

Terms and Conditions of Sale and Delivery Status as of August 2015

1 Conclusion of the contract

1.1 ECT-KEMA GmbH will perform all deliveries and services exclusively on the basis of the following Terms and Conditions of Sale and Delivery. Divergent terms and conditions of the ordering party shall only be valid if they have been expressly acknowledged in writing by ECT-KEMA GmbH.

1.2 The conclusion of a contract requires a written order confirmation by ECT-KEMA GmbH. All other agreements entered upon in conjunction with the conclusion of a contract shall only be binding if they have been made or confirmed in writing by ECT-KEMA GmbH. Statements made by telefax or e-mail are considered equivalent to statements in writing.

2 Offer, documentation, scope of delivery

2.1 ECT-KEMA GmbH retains all ownership rights and copyrights pertaining to cost estimates, drawings and other similar documentation. These documents as well as other information, insofar as they are not public domain, must not be utilized or made available to third parties without ECT-KEMA GmbH consent. ECT-KEMA GmbH obliges itself to obtain the ordering party's consent prior to providing third parties with information or documentation that has been designated by the ordering party as being confidential.

2.2 Already during the offer phase, the ordering party shall indicate in writing any service condition that falls outside the realm of the ordinary, any intended use of a special nature as well as any increased risks that could arise in connection with the utilization of the object of the delivery by the ordering party.

2.3 The delivery quality ECT-KEMA GmbH specifically has to perform is laid down in the contractual agreement. The information pertaining to foundations is based on a soil load-bearing capacity of 200 kN/m² (2 kp/cm²) as well as on the construction soil being ready for digging and free of groundwater. Any deviations there from leading to difficulties shall be at the expense of the ordering party.

2.4 The above offer is only valid under the assumption, that a written agreement is reached for all above mentioned terms of sale and conditions of delivery including the attached supplementary conditions and all sections detailed in the offer.

2.5 The technical documentation for the machine(s) is part of ECT-KEMA GmbH's scope of supply. The installation and operating instructions will be supplied in three copies in the language of the operating country.

2.6 In order to certify the compliance of the machine/plant with the regulations of the machinery rules, principally a conformity declaration has to be issued and the CE sign has to be fixed at the machine/plant. (Only valid for countries of the European Community). However, conformity cannot be confirmed before the machine/ plant is ready for operation after commissioning as in this case also transition points (interface) from preceding and to following machines/ parts of the plant have to be taken into consideration. For this reason the conformity declaration can only be issued by the

manufacturers if they have installed the machine/plant themselves or convinced themselves of the correct connection or installation at site. ECT-KEMA GmbH suppose appropriate use of the machine/plant for the certification. If a modification is made at the machine/plant without the written consent of the manufacturers, the conformity declaration issued by ECT-KEMA GmbH will become invalid. If the operators provide local supplies or install the machine/ plant themselves, the manufacturers will only issue a EU manufacturers' declaration. In this case the operators are responsible that the components are conform to the rules, for their correct installation or connection, the issue of a EU conformity declaration and the fixing of the CE sign. The same is valid for the problems which prevent a CE signing due to reasons for which the manufacturers are not responsible.

2.7 ECT-KEMA GmbH reserves the right of technical modifications as a result of further improvements. Details shown in drawings and leaflets are not binding and part of the offer, unless these are agreed upon in writing.

3 Prices, payment, offsetting

3.1 Unless otherwise agreed upon, all prices are “ex works” (EXW-Incoterms 2000), including loading at ECT-KEMA GmbH factory in Görlitz/Germany, but excluding packaging, installation and commissioning. The German valued-added tax is not included in the price and will be charged separately at the applicable statutory rate.

