

GENERAL TERMS AND CONDITIONS OF SALE - DOHMEYER CONSTRUCTION SP. Z O.O.

DOHMEYER

CRYOGENIC • FREEZING • PRECISION

Effective October 1st, 2018.

These Terms and Conditions supersede all prior General Terms and Conditions of Sale.

I. Definitions and general rules of application of the General Terms and Conditions of Sale

Dohmeyer – the company trading as Dohmeyer Construction spółka z ograniczoną odpowiedzialnością (*limited liability company*) with registered office in Mielec at ul. Wojska Polskiego 3, 39-300 Mielec, Poland, holder of NIP (*taxpayer ID no.*): PL5252494903, recorded in the register of entrepreneurs of the National Court Register, kept by the District Court in Rzeszów, XII Commercial Division of the National Court Register under KRS no.: 0000374180;

Client – any business entity recognised as an entrepreneur in the country of its registration, which enters into an agreement with Dohmeyer;

Machinery – a product specified by the Client in the agreement, consistent with specification and technical data;

General Terms and Conditions of Sale – these terms and conditions that set out rules of execution, performance, delivery, payment and liability of parties to the agreement;

Statement in writing – a declaration of will made in the form of a written statement to allow for identification of the declarant;

Document – an information carrier that allows for reading its content, including but not limited to a letter, email, fax or scan;

Client's local law – a legal system applicable in the country of registration of the Client and applicable law;

Dohmeyer's local law – a legal system applicable in the Republic of Poland;

Agreement – a proposal accepted by the Client which sets out detailed terms and conditions of order;

Payment currency – the currency specified in the agreement in which the price shall be paid and which applies to payments between Dohmeyer and the Client;

Force Majeure – any sudden and unforeseen event, either on the part of Dohmeyer or the Client, which may adversely affect mutual relations between the parties and which may not be directly nor indirectly attributed to either party. Force majeure events include but are not limited to natural disasters, acts of public authorities or national authorities in the country of registration of Dohmeyer or the Client or in a third country, as well as decisions of public international organisations that may reflect on the agreement, such as decisions related to embargoes, trading bans, military acts, applicable to the area of performance of the agreement;

General Terms And Conditions of Machinery – a document that sets out the terms of conducting reviews, tests and trials, operating the Machinery, providing maintenance and warranty service and resolving technical problems, which constitutes an integral part of these General Terms and Conditions of Sale.

II. Conclusion of an agreement

1. Catalogues, proposals, drawings, information, samples, tests

Dohmeyer declares and represents that all advertising brochures, information, drawings, tests, samples shall not be

considered to be a proposal as defined in these General Terms and Conditions of Sale and they shall not constitute a basis for any claims made by the Client or third parties against Dohmeyer, including but not limited to claims related to conclusion or performance of the agreement.

For conclusion of a legally binding agreement, the agreement shall be in compliance with these General Terms and Conditions of Sale and the provisions of relevant proposal made by Dohmeyer. Dohmeyer reserves the right to modify these General Terms and Conditions of Sale in its proposal in line with the nature and specifics of the Client and mutual arrangements of the parties.

2. Agreement

An agreement may become legally binding when:

a. The Client has provided Dohmeyer with a request for proposal for Machinery specified in the request. The request shall be made in writing or, if provided by telephone or other long-distance voice communication system (e.g. Skype, mobile applications), it should be confirmed in writing;

b. Based on the request, Dohmeyer shall formulate a proposal of an agreement for the Client, including but not limited to:

- technical specifications of Machinery,
- detailed terms and conditions of delivery,
- time frames,
- detailed terms and conditions of payment,
- details of installation, trials and tests,
- legal disclaimers,
- effective date of proposal.

c. The proposal may be subject to modifications by Dohmeyer and the Client until such time when they enter into an agreement. After all the details of the proposal are arranged, Dohmeyer sends the Client the final proposal made in writing.

d. The Client accepts the final proposal by submitting a statement of acceptance in writing. If the statement cannot be made in writing and the Client provides acceptance of the final proposal orally, by telephone or by other means of oral communication, the basis for acknowledging that the Client has accepted the final proposal will be the receipt of an advance payment from the Client.

e. The agreement shall become legally binding on Client's acceptance of the final proposal and receipt of an advance payment specified in the proposal, which might not be less than 45% of the value of the agreement, unless Dohmeyer and the Client agree otherwise during negotiation of the proposal and the outcome of such negotiations is recorded in the final proposal.

f. Upon conclusion of the agreement the Client shall not modify the subject matter thereof, which includes but is not limited to modification of technical parameters and specifications of the Machinery, time frames, prices and payment terms. Any modifications against the agreement shall be deemed to be a new request for proposal.

III. Performance of an agreement

1. Dohmeyer shall proceed with performance of the agreement promptly after receipt of an advance payment specified in the relevant order.

2. The Client shall be notified about progress in performance of the agreement.

3. As part of performance of the agreement Dohmeyer shall carry out all tests and trials of the Machinery and provide the Client's staff with training necessary for operation of the Machinery unless otherwise stated in the agreement.

