



K+S Aktiengesellschaft, K+S KALI GmbH, esco – european salt GmbH and Co. KG, K+S Entsorgung GmbH, K+S Transport GmbH, K+S Consulting GmbH, Ickenroth GmbH, Chemische Fabrik Kalk GmbH, MSW Chemie GmbH, Frisia Zout B.V. ("K+S")

Important notice: The following text is a translation of the "Einkaufsbedingungen für Bauleistungen" of the above-mentioned companies. It is issued solely for the purpose of informing business partners and shall neither have any legal effect on the contractual relationship nor form a basis for interpretation or construction of the contractual regulations. The German version shall be the only legally binding version and – if necessary – basis for interpretation or construction of contractual regulations.

1. Scope

The following terms and conditions for construction works ("Terms and Conditions") shall be deemed to be incorporated in, and form part of, any business contact of K+S with any affiliates, for example vendors or distributors ("Contractor"), concerning construction work. Furthermore, the "Bau- und Werkstoffleitfäden" by K+S shall be applicable.

K+S rejects the applicability of any general terms and conditions of the Contractor. They shall only be incorporated into a contract, if K+S approves the incorporation in writing before a contract is concluded. Such an approval is required for every and any contract separately, even if K+S had knowledge of the general terms and conditions of the Contractor beforehand and goods and/or services have already been accepted by K+S.

These Terms and Conditions shall apply to all business contacts as stated above, irrespective of whether the Contractor performs its obligations itself or through third parties. Individual agreements between K+S and the Contractor shall have a higher priority than these Terms and Conditions if and only if they have been prepared in the form of a written contract or approved by K+S in writing.

2. Contract Conclusion and Written Form

Contracts and contract alterations shall only be binding if they were proposed or approved by K+S in written form. A waiver of written form shall also be prepared in written form to have effect.

If K+S remains silent in regard to offers, requests or declarations of the Contractor, this silence shall not be regarded as an approval, unless such a procedure has been agreed upon in writing beforehand.

Contracts and contract alterations that are computer generated by K+S shall satisfy the requirement of the written form if they state that they bear no signature due to the fact that they are computer generated.

3. Elements of Contract

The following elements shall apply in the order mentioned below.

- a) K+S' order including the technical specification and service specification
- b) These Terms and Conditions
- c) "Bau- und Werkstoffleitfäden" of K+S
- d) European norms with EN-sign as well as German norms with DIN-sign
- e) Construction tendering and contract regulation (VOB) part C

4. Scope of the Construction Contract

Unless stipulated otherwise, within the performance specification the following regulations shall apply:

The Contractor shall name a site manager to K+S in writing for the entire duration of his performance until the process of acceptance is completed and the Contractor's performance has been approved by K+S. Interchanging of the site manager previously named has to be cleared by K+S in writing. If an important reason exists, the Contractor is entitled to attain a clearance. In other cases, the decision is at K+S' own discretion.

The Contractor shall have the obligation to closely examine the construction site(s) during the negotiations and before submitting an offer. Difficulties arising from the particular construction site(s) that are discernible at the time the offer is submitted shall have to be clarified beforehand and shall be taken into account in the prices contained in the offer. If the Contractor neglects these obligations, the agreed upon price shall be considered to include any and all difficulties arising from the particular construction site(s) that would have been discernible through a proper examination.

The Contractor shall estimate his prices and submit his offers in a way that ensures that the performance is finished, complete and fit for the agreed upon purpose at the time of surrender. Performances shall have to be turnkey ready and take into account all interfaces essential for operation to already existing works and/or performances of other contractors. Services required to achieve this shall be owed by the Contractor, even if they are not mentioned in the service specification (Technische Spezifikation or Leistungsverzeichnis) or are not listed separately in the purchase order, unless the parties have agreed upon otherwise.

Furthermore, the Contractor shall have the following obligations that have to be taken into account in his offer price and shall be deemed compensated:

- a) Setup and maintenance of the construction site(s) in regard to the Contractor's performance.

