

**General Terms of Service for Service Contracts  
(e.g. the planning, assembly and repair of anti-hail netting systems)  
of Fruit Security GmbH, 257064k**

**§ 1 General provisions**

- (1) The following terms and conditions shall apply, as amended in each case, to all present and future service contracts, e.g. for the planning, erection and repair of anti-hail netting systems, even if we do not explicitly refer to them.
- (2) We hereby object to any counter-confirmations, counter-offers or notes of the customer that refer to its General Terms and Conditions; any deviating terms of the customer shall only apply if confirmed by us in writing. If the purchaser is a consumer within the meaning of the KSchG (consumer protection act), our terms shall only apply to the extent they do not violate any mandatory legal rules.
- (3) The customer may assign any claims resulting from legal transactions concluded with us only upon our explicit consent.

**§ 2 Contractual principles**

- (1) All our offers are without obligation.
- (2) Orders placed by customers shall only be deemed accepted by us (even if placed by accepting any offer submitted by us) if we have confirmed them in writing.
- (3) All of the documents that the conclusion of the contract was based on shall be considered to form the basis of the contract, and in the following order of priority:
  - a) the order confirmation transmitted to the customer
  - b) the customer's (purchase) order
  - c) our underlying quotation
  - d) the fact sheets and specification sheets transmitted by us
  - e) the sampling documents and plans transmitted by us
  - f) other documents that the contract is based on
- (4) The documents pertaining to the offer, such as illustrations, drawings, weight specifications and dimensions only represent approximations, unless they are explicitly designated as binding. We reserve the title and copyright to cost estimates, drawings, plans and other documents; they must not be made accessible to third parties. Information contained in brochures and leaflets is non-binding.
- (5) The static requirements of the system are specified in the specification sheet. Structural analyses and ground anchor tests shall only be performed upon the purchaser's explicit request and lie in the responsibility of the purchaser. However we point out that our system must be based only on tested anchors.

**§ 3 Terms of payment**

- (1) Our prices are indicated net of VAT as applicable at the time of performance of the service.
- (2) If additional or increased costs (e.g. customs duties, currency adjustment) are incurred due to legislative changes occurring between the time of contract conclusion and performance of the service, we shall be entitled to increase the agreed prices accordingly.
- (3) Our fee shall basically be due for payment without deduction immediately after receipt of the invoice, unless any other payment term is agreed in writing.
- (4) We shall not accept bills of exchange or cheques, except if so agreed in exceptional circumstances and only as payment. Discount and note charges shall be for the account of the customer and shall be due immediately.
- (5) If the invoice amount is not settled within 14 calendar days after the invoice date or on any other due date, we shall be entitled to charge default interest for damages in the amount justified, but at least – and regardless of fault – in the amount of 9.2 percentage points above the respective OeNB base rate p.a. (amount of the statutory default interest rate for transactions between entrepreneurs), without any separate dunning letter being required.
- (6) If the customer no longer carries on any regular business operations, if, in particular, any cheque or note protest takes place or if any delay or even suspension of payment occurs, or if judicial or out-of-court composition proceedings are initiated or any proceedings under insolvency law are opened with respect to its assets, or if such proceedings are not opened but only for lack of sufficient assets to cover the costs, we shall be entitled to demand immediate payment of our claims from the business re-

lationship, even if we have accepted notes or cheques. The same shall apply if the customer is in default of its payments to us, or if other circumstances are revealed that raise certain doubts as to its creditworthiness. Moreover, in that event we are entitled to withhold outstanding services, to request payment in advance or to be provided with collateral or to rescind the contract.

- (5) The customer shall only be entitled to offset any claims against our claims and to withhold or reduce any payments, if the counter-claims alleged by it in this respect have been established as final and absolute in court or were explicitly acknowledged by us.

**§ 4 Official approvals / third-party rights**

- (1) The customer shall obtain and maintain all required official approvals or notices for installation of the system on its own, except if we are explicitly charged with obtaining the same. We shall not warrant that we can obtain the relevant approvals.
- (2) Any fees and other costs associated with the official proceedings (e.g. for approvals, notices, permits, static and structural-physical tests) shall be for the account of the customer.
- (3) The customer explicitly promises that it is entitled to install the system at the location provided for the purpose and that erection of the same will not violate any third-party rights. The customer shall indemnify us in this respect.

