

General Terms and Conditions for Work and Services by INNOCHEM Wasser GmbH (“INNOCHEM”)

1. General

The following General Terms and Conditions for Work and Services furnished by INNOCHEM as the contractor (herein below also the “Contractor”) shall be included in the content of work or service contracts, hybrid work and service contracts, and other contracts incorporating elements of work or services (hereinafter the “Contract”). The Contractor acknowledges no General Terms and Conditions to the contrary or other restrictions required by the Client, unless the Contractor has expressly consented to them in writing for each specific case.

2. Non-binding Offers

2.1 The Contractor’s offers are non-binding. Documents belonging to offers, such as illustrations, drawings or indicated weights or dimensions, are only approximate unless expressly identified as binding. In cases of doubt, a reasonable charge will be assessed for quotations.

2.2 Offers, together with all calculations, sketches, drawings, etc., developed by the Contractor, are not to be reproduced or made available to third parties without the Contractor’s written consent, and shall remain the property of the Contractor.

2.3 Documents may be used only for purposes of the Contract; in particular, they are not to be used to reproduce the same or similar products. They must be returned to the Contractor on request if the offer does not result in the placement of an order. If waste and wastewater are to be accepted at the Contractor’s recycling, disposal and treatment facilities, the following shall apply in addition: The Contractor’s offers are non-binding with regard to price and quantities. Waste and wastewater will be accepted only so far as available capacity permits. If the Contractor’s recycling, disposal or treatment capacity is reduced after the Contract is signed, or capacity is no longer available because the Contractor’s own needs have increased, the Contractor will no longer be obligated to provide the applicable work or service.

3. Order

3.1 Clients shall be bound by their written orders for three weeks. A Contract has not been formed until the Contractor has confirmed the order in writing or has performed the applicable work or service. Subsequent changes, additions or addenda to the content of the Contract may be made only in writing by mutual agreement between the parties.

3.2 Agreements or understandings reached prior to the signing of the Contract shall take effect only if recorded in writing in the specific Contract itself.

4. Client’s Obligations

4.1 Without specifically being requested to do so, the Client shall ensure that the Contractor receives in a timely manner all documentation and information needed for the performance of the order.

4.2 In performing the order, the Contractor shall be entitled to assume that facts provided by the other party, and particularly figures and provided documents, are correct and complete; this provision shall not apply if a review of such facts has been expressly agreed upon in writing.

4.3 If waste and wastewater is to be accepted at the Contractor’s recycling, disposal and treatment facilities, the following shall apply in addition:

a) The Client shall be responsible for meeting the specifications established in the individual Contract (e.g., a waste data sheet). The specifications shall also extend to the packaging and form of delivery. Acceptance periods shall be agreed upon for each Contract individually and must be observed. The Contractor may refuse deliveries outside the agreed acceptance times. The Contractor’s instructions must be followed with regard to delivery of waste and wastewater. The current version of the INNOCHEM Safety and Administrative Rules (“SOV”) shall apply.

b) Delivery shall be performed at the Client’s expense, by either the Client itself or a third party engaged by the Client, in compliance with the requirements of law and using vehicles and containers that permit transfer to the Contractor’s facilities. The Client undertakes to comply with all applicable provisions of law. If a shipment is to cross international borders, the Client’s compliance shall specifically also extend to EU Council Regulation (EEC) 259/93 on the shipment of waste, and to the German Waste Shipment Act (Abfallverbringungsgesetz).

c) In the event of changes in or deviations from the specifications, or of breaches of other terms or conditions, the Contractor shall be entitled to reject the shipment in part or in whole. If an alternative form of recycling, disposal or treatment exists in such a case, both parties will examine whether this option is feasible. The Client shall assume any additional costs occasioned by the rejection and/or alternative recycling, disposal or treatment.

5. Scope of Work or Services

5.1 The Contractor will assume responsibility for the contractual work or services defined in the written order confirmation.

5.2 In performing its work, the Contractor will comply with the recognized rules of the art and contribute its own knowledge and experience. If it becomes evident during the course of work on the order that the contractual work or service cannot be performed, or can be performed only with a materially different outlay of equipment and/or personnel, the Contractor shall inform the Client without delay. The parties shall decide whether, to what extent, and at what cost the order will be continued. If they do not reach agreement, each party shall have the right to terminate the Contract by a written declaration. In that case the Contractor shall be entitled to compensation for all its expenses to that date, and to payment of a remuneration consistent with the actual expenditure of work or services.

