

General Terms and Conditions of REFOIL GmbH

§ 1 Scope of application

1. The following General Terms and Conditions (hereinafter referred to as "GTC") apply exclusively to all services provided by REFOIL. This includes in particular if REFOIL has expressly taken over the development and / or design of machines or REFOIL is commissioned with the construction and dismantling of machines.
2. This also applies in the event that the contractual partner submits a contract offer or an order placement on the basis of his own, deviating or supplementary terms and conditions. Deviating or supplementary terms and conditions of the contractual partner, to which REFOIL has not expressly agreed, shall in no case become part of the contract even without express rejection.
3. These GTC shall also apply if REFOIL provides the services without reservation in the knowledge of conflicting, supplementary or deviating conditions of the contractual partner.
4. All agreements between REFOIL and the contractual partner that are made for the execution of the contract must be made in writing. Insofar as contracts for work or work contract offers from REFOIL contain written provisions that deviate from the GTC, the individually offered or agreed contractual rules take precedence over them.

§ 2 Conclusion of contract

1. If REFOIL makes an offer, REFOIL is bound to this offer for a period of 14 days.
2. If REFOIL's offer contains typographical or printing errors or if the price determination is based on technical transmission errors, REFOIL is entitled to contest, whereby REFOIL must prove the error.
3. Preparatory work, such as the preparation of specifications, plans, drawings and models requested by the customer, is also subject to remuneration on the basis of a separate written agreement.

§ 3 Subject matter of the contract

1. The subject matter of the contract is solely the service described in the offer. Changes, additions and ancillary agreements to the subject matter of the contract as well as drawings, illustrations, dimensions or other performance data are only binding upon written confirmation by the user.
2. In principle, only the features listed in the offer shall be deemed to have been agreed as the quality of the subject matter of the contract. In addition, public statements, praises, preliminary discussions or planning in advance do not constitute a contractual specification of the quality of the products.
3. Consulting services and information of any kind are only binding if they have been confirmed in writing by STARK.

§ 4 Obligations of the Customer

1. Providing information

- a) If necessary, the client shall provide REFOIL with all information, documents, materials and the like necessary for the execution of the order free of charge in good time before execution of the order. If the information, documents, materials, etc. are provided in electronic form, the client uses a standard format.
- b) If it is necessary for the execution of the order that the customer has to hand over equipment or machines to STARK, this is done on loan at the expense and risk of the customer. The customer will provide existing documentation and instruct Refoil in the device.

If repairs are necessary on the provided device, these shall be carried out at the expense of the customer, provided that the repairs are due to intentional or grossly negligent behavior of REFOIL.

2. Approvals/Acceptance

- a) If building permits and/or other permits are required, these must be obtained from the customer. The customer must ensure compliance with all building law, building safety regulations, safety law and event law regulations, unless this is to be assumed by REFOIL on the basis of statutory provisions or an express agreement.
- b) The costs of the permits shall be borne by the customer.
- c) Costs arising from the fact that unforeseen changes have to be made or that the customer has not obtained the necessary permits or has not fulfilled the necessary structural measures or any agreed or necessary preparatory measures must be borne separately by the customer, unless he can prove that REFOIL has not incurred any further costs as a result.

3. Location and test

- a) The installation location for the system must be at ground level and with a solid surface. The plant is to be installed in a dry, dust-free and temperature-controlled environment.
- b) Supply lines for electricity and air to the assembly site must be provided by the customer to a sufficient extent.
- c) Sufficient quantity of material must be provided free of charge for testing and commissioning.

4. Personal

- a) The customer shall provide the required number of qualified personnel and equipment for the transport of a machine to the assembly site as well as for assembly and commissioning on time. Insofar as the customer makes the helpers available to REFOIL within the framework of the Act on the Leasing of Employees (AÜG), the statutory provisions shall apply. If the customer leaves employees within the meaning of AÜG without the necessary permission, it shall indemnify REFOIL from all claims arising from refoil's lack of permission.
- b) The helpers are vicarious agents of the customer and are subject to his instructions. If the customer provides several helpers, he must appoint a responsible person as the contact person.
- c) The helpers are not vicarious agents or vicarious agents of REFOIL, unless they are expressly ordered and requested at the request of STARK/REFOIL.

