

Terms of service and payment



1. Basis of the contract

1.1. Offers, sales, work deliveries, work services and all other services are provided exclusively on the basis of

- the above contract text as an individual agreement;
- the binding installation plan;
- the following terms and conditions of performance and payment, even if no express reference is made to them again; this also applies in particular to permanent business relationships;
- the legal provisions of the Federal Republic of Germany, with the exception of those provisions that refer to another national law or the law of international or supranational institutions. This excludes in particular the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980.

This also applies to pre- and post-contractual rights and obligations. In the event of deviations, the order of precedence is determined according to the order of the above list.

1.2. Further contractual components are not agreed. Any differing terms and conditions of the customer are expressly rejected, unless AMI agrees to their validity in writing. The customer's terms and conditions shall not apply, even if AMI carries out the delivery without reservation and without objecting to them again.

2. Offers and conclusion of contract, scope of service

2.1. AMI's offers are subject to change. Drawings, dimensions, weights and other performance data are therefore only binding if this is expressly agreed in writing.

2.2. An agreement made by a representative shall only be effective, if it is confirmed at least in text form by one of the managing directors or authorized signatories or the project manager appointed by the management of AMI. The other employees of AMI are not authorized to make agreements that deviate from the contract.

2.3. Offers, drawings and all documents describing the services shall enjoy copyright protection in relation to the customer. Ownership shall remain with AMI. The customer shall not make this information accessible to third parties without the consent of AMI. Disclosure, in particular to competitors, is excluded.

2.4. The customer has the right to use data processing programs with the agreed performance features in unaltered form on the specified devices. Copies thereof may not be claimed, unless this has been expressly agreed.

AMI reserves the right to make technical changes that become possible or necessary, due to technical developments during the implementation or planning phase, provided that this does not restrict the contractually agreed services of the overall system.

3. Prices

3.1. The sales prices do not include packaging costs, shipping costs or insurance that can be taken out at the customer's request. The prices offered and/or agreed are valid for a period of four months from the time of the offer or conclusion of the contract. If the service has not been provided in the agreed time, because there are obstacles to performance within the customer's sphere, the price will increase by 5 %.

3.2. If charges, or other external costs included in the agreed price, change later than four months after conclusion of the contract, or if they arise new, AMI shall be authorized to similarly adjust the total extent, without prejudice to the aforementioned regulation.

4. Approval and planning, suitability, cooperation of the customer

4.1. The customer shall obtain the necessary approvals; they are in his responsibility.

4.2. The customer is obliged to check the submitted execution and assembly plan carefully and to raise any concerns. He shall

provide all documents required for any assembly (e.g. drawings, sketches) in good time before delivery. Documents supplied subsequently, shall entitle AMI to withdraw from the contract without consequences, unless these documents do not affect AMI's obligation or only affect it insignificantly. AMI may, at its own discretion, demand payment of the resulting additional costs incurred instead.

4.3. Presentations and descriptions in advertising brochures/at Internet sites do not represent any assurance of properties. It is the customer's responsibility, to set out and describe the requirements for the object of performance, so that AMI can check its suitability. He shall also communicate all circumstances necessary for a risk assessment, in particular the intended use from a risk perspective, as well as any foreseeable misuse.

5. Delivery, validation obligations

5.1. Delivery times are always to be regarded approximately, even if this is not expressly stated again.

5.2. Compliance with the delivery time presupposes the fulfillment of the customer's contractual obligations. If the customer requests changes to the scope of services or assembly, that deviate from the contract text or from the execution plan confirmed by AMI, the delivery time will be extended in accordance with the required period of work.

5.3. Delivery delays due to force majeure, e.g. war, civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy, currency and trade restrictions, embargo, sanctions, lawful or unlawful official acts, compliance with laws or government orders, expropriation, confiscation of works, requisition, nationalization, plague, epidemic, pandemic, natural disaster or extreme natural event, explosion, fire, destruction of equipment, prolonged breakdown of means of transport, telecommunications, information systems or energy, general industrial or labor unrest such as boycott, strike and lockout, go-slow, occupation of factories and buildings, etc., or due to events that make delivery significantly more difficult or impossible, including in particular operational disruptions, strikes, lockouts, energy supply difficulties, official orders, traffic disruptions and the like, even if they occur at suppliers or their subcontractors, and even in the case of bindingly agreed delivery periods and delivery dates - AMI shall not be responsible for delays in delivery. In this case, AMI is entitled to postpone delivery for the duration of the hindrance plus a reasonable start-up time or to withdraw from the contract in whole or in part due to the unfulfilled part of the contract. AMI can only invoke the aforementioned circumstances if AMI informs the customer immediately and reimburses the customer immediately for the part of the contract that has not been fulfilled yet.

