

GK Europe GmbH Terms and Conditions of Sale

1. Definitions

1.1 In these conditions, the following words shall have the meanings set opposite each respectively:

"Company" GK Europe GmbH;

"Customer" Person, firm or company who purchases Goods from the Company;

"Contract" the contract made or to be made between the Company and the Buyer;

"Goods" any goods or services agreed to be provided by the Company to the Customer in the Contract.

2. General

2.1 Acceptance of any tender made by the Company shall not constitute a contract, but shall constitute an offer by the Customer to contract on the terms thereof. No contract shall be constituted until the Company, by confirmation in writing, accepts such an offer.

2.2 All goods sold and services provided are provided by the Company upon the terms and conditions herein stated unless otherwise agreed in writing. By accepting a tender, the Customer will be deemed to have agreed that any printed conditions attached to his order form are only binding so far as they are not at variance with the Company's own written conditions. Clerical errors are subject to correction.

2.3 The Customer shall indemnify the Company against all penalties, damages and costs to which the Company may become liable as a result of work done in accordance with the Customer's specifications which:

2.3.1 involves an infringement of a patent, intellectual property or registered design;

2.3.2 involves a contravention of any statutory obligation imposed by applicable health and safety acts.

3. Limit of Contract

A tender includes only such Goods and accessories as are specified herein. The Company reserves the right to make or to have made minor alterations to design or materials which do not affect the satisfactory working of the Goods.

4. Drawings

4.1 All drawings, descriptive matter, weights, dimensions and specifications submitted, and the descriptions and the illustrations contained in the Company's catalogues, pamphlets, price lists and other advertising matter, are approximate and by way of identification only and are intended merely to present a general idea of the Goods described therein; their use shall not, in any circumstances, import a sale by description.

4.2 Certified outline drawings will be supplied if necessary after the acceptance of the tender, but the Company does not undertake to supply copies of detailed drawings. When drawings are submitted for approval, they shall remain the property of the Company and shall be treated as strictly confidential and shall not be divulged to third parties without the Company's written consent and shall be returned immediately upon request by the Company.

5. Sub-Contractors

5.1 Where Goods are shown in the tender as being for supply or execution by persons nominated by the Customer (hereinafter called "Nominated Sub-Contractors")

5.1.1 such supply or execution shall not form part of the Contract;

5.1.2 the Customer shall (unless he shall procure a corresponding indemnity to the Company by the Nominated Sub-Contractors which is acceptable to and accepted by the Company) be deemed to have given to the Company an indemnity:

5.1.2.1 against claims in respect of any negligence by the Nominated Sub-Contractors, their servants or agents, any misuse by them of any scaffolding or other plant, or any breach of statutory duty, or similar claims;

5.1.2.2 against any expense occasioned by the Company in performance of the Contract by reason of delay or defect in the works or goods or the execution or supply of the works or goods the subject of the sub-contract.

6. Tests, Inspection and Performance

6.1 All Goods are carefully inspected and, where applicable, submitted to standard tests before despatch. Physical tests on materials in the presence of the Customer or its representative will not be arranged unless expressly provided for in the Contract. Where such tests are expressly provided for and the Customer fails to attend such tests after seven days' notice that they are ready to be held, the tests shall proceed in the absence of the Customer and shall be deemed to have been made in its presence and shall be recognised by it.

6.2 Any performance figures given by the Company are based upon the Company's experience and are such as the Company expects to obtain under normal conditions of service; and no warranty or guarantee is given or to be implied.

7. Time of Despatch and Installation

Any time quoted by the Company is to be treated as an estimate only and no contractual obligation is to be imparted by such quotation. Time of delivery shall not be of the essence.

8. Cancellation

In the event of the Contract being cancelled, the Company reserves the right to pass on all costs incurred up to the date of the cancellation of the Contract.

9. Force Majeure

In the case of "force majeure", accidents, holidays, shortage of labour, complete or partial stoppage of work, however arising, restriction or cessation of output from any cause, war, strikes, lockouts, disputes, failure to obtain supplies or components or any other cause whatsoever outside the Company's control, which hinders or prevents the Company from giving delivery or proceeding with the installation, the delivery of the Goods contracted for or its installation may be wholly or partially suspended but not cancelled, except that if the period of suspension exceeds twelve months the Company shall have the right to cancel the contract in respect of Goods undelivered and installation not performed and the contract price shall be apportioned accordingly.