6. Billing

6.1 Remuneration will be billed in accordance with the terms and conditions agreed upon in writing and any written amendments thereto. It is understood that the Contractor’s prices do not include the statutory value-added tax.

6.2 The Contractor shall be entitled to issue interim invoices for expenses incurred to date.

6.3 For acceptance of waste and wastewater at the Contractor’s recycling, disposal and treatment facilities, the following shall apply in addition: If a determination of weight is the defining factor for invoicing, this determination shall normally be made by weighing on one of the Contractor’s plant scales at the time of arrival.

7. Payment

7.1 The invoice amount is payable 8 days after the invoice date, without discounts; in the case of acceptance of waste and wastewater, payment shall be due at the time of acceptance.

7.2 Payments shall not be deemed made until the amount is permanently available in an account of the Contractor.

- 7.3 The Contractor shall begin billing late interest 30 days after the due date, in the amount established by law.
- 7.4 The Contractor reserves the right to apply payments toward the oldest billed items plus accrued late interest and costs, in the following order: costs, interest, principal of the receivable. The Client shall have no right to withhold performance. The Client may offset payments only with uncontested claims or claims established as final and absolute.
- 7.5 For acceptance of waste and wastewater at the Contractor's recycling, disposal and treatment facilities, the following shall apply in addition: In the event of failure to pay as due, the Contractor shall be entitled, without prejudice to any further rights, to refuse performance of the Contract or of subsequent contracts associated therewith.
- 8. Deadlines**
- 8.1 Deadlines for performance of the order are non-binding unless binding deadlines are set expressly in a written order confirmation.
- 8.2 If binding deadlines have been agreed upon, the Client shall allow a fair and reasonable grace period, normally of four weeks, in the event of dilatory performance.
- 9. Force Majeure, Impediments**
- Force majeure of any kind; unforeseeable disruptions of operations, transportation or shipping; fire damage, flood; unforeseeable shortages of labor, energy, raw materials or supplies; strikes, lockouts, orders by the authorities or other impediments for which the performing party is not at fault and which delay performance, shipment or acceptance, or which vitiate any reasonable expectation of performance, shipment or acceptance, shall exempt the party from the obligation to perform or declare acceptance for the duration and to the extent of the disruption. If the disruption causes binding deadlines to be overrun by more than eight weeks, each party shall be entitled to withdraw from the Contract.
- 10. Place of Performance/Shipping**
- Except as expressly agreed otherwise in the written order confirmation, performance of the Contract shall take place "ex works" (Incoterms 2000).
- 11. Reservation of Ownership**
- 11.1 If the Contractor's performance includes an item that is to be delivered (Item Subject to Reservation), said Item shall become the Client's property only when the Client has met all obligations under the business relationship with the Contractor, including accessory claims, claims for damages, and the cashing of checks and notes. The reservation of ownership shall also continue in existence when individual receivables of the Contractor are included in an ongoing account and the net balance has been drawn and recognized.
- 11.2 The Contractor shall be entitled to demand that the Client surrender the Item Subject to Reservation, without a grace period and without withdrawing from the Contract, if the Client is in arrears in performing its obligations toward the Contractor. The recovery of the Item Subject to Reservation shall constitute a withdrawal from the Contract only if the Contractor expressly declares its withdrawal in writing. If the Contractor withdraws from the Contract, it may demand fair and reasonable compensation for the duration for which it permitted the Item Subject to Reservation to be used.
- 11.3 The Client is obligated to keep the Item Subject to Reservation in safekeeping for the Contractor, to maintain and repair the Item at the Client's own expense, and to insure the Item at the Client's own expense against loss or damage within the limits to be expected of a prudent businessperson. The Client hereby assigns to the Contractor in advance its claims under the pertinent insurance policies.
- 12. Damages**
- 12.1 Claims for damages – including extra contractual claims – by the Client shall not be permitted in cases of ordinarily negligent breaches of obligation on the part of the Contractor, its employees and others it engages in performing its obligations, unless that breach concerns an obligation that is of material significance for achieving the object of the Contract.
- 12.2 The Contractor shall be liable for indirect loss or damage, or for loss or damage that is unforeseeable at the time of execution of the Contract, only in the case of gross negligence on the Contractor's part.
- 12.3 The above limitations shall not apply for loss or damage resulting from injuries to life, limb or health. They shall not affect provisions for liability mandatorily prescribed by law.
- 12.4 The following shall apply additionally for the acceptance of waste and wastewater at the Contractor's recycling, disposal and treatment facilities: The Client undertakes to deliver only waste and wastewater meeting specifications, and to comply with the other terms and conditions. Irrespective of fault, the Client assumes liability for all loss or damage and consequential loss or damage resulting from failure to comply with the specifications or with the terms and conditions.
- 13. Notice of Defects**
- 13.1 If no formal acceptance is to be performed at the Contractor's premises, notice of defects in the supplied items shall be given in writing without delay, and in no case later than fifteen business days after the supplied item is received by the Client, furnishing a clear identification of the defect.
- 13.2 In the case of latent defects, the written complaint must be issued without delay after the defect is detected, and in no case later than three months after the supplied item is received; time bars shall not be affected hereby. The Client shall bear the burden of proof of the existence of a latent defect.
- 14. Client's Rights in Cases of Defects**
- 14.1 Claims for defects on the part of the Client shall be limited to a right to rectification of the defects. If the Contractor waives its right to rectify defects, or fails to rectify defects within a fair and reasonable period, or if the item supplied for purposes of rectification is still defective after two attempts at a remedy, the Client may, at its discretion, withdraw from the Contract or reduce the remuneration. This provision shall not affect claims for damages under Item 12. The Client shall have no right to correct the defect on its own and to demand compensation for the associated expenses.
- 14.2 Warranties must be agreed upon in writing. A warranty declaration shall be effective only if it describes with adequate specificity the content of the warranty and the duration and geographical scope of warranty protection.
- 15. Time Bar**
- In the case defined under § 634a No. 1 of the German Civil Code (BGB), claims for damages shall be time barred one year after the statutorily defined inception of the time bar period. In the case defined under § 634a No. 2 of the German Civil Code, such claims shall be time barred two years after the inception of the statutorily defined time bar period. Otherwise, claims for defects shall be time barred one year after acceptance of the product of the Contractor's work. This provision shall not affect mandatory provisions of law regarding time bars and liability, such as liability for wilful misconduct and gross negligence, for injuries to life, limb or health, or for breaches of material contractual obligations.

