

Translation from the German

## **General Terms and Conditions**

### **§ 1 Conclusion of the agreement**

These General Terms and Conditions of Business apply solely to agreements made with the cleaning company (contractor) within the scope of services pursuant to § 2 of these General Terms and Conditions of Business. Any deviating regulations contained in the principal's General Terms and Conditions are therefore expressly contradicted.

Any offers made by the contractor in brochures, advertisements etc. are without engagement and non-binding - also with reference to prices quoted - unless a binding undertaking has expressly been provided.

The contractor researches and estimates his costs in respect of his activities with care. This may take some time. Therefore, the principal is bound to his order for five days. The confirmation by the contractor is deemed given if he fails to accept within three days from receipt of order.

No verbal subsidiary agreements have been agreed upon.

Adherence to a term of performance is dependent upon punctual delivery by the contractor's suppliers.

### **§ 2 Scope of services**

The contractor offers the following services:

- cleaning of tank interiors;
- cleaning of silo interiors;
- cleaning of container interiors;
- cleaning of IBC interiors; and
- cleaning of associated accessories / equipment.

The interior cleaning of tanks and all accessories of road vehicles and containers is performed professionally. A cleaning order is prepared for each tank; tanks with several compartments count as one tank if all compartments had contained the same product to be cleaned.

The contractor provides his services according to the requirements and information provided by the principal. The contractor shall observe requests for change and/or extensions only where they are necessary for technical reasons in order to attain the purpose of the agreement. The contractor cannot assume liability for any specific successful outcome of his services.

The cleaning of accessory parts requires a specific order; in the case of hoses, their number has to be stated and unequivocal identification of the hoses to be cleaned has to be possible.

In case of a major change to the contractual obligations of the contractor in order to adjust to the requirements of the principal, the contractor shall bill the principal for the extra effort and expense required. This also applies to an extensive check in order to ascertain if, and under what conditions, the amendment or extension can be implemented insofar as the contractor advised the principal accordingly.

The contractor is entitled to render part performances.

### **§ 3 Prices and payment**

The list prices at the time of delivery shall apply. Fixed prices apply only when the price agreement in an individual case includes neither the possibility of a price increase nor a time-based limitation of the fixed-price agreement e.g. due to a quotation.

The prices do not include statutory Value Added Tax. Unless otherwise agreed, cleaning agents, material costs and other subsidiary services are not included in the price.

Additional services that are not included in the price list or the quotation shall be paid for separately. This applies especially to additional expenses as a consequence of

- a) necessary and reasonable use of third-party services;
- b) any test services commissioned; as well as
- c) services rendered outside business hours.

If the principal is in default of payment he shall pay interest on arrears in the amount of 8 per cent above the base interest rate. Interest on arrears shall accrue whenever the time allowed for payment is exceeded; a demand for payment is not required.

The contractor shall first set off incoming payments against any older debts. If legal fees such as dunning costs have arisen, the contractor is entitled to set off payments by the principal against these costs, then against the interest, and finally against the main performance.

The contractor is entitled to demand a prepayment in the amount of half the total order value for his services.

#### **§ 4 Dates, deadlines and impediments to performance**

Dates or deadlines of performance that may be agreed upon with binding or non-binding force are required to be made in the written / text form.

If the cooperation of the principal is required or agreed for a service to be performed by the contractor, the performance time shall be extended by the time by which the principal has failed to meet this obligation.

In the case of delays as a consequence of

- a) change in requirements by principal;
  - b) problems with third-party products (e.g. cleaning agents provided by the principal);
- the performance date shall be extended accordingly.

If the contractor is unable to perform his contractual obligations, or unable to perform same within the specified time, due to industrial action, Force Majeure or other circumstances that are beyond the control of the contractor, this shall have no negative legal consequences for the contractor.

If the principal places orders for changes or additions that are not only of a minor extent, dates and deadlines that are oriented towards the original object of the agreement shall no longer be valid.

The contractor shall notify the principal without delay in writing about any changes made to performance dates or deadlines.