- b) Supply of electricity, water, and sewerage, including any and all connection charges during the construction period until acceptance by K+S, if not otherwise agreed.
- c) Ensuring the public's safety concerning the facility to be built and compliance with accident prevention regulations of the trade association.
- d) Protecting the work performed from damage and theft. Damage shall mean weather damage and ground water in particular but not exclusively.
- e) Identifying electrical cables within structures and soil as well as their protection.
- f) Obtaining necessary official permits and approvals including the Contractor's own costs and fees associated with this task, if not otherwise agreed.
- g) Performing all necessary survey work during the construction period, including the Contractor's own costs and fees associated with this task, if not otherwise agreed.
- h) Manufacturing and procuring all inventory records and revision plans, operating documents, operating regulations and maintenance instructions, administrative orders as well as surrendering these to K+S before acceptance, if not otherwise agreed.
- i) Establishing and maintaining access routes and roads to the construction site(s).
- j) Cleaning of the construction site(s) from garbage, contaminants and the like, concerning or arising from the plant engineering or assembly work by the Contractor, if needed.
- k) Participation in all meetings concerning the commission of the Contractor in person.
- l) Auditing any and all documents surrendered by K+S in regard to completeness, factual correctness and suitability for the intended construction work. The Contractor also commits to check all information given to him for correctness and suitability for performing his contractual obligations. The Contractor has to inform K+S about any concerns in regard to the above-mentioned qualities in writing.
- m) The Contractor's obligation to deliver and perform includes all parts and services customary or in factual connection with the ordered performance and/or service even if they are not mentioned in the contract but are essential for the completion of the contract. Supplementing performances according to ATV (DIN 18299) not mentioned in the contract are part of the Contractor's obligation and the Contractor has to calculate his pricing accordingly.
- n) If not otherwise agreed, the Contractor is obligated to perform workshop and construction planning necessary

for ready to use performance and surrender these to K+S within the agreed upon time period, in any case before execution so they can be reviewed.

- o) The Contractor is obliged to execute the services, relevant items, contingency items, electable items and alternative items included in the service specification as requested by K+S and within the specified time frame. The time needed for the performance of these items shall find consideration by the Contractor when he places his offer if the parties did not agree upon otherwise.
- p) The Contractor is obliged to ensure autonomously that no loss of information or incompatibilities occur at interfaces or further interfaces affecting his performance. The Contractor shall also ensure that his performance can be fully integrated into other performances by other parties involved in the planning and execution, and that no hindrances occur. The Contractor shall advocate the integration in close coordination with the other participating parties. All services associated with this shall be compensated for with the agreed upon price. The Contractor shall point out any possible difficulties, risks, cost increases, or disputes to K+S in writing.
- q) While at the site of a K+S operation, employees and representatives of the Contractor shall submit to access control, adapt to the usual business hours and operational procedures as well as observe security regulations and follow security related instructions.
- r) If not otherwise agreed, all materials (for example building and construction materials, components, spare parts, etc.) as well as auxiliary means (for example tools, equipment, machines, vehicles, scaffolding, containers, energy, water, etc.) shall be provided by the Contractor without acquiring claims for further compensation against K+S. If the parties agreed that materials or auxiliary means are to be provided by K+S, these shall be picked up at the relevant department of K+S by the Contractor, declaring the order number and intended purpose and shall be reviewed immediately. Complaints shall have to be filed promptly in writing.

5. Deadlines / Partial Performance

The Contractor shall be bound by the agreed upon deadlines. Performance ahead of schedule or partial performance need a written approval of K+S beforehand.

The deadlines for the completion and beginning of construction and other promised intermediate deadlines are binding contractual deadlines. The Contractor shall be required to equip the construction site(s) with a workforce, materials and auxiliary means suitable to meet the deadlines also considering external factors. If the Contractor does not comply, he shall have to remedy the situation immediately upon request of K+S.

If the Contractor realizes that he will not be able to fulfill his contractual obligations fully or not at all, he shall inform K+S



promptly and in written form about any delay as well as the cause and expected duration of such delays. If the Contractor does not meet this obligation, he shall have to compensate for any and all disadvantages and/or damages arising out of this. If K+S approves a tardy performance, the approval does not constitute a waiver of rights in regard to the tardy performance.

6. Assurance of Quality

The Contractor shall establish and maintain a system to assure quality and shall have to prove these measures to K+S, if requested. Furthermore, if so requested by K+S, the Contractor will establish a system to assure quality pursuant or equivalent to ISO 9001 et seq. K+S shall have the right to audit the quality assurance system in person or using a third party.