5.4. If AMI defaults on delivery, the customer shall only be entitled to claim damages, if he has set a grace period of at least two weeks. There shall be no further claims for delay.

5.5. AMI's maximum liability for all claims shall be set at 25% of the total contract amount. Compensation for loss of profit shall not be paid.

5.6. Partial deliveries are permitted and must be paid.

5.7. After handover or installation of the item, the customer must immediately inspect the goods or work, including documentation, for suitability, for use and freedom from defects. He must carry out a test run in which all expected requirements for the goods/work are checked (load capacity, performance, etc.). The inspection obligation also includes checking, whether the machine meets the safety requirements of the Machinery Directive when used.

5.8. Within 12 working days of the handover of the goods/delivery of the work, they shall be deemed to have been approved without reservation and free of defects, unless the inspection or test run revealed defects and these have been reported in writing within a period of 12 working days from handover of the goods/delivery of the work.

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5.9. All complaints must be addressed directly to the management (managing director/authorized signatory) and not to representatives.

6. Transfer of risk

6.1. The risk shall pass to the customer when the purchased item is handed over to the person carrying out the transportation (EXW/FCA Incoterms® 2020). This also applies, if AMI assumes the shipping costs in accordance with a separate agreement.

6.2. Transport damage must be noted immediately on the delivery bill and ascertained to the shipping company (forwarding agent, haulage company, etc.) by the relevant authorities, in order to assert claims for compensation.

6.3. In the case of assembly, the service shall be deemed to have been accepted after 12 working days after notification of completion of the service in text form. If the customer has put the service or part of the service into use, acceptance shall be deemed to have taken place six working days after the start of use.

7. Defects

7.1. The individual system parts are assembled according to a modular system. They are therefore interchangeable and can be removed from the object in which they were installed, without destroying the object or the system or the conveyor, or changing its nature.

7.2. Minor deviations, e.g. in color and shape, or in any other way, which according to common opinion do not affect the value or suitability of the service object, are not a defect. In particular, normal signs of wear and tear of wearing parts are not a defect.

7.3. Furthermore, impairments, resulting from improper or unsuitable use, work carried out on the service object by third parties or the customers themselves, natural wear and tear, consequences of incorrect or negligent treatment, in particular excessive stress, unsuitable operating materials, replacement materials, defects or unsuitability of the structural system provided by the customer, chemical, electrochemical or electrical influences, insofar as they are not attributable to a fault on the part of AMI, are not classified as a defect.

7.4. The customer undertakes to operate and maintain the item strictly in accordance with the operating and maintenance instructions. Claims for defects shall only exist, if the object of performance was operated and maintained properly (in accordance with the maintenance plan) and any changes to the system delivered within the limitation period for claims for defects have only been carried out with the written consent of AMI.

7.5. Furthermore, claims for defects shall only exist, if a maintenance contract has been concluded with AMI and the maintenance has been carried out, unless the customer can demonstrate and prove that any defects and damage would also have occurred or not been detected, even as a result of a maintenance contract and that the consequences of any defects would therefore be the same.

7.6. No liability for defects shall be assumed for the delivery/assembly of used items.

7.7. The function of the system depends essentially on the interlocking of project planning, design, construction of the control cabinets and assembly on site. If one of these service phases is carried out by a third party, the liability for defects for AMI's services shall lapse.

7.8. The immediate inspection and complaint of the service object in accordance with section 5 is an essential obligation of the customer. Obvious defects must be reported at least in writing within 12 working days of receipt of the goods, in the case of assembly 12 working days after installation, otherwise liability for defects is excluded. Material defects that cannot be discovered within this period even with the most careful inspection must be reported immediately after discovery at least in writing. If there is a significant defect in this respect, AMI is entitled, at its own

discretion, to subsequent performance in the form of remedying the defect or to delivering a defect-free service object.