10. Price Variation

10.1 The price for the Goods shall be exclusive of VAT and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of such amounts the Customer shall pay in addition when it is due to pay for the Goods.

10.2 Any price quoted by the Company is based on the cost of labour, materials, transport and fuel, and on the necessity of

conforming to the statutory obligations ruling, at the date on which the price is quoted. If between that date and the time when the equipment is delivered or installed variations occur in these costs, the price shall be amended in so far as the cost of manufacturing or procuring and installing the equipment has been affected by such variations. The certificate of the Company's accountants as to the effect of such variations upon the cost of procurement manufacture or installation shall be conclusive whether such procurement manufacture or installation is being undertaken directly by the Company or not.

11. Acceptance

The Goods shall be deemed to have been taken over by the Customer in the case of Goods not requiring installation upon delivery, and in the case of Goods requiring installation when installation is completed (or on completion of tests on site, if such tests are expressly provided for in the contract) or when the Goods have been put into commercial use, whichever may be the earlier; provided that in any case the plant shall be deemed completed two calendar weeks after notice has been given in writing to the Customer purchaser to that effect unless in the meantime tests shall have been made in pursuance of such express provision as aforesaid showing that it is not completed. The date of acceptance shall not be delayed on account of additions, minor omissions or defects which do not materially affect the commercial use of the Goods.

12. Terms of Payment

12.1 The payment of all invoices shall be in full, in accordance with the terms of payment agreed in the Contract. Any terms with no written agreement between the two parties are to be strictly 30 days from the date of invoice.

12.2 All payments payable to the Company under the Contract shall become due immediately upon its termination despite any other provision.

12.3 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counter-claim, discount, abatement or otherwise unless Customer's claims have not been disputed or the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

12.4 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such form from the due date for payment at the rate of 9 percentage points above the base rate, accruing on a daily basis until payment is made, whether before or after any judgement.

13. Warranty

13.1 The Company undertakes, at its own expense, to make good any defects which shall develop in the Goods supplied under the Contract within twelve months of acceptance (see condition 11) PROVIDED that such defect has arisen solely from faulty materials or workmanship and PROVIDED ALSO that Goods have, in the opinion of the Company, been properly maintained and used under normal working conditions and are returned carriage paid within seven days of the discovery of the defect. For goods of a manufacturer (other than the Company's manufacture) specified in the Contract, the Customer shall accept the manufacturer's warranty, if any, in lieu of the above undertaking.

14. Limitation of Liability

14.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, management, legal representatives, agents and sub-contractors) to the Customer in respect of:

- 14.1.1 any breach of these conditions;
- 14.1.2 any use made or resale by the Customer of any of the Goods, or of any product incorporating any of

the Goods; and

14.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

14.2 In case of slight negligence, the Company shall be liable only, if major contractual duties are violated and, thus, the purpose of the Contract is endangered. Otherwise, Company's liability for slight negligence shall be excluded.

14.3 Nothing in these conditions excludes or limits the liability of the Company:

14.3.1 for death or personal injury caused by the Company's negligence; or

14.3.2 for strict liability; or

14.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

14.3.4 for fraud or for fraudulent misrepresentation or concealment of a defect; or

14.3.5 for an express guarantee for certain characteristics of the Goods.

14.4 Subject to condition 14.2 and condition 14.3:

14.4.1 the Company's liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the typical and foreseeable damage; and

14.4.2 the Company's total liability shall be limited to the Contract price; and

14.4.3 the Company shall in no event be responsible for indirect, incidental, liquidated or consequential damages, including, without limitation, lost profits, lost sales, lost revenue or loss of customers, or for any other loss of any nature, whether based in contract, tort, negligence, strict liability or otherwise, due to its performance, or failure to perform, under the Contract; and

14.4.4 the Company shall be liable for damages based upon delay in case of slight negligence only up to 5% of the net order value of the affected Goods.

15. Risk/Title

15.1 The Goods are at the risk of the Customer from the time of delivery.

15.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

15.2.1 the Goods; and

15.2.2 all other sums which are or which become due to the Company from the Customer on any account.