7. Audits

K+S shall have the right to audit the contractual performance of the Contractor. For this purpose, K+S shall have the right to enter the Contractor's or his subcontractor's facilities with due notice in order to inspect the facilities and plants essential for the contractual performance. K+S and the Contractor shall each bear their own costs arising from such audits.

8. Use of Subcontractors

The use of third parties for the fulfillment of the contract and the replacement of such shall each require the written approval of K+S. If the Contractor plans to use third parties for the fulfillment of the contract this shall be stated in his offer to K+S.

9. Order Execution

If the Contractor has any concerns about the specifics of the planned execution, any instructions issued by K+S, about the quality of materials or auxiliary means surrendered by K+S or about the performance of other contractors, he shall inform K+S promptly in writing (declaration of concern).

According to §§ 48 et seq. EStG (German income tax law), K+S has the obligation to pay 15% of each payment to the relevant revenue office if the Contractor does not present an exemption certificate. To enable K+S to comply with these regulations, the Contractor shall name the relevant revenue office, his tax identification number and the bank details of the relevant revenue office, with the invoice at the latest. The disclosure of this information shall be a condition for the invoice to become due. Alternatively, the Contractor shall have the possibility to surrender an exemption certificate with the invoice.

The Contractor shall be required to keep a site journal with daily reports that shall be surrendered to K+S or the construction supervisor appointed by K+S on a weekly basis. K+S and an appointed construction supervisor shall have the right to inspect the site journal and daily reports and request copies at any time and at their own discretion. Daily reports have to include any and all information relevant to the contractual performance and invoicing, such as construction progress, weather, temperature, number and type of workers

employed at the construction site, number and type of large appliances employed, beginning and end of performances of a greater scope, determinations of condition, work interruptions and their reasons, accidents, administrative orders or other incidents. If K+S provides forms for the site journal, the Contractor shall have the obligation to use these. The Contractor shall get no further compensation for the services describe above.

The Contractor shall have the obligation to dispose of all resulting waste according to statutory regulations. A proof of disposal shall be enclosed with any invoice concerning the disposal of waste. The Contractor shall not be compensated without a proof of disposal (condition for maturity).

10. Changed or Additional Services

The Contractor shall have the obligation to perform changed or additional services if requested by K+S and if the performance is necessary for the fulfillment of the contract. This shall not apply if the Contractor's operation is not suited for these services. The Contractor's compensation shall be determined on the grounds of the original pricing considering the particular additional costs of the requested service.

If K+S requests a change in the service or one that has not been part of the contract, the Contractor shall only have a claim for further compensation if he informed K+S about his claims promptly and before execution and also promptly handed in a follow-up proposal using the form provided by K+S. The follow-up proposal shall outline the cost impact including changes in the construction time and consider these in the pricing in a final manner. An extension of contractual deadlines and compensation for extended construction time shall be excluded if the Contractor did not inform K+S about the impact to the construction time with the follow-up proposal.

Prices for changed or additional services shall be determined on the basis of the offer calculation by the Contractor considering the additional or reduced costs. The actual costs shall be accounted for by the Contractor. A contractual discount granted to K+S in the original pricing shall also be applied to the pricing in regard to the changed or additional services. The Contractor shall disclose the basis for his price calculation, such as offer calculations and invoices, to K+S.

The price shall be agreed upon by the parties before the Contractor begins the execution of the service, where possible. The Contractor shall be required to begin execution of a service if so requested by K+S, even if a final agreement regarding further compensation has not yet been reached.

The Contractor shall not have claims for further compensation if the Contractor's follow-up proposal is based on circumstances that would have been discernable to qualified personnel from the offer documents in connection with an inspection of the construction site(s) and, nevertheless, the Contractor did not inform K+S about the increase in cost in advance to closing the contract. Such services shall be considered supplementing performances that were included in the original offer obtained through the performance specification.



11. Acceptance

Any acceptance shall only be made out in written form, with K+S and the Contractor signing an acceptance protocol. The form for the approval protocol shall be provided by K+S. An acceptance through putting into operation is excluded. Both parties shall have the right to invite to an acceptance with a notice of 10 working days. The Contractor shall have to cooperate during the acceptance process and provide the needed workforce and measuring instruments. An implied or notional acceptance is excluded.

