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## ALLFILL GmbH

### GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY, AND CONDITIONS FOR THE PERFORMANCE OF REPAIR WORKS

Version as of October 2017

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## 1 Abbreviations and Definitions

- 1.1 ALLFILL GmbH, Zellerstr. 22, D-64720 Michelstadt, shall hereinafter be referred to as "Contractor". The purpose of its business is the production, distribution, installation as well as the performance of repair works of bottling plants and parts and equipment for these plants (hereinafter referred to as subject-matter or plants).
- 1.2 "Principals" shall be natural persons or legal entities who intend to conclude or have concluded a contract with the ALLFILL GmbH being the seller resp. the executing contractor with regard to the purchase of plants, parts, equipment or spare parts described in item 1.1. or with regard to the performance of repair-, service-, inspection-, installation- or maintenance works of such plants.
- 1.3 Contract" resp. "Order" shall mean any contract of sale or contract for work and services concluded between the contractor (item 1.1) and a principal (item 1.2).
- 1.4 The present general terms and conditions of sale and delivery including the conditions for the performance of repair works shall hereinafter be referred to shortly as general terms and conditions.

## 2 Integral parts of the contract

- 2.1 As far as nothing different has been stipulated the content of the contract shall be composed of the following integral parts:
  - 2.1.1 conditions agreed individually between principal and contractor,
  - 2.1.2 technical service description,
  - 2.1.3 generally valid price list of the contractor as amended  
– subject to possible misprints or errors,
  - 2.1.4 general terms and conditions of ALLFILL GmbH as amended from time to time.
- 2.2 The integral parts of the contract complement one another. In case of contradictions the provisions which have been listed (item 2.1) first shall prevail.

## 3 Conclusion of the contract and applicability of the present terms and conditions

- 3.1 The present general terms and conditions (item 1.4) shall be an integral part of each and any offer made by the contractor, each and any request for purchase, repair or service made by the principal and of any contract however concluded (item 1.3).
- 3.2 General terms and conditions or conditions of purchase of the customer shall not be an integral part of the contract, unless their application has been explicitly agreed in written form stating the exact provisions to be applied.
- 3.3 The contract shall come into force upon acceptance by the contractor of a request for purchase, for repair or service works made by the principal. The principal shall be bound to his request for a period of thirty days from receipt by the contractor.
- 3.4 The present terms and conditions shall apply to the whole future business relation between the principal and the contractor, in particular to later repair orders and to the purchase of spare parts, even if these have no material bearing on the original contract.

## 4 Subject matter of the contract

- 4.1 GENERAL PROVISIONS:
  - 4.1.1 Subject matter of the contract shall be the provision of services against payment by the contractor for the principal. According to their content these services may optionally be
    - 4.1.1.1 the sale of plants described in item 1.1, according to the agreement either with or without installation, the sale of equipment or spare parts for the plants or
    - 4.1.1.2 the performance of repair works, service-, inspection-, attendance-, installation- or maintenance works on the plants, their parts and equipment.
  - 4.1.2 Unless it is part of the contract, the principal shall establish at the place of the present or future use of the plant subject to the contract (in the following referred to as installation site) all technically and organisationally necessary conditions for the performance of the contract, in order to facilitate a most undisturbed and efficient progress of the works by the contractor.
  - 4.1.3 The principal shall provide the contractor on time with any and all documents and information necessary for the performance of the order, without the contractor's explicit demand being required, and he shall notify the contractor of any and all incidents and circumstances which are important for the performance of the order. He shall furthermore free of charge provide the contractor with the sample and specimen material required for the processing.
  - 4.1.4 Delivery periods shall be deemed envisaged and do not constitute firm deals. If no exact delivery time is agreed, the contractor shall perform the services within an appropriate period of time. Delivery periods shall start to run as soon as the principal has provided the contractor with all documents, sample and specimen material which is necessary for the performance of the service, resp. as soon as the principal has made an advance payment or deposit required from his part. Delivery delays from suppliers of the contractor shall entitle the contractor to an appropriate extension of the delivery period.