3.2 Unless otherwise agreed upon, all payments must be made into ECT-KEMA GmbH account without any deductions.

3.3 The conditions of payment are fixed in the “Further Conditions” as part of the offer.

3.4 Should the ordering party be in arrears of payments, ECT-KEMA GmbH shall be entitled to charge interest at the rate of 8% above the base interest rate fixed in the German Civil Code (BGB). ECT-KEMA GmbH reserves the right to lay claim to additional compensation for damages. Moreover, in the case of a payment delay, after the ordering party has been notified in writing, ECT-KEMA GmbH shall be entitled to refrain from fulfilling its contractual obligations until the payments have been received.

3.5 In the event of delays caused by the ordering party ECT-KEMA GmbH reserves the right to adjust the price(s) accordingly.

3.6 The ordering party is only entitled to refrain from making payments or to offset against counterclaims if the latter have been determined in an undisputed, ready-for-decision or legally-binding manner. The ordering party shall not be entitled to refuse to perform due to advance performance as long as ECT-KEMA GmbH makes counter- performance or provides security for it.

3.7 If it becomes apparent after conclusion of the contract that ECT-KEMA GmbH entitlement to receive payment is in jeopardy due to inadequate ability to perform on the part of the ordering party, then ECT-KEMA GmbH shall be entitled, if ECT-KEMA GmbH has entered an advance-performance obligation, to refuse to continue to make deliveries or to render services and to set a reasonable deadline by which the ordering party has to pay in advance or to provide security for it. After this deadline has expired without redress, ECT-KEMA GmbH shall be entitled to withdraw from the contract and to claim damages.

3.8 Should the ordering party withdraw either partially or completely from a concluded contract for reasons for which ECT-KEMA GmbH is not responsible, the former shall compensate ECT-KEMA GmbH for all costs incurred, including costs associated with the stocking of parts as well as for any other damage that ECT-KEMA GmbH might incur as a result.

4 Reservation of ownership, insurance, insolvency

4.1 ECT-KEMA GmbH retains ownership of the object of delivery until all contractually stipulated payments have been received.

4.2 The ordering party is entitled to re-sell the object of delivery within the ordinary course of business. The ordering party, however, already now assigns to ECT-KEMA GmbH all receivables in the amount of the final sum of the purchase price owed, including the turnover tax, accruing from the re-sale to the buyer or third party. The ordering party continues to be authorized to collect these receivables even after the assignment. This does not affect the right of ECT-KEMA GmbH to collect these receivables itself. ECT-KEMA GmbH, however, obliges itself not to collect the receivables itself as long as the ordering party fulfils its contractual payment obligations and no petition has been filed for opening of insolvency proceedings.

4.3 If the object of delivery is combined with other moveable objects to form a single item and if the other item is to be seen as the principal item, then the ordering party shall make a prorated transfer of co-ownership to ECT-KEMA GmbH, insofar as the principal item belongs to the ordering party. The latter preserves the co-ownership for ECT-KEMA GmbH.

4.4 Upon request by the ordering party, ECT-KEMA GmbH shall release the security provided to the extent that the value of the objects delivered with reservation of ownership exceeds the value of the receivables to be secured by more than 10%.

4.5 At the expense of the ordering party, ECT-KEMA GmbH shall be entitled to insure the delivery against theft, damage caused by breakage, fire or water as well as against other damage insofar as the ordering party has not itself concluded a commensurate insurance-contract and informed ECT-KEMA GmbH to this effect.

4.6 As long as the object of delivery is still owned by ECT-KEMA GmbH, the ordering party shall not be authorized to sell, pledge or offer it as security. The ordering party must notify ECT-KEMA GmbH promptly about any pledges, seizures or other dispositions effectuated by third parties.

4.7 Should the ordering party be in arrears of payments, ECT-KEMA GmbH shall be entitled to rescind and repossess the object of delivery after a reasonable deadline has passed without redress, if such deadline was indispensable. Following rescission, the ordering party is obliged to deliver the object without delay.

4.8 Should a petition be filed for institution of insolvency proceedings against the assets of the ordering party, ECT-KEMA GmbH shall be entitled to withdraw from the contract and to demand the immediate return of the object of delivery if the ordering party is not in a position to provide adequate security.

