



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 Maschinen, Anlagen, Systeme (einschließlich Software) sowie Werkleistungen" 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 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 purchase of machines, assets, systems (including software) and work services ("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 any services commissioned by K+S associated with (including delivery where applicable) machines, assets, systems (including software) and work services on or for other items. 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 his obligations himself 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 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-signs as well as German norms with DE-sign

4. Contractor's Scope of Performance

Unless stipulated otherwise within the service specification the following regulations shall apply:

The Contractor shall name a project manager to K+S in writing for the entire duration of his performance until the commissioning process is completed and the Contractor's performance has been approved by K+S. Interchanging of the project 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 installation site(s) during the negotiations and before submitting an offer. Difficulties arising from the particular installation 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 installation 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 performance specification (Technische Spezifikation or Leistungsverzeichnis) or are not listed separately in the purchase order, unless the parties have agreed 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 installation sites in regard to the Contractor's performance.
- b) Supply of electricity, water and sewerage, including any and all connection charges during manufacturing, installation and commissioning until the approval 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 (for example frost, snow, heat and rain) 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 project 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 approval, if not otherwise agreed.
- i) Establishing and maintaining access routes and roads to the installation 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 plant engineering and/or assembly 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 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 has the obligation to ensure autonomously that no loss of information or incompatibilities occur at interfaces or further interfaces affecting his performance. The Contractor has to ensure as well 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 advocates the integration in close coordination with the other participating parties. All services associated with this are compensated for with the agreed upon price. The Contractor has to point out any possible difficulties, risks, cost increases, or disputes to K+S in writing.
- p) 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.
- q) 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, scaffolds, 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.
- r) Transportation costs, possibly transit insurance and packaging. Also, costs for assembly and commissioning.

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 beginning and completion of assembly and other promised intermediate deadlines shall be binding contractual deadlines. The Contractor shall be required to equip the installation 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. If 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 planned kind of 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).

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 changed 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.

The joint acceptance process shall be conducted at the installation site(s). The acceptance shall be made promptly and if a trial operation was contractually agreed upon, respectively after the agreed upon time period. Within the existing possibilities a machine may also be used for production during the trial operation. Factual costs arising from the acceptance process shall be paid by the Contractor, and the costs for own personnel shall be paid by each party, respectively.

If it is determined that the machine, plant or system were not manufactured according to the contract, the Contractor shall

have the obligation to immediately establish the contractual condition and request to repeat the acceptance process. All costs arising from a repetition of the acceptance process shall be paid by the Contractor.

12. Warranty / Substitute Performance

The statute of limitation for defects shall be 36 months and shall begin to run after acceptance. The statute of limitations for spare parts shall be 36 months after successful installation.

Defects have to be rectified by the Contractor free of charge. If the rectification is impossible or it is unreasonable for K+S, the Contractor shall be obliged to replace the defective performance free of charge.

If time is of the essence or if the Contractor is in default in regard to the rectification of defects, K+S shall have the right to rectify the defects at the expense of the Contractor itself or through a third party. K+S shall inform the Contractor about the substitute performance promptly. If informing the Contractor is not possible, measures necessary to prevent damages may be taken without it. In these circumstances, K+S shall inform the Contractor in a timely manner. K+S' rights concerning the defects shall remain unaffected excluding any defects arising from measures taken by K+S or a third party.

The statute of limitation shall run anew as mentioned above in the first paragraph of this No. 12 from the moment of a written acceptance in regard to the remedy of defects.

For parts of a machine that cannot be used for its intended purpose for a period of time because of measures to remedy defects, the statute of limitations shall not run for this period of time.

If a remedy of defects is not possible or unreasonable to K+S, all of K+S' statutory rights shall remain unaffected.

Further claims from defects or liability by K+S shall remain unaffected.

13. Compensation and Invoicing of Services

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

Payments shall only be made to proper invoices that exhibit all statutory and contractual agreed upon contents, in particular comply with VAT regulations and have a separate VAT certificate. The K+S order number shall always be listed. Payment shall be made within 30 days of receipt of an auditable invoice and proper order completion.

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.

14. 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 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 not have the remaining part of the contract fulfilled and to request compensation for damages instead, if the fulfillment is no longer of interest to K+S because of the 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, and other plants, construction materials and parts available at the construction site(s)) of the Contractor for compensation.

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.

15. 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.

16. 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).

17. 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.