

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

These Terms and Conditions shall apply to all business contacts with contractual partners such as sellers and distributors of K+S (hereinafter "Contractors"), with respect to construction services. The "Construction and Material Guidelines" of K+S shall also apply.

Standard terms and conditions of the Contractor shall not be recognized and shall not be an element of the contract. This shall not apply if their application has been consented to in writing by K+S. This written consent requirement shall also be necessary if the standard terms and conditions of the Contractor are known to K+S and shipments and services have already been accepted by K+S in its knowledge of them.

These Terms and Conditions shall apply to all business relations with Contractors of K+S with regard to providing the aforementioned services, regardless of whether the Contractor performs the service itself or through subcontractors working on its behalf. Individual agreements between K+S and the Contractor shall take precedence over these Terms and Conditions. This shall require a written contract or written confirmation by K+S.

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 explicitly made by K+S with the information that they are valid without being signed shall meet this written form requirement.

If K+S and the Contractor conclude a framework agreement (also called "Kontrakt") under which further contracts are to be concluded as a result of requests by K+S, these further contracts will enter into force without the Contractor's confirmation. This shall not apply if the Contractor objects to the conclusion of a particular contract in writing and within an appropriate time, but no later than ten business days after the respective request.

3. Elements of Contract

The following elements – if applicable – shall apply and in the case of contradictions supersede each other in descending order:

- a) The purchase order by K+S
- b) Technical or service specification
- c) These Terms and Conditions
- d) "Construction and Material Guidelines" of K+S
- e) European norms with EN-sign as well as German norms with DIN-sign
- f) Construction tendering and contract regulation (VOB) part C
- g) Generally recognized rules of technology

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.
- 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.
- 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.
- 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.
- k) Participation in all meetings concerning the commission of the Contractor in person.
- l) Verification of the documents provided to the Contractor by K+S in terms of completeness, factual correctness and suitability for performing the construction services agreed. The Contractor shall be obliged to check all details in terms of correctness and suitability for performing its services. The Contractor must report any reservations concerning this to K+S in writing and without delay.
- m) 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.

- n) The workshop and installation plans necessary to produce the contractual performance, as well as their submission for verification within the agreed time periods, but in any case in good time before performance.
- 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 must sufficiently equip the construction site with workers, materials and resources in order to keep to deadlines also under consideration of external influences, excluding Force Majeure. In case of non-compliance, the Contractor must remedy the situation at the request of K+S without undue delay.

If the Contractor realizes that it will not be able to fulfill its contractual obligations fully or not at all, it 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, it shall have to compensate for any and all disadvantages and/or damages arising out of this. The unconditional acceptance of a delayed performance does not, with the exception of contractual penalties, constitute any waiver of rights by K+S with respect to the delayed 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 subcontractors and their replacement requires prior written consent given by K+S. If the Contractor anticipates that subcontractors will be used to fulfill its obligations under the contract, the Contractor must inform K+S with the submission of a tender.

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.

If the parties have agreed on a remuneration based on hourly rates, evidence of those hours worked must be confirmed, in the form of time sheets, by a person appointed by the Contractor on a daily basis. If templates of the Contractor are used that contain terms and conditions of the Contractor shall be considered void even if they have been signed by K+S.

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 be obliged to perform modified and/or additional services under section 650b of the German Civil Code (BGB) at the request of K+S if they become necessary to achieve the agreed work, or if K+S desires to change the agreed work and performance is reasonable for the Contractor. The Contractor's remuneration shall be determined on the basis of the calculation of prices for the contractual services ("Urkalkulation"), taking into account the particular costs of the service required.

If a service is required by K+S which is not provided for in the contract or is modified, the Contractor shall only be entitled to claim additional payment if it announces the claim in writing to K+S without delay and before performance, and submits an additional offer without delay using the forms made available by K+S for that purpose. The additional offer must state all cost effects including any construction changes, and be finally incorporated into the prices. In the event of an instruction to change the agreed work, the Contractor should only prepare the additional offer if it considers performance of the change reasonable. If the Contractor maintains that its internal procedures make the instruction unacceptable or unreasonable, it bears the burden of proof. With regard to construction effects about which the Contractor does not provide information when submitting the additional offer



at the latest, there will be no extension of the contractual deadlines or payment for a longer construction period.