5 Delivery time, delays in delivery

5.1 The delivery time is set forth in the contractual stipulations. Compliance with said delivery time presupposes that the ordering party has fulfilled all of the obligations incumbent upon it such as, for example, the conclusive clarification of preliminary technical questions, the presentation of the required official certifications and permits or the effectuation of the agreed-upon advance payment. The delivery time will be commensurately extended should this not be the case.

5.2 Adherence to the delivery times is subject to the proviso that ECT-KEMA GmbH itself has received its supplies correctly and punctually if ECT-KEMA GmbH has concluded a congruent contract for the supplies concerned.

5.3 The delivery date is considered as having been complied with if, prior to its expiration, the object of delivery has left ECT-KEMA GmbH factory in Görlitz/Germany or ECT-KEMA GmbH has given notification about its readiness to proceed with shipment. If an acceptance inspection of the object has been agreed upon, the compliance with the delivery date is based on the agreed-upon date for this or on the notification of readiness to undergo the acceptance inspection.

5.4 Should the shipment or the acceptance inspection of the object of delivery be delayed for reasons for which the ordering party bears responsibility, or if the latter delays acceptance, all risks pertaining to the object of delivery are passing to the ordering party. Any costs incurred by ECT-KEMA GmbH after notification of the readiness to ship or to undergo the acceptance inspection shall be borne by the ordering party starting one month after notification.

5.5 Agreed-upon delivery dates shall be extended by the duration of a hindrance or interruption in cases of force majeure, labour disputes or other unforeseen circumstances whose occurrence could not have been prevented by ECT-KEMA GmbH, ECT-KEMA GmbH shall promptly inform the ordering party about the beginning and end of all such occurrences.

6 Passing of risk, acceptance inspection

6.1 The risk passes to the ordering party at the time when the object of delivery or parts thereof have left ECT-KEMA GmbH factory in Görlitz/Germany, irrespective of whether ECT-KEMA GmbH has assumed the shipment costs or other performances, such as delivery and installation.

6.2 If an acceptance inspection has been agreed upon, the risk is passed to the ordering party upon acceptance. Acceptance must not be refused due to inconsequential defects. Acceptance is considered to have taken place if the ordering party does not accept the object of delivery within an appropriate period of time specified by ECT-KEMA GmbH, even though the ordering party was obliged to do so.

7 Rights in case of defects

7.1 The quality features owed to the ordering party are based on the agreements reached with the latter, on the quality features indicated by ECT-KEMA GmbH and on the general purpose of use of the object of delivery. If ECT-KEMA GmbH is supposed to supply the delivery object according to individual drawings, specifications or samples provided by the ordering party, the latter shall be responsible for the suitability of the deliveries for the purpose of use envisaged by the ordering party.

7.2 In the event of justified complaints by the ordering party ECT-KEMA GmbH shall provide remedy either by means of a replacement delivery or subsequent improvements. A prerequisite for this is that the ordering party has inspected the delivery immediately upon receipt and has promptly informed ECT-KEMA GmbH in writing about obvious defects ascertained in this process, indicating the reasons for the complaint. Should, however, hidden defects be ascertained at a later point in time, these must also be promptly indicated in writing, together with the reasons for the complaint.

7.3 Should ECT-KEMA GmbH fail to provide remedy within a reasonable period of time or if the remedy is not successful, then the ordering party shall be entitled to demand a reduction of the price or, should the breach of contract be fundamental, to withdraw from the contract altogether. If only parts of the delivery are defective, the further rights of the ordering party shall apply only to the defective part of the delivery, unless it has no interest in the contractual partial delivery.

