

**General Terms and Conditions of Installation and Commissioning of
Maschinenfabrik Köppern GmbH & Co. KG, Köppern Aufbereitungstechnik GmbH & Co KG und Köppern Entwicklungs-GmbH**

valid from 01.01.2021

1. Scope of Application

- 1.1 These General Terms and Conditions of Installation and Commissioning („**GTC of Installation and Commissioning**“) shall apply to all current and future business relations between our domestic or foreign customer ("**Customer**") and us or with us within the meaning of §§ 14 et seq. German Corporation Act (AktG). Our GTC of Installation and Commissioning shall only apply to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB) and to legal entities under German public law or public-law special fund.
- 1.2 These GTC of Installation and Commissioning shall apply in particular to installation, installation surveillance (supervision), cold and hot commissioning as well as to operation tests in Germany and abroad (hereinafter referred to as "**Work**") within the scope of delivery or independent installation, commissioning or repair contracts and supplement the individual agreements between the Customer and us. Supervision is the advice, the technical instruction of the Customer's personnel or of third parties commissioned by him and, if practically possible, the control of the Work carried out by this personnel on the basis of the advice or instruction. Unless otherwise agreed, the GTC of Installation and Commissioning in the version valid at the time of the Customer's order, or in any case in the version most recently communicated to him in text form, shall also apply as a framework agreement for similar future contracts, without us being obligated to refer to them in each individual case.
- 1.3 Insofar as the contract also includes deliveries, our "General Terms and Conditions of Delivery and Contract Manufacturing" in the current version shall apply.
- 1.4 These GTC of Installation and Commissioning apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Customer shall only become part of the contract if and to the extent that we have expressly agreed to their validity in writing. This requirement of consent applies in any case, for example even if we carry out the Work to the Customer without reservation, knowing the GTC of the Customer. By placing the order the Customer acknowledges our GTC of Installation and Commissioning.
- 1.5 Customer's legal representations and notifications concerning the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction), must be made in writing or text form (e.g. letter, e-mail, fax) (hereinafter "**in writing**"). Statutory form requirements and other evidence, in particular in the event of doubts regarding legitimacy of the person making representations, shall remain unaffected.
- 1.6 Individual agreements made with the Customer (including collateral agreements, supplements and amendments) shall prevail over these GTC of Installation and Commissioning. The content of such individual agreements shall depend on written contract and/or our confirmation in writing.
- 1.7 References to the validity of statutory provisions shall be deemed a clarification only. Even in the absence of such clarification, the statutory provisions shall apply, unless they are directly amended or expressly excluded in these GTC of Installation and Commissioning.

2. Contract conclusion

Our offers are subject to change and non-binding. A contract is only concluded if we have confirmed the Customer order or other order in writing or in text form or have carried out the Work within a period of two weeks. The Customer is bound to his order or other order for that period of time.

3. Technical documentation

All technical documents remain our property and may not be copied, reproduced or made accessible, communicated or handed over to third parties, in particular competitors, without our written consent. They may only be used for installation, commissioning, operation and maintenance in connection with our Work.

4. Our obligations

We undertake to carry out the work by qualified personnel or to have it carried out by qualified third parties.