7.9. Remedying the defect has failed at the earliest when AMI has carried out two unsuccessful defect-remedy works.

7.10. In the case of remedying the defect, AMI will only bear the costs up to the amount of the purchase price/work wages. AMI is not liable for expenses that arise because the service object was taken to a location other than the place of performance.

7.11. AMI can refuse to remedy the defect/subsequent performance until the customer has paid at least the fee in the amount of the value of the service already provided.

7.12. Without prejudice to other provisions in these terms and conditions, a right of retention may be asserted due to possible defects, at most in the amount of twice the cost of remedying the defect.

7.13. The limitation period for claims for defects is 12 months, calculated from the transfer of risk.

8. Assembly, acceptance

8.1. The customer must provide AMI with the necessary storage and work spaces on the construction site, the existing access routes and sufficiently secured power connections free of charge.

8.2. The customer must also provide the following services for assembly:

General fire protection measures, the masonry work, demolition work, concrete and reinforced concrete work, necessary for the implementation of the project; all services related to the construction, assembly or dismantling of other parts of the building and equipment; provision of compressed air, provision of cranes, forklifts and lifting platforms; primary power supply for the control cabinets; lighting equipment; disposal of packaging material and auxiliary materials; waste containers (also for the disposal of building materials); creation of all barriers, cladding, access doors, fences and other security equipment not expressly mentioned; timely and successful coordination of the service and delivery to be provided by the customer; provision of appropriate equipment and personnel to the extent required for acceptance; accommodation for the assembly and commissioning personnel; guarantee of theft-proof storage of AMI materials; closed, normally tempered, cleared installation site free of other assemblies; free access to the installation site; the required load-bearing capacity of the floor and its accessibility with lifting platforms and forklifts.

8.3. Delays during assembly for which AMI is not responsible, may lead to additional costs and will be invoiced separately after assembly has been completed. If soiling of the system is caused by other trades during installation, the customer shall be responsible for cleaning the system.

8.4. At AMI's request, the customer shall confirm acceptance and receipt of the technical documents, declaration of conformity and operating instructions.

8.5. Within the scope of the installation work, AMI shall only be liable for proper installation. Any further liability is excluded, unless intent or gross negligence can be proven or personal injury has occurred.

8.6. If defects occur during assembly, AMI has the right to supplementary performance. Only in urgent cases of danger to operational safety and to prevent disproportionately large damage, in which case AMI must be notified immediately, or if there is a delay in rectify the defect, shall the customer have the right to rectify the defect himself or have it rectified by a third party and to demand reimbursement of the necessary costs.

8.7. AMI shall not be liable for damage or defects during installation work that are attributable to intervention by the customer or third parties. Furthermore, any liability for measures taken by our fitters, that are additionally requested by the customer and have not been previously agreed and expressly authorized by AMI, is excluded.



8.8. Any damage or defects that occur during installation, must be reported immediately, at the latest within one week. The same applies to hidden defects or damage from the time of discovery. If this is not done, AMI shall be released from liability.

8.9. The working time of the fitter to be paid by the customer begins with the start of the journey to the customer and ends with the return of the fitter to us or to his place of residence. Travel days or nights commenced shall be charged pro rata.

8.10. The installation and/or service work is due and payable immediately after invoicing. A right of retention only exists for reasons that lie in the installation and/or service itself. Offsetting is generally excluded unless the claims are legally established or recognized.

9. Damages

9.1. The assertion of damages or reimbursement of expenses - hereinafter referred to as "damages" - due to defects is excluded, if AMI is unable to provide subsequent performance for reasons for which it is not responsible.

9.2. Compensation for damages due to defects and for defects and consequential damages resulting from the delivery of defective goods of service shall generally require, that AMI has caused the defect intentionally, through gross negligence or through a negligent, significant breach of duty, unless otherwise agreed. The same applies to compensation for damages due to a breach of any durability guarantee given by AMI.