15.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

15.3.1 hold the Goods on a fiduciary basis as the company's bailee;

15.3.2 store the Goods (at no cost to the Company) separately from all other Goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

15.3.3 not destroy, deface or obscure any identifying

- mark or packaging on or relating to the Goods; and
- 15.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.
- 15.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
- 15.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and
- 15.4.2 any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customers shall deal as principal when making such a sale.
- 15.5 The Customer's right to possession of the Goods shall terminate immediately if:
- 15.5.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into a liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- 15.5.2 the Customer suffers or allows an execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform and of his/its obligation under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts or the Buyer ceases to trade; or
- 15.5.3 the Customer encumbers or in any way charges any of the Goods.
- 15.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 15.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 15.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all the goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- 15.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 15 shall remain in effect.

16. **Dynamic Loads**

- 16.1 The Goods are available in various designs, including isolated and other models commonly identified as "balanced", which affect the total dynamic reaction imposed upon the supporting structure and foundation. Approximate reactions for proposed equipment will be furnished to the Customer upon request and calculated magnitude and frequency limits of dynamic reactions will be shown on general arrangement drawings. Analysis of such reactions relative to deflection, rigidity, strength and loading of supports, as well as the effect of these reactions on the foundation, the transmissibility of the soil and any other environmental aspects are the responsibility solely of the customer.

- 16.2 The Company shall not be responsible for direct or indirect damage caused by these dynamic reactions.

17. **Erection**

Any erection included in the tender is, unless otherwise stated, quoted exclusive of any builders', masons', joiners, work or electrical wiring and is conditional upon suitable foundations, buildings, cranes, lifting tackle, scaffolding, etc., being ready and free for use and a satisfactory means of access to the site with a clear passage for all parts being provided by the purchaser. Where it is found necessary for the workmen of the Company or their agents or contractors to work above or in the vicinity of the workmen of the Customer, its agents or contractors, the Customer shall accept full responsibility for any injury or damage to persons or property and shall indemnify the Company in respect of claims arising under applicable law. If for any cause outside the control of the Company the progress of the erection work is hindered a charge may be made to cover the additional expense incurred.

18. **Safety Features**

Acceptance of the tender holds the Customer responsible for maintaining safety features provided by the Company. The Customer accepts the responsibility to not remove, defeat or bypass any safety features provided by the Company, except in the course of normal service and maintenance. When performing service or maintenance, the equipment must be in a zero mechanical state using proper lock-out/tag-out procedures.

19. **Vibration and Foundation**

Company's general arrangement drawings are to be furnished with the magnitude and frequency of dynamic reactions, along with static loads. Embedded steel is recommended for anchoring Company's vibratory equipment. However, if embedded steel is not available, an anchor bolt option maybe feasible, and, if so, it shall be noted in the general arrangement drawings. The Company is not responsible for vibration transmission to surrounding structures, nor responsible for soil conditions, underground piping, water tables, or other items affecting foundations. Any additional costs for foundation design, building design, or vibration analysis are not within the Company's scope of supply. It is the responsibility of the Customer to ensure that the foundation is adequate to support the Company's vibratory equipment For further information, see FVB's brochure Company's information regarding installation instructions for vibration machines.

20. **Insurance**

The Company shall not be responsible for the insurance of Goods and accessories specified herein after the date on which, in accordance with condition 11, such Goods are deemed to be taken over by the Customer, but the Company shall insure the same to the full value thereof until the said date.

21. **Patents**

The Customer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in

respect of any infringement or alleged infringement of any patent, registered design, unregistered design, design right, copyrighted trademark or other industrial or intellectual property rights resulting from compliance by the Company with the Customer's instructions, whether express or implied.

22. **Storage Fee**

A storage fee of .5% per week beginning the 1st Monday after the contractual due date may be charged in the event the delivery is not taken at the contractually agreed upon date.

23. **Arbitration and Jurisdiction**

All disputes arising out of or in connection with the Contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration is Düsseldorf. The arbitral tribunal shall be comprised of three arbitrators. The language of the arbitration shall be English.

If, despite the arbitration clause in the previous paragraph, ordinary courts have jurisdiction, then place of jurisdiction shall be Düsseldorf; however, the Company shall be entitled to sue the Customer at his general legal venue.

24. **Applicable Law**

Unless otherwise agreed in writing, the Contract shall, in all respects, be governed by and construed in accordance with German Law, with the exception of §§ 305 – 310 BGB (German Civil Code), the application of which is expressly excluded.

25. **Severability**

Should individual provisions of the Contract be or become invalid, the remaining provisions shall continue to be in full force and effect. The invalid provision shall automatically be replaced by such other provision coming as close as possible - to the legally permissible extent - to the economic meaning and purpose of the invalid provision.