5. Obligations of the Customer

- 5.1 The Customer shall do everything necessary on his part to ensure that the Work can be started on time and carried out without disturbance or interruption.
- 5.2 The Customer shall carry out the preparatory work on site and other preparatory work in a professional manner at his own expense and responsibility, if necessary in accordance with the documents supplied by us.
- 5.3 Our personnel shall only be called upon when all preparatory work has been completed.
- 5.4 The Customer shall ensure that the necessary entry clearance and exit, residence, work permits or other permits can be obtained for our personnel.
- 5.5 In the event that adequate living space is not readily available in sufficient quantities in the vicinity of the installation site, the Customer shall assist in the procurement of living space (Western European standard).
- 5.6 The Customer shall take the necessary accident prevention measures at his own expense. In particular, he shall expressly advise us if special consideration is to be given to him and other entrepreneurs or if relevant regulations are to be observed.
- 5.7 We are entitled to refuse or stop work at any time if safety is not guaranteed.
- 5.8 In case of accident or illness of our personnel, the Customer shall provide the necessary assistance.
- 5.9 The equipment to be installed shall be stored protected from all harmful influences. Unless otherwise agreed, the delivery must be inspected by the Customer for completeness and damage in the presence of our personnel before commencing Work. Parts lost or damaged during storage will be delivered to the Customer or repaired at his expense.
- 5.10 The Customer shall ensure that the transport routes to the place of installation are in a usable condition and that the installation site itself is in working order and that access to the installation site is unimpeded and that all necessary way and access rights are ensured.
- 5.11 The Customer shall ensure to provide heatable or air-conditioned, lockable rooms for our personnel, including appropriate sanitary facilities, as well as lockable, dry rooms for the storage of tools, delivery parts, personal belongings, etc. free of charge. All these rooms shall be located in the immediate vicinity of the workplace.
- 5.12 The Customer shall provide the following services in good time and at his own expense in accordance with the instructions of our personnel or our assembly program:
- i. Provision of qualified skilled workers and assistants such as locksmiths, welders, electricians etc. with the necessary tools and equipment. These workers must follow the work instructions of our personnel. However, they remain in contractual relationship with the Customer and under his supervision and responsibility;
 - ii. We recommend to deploy the future operating personnel already during assembly and commissioning in order to familiarize them with the respective technology. We are prepared to take over the technical training of the operating personnel on the basis of special written agreements;
 - iii. Provision of operational cranes and hoists with operating personnel, appropriate scaffolding and means of transport for transporting personnel, tools, equipment and materials;
 - iv. Provision of appropriate workshop equipment and measuring devices;
 - v. Provision of the necessary consumables and installation materials, cleaning agents and lubricants as well as small assembly materials, etc.;
 - vi. Provision of the necessary electrical power and lighting (including the necessary connections up to the installation site) and other operating materials, such as compressed air, water, steam, etc.; and
 - vii. Provision of means of communication such as telephone, Internet connection, etc.
- 5.13 The Customer shall ensure that we are granted the appropriate permits for the import and export of tools, equipment and material in good time.
- 5.14 After completion of the Work, the tools and equipment provided or borrowed by us shall be sent immediately to the place specified by us at the Customer's expense and risk.

5.15 If the Customer does not or only partially fulfil the above obligations, we shall be entitled to carry them out ourselves or have them carried out by third parties. The costs arising therefrom shall be borne by the Customer. He shall indemnify us against claims of third parties.

5.16 The Customer shall draw our attention to special statutory, official and other regulations which relate to the execution of the installation, operation and the prevention of illness and accidents.

6. Work without contractual agreement

Without our written consent, the Customer is not authorized to use our personnel for work that is not contractually agreed. We do not assume any liability for work carried out on the customer's instructions without our special instructions.

7. Working time

7.1 Unless otherwise agreed, the regular daily working time shall be 8 hours between 6.00 a.m. and 7.00 p.m. The regular weekly working time shall be 40 hours spread over 5 working days.

7.2 If shorter working times must be observed for reasons beyond our control, the regular working time shall be charged. With regard to the time allocation, our personnel will depend on the operational conditions of the Customer and his local conditions.

7.3 Working hours in excess of the regular weekly or daily working hours shall be considered overtime. Overtime work is only permitted by mutual agreement.

7.4 Late work is deemed work starting after 12.00 a.m. and ending after 7.00 p.m.

7.5 Night work shall be deemed to be work performed in the period between 7 p.m. and 6 a.m.

7.6 Overtime during night time shall be deemed to be the overtime hours performed between 7.00 p.m. and 6.00 a.m.

7.7 Work on Sundays and public holidays is any work performed on Sundays and public holidays between 12 a.m. and 12 p.m. Sundays and public holidays are days on which there is a break or statutory holidays at the place of work. Good Friday, Easter Monday and Christmas Day shall in any case be considered public holidays. Work on Sundays and public holidays is only permitted in urgent cases and by mutual agreement.