#### **§ 5 Duty to inspect, notice of defects and acceptance**

The principal shall inspect the services of the contractor forthwith in accordance with the supporting cleaning confirmation presented by the contractor as soon as the contractor has completed the cleaning and any additional services and has informed the principal accordingly. The principal shall inspect the cleaned vessel and all accessories for cleanliness on the premises of the contractor; if a defect becomes apparent, he shall advise the contractor forthwith and notify him in writing or by email.

If the principal neglects his duty to give immediate notice of defects, the service shall be deemed accepted unless the defect would not have been apparent during an inspection. Moreover, the principal shall lose his warranty rights pursuant to the provisions of § 7 of these General Terms and Conditions of Business, and the contractor shall be released from liability pursuant to § 8 of these General Terms and Conditions of Business.

Should such a defect become obvious at a later date, a notice is required to be sent in writing or by email immediately after its discovery, otherwise performance will be deemed as approved even in view of this defect. Timely sending of the notice is sufficient in order to maintain the principal's rights.

The services of the contractor are also deemed as accepted without objection if the principal removes the cleaned vessel from the contractor's premises without having previously presented a notice of defects due to obvious defects.

If the contractor fraudulently concealed the defect, he may not invoke these provisions.

## **§ 6 Duty to cooperate**

The principal shall provide the necessary data truthfully and in due time, above all in regard to the input material that the tank previously contained (the product to be cleaned), the next scheduled load, technical conditions and specific requirements.

He shall confirm the correctness of this information by presenting the freight documents and delivery notes or by his signature. Incorrect or incomplete information presented by the principal will lead to complete exclusion of contractor's liability and guarantee.

The principal is responsible for providing adequate resources and information within the scope of his duty to cooperate. He is also responsible for ensuring that his employees are sufficiently competent from a professional and technical point of view. Where the principal provides cleaning agents or materials, he is responsible for ensuring that same are provided in sufficient quantities.

If the contractor deems it necessary, the principal shall provide a chemical analysis of the input material. The contractor is not obligated to check the information on the product that is to be cleaned or the next load provided by the principal or to point out possible incompatibilities unless statutory regulations have been infringed or the ascertainment thereof is obvious. This applies also to the suitability of the cleaning agents or materials provided by the principal.

The principal shall make the completely emptied vessel available for cleaning. If there are any residual quantities in the vessel, the principal is obligated to inform the contractor thereof prior to the start of the cleaning operation. In order to verify the presence of any residual quantities, a joint inspection shall be carried out by the contractor and the principal. Any quantities determined shall be measured, noted down in the cleaning order and confirmed by the principal. If a fixed residual quantity is exceeded, separate disposal costs will be billed to the principal by the contractor in accordance with the price list.

## **§ 7 Guarantee and statute of limitation**

Faulty deliveries or services shall be repaired or replaced by the contractor, following corresponding notice by the principal, within the guarantee period of twelve (12) months beginning on the date of acceptance or the date of the event triggering acceptance. The defects shall be described in as much detail as possible. The contractor shall rectify the defects free of charge or provide a corrected cleaning document to the principal free of charge. Any expenses exceeding those shall be billed at cost.

In adverse circumstances a number of subsequent improvements may be required. Any deviations that impair the suitability for the known use (e.g. the next load) are considered as defects.

There shall be no claims for defects when the defect is only of a minor order, i.e. if it has no major impact on the known usage, if it is the consequence of a cleaning agent or material provided by the principal, or if it is based on incorrect information provided by the principal with reference to the product to be cleaned or the next load.

If subsequent performance fails within a period set by the principal for fulfilling this subsequent performance, the principal may demand rescission of the agreement or a price reduction.

There shall be no claims for defects when no timely notice of defects has been given pursuant to § 5 of these General Terms and Conditions of Business and when the claim is based on this defect.

## **§ 8 Liability**

The contractor is only liable for damage, except in case of an infringement of major contractual obligations, if and insofar as the contractor, his legal representatives, senior staff members or other agents are charged with wrongful intent or gross negligence. In case of an infringement of substantive contractual obligations, the contractor shall be liable for any culpable behaviour of its legal representatives, senior staff members or other agents.

Except in case of intent or gross negligence by legal representatives, senior staff members or other agents, the liability of the contractor is limited to the damage that is typically foreseeable at the time when the agreement was concluded.

