all frustrated expenses incurred in performing the contract.
- e) or, after granting a reasonable period of grace, terminate the contract.

8.4. Should the purchaser after the period of grace specified in Clause 8.3. fail to make payment or to meet any other obligation, the vendor shall be entitled to terminate the contract by giving notice in writing. On being asked to do so by the vendor, the purchaser must return to the vendor any goods that have already been delivered and reimburse the latter for the depreciation of the goods in addition to defraying all expenses properly incurred by the vendor in the performance of the contract. As regards goods which have not yet been delivered, the vendor shall be entitled to place the finished or unfinished parts, as the case may be, at the disposal of the purchaser and debit the purchaser's account with the corresponding share of the selling price.

8.5. The Vendor retains legal title to the goods until full performance of the Purchaser's obligations. The purchaser is obligated to comply with all required formalities conducive to ensuring the retention of legal title by the vendor in case of attachment, seizure or other distraint, the purchaser is under obligation to file the vendor's retention of title to ownership of the goods and to notify him of same without delay.

8.6. Claims of the vendor against the purchaser other than those mentioned in Clause 8, arising from the latter's default are not admissible.

9. AUXILIARY MATERIALS

Auxiliary materials, if any, required for handover, commissioning or subsequent services, if any, shall be provided by the Purchaser free of cost.

10. WARRANTY AND LIABILITY

10.1. Warranty shall be limited to new equipment and subject to full compliance of the Purchaser with the terms of payment and fulfilment of the maintenance instructions included in the Operating and Maintenance Manual by authorised persons or licensed dealers.

10.2. The warranty period shall be the shorter of 12 months from the date of commissioning or 1000 operating hours and expire in any case 18 months after the date of delivery. Unless otherwise established through a valid certificate of commissioning, the date of commissioning shall be the date of the invoice.

10.3. The warranty period shall not be extended upon correction of defects or upon transfer of the warranty.

10.3.1 The warranty expires upon use of non original Rockster spare and ware parts.

10.4. The purchaser can only avail himself of his rights under this Clause if he notifies the vendor in writing and without delay of any defects that have become apparent. Each warranty service or each payment of damages shall be excluded where defects in goods delivered are not communicated to the Vendor immediately upon receipt and/or where defects are not immediately and within the applicable period of time communicated to the Vendor as soon as such defects are identified or where the delivered products were modified in any way whatsoever by persons not authorised to do so by the Vendor or where products were subjected to improper handling in any other way. On receipt of such notification, the vendor, if the defect is one which, under the provision of this Clause, is to be remedied by him, shall at his own option;

- a) repair the defective goods in suit or
- b) have the defective goods or parts returned to him for repair; or
- c) replace the defective goods; or
- d) replace the defective parts.

The repair or replacement of any defects does not result in an extension of the guarantee period.

10.5. Where the vendor has defective goods or parts returned to him for replacement or repair, the purchaser shall, unless otherwise agreed, bear the cost and risk of carriage. Unless otherwise agreed, the return to the purchaser of goods or parts sent by way of replacement or of repaired goods or parts shall take place at the cost and risk of the vendor.

10.6. The vendor shall not be under any obligation to defray the cost of repairs carried out by the purchaser himself or undertaken by him unless the vendor has consented to do so in writing.

10.7. The liability of the vendor shall apply only to defects that become manifest under operating

conditions as stipulated in the contract and in the course of normal use. In particular his liability does not extend to defects arising from faulty installation carried out by the purchaser or the latter's agent, poor maintenance, faulty repairs or alterations, or those made without the written consent of the vendor by persons other than the vendor or his agent, nor is he liable for normal deterioration.

10.8. For those parts of the goods which he himself has obtained from subsuppliers, the vendor shall only be liable to the extent of the guarantees granted him by the subsuppliers. Where goods are made to order by the vendor in accordance with models supplied by the purchaser, the liability of the vendor does not extend to the correctness of the design but to its execution in accordance with the instructions of the purchaser. In such cases the purchaser is fully responsible to the vendor for all damages or claims that may result from any infringement of patent rights. The vendor assumes no warranty liability in accepting repair orders or orders for alterations and modifications of goods that are not new or have not been manufactured by the vendor.

10.9. From the commencement of the guarantee period the vendor assumes no further liability, save as provided for in this Clause, nor shall be liable even in respect of defects due to causes existing prior to the passing of the risk.

10.10. It is expressly agreed that the purchaser shall have no claims on the vendor in respect of personal injury or of damage to goods that are not subject of the contract, for any other damage and for loss of profit except to the extent provided for by the applicable legislation in the case of proven intent or gross negligence on the part of the Vendor.

10.11. The warranty is only transferable provided the object of warranty is inspected and serviced by authorised persons or licensed dealers at the time of transfer or sale, in compliance with the maintenance instructions included in the Operating and Maintenance Manual. Transfer of the warranty does not extend the warranty period as stated herein. The warranty remains subject to all applicable terms and conditions.

11. RELIEFS

11.1. The following shall be deemed grounds of relief if they intervene after the formation of the contract and impede its performance: industrial disputes and all other circumstances that are beyond the control of the parties, e.g. fire, mobilization, requisition, embargo, currency restrictions, insurrection, general shortage of materials and restrictions in the use of power.

11.2. The effects of the said circumstances with respect to the obligations of the contracting parties are defined in Clauses 6, 8, and 9.

12. VENUE, APPLICABLE LAW

12.1. Disputes arising out of or in connection with the contract shall be under the jurisdiction of the Austrian court of law having original jurisdiction over the headquarters of the vendor. The vendor may also appeal, however, to another court of law having jurisdiction over the purchaser.

12.2. Contracts shall, in addition to the Vendor's General Conditions of Delivery, be exclusively governed by the non-unified law of Austria. Application of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

12.3. The parties can also agree as to the competency of a court of arbitration.

12.4. The place of performance of delivery and payment shall be the domicile of the Vendor. This also applies to transactions where goods are, according to the relevant contract, handed over at a different location.