8. Travel time and other times equivalent to working time

8.1 Travel time as well as reasonable order-related preparation and post-processing time (e.g. evaluation and reporting) shall be deemed to be working time pursuant to Section 7. This shall apply in particular to the following times:

- i. The time required for the outward and return journey to and from the site of operation;
- ii. The time required to move into accommodation at the site of operation;
- iii. Any time spent on official registration and deregistration formalities.

8.2 If it is not possible to find appropriate accommodation and catering facilities in the vicinity of the place of work, the daily time (travel time) required for the journey between the place of accommodation or catering and the place of work shall be calculated as working time. All expenses incurred in this connection as well as the costs for the necessary use of appropriate means of transport shall be borne by the Customer.

8.3 If our personnel is hindered in the execution of the pending work due to circumstances beyond our control, or if they are held back for any reason after completion of the work, the waiting time shall be counted as working time. All other related costs shall also be borne by the Customer. The same applies to other downtimes for which we are not responsible, such as on public holidays at the place of work.

9. Charge rates

9.1 The Work shall be invoiced according to time and effort (according to result) or at lump sum. Unless otherwise agreed, the work will be charged according to the result.

9.2 Work according to result

The services are invoiced as follows:

i. Labor costs

- The Customer certifies the working time spent by our staff on presentation of the completed time sheets. If the Customer does not issue the certificate in time, the time sheets of our personnel serve as a basis for invoicing.
- The rates and surcharges specified in the offer apply to the working time spent (in particular overtime, late work, night work, Sunday and public holidays), travel time and other times equivalent to working time.
- In the case of particularly dirty work or work to be carried out under difficult conditions, e.g. at great heights and depths or if special protective suits and/or breathing apparatus must be worn, we shall charge an aggravation surcharge per working hour (according to the offer) in addition to the normal rates and release.

ii. Travel expenses

- The costs for the outward and return journey as well as for travel within the country of assignment - by rail, ship, airplane or other means of transport including the necessary ancillary costs such as for insurance, freight and customs of luggage, passport and visa fees, issue of entry, residence and work permits will be invoiced to the Customer according to time and effort.
- Possible costs for medical examinations on departure and return as well as for vaccinations of our staff will also be charged to the Customer.
- Unless special circumstances require the use of a different class, we will charge:
 - for flights of 4 hours or more in business class (otherwise economy class)
 - for train and ship journeys the 1st class
 - for car use kilometer allowance according to offer or rental car and fuel costs:

iii. Accommodation and Allowance

Our staff is entitled to healthy and sufficient food as well as good and clean, heated or air-conditioned individual accommodations at the place of work or in its immediate vicinity. In order to cover the costs of food and accommodation, as far as these are not directly covered by the Customer, as well as the additional costs for drinks, maintenance of laundry etc., we charge either the daily rates listed in the offer or the actual costs against proof.

iv. Home leaves

Our staff is entitled to home leaves (in Europe every 6 weeks, outside Europe every 8 weeks). The costs for the journey from the place of employment to our business location and back are borne by the Customer. The time required for the outward and return journey as well as the allowances will be charged according to clauses 8.1, 9.2.b and 9.2.c.

v. Costs for special tools and equipment

The daily and hourly charge rates include costs for the provision of simple basic equipment with ordinary tools and simple devices. If special equipment and tools are required for the performance of the Work, corresponding rental rates shall be charged in accordance with the offer, calculated from the day of dispatch to the day of return to the point of dispatch. Tools and equipment not returned by the Customer will be invoiced at replacement value. Transport and insurance costs as well as any other charges in connection with the import and export of the tools and equipment shall be borne by the Customer.

vi. Consumables and small assembly materials

Consumption, installation and assembly small material supplied by us will be charged according to expenditure.