The party that claims conditions are deviating from what was documented in the acceptance protocol shall bear the burden of proof.

With acceptance, the Contractor shall have to surrender everything needed for the putting into operation such as official permits, acceptances, test certificates, acceptance certificates from state defined authorities and institutions (TÜV, etc.) and operation documents.

12. Warranty / Substitute Performance

The statute of limitations for all services rendered shall be 5 years and shall begin to run after acceptance. Because of the damage susceptibility of flat roofs and foil roof, the parties shall agree upon a statute of limitations of 10 years for roofing works concerning flat roofs and foil roofs, which shall begin to run with acceptance.

If the Contractor does not fulfil his contractual obligations at all or does not do so in a timely manner or should the performance prove to be faulty or not according to the contractual agreements during execution, K+S shall have the right to a substitute performance through a third party at the expense of the Contractor, if a fair deadline set by K+S to remedy the situation as well as a second deadline under the threat of a substitute performance have expired.

13. Collaterals

If not otherwise agreed by the parties in writing, the Contractor shall provide a collateral of 10% of the preliminary overall net order value plus VAT. This contract performance security shall extend to all obligations arising from the contract, particularly to the performance according to the contract including invoicing, remedy of defects before acceptance and damage claims as well as refund of overpayment including interest. The contract performance security shall be provided in the form of a directly enforceable guarantee and be issued by a major German bank, a German savings bank or a German credit insurer. The deed of suretyship shall be indefinite and include the waivers of defense of failure to pursue remedies, voidability and set-off (§§ 771, 773 BGB (German Civil Code)) and the right of deposit with a public authority. The contract performance guarantee shall be surrendered to K+S within 14 working days of the receipt of the contract. If the guarantee was not surrendered until the first interim bill was issued, K+S shall have the right to withhold payments until the amount of the contract performance security is reached.

If not otherwise agreed upon by the parties, K+S shall withhold the amount of 5% of the net value of the final invoice plus VAT as a warranty security. The withheld amount shall be paid out if the Contractor provides a warranty bond that meets the same requirements set out for the contract performance security set out in the first paragraph of this No. 12. The warranty bond shall extend to all warranty claims, including damage claims and the refund of overpayments including interest.

The above-mentioned regulations shall only apply to contracts with an overall net order value equal to or greater than EUR 50,000.00.

14. Compensation and Invoicing of Services

All prices exclude the statutory value-added tax (VAT).

Partial final invoices (Teil-Schlussrechnungen) shall not be issued. Invoices shall be designated as progress invoice (Abschlagsrechnung) or final invoice (Schlussrechnung) and state the respective order number, order date and project number issued by K+S. Invoices shall be numbered consecutively. If not otherwise agreed, progress invoices shall only be made out with a value of at least EUR 10,000.00 and only one invoice shall be made out per month.

The final invoice shall be made out 4 weeks after acceptance at the latest. It shall include all necessary documents, be verifiable, account for VAT according to statutory regulations and state all previous progress invoices and payments made by K+S. One copy shall suffice.

Payments on progress invoices shall be due within 30 calendar days of receipt of a verifiable progress invoice. The payment on the final invoice shall be due within 30 calendar days of receipt of the verifiable final invoice including the documentation. These maturities shall not apply if the parties agreed otherwise.

K+S shall not owe interest on maturity. The annual default interest rate shall be 5 percentage points above the base rate. K+S shall be deemed to be in default according to the statutory regulations. However, K+S shall not be deemed to be in default in any case before receiving a written warning by the Contractor.

Billing on the clock shall only be applicable if the parties agreed upon this beforehand and in writing. If the parties agreed upon billing on the clock, all hours shall be documented on a daily basis by the Contractor on the form provided by K+S for this purpose, stating the beginning and end of each service. Costs for accommodation allowance as well as travel allowances and accommodation expenses shall only be paid by K+S if the parties agreed upon this explicitly beforehand.

If the parties agreed upon compensation by measurement and standard prices, the standard prices shall be deemed to be agreed upon in consideration of a contractual overall volume. There shall be a right for both parties to request an adaptation of the standard prices if the overall volume falls short or overreaches by more than 20%. Quantity calculations,

measurements, drawings and evidence of usage shall be made available to K+S by the Contractor. Quantities shall be determined using mathematical formulas and not by approximate values.