16. Confidentiality

- 16.1 The parties undertake to keep confidential for a period of 5 years after the signing of the Contract all information they have learned in connection with the performance of the Contract and all experiences they have had with one another, not to make such information and experiences accessible to third parties, and not to employ them for commercial purposes, unless a written agreement has been reached to the contrary. This obligation shall not apply to information and experiences which demonstrably, as a whole,
a) were already public knowledge at the time of their transmittal to the receiving party, or became public knowledge after their transmittal without fault of the receiving party;
b) were already known to the receiving party at the time of transmittal;
c) were made accessible to the receiving party by third parties after their transmittal,
d) were made known by the receiving party to a third party who is in a legal consulting, business consulting or tax consulting profession subject by law to a confidentiality obligation.
- 16.2 The Client shall treat the Contractor's non-binding offer as a business secret and keep it confidential.

17. Intellectual Property Rights

- 17.1 The Client shall ensure that the supply and use of material re- sources such as plans, computations, test specimens, etc., will not infringe the intellectual property rights of third parties, and shall hold the Contractor harmless from all claims. The Client shall pay license fees or costs incurred to avoid infringements of such rights.
- 17.2 If intellectual property rights come into being as part of the order, the Contractor shall have the right to acquire a nonexclusive right of use from the Client, on fair and customary terms.

18. Applicable Law, Jurisdiction and Venue

- 18.1 German law shall apply. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 18.2 The venue for all disputes for both parties shall be Oldenburg, at the discretion of the plaintiff. Furthermore, the Contractor shall be entitled to assert its claims in the court of general jurisdiction for the Client's location. The following shall apply for the acceptance of waste and wastewater at the Contractor's recycling, disposal and treatment facilities: The venue for all disputes for both parties shall be Oldenburg. However, the Contractor shall also be entitled to assert its claims in the court of general jurisdiction for the Client's location.

19. Severability Clause

Should individual clauses of these General Terms and Conditions prove to be invalid in whole or in part, the validity of the remaining clauses or the remaining parts of such clauses shall not be affected thereby. The parties shall replace an invalid provision with a valid provision that is as close to the economic intent of the invalid provision as possible.