§ 5 Delivery time & delays

1. Completion dates are only binding if they have been confirmed in writing by REFOIL. This obligation can only be deviated from if the written form is maintained.
2. Delays in performance due to force majeure (e.B. strike, lockout, official orders, general disruptions to telecommunications, etc.) and circumstances in the area of the customer (e.B. non-timely provision of cooperation services, delays by third parties attributable to the customer, etc.) REFOIL is not responsible and entitles it to provide the services concerned for the duration of the disability plus VAT. of a reasonable start-up time. If the customer has caused delays due to a lack of cooperation, he cannot derive any further rights from the non-timely completion.
3. If delays are caused due to delayed delivery of components required for the construction of the system, REFOIL is also not responsible for this. Completion dates are postponed according to the duration of the delay.

§ 6 Acceptance, remuneration

1. REFOIL waives a formal acceptance. The purchaser may accept the work by means of conclusive behaviour. Such conclusive behaviour lies, among other things, in the putting into use of the work and in the uncontraful receipt of acertificate of completion. In all other respects, acceptance of the agreed work can be declared within the framework of tests at REFOIL.
2. The remuneration is due immediately upon sending the invoice, unless other payment periods result from the invoice.
3. The customer is obliged to pay an advance payment of 30% of the agreed remuneration when placing the order. 60% of the agreed remuneration is to be paid after acceptance of the agreed work at REFOIL. The last 10% is payable after commissioning. Other advance payments can be agreed individually. In the case of partial services, REFOIL is also entitled to demand corresponding partial payments, even if these have not been agreed in an individual contract.
4. REOIL may invoice third-party wage, freight, transport or material cost increases not included in the offer, which were not yet known at the time of conclusion of the contract and for which REFOIL is not responsible, by means of separate proof.
5. If the customer is in default of payment, REFOIL is entitled to demand default interest at the statutory rate. The assertion of further damage caused by default remains unaffected by this. In addition, REOIL has the right to withhold the service and/or to withdraw from the contract.
6. The conditions regulated in the offer are to be understood as the final price including the applicable value added tax.
7. If, after conclusion of the contract, there are concrete indications of the contractual partner's insolvency, such as e.B enforcement measures by creditors of the contractual partner, exceeding the payment deadlines or the like, the user is entitled to demand security or to withdraw from the contract.

§ 7 Transfer of risk

1. The risk of accidental loss or accidental deterioration of the manufactured goods shall pass to the contractual partner upon their handover. The installation of the system at the customer's site is equivalent to the handover.
2. Insofar as the contractual partner is in default of acceptance, this shall also be equivalent to the handover.

§ 8 Right of retention, set-off, assignment

1. The contractual partner can only assert a right of retention from the same contractual relationship. In addition, all rights of retention – regardless of the legal relationship – vis-à-vis the user are excluded.
2. The contractual partner is only entitled to offset against recognised, legally established claims.
3. The rights of the contractual partner can only be assigned with the written consent of STARK.

§ 9 Warranty

1. REFOIL warrants the agreed quality in accordance with § 3 (3) – with the exception of insignificant deviations – by ensuring that it delivers a defect-free product or can remedy the defective condition at its discretion and after setting a reasonable deadline by the customer. If REFOIL opts for subsequent performance by remedying the defect, the contractual partner shall only have further warranty rights if the removal of the defect has failed twice. The reasonable grace period does not begin earlier than the defect and the duty of representation of REFOIL have been established and proven.

2. If the supplementary performance finally fails, the contractual partner may, at his discretion, demand a reduction in the remuneration (reduction) or cancellation of the contract (withdrawal). In the event of a minor lack of conformity, in particular in the case of minor defects, the contractual partner shall not be entitled to withdraw from the contract.
3. Warranty claims regarding all products manufactured by REFOIL shall become statute-barred within one year, unless otherwise agreed in writing. However, they expire prematurely as soon as repair attempts or changes are made by the customer or operating instructions are not followed. The warranty period begins on the day of the transfer of risk. It occurs at the latest upon expiry of the maximum periods specified in § 199 (3) and (4) BGB. Other limitation provisions of these terms and conditions remain unaffected by this.