4. Dohmeyer shall notify the Client about completion of each stage of the agreement, including the date of tests and trials of the Machinery and the date of collection.

5. The terms of providing the Client's staff with training, the method of installation of the Machinery, terms of maintenance and warranty service to be provided by Dohmeyer and detailed technical aspects of installation and operation of the Machinery are set out in the General Terms and Conditions of Machinery which constitute an integral part of these General Terms and Conditions of Sale, unless the parties agree otherwise in the agreement.

6. If cooperation from the Client is required for proper performance of the agreement, which cooperation includes payment of an advance, provision of information, documents, materials or technical components essential for the performance of the agreement, and the Client fails to cooperate within time frames and on terms set forth in the agreement or request made by Dohmeyer, Dohmeyer shall have the right to extend the time frame for performance of the agreement by the time during which the Client fails to cooperate. If the Client, despite being given additional time by Dohmeyer, fails to cooperate on performance of the agreement, Dohmeyer shall have the right to withdraw from the agreement, without prejudice to its right to receive liquidated damages or compensation specified below.

7. Dohmeyer shall not be liable for any delay in performance of the agreement if such delay is due to occurrence of force majeure or actions of the Client.

8. Either party shall notify the other party about occurrence of any obstacles to performance of the agreement. The absence of such notification shall be deemed to be failure to cooperate which might provide grounds for withdrawal from the agreement by the other party.

IV. Prices and payment

1. The price specified in the agreement is inclusive of all costs and remuneration payable to Dohmeyer required for proper fulfilment of the relevant order.

2. The price is exclusive of taxes, fees and statutory charges which the Client is obliged to pay under its local law as well as transportation, installation and maintenance costs.

3. The price is exclusive of currency conversion costs payable by the Client on payment of the price in the payment currency.

4. The price is exclusive of bank fees charged in accordance with rules and regulations applicable at the Client's bank. If any payment made by the Client fails to cover the price in full, Dohmeyer will require the Client to pay the remaining amount.

5. The price is exclusive of the costs of maintenance services, out-of-warranty service, replacement of consumable parts referred to in the General Terms and Conditions of Machinery.

6. The price shall be paid based on an invoice sent by Dohmeyer to the bank account and by the date indicated therein.

7. Payment date shall be the date on which the payment is credited to the bank account of Dohmeyer.

8. Dohmeyer shall have the right to charge interest for late payment at a minimum rate of 9.5% per annum on overdue payments.

9. If the Client pays the price in instalments, each payment shall be appropriated as follows:

- a. First, for interest on overdues;
- b. Then, for the amount due that remains unpaid for the longest time;
- c. Current payments.

V. Delivery

1. Dohmeyer shall deliver the Machinery in accordance with transport rules under the International Commercial Terms, Incoterms 2010 version. Unless otherwise agreed in a specific agreement, the Machinery shall be delivered EXW whereby the place of delivery of the Machinery shall be Dohmeyer's warehouse located in Mielec.
2. Dohmeyer shall notify the Client about the date of collection of the Machinery from its warehouse. All costs associated with loading, transport, insurance, customs duties, transit fees and other costs shall be paid by the Client.
3. Upon notifying the Client about possible collection of the Machinery and expiration of the time appointed for collection, Dohmeyer shall have the right to charge storage fees for any additional time of storage of the Machinery. The collection request shall specify the additional time for collection and the rate of storage fees that will be charged for the time of storage.
4. On collection of the Machinery the Client shall check the packaging for any signs of tampering or damage and immediately report any reservations it might have in that respect to Dohmeyer.
5. The liability of Dohmeyer for faults in operation of the Machinery is specified in the General Terms and Conditions of Machinery.
6. The parties may agree on other terms of delivery of the Machinery, however, the same must be acknowledged by Dohmeyer in writing.

VI. Withdrawal from an agreement

1. Either party may withdraw from the agreement by submitting a statement of withdrawal provided that:
 - a. for the Client:
 - Dohmeyer delays the commencement of work under the agreement to the extent that its performance within original time frames specified in the relevant order becomes impossible, i.e. failure to commence the work before half of the time during which Dohmeyer is to fulfil the order expires; The Client may submit a statement made in writing not later than 14 days after discovering the grounds for withdrawal.
 - b. for Dohmeyer:
 - the relevant order is modified by the Client after the agreement takes effect;
 - the Client fails to pay due instalments of remuneration as stated in the agreement;
 - the Client refuses to cooperate although such cooperation is required by the agreement, after expiration of additional time set by Dohmeyer for such cooperation;
 - the Client fails to collect the Machinery within time specified in the agreement and upon expiration of additional time set by Dohmeyer in the collection request.
 Dohmeyer may submit a statement of withdrawal made in writing not later than 14 days after discovering the grounds for withdrawal.
2. If the withdrawal is due to reasons attributable to the Client, the Client shall pay liquidated damages for withdrawal. Liquidated damages shall amount to:
 - a. 30% of the price in the event of withdrawal during the first week after effective date;
 - b. 45% of the price in the event of withdrawal after the first and before the fourth week after effective date;
 - c. 80% of the price in the event of withdrawal after the fourth week after effective date.
3. Dohmeyer reserves the right to claim compensation in excess of liquidated damages stipulated above if the amount of liquidated damages fails to cover the value of damage caused by withdrawal in full.