**§ 5 Services to be provided by the customer**

- (1) The customer shall be responsible for the legal and factual constructability of the plot of land where the system is going to be erected (e.g. load bearing capacity, subsoil).
- (2) Prior to planning a system, the customer shall provide all information and documents required in this respect. In particular, the customer shall make available a blueprint of the area where the system is meant to be installed, including the pipes and wires, stakes and constructions situated on site, both above ground and down to a depth of 3 m below ground.
- (3) Our planning work will be effected based on the completeness of the information provided by the customer in writing. Any extra costs resulting from incomplete information shall be for the account of the customer. Any curtailing of the system or reduction of the relevant areas resulting therefrom shall not decrease our claim for consideration.
- (4) For the purpose of execution of the installation or repair work, the structural conditions must allow for unobstructed provision of the services or assembly work. Unless otherwise agreed in writing, the customer shall ensure, for its own account and on its own responsibility, that the following prerequisites are met, in particular:
  - a) existence of a paved access road and a parking position for the required excavator, assembly and delivery vehicles, accordingly for vehicles with a gross weight of 40 t;
  - b) existence of an eligible storage area next to the building site for interim storage and preparation of the components for assembly;
  - c) existence of an up-to-date blueprint of all pipes, wires and constructions situated on site, both above ground and down to a depth of 3 m below ground, or of a written confirmation by the customer to the effect that no pipes/wires and constructions exist either above or below ground;
  - d) provision of site power supply (220 V/380 V) with at least 25 A fuse protection;
  - e) provision of construction site water and drainage pipes;
  - f) removal of obstacles or safety hazards within the work area (e.g. power lines) or appropriate protection of the work area;
  - g) any barriers securing the building site, if required.
- (5) If the customer fails to meet the aforementioned obligations in para. (1)-(4), or fails to meet the same in time, or only meets the same in part, the extra costs incurred as well as any downtime shall be for the customer's account. Moreover, we shall be entitled to withhold our services until the aforementioned prerequisites are met, or we may rescind the contract after granting a reasonable period of grace of 14 days.

#### **§ 6 Dates and periods of performance**

- (1) The dates and periods of performance indicated are non-binding, unless explicitly agreed otherwise in writing.
- (2) Obstacles to performance that are due to force majeure or due to unforeseeable events, and events that we are not responsible for, such as unfavourable weather conditions, non-availability of all documents and information required for planning, missing components that are required for assembly, malfunctions, strikes, lock-outs, official orders, or due to reasons pertaining to the customer's sphere of influence shall release us from the obligation to observe any performance periods agreed, for the duration and to the extent of the effects of such events. Such events shall also entitle us to rescind the contract, without any claims for damages or other claims arising on the part of the customer.
- (3) If an agreed period of performance is exceeded, without the existence of any delivery obstacle according to the above paragraph (2), and if the obstacle is attributable to our sphere of influence, the customer shall grant to us, in writing, a reasonable grace period of at least three weeks. If we culpably fail to observe said grace period as well, the customer shall be entitled to rescind the contract, but not to assert any claims for damages from non-performance or default, unless we have acted with intent or gross negligence.
- (4) If commencement of the service work is delayed through no fault on our part, or if the work is interrupted through no fault on our part, all additional costs incurred, such as travel expenses, travel time, the cost of room and board, and any idle time, may be charged to the customer.

#### **§ 7 Warranty / damages**

- (1) We represent that we will deploy qualified personnel, and warrant the proper execution of the services on the basis of the information provided to us.
- (2) In case of non-observance of obligations or recommendations to the customer associated with installation, assembly, commissioning and use (for instance, as stipulated in § 5 or as contained in the operating and maintenance instructions), or of any official approval requirements, any claim for damages against us shall be excluded.
- (3) In case of complaints lodged in due form and in due time, that are objectively justified, the customer shall only have the right

to claim subsequent improvement or (if improvement is impossible) replacement, however subject to our right to replace the faulted goods instead of improving them, or to reduce the price instead of replacement or improvement, or to decide on redhibitory action.

- (4) The customer shall not be entitled to any rights and claims beyond that.
- (5) In case of unjustified letters of complaint or claims for damages that cause extensive investigations, the customer may be charged for the cost of the investigation.
- (6) In any case, we shall only be liable to the customer in case of intent or gross negligence. This shall apply, in particular, in case of violation of a duty to warn under §1168a ABGB (Austrian civil code). Moreover, we shall not be subject to any liability for lost profit, consequential damage or for damage due to third-party claims.

#### **§ 8 Miscellaneous**

- (1) The place of performance shall be the respective place of provision of the service, and in case of planning work our registered office.
- (2) The place of jurisdiction for all disputes arising from the contractual relationship shall be Weiz. However, we may also choose another place of jurisdiction.
- (3) The law of the Republic of Austria shall apply to the exclusion of conflict of law rules. This shall explicitly apply to the application of the UN Convention on Contracts for the International Sale of Goods (CISG).
- (4) Should any provisions of these General Terms be ineffective, this shall not affect the validity of the remaining contractual provisions. Invalid provisions shall be deemed replaced by such valid provisions as are suitable to realise the economic purpose of the lapsed provision, to the extent possible.
- (5) The customer explicitly consents to its personal data being stored and processed by automatic means with a view to performing this contract.
- (6) In case of discrepancy between the German version and any translated version of the Terms and Conditions, the German version shall take precedence and shall prevail in all matters pertaining to any relationship between the parties.