§ 10 Liability

1. All claims for damages of the contractual partner regardless of the legal grounds against REOIL are excluded, unless REFOIL or its vicarious agents have acted intentionally or grossly negligently or slightly negligently violated essential contractual obligations. Essential contractual obligations are those obligations that protect the contractual legal positions of the contractual partner that the contract has to grant him according to its content and purpose; Furthermore, contractual obligations are essential, the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the contractual partner has relied and was entitled to rely.
2. In the event of gross negligence or slightly negligent breach of an essential contractual obligation, the compensation for damages is limited to the typical and foreseeable damage.
3. Liability for damage that does not occur to the subject matter of the contract is excluded except in cases of intent and gross negligence.
4. Liability for injury to life, limb and health, for the absence of a quality for which a guarantee has been assumed by REFOIL, as well as liability under the Product Liability Act remains unaffected.
5. A limitation period of one year applies to all claims for damages or reimbursement of futile expenses in the case of contractual and non-contractual liability asserted against REFOIL – except in cases of intent or injury to life, limb and health. The period begins with the date specified in § 199 BGB. It occurs at the latest upon expiry of the maximum periods specified in § 199 (3) and (4) BGB. Other limitation provisions of these terms and conditions remain unaffected by this.
6. REFOIL is not liable for damages caused by force majeure, riots, war, terror or natural events or by other events for which it is not responsible; this includes, for .B, strikes, lockouts, traffic disruptions or orders from high authorities at home or abroad.

§ 11 Termination, withdrawal

1. If the customer withdraws from the contract without REFOIL having given him a reason to do so or refoil declares the withdrawal or termination of the contract for reasons for which the customer is responsible, the customer undertakes to pay the costs already incurred as well as the lost profit with a lump sum of max. 15% of the agreed remuneration. The customer reserves the right to prove that the claim is lower.
2. REOIL may terminate the contract and withdraw from the contract in the event of an increased and/or unforeseen risk situation. This also applies in particular if
 - the customer refrains from taking measures that serve or would serve the safety of visitors or other parties involved, in particular in accordance with building or police regulations, or
 - defects for which the customer is responsible would be discovered that could endanger the health or life of a third party, or

- the customer has concealed circumstances that are important for the assessment of the risk situation and/or the equipment of the production and/or the employees or assistants of STARK.

§ 12 Copyright/Patent/Property Rights

1. All rights that REFOIL acquires in the plant itself, in its preparation, development, creation and construction, remain with REFOIL. This applies to all rights of the inventor and author and includes in particular the concept of the plant or one or more parts thereof. This also applies if the rights have been acquired pre- or non-contractually without a contract having been concluded or if the customer has withdrawn from the contract or if it has been terminated in any other way. REFOIL is exclusively entitled to apply for corresponding rights, e.g. patent rights, and to bring them to registration.
2. REFOIL shall make the entire plans of the constructions available to the customer with regard to the subject matter of the contract on request and grants the customer a simple license to use the system that is unlimited in time and space. Insofar as the customer wishes to use the work results in the context of further developments with other commercial or non-commercial partners within the scope of the subject matter of the contract, this is only permitted with the written consent of REFOIL. However, the client may not unreasonably refuse this consent in accordance with the principles of good faith.
3. The customer assures and warrants that he may freely dispose of all rights used by him or provided to REFOIL for use and that these are free of any rights of third parties (in particular copyrights, rights to one's own image, trademark rights, naming rights or other rights). In the case of portraits, the customer assures that in particular depicted persons or owners or other entitled persons of depicted objects or objects agree with the exploitation and that, to his knowledge, there are no rights of third parties that restrict or exclude use.
4. The customer indemnifies STARK from any claims of third parties in the event of infringement of property rights, unless the customer has not caused REFOIL to use them.

§ 13 Final provisions

1. The business relationship between the contractual partner and REFOIL shall be governed exclusively by German law to the exclusion of the laws on the international purchase of movable property, even if the contractual partner has his domicile or registered office abroad.
2. As far as legally permissible, Augsburg is the exclusive place of jurisdiction for all legal disputes in connection with the business relationship. REFOIL is also entitled to sue at the general place of jurisdiction of the contractual partner. The place of performance is the registered office of STARK.

§ 14 Severability clause

Should one or more of these terms and conditions be or become invalid, incomplete or in need of supplementation in whole or in part, this shall not affect the validity of the remaining clauses. In this case, the parties undertake to agree on a regulation that comes closest to what was economically intended. Gaps in the regulation must be dealt with in the same way.

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