- 4.1.5 If the principal is in default of acceptance, the contractor shall be entitled to have the performances intended for the principal stored at the risk and cost of the principal if the nature of the services allows storage.
- 4.1.6 The contractor shall be entitled to employ subcontractors for the fulfilment and the handling of contracts.
- 4.2 SPECIFIC PROVISIONS FOR THE PURCHASE (PLACE OF PERFORMANCE; TRANSPORT; RISK OF LOSS):
- 4.2.1 In relation to the contractual specification of the object of purchase, the serial and standard accomplishment, construction and shape shall remain subject to change during the delivery period as far as the composition of the delivered installation does not fundamentally differ from the contract. Any and all specifications on performances, weights, operating costs etc. contained in descriptions, shall be deemed approximate, even if they have been agreed.
- 4.2.2 The principal shall collect the object of purchase at the agreed location, unless shipment has been stipulated. In this case the contractor shall forward the object of purchase to the principal. The principal herewith declares to agree to shipment by rail, by carrier or freight forwarder, by ship or else.
- 4.2.3 The object of purchase shall be deemed delivered and handed over properly in the following cases:
- 4.2.3.1 in case of agreed collection with the notification to the principal or an authorized third party (carrier, freight forwarder etc.) that the object of purchase is ready for shipment and collection at the agreed location. The principal shall inspect the object of purchase at the agreed location and take it into his charge immediately after the notification. The right to inspection shall be waived by implication if the principal places the shipment order without having performed any inspection.
- 4.2.3.2 In case of shipment with the handover to rail, carrier or freight forwarder etc. in the establishment of the contractor or in the duty free area.
- 4.2.4 Any and all risks, particularly the one of accidental perishing shall pass on to the principal at the time of performed delivery in accordance with item 4.2.3. In case of shipment the contractor shall conclude a transport insurance at the cost of the principal.
- 4.2.5 If the contractor should withdraw from the contract due to incomplete payment of the purchase price, the contractor shall without prejudice to his compensation claims (item 14.3) be entitled to choose between claiming the actual damage inclusive of lost profits or claiming a cancellation charge in the amount of 25 % (incl. of VAT) of the full purchase price as liquidated damages, not being subjected to reduction by judgement. If the withdrawal by the contractor is effected after the handover of the object of purchase, the principal shall, subject to further claims of the contractor, be obliged to pay a usage fee for the time from handover until its actual restitution. If the withdrawal of the principal is justified, the contractor shall be obliged to pay back possibly received advance payments or instalments excluding any other claims.

4.3 SPECIFIC PROVISIONS FOR THE EXECUTION OF REPAIR WORKS:

- 4.3.1 The contractor shall perform those services which he considers necessary for the completion of the ordered repair-, servicing-, maintenance-, or inspection target. Upon explicit request of the principal the contractor shall make an estimate of the costs preliminary to the performance which in detail displays the costs to be expected, broken down to work and material etc. The contractor shall submit estimations of costs without engagement unless the written estimation of costs explicitly stipulates otherwise. If unexpected increases of costs should occur and/or supplementary works or the additional use of material should appear necessary or advisable during the installation, an overrun of costs to the amount of 20% higher than the estimation (of costs) shall be admissible without prior notification of the principal being required.
- 4.3.2 The contractor shall neither be obliged to inspect the object of repair further than to the extent of the ordered works and to indicate possible further defects or damages, nor shall he be obliged to carry out inspections of material, unless it has explicitly been agreed otherwise.
- 4.3.3 If it is agreed that the contractor shall carry out the ordered works on-site with the principal, the principal shall cooperate to the full extent required. The order made shall include the authorisation to execute trial runs with the object of repair. Item 5.3 shall be applied analogously.
- 4.3.4 Upon completion of the ordered performances the principal shall immediately examine the object of repair with regard to possible defects. If a defect shows, the principal shall immediately notify the contractor of such in writing. If he fails to notify, the services performed and/or the parts installed shall be deemed accepted, unless it is a defect which could not be detected at the time of inspection. If such a defect shows later on, the notification shall be made immediately after its detection, otherwise the services performed shall be deemed accepted even with regard to that defect.
- 4.3.5 In the absence of other agreements substituted used parts and other material shall pass into the contractor's ownership without compensation, resp. shall be disposed of by the contractor at the costs of the principal.