- vii. In the event of accident or illness of our staff, the Customer shall bear the costs for proper medical treatment, including the necessary accommodation and nursing care costs, including all medication, insofar as no reimbursement is made in accordance with statutory social security regulations. For the duration of the incapacity to work, the Customer shall continue to pay the agreed allowance rates, which shall be reduced appropriately in the event of hospitalization. The Customer shall bear all costs incurred in connection with repatriation due to accident or illness as well as the travel costs for the dispatch of a replacement person.
 - viii. Any taxes, duties, fees, social security contributions and the like which we (or our personnel) have to pay outside the Federal Republic of Germany in connection with the contract shall be borne by the Customer.
- 9.3 Work at lump sum
- i. The scope of the Work taken over at a lump-sum price shall be governed by the individually agreed written agreements. The lump-sum price covers the agreed Work to be performed by us. We presuppose an unimpeded workflow and the timely completion of the preparatory work to be carried out by the Customer and all ancillary services to be provided.
 - ii. Additional expenses incurred to us due to circumstances for which we are not responsible, such as subsequent changes in the content or scope of the agreed work, waiting times, rework, additional travel, etc., shall be borne by the Customer. Invoicing shall be in accordance with clause 9.2.
- 9.4 Reservations regarding the charge rates
- We reserve the right to adjust the charge rates in accordance with clauses 9.2 and 9.4 accordingly before the start of or during the execution of the work, if there is a change in collective agreements, social legislation, other statutory regulations or the cost of living or if the allowances set out should not be sufficient.
- 10. Terms of payment**
- 10.1 All prices are net prices without value added tax, which - if applicable - the Customer must pay additionally at the respective statutory rate.
- 10.2 Unless otherwise agreed, the accrued costs shall be invoiced at the end of each month or quarterly. Invoices (in the currency stipulated in the contract) shall be payable immediately without deduction upon receipt of the invoice. The method of payment shall be determined in each individual case. For payment, the day of performance is the day on which we can dispose of the amount.
- 10.3 Payments made by the Customer to our personnel shall not have a debt-discharging effect to us.
- 10.4 If the agreed payment dates are exceeded, the consequences of default shall arise without the need for a special reminder. Notwithstanding other or further rights and claims, we shall be entitled to demand interest at a rate of nine percentage points above the respective prime rate (§ 247 BGB) p.a. Payment of interest on arrears does not cancel the obligation to make payment in accordance with the contract.
- 10.5 If payment is not made in due time, we shall be entitled
- i. to assert all claims arising from this or other transactions immediately against the Customer;
 - ii. to withhold our services or any deliveries from this or other orders until all outstanding claims from this or other orders have been settled in full by the Customer.
- 10.6 The Customer may only set off counterclaims if these counterclaims are undisputed or have been legally established. The Customer may only exercise a right of retention if his counterclaim is based on this contract.
- 11. Deadline for the performance of the Work**
- 11.1 A deadline for the performance of the Work shall only be binding on us if it has been confirmed by us in writing. The period shall commence as soon as all requirements for the commencement of the Work have been met. The deadline shall be deemed to have been met if the Work has been completed by the time it expires or, if the Work is carried out in sections, if it has been completed for the respective section.
- 11.2 The Work shall also be deemed to have been completed if parts are missing or reworking is necessary, provided that operational readiness is not affected.
- 11.3 A reasonable extension of the deadline shall be granted
- i. if we do not receive the information we need for the execution of the Work in time or if the Customer subsequently alters it, thus causing a delay in the Work;
 - ii. if the Customer does not meet his obligations under the contract, in particular the payment obligations under clause 10 and the cooperation obligations under clause 5, or if his suppliers are behind schedule with their work;
 - iii. in the event of circumstances beyond our control, for example, if mobilization, war, civil war, riot or sabotage are threatened or have occurred, as well as in the event of industrial disputes, accidents, illnesses, delayed or faulty delivery of the necessary materials, measures or omissions by authorities or state bodies, unforeseeable transport obstacles, fire, explosion, natural phenomena, pandemics, epidemics or similar.
- 11.4 If a bindingly agreed deadline is not met for reasons for which we alone are responsible, we shall be liable in accordance with the statutory provisions. In any case, however, a reminder from the Customer is required.
- 11.5 If our personnel is endangered or considerably hindered in the execution of its work for reasons for which we are not responsible, we are entitled to order the return of the installation personnel. In these cases, as well as in the event that personnel are retained after completion of their work, the corresponding hourly or daily rates will be charged to the Customer as waiting time and the travel expenses plus board and lodging costs.
- 12. Risk of loss**
- 12.1 The Customer shall bear the risk for the material to be installed during the execution of the work. If objects, installations etc. on which work has been carried out are destroyed or damaged for reasons for which we are not responsible, we retain the right to the agreed remuneration.
- 12.2 The Customer shall also bear the risk for the tools, equipment and materials provided by him.
- 13. Warranty**
- 13.1 For a period of 12 months after completion of the Work, we warrant that the Work will be carried out professionally and carefully in accordance with the following provisions.
- 13.2 If the Work is interrupted for the reasons mentioned in clause 11.3, the warranty period for the Work completed prior to the interruption shall commence no later than three months after the beginning of the interruption.
- 13.3 Any defects in the Work on the objects, installations, etc. on which the Work was carried out which are discovered during the warranty period shall be remedied free of charge. The precondition is that we are notified of the defects in writing immediately after their discovery. We shall only assume a warranty for defects attributable to work carried out by the Customer's personnel or third parties under our supervision if these defects are demonstrably due to gross negligence on the part of our personnel during instructions or supervision.
- 13.4 There shall be no warranty if the Customer or third parties carry out modifications or repairs without our written consent or if the Customer does not immediately take suitable measures to reduce the damage.
- 13.5 For rectification work under warranty, we shall assume the warranty to the same extent as for the original Work, but not beyond the warranty period applicable to such Work.
- 13.6 Any claims and rights based on defects other than those referred to in Clauses 13.1 to 13.5 are excluded.
- 14. Liability**
- 14.1 Unless otherwise provided in these GTC of Installation and Commissioning, we shall be liable in case of a breach of contractual and non-contractual obligations according to the statutory provisions.
- 14.2 We shall be liable for damages - irrespective of the legal basis - within the scope of the liability for culpability in case of intent and gross negligence. In the case of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. due care in our own affairs; minor breach of duty), (i) for damages resulting from injury to life, body or health and (ii) for damages resulting from the breach of a material contractual obligation (obligation the fulfilment of which makes the proper execution of the contract possible in the first place and on the fulfilment of which the

contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage and to the amount of 3.5 times the order value.

- 14.3 The limitations of liability resulting from the above clause shall also apply to breaches of duty by or in favour of persons whose fault we are responsible for according to statutory provisions. They shall not apply to the extent that we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims of the Customer under the Product Liability Act.
- 14.4 Any further liability shall be excluded irrespective of its legal basis. In particular, we shall not be liable for lack of economic success, loss of profit, indirect damage, consequential damage caused by defects and damage resulting from third-party claims.
- 14.5 The above limitations of liability shall apply equally to claims for reimbursement of futile expenses (§ 284 BGB).
- 14.6 The above provisions do not imply a reversal of the burden of proof to the disadvantage of the Customer.
- 14.7 The Customer shall be liable for damages caused by his personnel. This shall also apply if our personnel directs or supervises the work, unless gross negligence can be proven to have occurred during instructions or supervision. The Customer shall be liable for damage caused by defects in the tools, equipment and materials provided by him. This also applies if our personnel has used them without complaint.

15. Final provisions

- 15.1 This GTC of Installation and Commissioning and the contractual relationship between us and the Customer shall be governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on the International Sale of Goods (CISG) and the rules of private international law.
- 15.2 The exclusive place of jurisdiction for all disputes shall be our registered office in Hattingen, if the Customer is a merchant or a legal entity under public law within the meaning of § 38 para. 1 of the German Code of Civil Procedure (ZPO). However, we are also entitled to sue the Customer at his legal place of jurisdiction. Priority statutory provisions, in particular those concerning exclusive jurisdiction, shall remain unaffected.
- 15.3 Should individual provisions be ineffective or unenforceable or lose their effectiveness due to circumstances occurring at a later date, the effectiveness of the remaining provisions shall remain unaffected. An invalid or unenforceable provision shall be deemed to be replaced by a valid provision which comes closest to the economic purpose pursued by the Parties. The same shall apply in the event of contractual loopholes.