VII. Compensation for withdrawal

1. The Client may withdraw from the agreement at any time without stating the reason by submitting a statement made in writing to that effect.
2. In the event of withdrawal from the agreement, the Client shall pay the following compensation:
 - a. 30% of the price in the event of withdrawal during the first week after effective date;
 - b. 45% of the price in the event of withdrawal after the first and before the fourth week after effective date;
 - c. 80% of the price in the event of withdrawal after the fourth week after effective date.

VIII. Warranty

1. Dohmeyer represents and warrants that the Machinery made by Dohmeyer complies with all contractual requirements and has been made with utmost care and accuracy.
2. Detailed terms of warranty service are set out in the General Terms and Conditions of Machinery.

IX. Technical support

1. If the Client wishes to obtain technical support which goes beyond the range of warranty services, including technical support, installation and replacement of consumable parts not covered by the warranty, the Client may request such services from Dohmeyer.
2. The terms of maintenance services shall be set out in a separate maintenance agreement that will be based on these General Terms and Conditions of Sale and the General Terms and Conditions of Machinery.
3. Dohmeyer and the Client shall agree on remuneration for individual maintenance operations in the maintenance agreement.

X. Intellectual property rights and reserved rights

1. Dohmeyer declares and represents that all technical documents, including concept, design and shop drawings, models, technical calculations, computer software, calculation models, videos, programmes, applications are exclusive property of Dohmeyer or Dohmeyer holds exclusive rights to such items.
2. If the Machinery includes software necessary for its operation, Dohmeyer shall grant the Client a non-exclusive perpetual licence to use such software. The licence shall take effect on receipt of the full price and collection of the Machinery by the Client through transfer of the licence document.
3. The Client shall not use any drawings, designs, models, technical calculations, computer software, calculation models, videos, programmes and applications without a prior written consent for the use thereof granted by Dohmeyer.
4. If the Client commits any breach of Dohmeyer's intellectual property rights or reserved rights, Dohmeyer shall have the right to require the Client to cease the breach and claim compensation.

XI. Confidentiality

1. Dohmeyer declares and represents that all information other than information which is made publicly known constitutes a trade secret of Dohmeyer.
2. Any information associated with the organisation, production technology and commercial information of Dohmeyer is considered by Dohmeyer to be a trade secret protected by law.
3. Dohmeyer reserves the right to maintain confidentiality of all information that constitutes a trade secret of which the Client becomes aware as a result of talks, negotiations of the

agreement, reviewing documents, proposals, catalogues, drawings, designs, calculations.

4. Any use of the trade secret without an explicit written consent of Dohmeyer shall give Dohmeyer the right to claim compensation from the Client.
5. Dohmeyer reserves the right to maintain confidentiality of the talks held with the Client as well as any information transferred regardless of the manner of transfer thereof. The confidentiality requirement shall apply to the information itself as well as the fact of existence of any talks.
6. The trade secret and confidentiality requirement shall apply without any limitations as to time and territory. The Client may be released from the above obligation solely based on an explicit written consent of Dohmeyer.

XII. Communication

1. Any communications between Dohmeyer and the Client shall be through modern-day means of long-distance communication, i.e. by email, telephone, fax, online chat, mobile application, unless the General Terms and Conditions of Sale state otherwise.
2. In each case the Client shall specify first name and surname and position of the person who will act as its representative.
3. The contact person appointed by the Client shall be authorised to execute agreements and effect statements on behalf of the Client.

XIII. Legal notice

1. All property rights to the Machinery are passed on to the Client on payment of the full price. Until such time as the full price is paid, Dohmeyer shall retain all rights to the Machinery.
2. Dohmeyer acknowledges and confirms that it applies personal data security and protection rules in accordance with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (GDPR), which applies in the European Union.
3. All agreements and legal transactions undertaken by Dohmeyer shall be governed by Dohmeyer's local law.
4. Dohmeyer reserves the right to subject any dispute that may arise out of the agreement or terms and conditions of warranty and maintenance service to settlement by a competent court of appropriate jurisdiction to Dohmeyer.
5. Dohmeyer reserves the right to amend these General Terms and Conditions of Sale. The amendment shall apply to all agreements made by Dohmeyer subsequent to the amendment of the General Terms and Conditions of Sale.
6. The General Terms and Conditions of Sale of 1 February 2015 applicable to date shall cease to be effective after these General Terms and Conditions of Sale take effect. Any amendments made shall not apply to prior agreements unless the Client gives its consent in writing.

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