## **5 Installation, start of operation, test run, approval**

- 5.1 If in the case of a sale of plants of the type described in item 1.1, the contractor is contractually obliged to their installation also, he shall put the delivered plant into the operating state according to the following provisions and in accordance with the agreed specifications and performance features. Until the agreed delivery date the principal shall arrange for the spatial, technical and other installation and connection conditions according to the parameters of the contractor in order to enable the contractor to perform the installation. If the principal fails to arrange for these conditions at all, fails to do so in time or arranges inadequately, he shall reimburse the contractor for all additional work and expense.
- 5.2 Installation shall be carried out at the location agreed in the contract (item 4.1.2). It shall be performed by qualified staff sent by the contractor himself or by employees of the contractor supervised by him and according to his instructions or possibly by third parties authorized by the contractor.
- 5.3 After the completion of the installation works, the contractor shall establish the operating ability of the plant. The contracting parties shall put the plant into operation together; supervised and instructed by the staff sent by the contractor.
- 5.3.1 The principal is obliged to reserve the required time and availability for the purpose of establishing the operating ability of the plant, which is at least three consecutive working days.
- 5.3.2 Within the course of testing the operating ability of the plant, trial runs with all containers and types of product shall be carried out. The containers and products needed and also all other required materials, as well as all the technical facilities, such as conduit cords, electricity supply and similar, are to be provided by the principal in sufficient quantity. Generally, the principle is obliged to participate in the plant installation free of charge.
- 5.3.3 The principal approves and takes note of the fact that during the course of the installation, the plant is being adjusted and that for this reason it cannot reach its full operating ability right from the start. The principal does not have the right to draw any legal consequences from this fact.
- 5.3.4 The plant is considered to be put into operation when its operational readiness is established, which means that the plant is available to the principal for a regular week of production. After the installation, the principal can use the plant at its own risk until its formal acceptance.

- 5.4 The formal acceptance of the plant takes place within 10 days of the installation at an earlier date, agreed beforehand between the principal and the contractor and an independent expert. The entire procedure, and above all the measurements and the formulation of the acceptance protocol, follow the DIN 8782 protocol, under the supervision of the principal.
- 5.5 The acceptance is considered successful if the plant fulfils all the technical requirements in all the essential points. Any insignificant deviations of the plant from the agreed requirements, which are considered unessential, do not give the principal the right to reject the acceptance. These unessential deviations are to be described in a written declaration of acceptance. If within the course of the acceptance procedure, the principal gains notice of any such deviations, the principal is to immediately notify the contractor about them in writing. A successful acceptance means that the plant construction is finished and delivered in the agreed form.
- 5.6 In accordance with item 5.5, both contracting parties, the principal and the contractor, are obliged to confirm the successful acceptance of the plant in writing (declaration of acceptance). If the principal does not promptly declare acceptance, the contractor can stipulate a 7-day deadline and notify the principal about this in writing. The acceptance is considered successful unless the principal notifies the contractor in writing why the acceptance is rejected, specifying the grounds for the rejection.
- 5.7 As an attachment to the declaration of acceptance (item 5.6), the contractor also hands over all the technical documentation and the instruction manual.

## **6 Mutual support**

- 6.1 The contracting parties engage to undertake everything to mutually facilitate the execution of the contract and to refrain from anything that might impede or endanger the execution of the contract.
- 6.2 Particularly with regard to technical issues the contracting parties both undertake to mutually support each other if the execution of the contract should require it. In general, the contracting parties shall work together closely. The principal shall provide for qualified staff for the cooperation with the contractor, he shall further put all technical equipment that is necessary for the execution of the contract such as conducts or connections for power supply etc. at the contractor's disposal.

## **7 Prices**

- 7.1 In return for the services performed the contractor shall be entitled to payment of an appropriate consideration by the principal. The amount of this fee shall be determined in the agreement, in the absence of an explicit agreement the fee shall be in accordance with the general and currently valid price list of the contractor.
- 7.2 Any and all fees and amounts stated in the order documents shall be deemed exclusive of VAT and other possibly incurring taxes and charges to be borne separately by the principal. Any and all additional expenses such as costs for packaging or its disposal, transport, freight, carriage, transport- and other insurances, travel expenses and costs for accommodation of the contractor's staff or other shall be borne separately by the principal. If the contracting parties should agree on DAP (Delivered at Place) or CIP (Carriage Paid to) shipment according to INCOTERMS 2010 (Carriage Insurance Paid, agreed destination) as a contractual condition, the principal shall not have to pay separately for freight or postage, he shall bear all other additional charges however.
- 7.3 If the contractor's consideration has been shortened by a time loss during the performance of the services as a result of circumstances in the sphere of the principal, he shall be entitled to an appropriate compensation in addition to the agreed fee.

## **8 Provision of a security**

- 8.1 The contractor shall be entitled to make the execution of contracts dependent on the provision of a security or an advance payment and to determine the type of demanded security (bank guarantee, deposit etc.).
- 8.2 If after conclusion of the contract circumstances should occur or emerge which justify the assumption of an increased risk of collectability, the contractor shall be entitled even ex post to demand the provision or increase of securities or advance payment.
- 8.3 That is the case particularly if the economic situation of the principal has changed to the worse or if there is reasonable suspicion that it is on the verge of worsening or if the existing securities have deteriorated in value or if these are on the verge of deteriorating. This shall equally apply if at conclusion of the contract no provision of securities has been demanded.