9.3. Otherwise, the aforementioned claims are excluded, irrespective of the legal grounds, in particular for breach of duties arising from and in connection with the contractual obligation, from culpa in contrahendo and from tort. This does not apply to claims under the Product Liability Act in cases of intent or gross negligence, in the event of injury to life, limb or health, due to the assumption of a guarantee for the existence of a quality or in the case of negligent, significant breaches of duty.

9.4. In the event of simple negligence, AMI's liability shall be limited to the foreseeable and typical damage, notwithstanding the aforementioned provisions. Changes to the burden of proof are not associated with the aforementioned provisions. Insofar as AMI's liability is excluded or limited, this shall also apply to the personal liability of AMI's employees, workers, staff, representatives and vicarious agents.

10. Retention of title

10.1. Until all claims ((including current account balance claims) to which AMI is entitled against the customer now or in the future for any legal reason have been settled, the following securities shall be granted, which shall be released on request at AMI's discretion if their value exceeds the claim by more than 20% on a sustained basis.

10.2. The object of performance shall remain the property of AMI until full payment of the remuneration and all ancillary claims. The customer may not pledge or otherwise encumber the object of performance until this time. In particular, the customer assures that he will not transfer the object of performance to third parties, even if only as security, without the written consent of AMI, either as part of a leasing relationship or in any other form. AMI may demand that the object of performance be marked as its property.

10.3. The customer may only change the objects of performance still owned by AMI, change their location or transfer them to third parties with the written consent of AMI.

10.4. In the event of access by third parties (e.g. seizure of real estate), the customer is obliged to draw attention to AMI's ownership and to notify AMI immediately. The customer shall bear the costs of defending against such seizure.

10.5. The customer is obliged to treat the object of performance with care, in particular he is obliged to insure it adequately at his own expense against fire, water and theft damage at replacement value. The customer shall assign payment of the insurance in advance, in the case of an insured event to AMI.

10.6. If maintenance and inspection work is required, the customer must carry it out in a good time at his own expense.

10.7. The customer may only combine the object of performance with land or a building for a temporary purpose and not with another object to form a single object until the transfer of ownership to the customer.

10.8. If an item is handed over to AMI for repair, the customer and AMI agree that AMI shall be entitled to a contractual lien on the item due to the remuneration for the work. The customer assures that he is the owner of the item.

10.9. The customer shall inform AMI prior to conclusion of the contract whether he intends to sell the object of performance or a subsequent product in the regular course of business. The customer hereby assigns to AMI in advance all claims against the purchaser arising from the sale transaction. For his part, the customer shall also only sell the object of performance or the subsequent product subject to retention of title (extended retention of title).

11. Payment

11.1. Payment is due immediately, the amounts are to be paid without deduction as follows:

30 % of the order amount after receipt of the order confirmation,

60 % before delivery of the goods, in the case of assembly before delivery of the goods and start of assembly.

10 % after receipt of the goods or completion of assembly.

11.2. Offsetting and/or retention by the customer is only possible insofar as it is done with an undisputed or legally established claim.

11.3. If the customer does not pay when due, AMI can claim at a rate of 9 percentage points above the prime rate. This does not affect the statutory claims for default.

12. Withdrawal and compensation

If the contract is not executed for reasons, for which the customer is responsible, or if AMI refuses to fulfill the contract, because the customer has not fulfilled his obligations, despite being granted a grace period, the customer is obliged to pay 15% of the agreed price, including VAT, without specific proof of damages. The customer reserves the right to prove, that AMI has incurred no or less damage, in which case it must only pay the proven damage. AMI may prove and claim a higher amount than the lump sum.

13. Final provisions

13.1. If a clause in these Terms and Conditions of Service and Payment of service and payment is invalid, it will be replaced by a provision that corresponds to the economic purpose of the invalid clause. The contract and these Terms and Conditions shall remain binding even if individual clauses are legally invalid.

13.2. Assignments by the customer are not possible.

13.3. The place of performance for both parties is D-57629 Luckenbach.

13.4. All disputes arising from or in connection with this contract shall be decided by the courts responsible for AMI's registered office in D-57629 Luckenbach; this shall also apply to liabilities arising from checks. AMI is also entitled to take legal action before the courts responsible for the customer's registered office.

13.5. In the event that this English version of the contract is to be interpreted in a way that is ambiguous in relation to the German original, the original German version is valid.

(valid since May, the 1st, 2024)