Liability for compensation for indirect damage, especially for lost profit, exists only in case of intent or gross negligence by legal representatives, senior staff members or other agents of the contractor.

The foregoing exclusions and limitations of liability do not apply to defects of title, in the case of explicit guarantees assumed by the contractor, or to damage resulting from injury to life, body or health. The liability pursuant to the law concerning product liability remains unaffected.

The contractor, his representatives, employees and agents shall assume no liability if the damage occurred due to incorrect information provided by the principal, especially with reference to the product to be cleaned or the next load or is based on cleaning agents or materials provided by the principal. The contractor, his representatives, employees and agents also assume no liability when no timely notice of defects has been given pursuant to § 5 of these General Terms and Conditions of Business and the claim is based on this defect.

## **§ 9 Particularities of guarantee / liability**

The technical details of the vessel to be cleaned, as well as the previous on- and off-loads, are usually unknown to the contractor. The contractor therefore cannot give the principal binding advice on the required scope of cleaning of accessory parts. Therefore, the contractor can neither provide a guarantee nor assume any liability for the state of the components connected to the vessel - even if only temporarily - if the cleaning thereof did not form part of the order, including any contamination emanating from them.

The contractor cannot provide any guarantee or assume any liability for the cleaning of components and accessories that cannot be looked into, since they render an inspection of the cleaning result impossible. Claim for defects and liability are also excluded insofar as they are due to residual quantities or incorrect information provided on the previous material.

## **§ 10 Damages by the principal**

The principal shall compensate the contractor for any damages that the contractor suffered from using the cleaning agents or materials provided by the principal. Furthermore, the principal shall compensate the contractor for any damages due to incorrect information provided by the principal, especially with reference to the product to be cleaned or the next load. This includes consequential damage in all cases.

## **§ 11 Data protection and confidentiality**

The contractor will store the principal's data required for the initiation and handling of the agreement (e.g. address and bank details).

The possibility of unauthorized use of data arises through the connection of a network with the Internet. The principal therefore is required to inform the contractor in advance about any data that are especially sensitive, so that the latter may be specially protected against unauthorized access.

The foregoing paragraphs also apply to any subcontractors and other third parties engaged by the contractor for the performance of the order.

Both contractual parties shall treat confidentially any and all information that is marked as confidential and becomes known to them within the scope of the agreement.

## **§ 12 Withdrawal**

The contractor may withdraw from the agreement if, despite prior professional scrutiny, it becomes apparent in the course of processing the order that the order cannot be carried out for reasons for which the contractor cannot be made answerable. In case of withdrawal from the agreement, the principal is only entitled to the cost-free return of the object in its respective state.

The contractor is required to inform the principal forthwith in writing or by email about the impracticability of the order, and shall forthwith refund to the principal any amounts paid for that part of the order that has proved to be impracticable.

The right to give notice for good cause remains unaffected.

## **§ 13 Communications**

If the contractual parties communicate by electronic mail (email), they accept the unlimited effectiveness of the declarations of intent transmitted in this manner in accordance with the following provisions.

The email is required to bear the sender's name and email address, the time of sending (date and time) as well as a repetition of the sender's name as the conclusion of the message.

No confidentiality can be assumed for data that are transmitted non-encrypted via the Internet. Upon request, each contractual party shall provide an encryption system at its end that is geared to the other party.

An email that has been received within the scope of the foregoing provisions is deemed to have been sent by the other partner, unless proven otherwise.

The binding force of the email, and thus of the text form, applies to all statements that the usual handling of the agreement entails. However, the text form is not permitted for termination or for statements that are required in writing from a party to the agreement, thus expressly deviating from this agreement.

## **§ 14 Applicable law and place of fulfilment**

The parties to the agreement agree to apply German law to any legal relationships arising from this contractual relationship. German law also applies to transnational dealings to the exclusion of the United Nations Convention on the International Sale of Goods.

It is understood and agreed between businessmen that the place of cleaning shall be the place of fulfilment for all bilateral performances under the agreement.

The venue agreed upon between businessmen or in case where the contractor does not have a national venue shall also be the place of cleaning.