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 amount of the remuneration should if possible be agreed between the parties before the Contractor starts performing the service. Upon being instructed by K+S, the Contractor must also perform the services if, within 30 days after the desire to make a change is delivered to the Contractor, no final agreement is reached regarding the additional remuneration. The instruction by K+S must be made in accordance with section 650b (2) BGB, in written form.

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 must be involved in the acceptance and provide the necessary workers and instruments. Section 640 (2) sentence 1 BGB shall apply with the provision that the Contractor must be requested twice with a reasonable time limit and with reference made to the legal consequence of a fictitious acceptance ("fiktive Abnahme").

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. Due to the particular susceptibility to damage of flat roofs and foil roofs, the warranty obligation for roofers' works on flat roofs and foil roofs is 10 years commencing with the acceptance of works by K+S.

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

Unless the parties have agreed otherwise, the Contractor shall provide collateral in the amount of 10 per cent of the provisional total net order value for the duration of the contractual performance. This contract performance security shall cover the fulfillment of all obligations resulting from the contract, particularly for the contractual performance of the service including settlement, removal of defects before acceptance, and compensation for damages, as well as the reimbursement of overpayments, including interest. The contract performance security shall be in the form of a directly enforceable guarantee, without any time limit, of a leading German bank, savings bank, or a German credit insurer. The guarantee document must

include a waiver of the defense of set-off, insofar as the counterclaim of the principal debtor is not undisputed or finally adjudicated. The defense of failure to pursue remedies must also be waived. 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 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.

However, the aforementioned collaterals shall only be provided for contracts with a provisional total net order value of at least 50,000 euros.

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 be liable to pay default interest after maturity under section 286 (3) BGB, if K+S has not received a written reminder. The default interest is 5 percentage points per annum above the basic interest rate.

Billing on the clock shall only be applicable if the parties agreed upon this beforehand. 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. Weight shall be determined using mathematical formulas and not by approximate values.

15. Termination of Contract

Without prejudice to other legal or individually agreed possibilities of termination, the parties can terminate the contract or parts of the contract under section 648a BGB for cause, if adherence to the contract would be considered unreasonable for the terminating party, also taking into account all circumstances of the individual case and in consideration of both parties' interests.

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 illegaler Beschäftigung) or tolerates such violations by a subcontractor.
- b) the Contractor commissions a subcontractor without the written consent of K+S or permits or tolerates further transfer of obligations by subcontractors or continues to employ subcontractors without consent after the expiry of a reasonable period of time.
- c) the construction site is not sufficiently provided with workers, construction materials and resources, and consequently the agreed completion date is obviously not kept to, and, despite receiving a reminder to redress the situation within a reasonable time set by K+S, with the threat of termination, the Contractor does not promptly produce a remedy.
- d) defects of performance occur before the completion of the contract that are not rectified after a reasonable time period set by K+S.

In the case of a termination with good cause the performed services shall be invoiced. K+S' damage claims or contractual penalties remain unaffected. Following a termination for cause for which the Contractor is responsible, K+S shall be authorized to have the uncompleted part of the service performed by a third party at the Contractor's expense without prejudice to further claims of damages under statutory regulations. 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, § 650 h BGB (German Civil Code).

Under section 648a (4) BGB both parties shall have the right to request a joint measurement of the services performed until the day of termination, carried out immediately after the termination. If a party refuses to comply or fails to appear on a date agreed or set by the other party with a reasonable notice to ascertain the performance level, it will bear the burden of proof for the performance level at the time of termination. This does not apply if unless the respective party fails to appear due to a circumstance for which it is not responsible and has informed the other party without undue delay.

16. Non-Disclosure

The Contractor shall not make available, whether for its own use or to third parties, K+S' know-how and all information and documents not disclosed to the public, particularly business secrets of K+S, of which the Contractor has gained knowledge for the purpose or on the occasion of the contract, or during negotiations or the performance of the contract, without the 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.

Disclosure to comply with statutory disclosure obligations is expressly permitted. In that event, K+S must – where permissible – be informed of the disclosure without delay and in writing.

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.