15. Termination of Contract

Additionally to the statutory and contractual possibilities of termination, both parties shall have the right to terminate the contract with good cause if a serious breach of contract occurs and it is unreasonable for either party to stand by the contract.

A serious breach of contract shall be deemed to have occurred in particular if one of the parties does not desist from non-trivial behavior that goes against the contractual regulations even after having been given a fair warning under the threat of termination of contract.

K+S shall have the right to terminate the contract with good cause in particular if

- a) the Contractor violates the German law to fight illicit work and illegal employment (Gesetz zur Bekämpfung von Schwarzarbeit und illegalen Beschäftigung) or tolerates such violations by a sub-contractor.
- b) the Contractor uses sub-contractors or tolerates a transfer of performances by a sub-contractor without prior written consent of K+S.
- c) the construction site(s) are not suitably equipped with a workforce, materials or auxiliary means and therefore the completion date is endangered and the Contractor did not rectify this situation despite having been warned by K+S under threat of termination of the contract and giving due notice.
- d) defects of performance occur before the completion of the contract that are not rectified after a reasonable time period set by K+S.
- e) the Contractor uses sub-contractors without the consent of K+S even after a reasonable period of time set.

In the case of a termination with good cause the performed services shall be invoiced. K+S' damage claims or contractual penalties remain unaffected. After a termination with good cause K+S shall have the right to have the part of the contract not yet fulfilled performed by a third party at the Contractor's expense. Further claims for damages shall remain unaffected. K+S shall also have the right to request compensation for damages instead, if the fulfillment is no longer of interest to K+S because of reasons that led to the termination with good cause. Furthermore, K+S shall have the right to use materials and auxiliary means (such as tools, scaffolding, plants, construction materials and parts available at the construction site(s)) owned by the Contractor. The Contractor shall receive reasonable compensation for items used by K+S.

Terminations shall be in written form.

Either party shall have the right to request a joint measurement of the work performed promptly after a termination of the contract has been declared.

16. Non-Disclosure

The Contractor shall neither be allowed to use know-how nor any information intentionally or incidentally obtained from K+S, should it be for the purpose of fulfilling the contract, during negotiations or the performance of the contract, for own purposes nor make them accessible to third parties without prior written consent of K+S. Furthermore, the Contractor shall not be allowed to duplicate documents surrendered by K+S without prior written consent. Such documents shall be returned to K+S immediately after completion of the contract. The Contractor shall also impose these obligations on his employees and sub-contractors.

17. Overpayment / Declaration of Assignment / Set-off / Right of Retention

The Contractor shall transfer any rights or obligations arising from the contract to a third party only with prior written consent of K+S.

The Contractor shall be obliged to promptly inform K+S about any transfer of rights by law or change in his company name or address in writing.

Set-offs by the Contractor shall only be valid insofar as they concern undisputed or legally established claims against K+S. A right of retention shall only exist if the claim arises from the same contractual relationship.

Concerning an overpayment by K+S, the Contractor shall not be entitled to claim the omission of enrichment according to § 818 section 3 BGB (German Civil Code).

18. Severability Clause / Applicable Law / Place of Jurisdiction

Should individual terms of these Terms and Conditions or parts thereof be ineffective, the legal effectiveness of the other provisions or the entirety of these Terms and Conditions is not affected.

These Terms and Conditions and any and all legal relationships between K+S and the Contractor shall be governed by the laws of the Federal Republic of Germany excluding collision laws as well as uniform international law, in particular UN sales law.

Prerequisites and effects of a retention of title shall be governed by the national law of the place where the respective item is stored if and only if the above choice of the laws of the Federal Republic of Germany was inadmissible or invalid according to that national law.

If the Contractor is deemed to be a merchant according to § 1 et seq. HGB (German Commercial Code), a legal entity under public law or special funds under public law, the exclusive place of jurisdiction for all and any disputes arising out of these Terms and Conditions or a contractual relationship between



the Parties shall be Kassel, Germany. However, K+S shall be entitled to bring action by its own choosing at the place of performance according to these Terms and Conditions or respectively according to an individual agreement or the Contractor's general place of jurisdiction. Statutory regulations with higher priority, especially concerning exclusive jurisdiction, shall remain unaffected.