## **9 Payment conditions, default**

- 9.1 If object of the contract is the sale of a plant such as described in item 1.1 including installation, the principal shall, unless a different agreement has been made, pay the amount due in four instalments as follows:
  - 9.1.1 40% of the total amount shall be due at the issuing of the order, resp. at conclusion of the contract,
  - 9.1.2 45% shall be due at the time of readiness for delivery, which is as soon as the plant has been produced in the factory of the contractor and is ready for collection or shipment,
  - 9.1.3 10% on the installation of the plant
  - 9.1.4 the remaining 5% of the amount within 60 days, though not later than on the acceptance of the plant.
- 9.2 The contractor shall deliver spare parts and wear parts against full payment in advance. In all other cases the fee as well as any additional costs shall be due net exempt from charges within 14 days from receipt of the invoice. The principal shall not be entitled to retain payments because of incomplete overall performance, because of claimed defects resp. alleged warranty claims.
- 9.3 Received payments shall – regardless of dedications declared differently – be credited against (judicial and/or extrajudicial) collection charges first, then against default interest and only after that against other debts due.
- 9.4 In case of payment default the principal shall owe default interest in the amount of statutory default interest, minimum in the amount of 12 % p.a.
- 9.5 Beyond interest and other damages caused by him as well as expenses incurred and cash expenditures, the principal shall reimburse the contractor any and all costs incurred by adequate extrajudicial collection measures in case of payment default. The contractor shall be entitled to (reimbursement of) these costs even if he has executed the collection measures himself. A minimum processing fee in the amount of 15, 00 Euro exclusive of VAT shall be due by the principal per piece of correspondence.

## 10 Retention of title, Prohibition to set-off

- 10.1 Every plant sold by the contractor, as well as any and all other performance parts or objects sold, delivered or installed on the occasion of service shall remain the property of the contractor (goods subject to retention of title) until full payment of either the purchase price or the fee due. Resale or pledging of goods subject to retention of title by the principal shall be strictly forbidden.
- 10.2 The principal shall immediately notify the contractor by registered letter of all interventions (levies of execution etc.) of third parties or of damages on the goods subject to retention of title stating all relevant circumstances and enclosing all relevant documents and even before that he shall notify the contractor by phone. The principal shall reimburse the contractor all lawyers' fees regarding judicial or extrajudicial measures.
- 10.3 The principal shall only be entitled to set-off claims against the contractor with claims determined by a Court or such explicitly accepted in written form by the contractor.

## 11 Representation and warranty

- 11.1 The contractor shall represent and warrant for the fact that the services demonstrate the agreed quality and that they are free of defects which might impair the use presumed by the contract. The contractor does not assume any further guarantees.
- 11.2 If the agreed performances show defects at the time of hand-over and if the defect is remediable, the contractor shall within the scope of representation and warranty be entitled upon his choice to either have defective parts repaired or exchanged. The principal shall allow the contractor the required time and occasion to perform correction of the defects. The contractor shall upon his own choice perform correction of the defects either at his own place or at the location of the principal. If in the course of correction works possible trial runs should be necessary or bottles, products to be bottled or technical equipment such as conducts or connections for power supply etc. should be required for test purposes, the principal shall put these objects or equipment at disposal free of charge.
- 11.3 The principal shall only be entitled to claim a reduction in price or cancellation of the contract if correction or exchange are either impossible, connected with unreasonable expense or in the case that the contractor fails to meet the principal's demand or fails to do so within appropriate time, at least within a period of 45 days (priority of correction and exchange).
- 11.4 V Representation and warranty shall not include the elimination of defects which have been caused or enhanced
- 11.4.1 by handling errors in the sphere of the principal, non-observance of forced conditions of use, of installation or operation manuals, or by other improper use or treatment,
- 11.4.2 by technical interventions by the principal or by third parties, non-observance by the principal of the instructions given for the plant or by negligent or intentional damage, by outside influences which the contractor is not responsible for, force majeure or
- 11.4.3 a result of unauthorized operation by third parties, vandalism or other acts of violence.
- Furthermore shall be excluded from representation and warranty the adaptation of the plant(s) to altered requirements of use and wear parts.
- 11.5 Possible claims of representation and warranty beyond this extent shall comply with the statutory provisions. The representation and warranty period shall amount to 12 months from delivery of the performances or from the start up if the contractor has contractually committed himself to installation. The contractor shall represent and warrant for electronic and pneumatic installation units and –parts according to the conditions of representation and warranty of his own suppliers.
- 11.6 If the contractor has acted because of alleged defects claimed by the principal and if it turns out that no such defect is given, the principal shall reimburse the contractor all expense caused. The amount of reimbursement shall be in accordance with the currently valid price list of the contractor.

