

Terms And Conditions Of Mauerspecht GmbH, Coswig

1 Scope Of Application

1. The following terms and conditions of the company Mauerspecht GmbH, hereinafter called the Contractor, shall apply to all orders and other contractual relationships between the Contractor and the Customer. By placing an order, the Customer accepts the terms and conditions of the Contractor as solely binding. Any terms and conditions of the Customer are hereby repudiated. They shall not be recognized by the Contractor even when the Customer sends his or her terms and conditions when placing an order and even when the Contractor does not expressly repudiate the terms and conditions of the Customer after receipt of the order.
2. All offers of the Contractor are non-binding and without obligation. They take effect only upon written order confirmation or with commencement of work. The contractor reserves the right to amend the order confirmation to the extent that changes arise with regard to the calculation basis (e.g. cost increase for diesel) or to risk increases between the submission of a tender and commencement of work.

2 Deadlines, Dates, Delay

1. Execution times, periods and dates specified by the Contractor are non-binding and subject to confirmation unless the Contractor expressly confirms the binding nature in writing. If the observance of bindingly accepted deadlines and dates becomes impossible due to circumstances for which the Contractor is not responsible, the time and deadline shall be suspended for the period of interruption and/or impossibility. In the event of an unreasonably long interruption and/or complete impossibility of the execution of the order, the Contractor shall be entitled to withdraw from the contract if the execution of the order is unreasonable. The same shall also apply in the case of events based on force majeure. All circumstances shall be deemed equivalent to force majeure which make the execution of the order significantly more difficult or impossible for the Contractor, e.g. sovereign measures, strikes, lock-outs, operational disruptions of all kinds, obstructions of traffic routes, irrespective of whether these circumstances occur at the Contractor's, a subcontractor's or a supplier's works.
2. The Contractor shall only be in default by means of a written reminder. The Customer shall be obliged to grant the Contractor a reasonable grace period in the event of default. In the event that the deadline expires without result, the Customer shall only be entitled to rescind the contract with respect to services not yet rendered by the Contractor. If the services already rendered up to the expiry of the deadline are only of minor importance for the Customer, he or she shall also be entitled to withdraw from the overall contract in the event of default. The Contractor's liability for any damage caused by the delay to the Customer through the Contractor's own fault shall be limited to 20% of the value of the delayed or non-delivered services. The limitation of liability does not apply to cases of intent or gross negligence. Any damage caused by delay must be proven by the Customer.

3 Terms Of Payment

1. All payments are to be made net cash 10 days after receipt of the invoice. Place of fulfilment is Coswig. Other terms of payment are only valid in case of written mutual agreements.
2. In the event of late payment, the Customer shall pay interest at a rate of 4% above the respective discount rate of the Deutsche Bundesbank from the due date in addition to the invoice amount. The Contractor reserves the right to assert a claim for further interest damage.
3. If the Customer does not meet his or her payment obligations or does not do so punctually or if the Contractor becomes aware of circumstances which, at his or her dutiful discretion, are likely to impair the creditworthiness of the Customer, all claims of the Contractor shall become due and payable immediately even if bills of exchange are accepted. In the case of total or partial default by the Customer, the continuation and completion of the Contractor's services shall be made subject to advance payments. If the Customer does not make an advance payment upon request, the Contractor shall be entitled to claim damages for non-performance instead of performance or to withdraw from the contract.
4. Any rights of retention of the Customer are excluded. The Customer may only offset his or her own claims to the extent that these claims have either been recognised as due by the Contractor or have been legally established.

4 Permits

1. The Customer shall procure any public law permits (e.g. building permits, road traffic permits, demolition permits, waste disposal permits, etc.) and submit them to the Contractor prior to execution of the order. If the possibly required permits are not available, the Contractor shall be entitled to withdraw from the contract and to claim damages for non-performance.
2. The Contractor shall not be liable for any damages suffered by the Customer as a result of such revocation or non-granting of permits. If the execution of the order becomes impossible as a result of revocation or if the execution of the order is delayed and/or interrupted for an unreasonable length of time in the event of legal disputes over the approvals, the Contractor shall be entitled to withdraw from the contract or demand reimbursement of his or her expenses. Waiting times and work interruptions at the construction site for which the Contractor is not responsible shall be invoiced separately to the Customer.

5 Warranty

1. Defects must be reported to the Contractor in writing by the Customer immediately after they become known or after completion of the services. Hidden defects must be reported in writing immediately upon discovery.
2. The Customer shall give the Contractor the opportunity to inspect the defect. In the event of a justified, immediate notice of defects, the Contractor shall be entitled to replace or rectify the reduced value.
3. If the notice of defects is not given immediately or if the Contractor is not given the opportunity to remedy the defect, any warranty claims shall lapse. If the Contractor does not fulfil an acknowledged or existing obligation to remedy defects or does not fulfil it in accordance with the contract, the Customer may reduce the purchase price. Withdrawal from the contract is excluded.
4. Further warranty claims – in particular for consequential damages – are excluded.

6 General Limitation Of Liability/Limitation

1. As far as not conceded in these conditions, liability claims against the Contractor – in particular claims for damages due to impossibility, delay, violation of contractual secondary obligations, culpa in contrahendo, tort, etc. – are excluded, also as far as such claims are in connection with warranty rights of the Customer. This applies unless the liability is based on intent and gross negligence.
2. A limitation period of 1 year shall apply to all claims against the Contractor unless other limitation periods are mandatory by law.

7 Insurance Benefits In The Event Of Damage

1. In the event of damage, the Contractor shall only be liable to the extent of the insurance benefits, less the deductibles.
2. The Contractor shall not be liable for any incorrect assessment of damages by the Customer. Any damage must be proven by the Customer within the framework of the insurance obligations.

8 Special Conditions

1. Machinery
The construction site must be passable for the machinery. No liability is assumed for damage caused by the weight or working movements of the machine on access roads, lawns, buildings, etc.

9 Retention Of Title

1. All goods delivered by the Contractor shall remain the property of the Contractor until full payment has been made by the Customer.

10 Individual Agreements

1. Individual agreements between the Contractor and the Customer must be in writing in order to be effective.

11 Severability Clause

1. If one of the General Terms and Conditions of Business used here should not become an integral part of the contract in whole or in part or be invalid contrary to expectations, the validity of the remainder of the contract shall not be affected.

12 Place Of Jurisdiction/Fulfilment

1. Place of fulfilment is Coswig.
2. Dresden is agreed as the place of jurisdiction, also for documentary, bill of exchange and cheque proceedings.