7.4 After notification, the ordering party shall afford ECT-KEMA GmbH the required time and opportunity to carry out all of the measures necessary within the scope of its remedy efforts; failure to do so shall free ECT-KEMA GmbH from liability for the defects. Only in urgent cases involving a risk to the ordering party's operating safety or in order to prevent disproportionately high damage – whereby ECT-KEMA GmbH must be immediately informed to this effect – is the ordering party entitled to eliminate the defect itself or to have this done by a competent third party.

7.5 No claims due to defects can be put forward by the ordering party in the following cases:

- inappropriate use or misuse of the object of delivery
- improper installation or commissioning by the ordering party by third parties
- natural wear and tear of parts that come into contact with the raw material (for example, clay)
- utilization of parts other than the original spare parts or wearing parts indicated by ECT-KEMA GmbH
- improper or careless treatment
- inappropriate maintenance
- use of unsuitable operating means
- execution of flawed construction work
- unsuitable building ground
- chemical, electrochemical or electric influences, insofar as ECT-KEMA GmbH has not assumed responsibility for these.

Deriving rights because of defects is also ruled out in cases where the ordering party or a third party has improperly reworked or made modifications to the object of delivery without obtaining prior consent from ECT, unless the ordering party can prove that these have not impacted the usability of the object of delivery.

7.6 The noise emission of the machines might exceed 85 dB(A). In case of values from 85 dB(A) onwards, the operating company must place auditory protection at the disposal of the personnel. In case of values from 90 dB(A) onwards, the operating personnel is obliged to wear auditory protection.

7.7 The machine/plant will be designed and built in accordance with the pertinent basic safety and health regulations which are valid at the time of placing the order.

7.8 Operation of the machine/plant without the prescribed protective devices is not allowed by the law. These devices have to be supplied either by the manufacturers of the machine/plant or by the operator depending on the contractual regulation and have to be installed during commissioning.

7.9 Suitability for the following climatic conditions: Climatic area DIN 50019-T
 Climatic group DIN 50019-G5
 Climatic range DIN 50019-AT

8 Liability, statute of limitations

8.1 The ordering party shall only be entitled to other claims within the scope of the statutory regulations, particularly claims for damages, also due to impossibility of performance, delivery delay or tortious product liability, if ECT-KEMA GmbH has failed to provide the guaranteed quality features, has acted fraudulently, if personal injury has occurred or if other damage has been caused by wilful or gross negligence by one of ECT-KEMA GmbH legal representatives or vicarious agents, or if the case involves a breach of duty that is not merely immaterial. Insofar as the breach of duty in this case has been due to a slight degree of negligence, liability shall be limited to the foreseeable damage that would typically occur.

8.2 The right of the ordering party to put forward claims due to defects shall be barred by the statute of limitations twelve months after the passage of risk, unless these claims involve wilful or fraudulent behaviour or other claims involving non-contractual product liability. All other claims, also those due to defects of a structure or concerning objects of delivery that have been used for a structure according to their usual modes of use and have caused it to become defective, shall be governed by the applicable statutes of limitation.

9 Software-related rights of use

9.1 Insofar as the scope of delivery includes software, the ordering party is given a non-exclusive license to use the software delivered, including the appertaining documentation, for the contractual purposes. Said software is provided to the ordering party to be used only with the object of delivery; its use with other hardware is prohibited.

9.2 All other rights concerning the software and the appertaining documentation shall remain with ECT-KEMA GmbH or with the originator of said software. The ordering party is prohibited from granting sublicenses.

10 Place of performance, jurisdiction, applicable law

10.1 Unless otherwise stipulated, the place of performance for all deliveries and services is ECT-KEMA GmbH factory in Görlitz, Germany.

10.2 Place of jurisdiction for both parties shall be Görlitz, Germany if the ordering party is a businessman within the meaning of the German Commercial Code (HGB). However, at its discretion, ECT-KEMA GmbH is also entitled to file suit against the ordering party at its general legal venue.

10.3 The contract with the present Terms and Conditions of Sale and Delivery shall be governed by the laws of the Federal Republic of Germany.