## 12 Liability

- 12.1 The contractor shall only be liable for damages caused by intent or by gross negligence. The onus of proof for the fault shall be on the principal. The liability shall be limited with the total amount that has been agreed in the course of ordering. The contractor shall not be liable for mere pecuniary losses, indirect damages, lost profits, missed savings, consequential damages, impairment of company value, loss of good will or damages resulting from claims of third parties.
- 12.2 Any damage claims shall fall under the statute of limitations after the expiry of 6 months from notice of the damage by the principal.

## 13 Protection of company- and trade secrets

- 13.1 The contracting parties shall keep secret beyond termination of the agreement any and all information and documents originating from the other party, marked as „confidential“, or which due to other circumstances doubtlessly are recognizable as company- and trade secrets and they shall – unless demanded by the purpose of the contract – neither record such information nor use or transfer it to third parties. The contracting parties shall equally assign these obligations to their employees and authorized representatives.
- 13.2 Confidential information (item 13.1) shall mean all information disclosed by one contracting party to the other by whatever means (in writing, orally or in the form of plans, documentations etc.), particularly technical data, customer (related) data, purchase conditions and contracts, data regarding employees, suppliers and resellers, know-how, product ideas, data regarding research, development, production, technology, finances, cost structures, marketing activities and data possibly underlying the secrecy of communication.
- 13.3 Excluded from the obligation to maintain secret shall be all information which
- 13.3.1 has been legally obtained from a third party or which is verifiably available to the public by other means than by an infringement of the obligation to maintain secrecy;
- 13.3.2 has been independently developed by employees of one of the contracting parties;
- 13.3.3 is already known to the contracting party receiving the information at the time of disclosure by the other contracting party;
- 13.3.4 is being released for disclosure to third parties by the contracting party giving the information by explicit written approval;
- 13.3.5 has to be disclosed to authorities or Courts according to mandatory legislation.

## 14 Right of withdrawal

- 14.1 Unless agreed otherwise the orders shall constitute sales contracts or contracts for work and service having as their purpose a non-recurring performance (= purpose obligations).
- 14.2 If the cooperation by the principal necessary for the performance of the service should remain undone, the contractor shall be entitled to set him an appropriate period to catch up, declaring that after fruitless expiry of that period the contract shall be deemed cancelled. The contractor shall furthermore be entitled to withdrawal
- 14.2.1 if the principal is in default of payment despite a reminder including additional respite of 14 days;
  - 14.2.2 if the principal himself or a third party providing for security has given incorrect information on his economic or financial situation when placing the order or if circumstances have been concealed which – if the contractor had been aware of these – would have resulted in the refusal of the order by the contractor;
  - 14.2.3 in case of material deterioration of the economic situation of the principal or third parties providing for security, in particular in case of moratoriums, extrajudicial assignments for the benefit of creditors, declarations of bankruptcy, presentation of the inventory of assets in Court, institution of insolvency proceedings or discharge for want of assets to cover costs of proceedings;
  - 14.2.4 in case of death or incapacity to act of the principal or – if the principal is a legal entity – in case of liquidation;
  - 14.2.5 if the principal violates material contract obligations and such infringement and its consequences should not be removed within 14 days from monition.
- 14.3 If the contractor as a result of the presence of one of the reasons acc. to item 14.2 legitimately declares the cancellation of the contract without notice, his claim for compensation for services already performed shall remain intact.

## 15 Miscellaneous

- 15.1 Agreements, amendments or supplements of orders deviating from these general terms and conditions shall only be effective if made in writing. Side-agreements have not been made.
- 15.2 Declarations which are material for the contractual relationship shall only be effective if made in writing.
- 15.3 Should one of the contract provisions be or become ineffective, the validity of all other provisions shall not be affected hereby, unless in the light of its partial nullity the adherence to the contract would constitute unreasonable hardship for one of the contracting parties. The ineffective provision shall be replaced by a substitute rule which meets the purpose aimed by the ineffective provision most closely.
- 15.4 Possible disputes arising from the contract including its formation shall be governed by Slovenian law excluding its referring rules as well as the UN Convention on contracts for the international sale of goods.
- 15.5 Place of performance and exclusive jurisdiction shall be Michelstadt, Germany. The contractor shall further at his sole discretion be entitled to assert his claims at the place of general jurisdiction of the principal.