

GENERAL TERMS AND CONDITIONS OF BUSINESS FOR COATING SERVICE

- I. Scope of application
- II. Conclusion of contract
- III. Subject matter of contract
- IV. Obligations of Customer
- V. Obligations of CemeCon
- VI. Deadlines
- VII. Acceptance
- VIII. Material defects
- IX. Liability
- X. Period of limitation
- XI. Confidentiality
- XII. Payment
- XIII. Right of lien
- XIV. Termination of the contract
- XV. Setting-off, retention, assignment
- XVI. Final provisions

I. Scope of application

1. These General Terms and Conditions of Business for the coating service (hereinafter referred to as "General Terms") apply to the legal relations existing between CemeCon AG (hereinafter referred to as "CemeCon") and Customer, i.e. all offers, contracts, services and deliveries of CemeCon AG in connection with the deliveries and services to be provided by CemeCon for the performance of coating services. Details of order placement result from the contracts concluded between Customer and CemeCon. Agreements made there take precedence over these General Terms.
2. These General Terms shall apply exclusively. Any general terms and conditions of business of Customer that conflict with or deviate from these General Terms shall not be recognized unless CemeCon has expressly agreed to their validity in writing. Acceptance of a counter confirmation by Customer with a reference to the latter's general terms and conditions of business shall not represent such agreement. These General Terms shall also apply if CemeCon performs deliveries or services without reservation and with knowledge of general terms and conditions of Customer that conflict with or deviate from these General Terms.
3. These General Terms shall apply in their respectively valid version for all future legal transactions with Customer.

II. Conclusion of contract

1. Offers by CemeCon shall be made on a non-binding basis unless they are expressly designated as binding in writing.
2. The contract between CemeCon and Customer is concluded on CemeCon's acceptance of Customer's order. CemeCon shall send Customer a written order confirmation.

III. Subject matter of contract

1. Among other things, CemeCon is involved in the field of mechanical coating of tools, components, medical instruments, etc. (hereinafter referred to as "materials"). Customer supplies the materials it owns to CemeCon and places an order with CemeCon to refine the materials, in particular to coat them (hereinafter referred to as "Refined material"). The Refined material shall subsequently be supplied to Customer.
2. The precise scope of the work and services to be performed results from the contracts concluded individually between CemeCon and Customer. This applies particularly to payment for the services. In addition, Customer and CemeCon stipulate in the contracts the requirements to be met by the materials to be supplied by Customer and agree there on the technical specifications for production of the Refined material.

IV. Obligations of Customer

1. Customer shall be required to supply the materials to CemeCon in accordance with the contractual provisions. The type and quality of the materials to be supplied shall be stipulated in the respective contracts. Customer shall be required to supply the materials to CemeCon in accordance with the periods of time specified in the respective contracts. If the materials should not meet the agreed standards of quality, Customer shall ensure prompt replacement of the defective material at its own expense.
2. Deliveries must be made exclusively in the packaging or charging systems approved by CemeCon.
3. Customer shall assume the costs and risk for the packaging and transport of the materials to CemeCon as well as of the Refined material from CemeCon to Customer or to a place designated by Customer.
4. On placement of the order Customer has to provide CemeCon with all information necessary for proper treatment and refinement of the materials. CemeCon shall not be liable for defects or damage that results from inadequate provision of information.

V. Obligations of CemeCon

1. CemeCon shall store the materials supplied by Customer properly in accordance with the usual practice in the branch of industry concerned and at its own expense, label them as property of Customer and only use them for the contractual purposes.
2. CemeCon shall subject the materials to a receiving inspection in accordance with the details specified in the respective contracts. If the materials do not meet the agreed specifications, CemeCon shall notify Customer of this without delay.
3. According to the contractual agreements, CemeCon shall refine the qualitatively flawless materials subsequent to the quality inspection and in this way produce Refined material.

4. CemeCon shall deliver the Refined material to Customer by using the packaging and charging system approved by CemeCon. If appropriate packaging for the Refined material has not already been supplied by Customer, CemeCon shall ensure that such packaging is available and bill Customer separately for the corresponding costs. Packaging and transport equipment provided by Customer shall be returned to the same at the latter's expense.

VI. Deadlines

1. The parties shall perform the contractual work and services within a reasonable period. If the parties have contractually agreed on a schedule, performance shall take place within the periods stipulated in the contract.
2. The deadlines indicated in the offer or order confirmation for CemeCon's performance of services are non-binding target deadlines. These deadlines shall apply as binding deadlines only if they are expressly designated as such.
3. If performance of the services by CemeCon is delayed due to circumstances that lie solely or very predominantly within Customer's scope of responsibility, the deadlines specified by the parties shall be reasonably extended by a period appropriate to the duration of the respective circumstances. The same shall apply to the occurrence of delays due to circumstances for which neither CemeCon nor Customer is responsible, in particular force majeure, acts of terrorism, official directives, etc.
4. If delivery of the Refined material is delayed due to circumstances for which Customer is responsible or if Customer is in default of acceptance, the latter shall compensate CemeCon for the resulting loss and additional expenditures.
5. If CemeCon cannot perform the contractual services on schedule, CemeCon shall inform Customer of this as soon as possible and at the same time explain the major reasons for the delay and indicate the expected duration of the delay.

VII. Acceptance

1. The materials Refined by CemeCon shall be subjected to an acceptance inspection by Customer immediately after completion of the coating. Acceptance of this work and services shall conform with the following provisions unless the parties individually agree otherwise.
2. The acceptance inspection can be carried out at CemeCon's headquarters during working hours (Monday to Friday, 8:00 am to 5:00 pm).
3. If no differing agreements have been made, a tolerance of two reject parts per 100 delivered parts shall be regarded as acceptable for each individual delivery of Customer. Customer has no entitlement to compensation for material costs for any parts that become rejects within this tolerance. For parts that become rejects outside the tolerance or get lost the liability to pay compensation shall be restricted to the material costs. At the request of Customer CemeCon shall deliver the respective reject products to the former.
4. Acceptance may not be refused due to defects that do not hinder the acceptance. Defects that do not hinder acceptance are insignificant defects and additionally, in the case of deviating quality, defects that are not attributable to the execution of the coating services.

5. If the quality inspection confirms proper quality of the materials within the framework of the acceptance test, Customer shall be required to submit a written declaration of acceptance promptly. If Customer identifies a defect that hinders acceptance within the framework of the acceptance test, the former shall notify CemeCon of this immediately and describe the defect as precisely as possible. After a fault analysis conducted jointly by the parties CemeCon shall eliminate the defect reported by Customer within the deadline agreed by the parties insofar. As soon as CemeCon has informed Customer of elimination of the defects and thus of deviation of the products from the agreed quality, Customer shall examine without delay whether the reported defect has been successfully eliminated and – if this is the case – submit a written declaration of acceptance.
6. If a formal acceptance inspection is not carried out at the headquarters of CemeCon, the work and services performed by CemeCon shall apply as accepted if
 - Customer does not accept the work and services within a reasonable period set by CemeCon although Customer is required to do so;
 - Customer does not give notice of defects that hinder acceptance within a period of four weeks or
 - Customer pays invoices without reservation.
7. Through the acceptance Customer recognizes that the work and services performed by CemeCon essentially meet the contractual provisions.

VIII. Material defects

1. CemeCon shall be responsible for ensuring that the work and services it performs are free of material defects. The liability is based on the following provision:
 - a. Customer shall be required to inspect the work and services performed by CemeCon without delay and to inform CemeCon promptly of any defects in writing.
 - b. Notwithstanding possible claims for damages or compensation of expenses, Customer shall have the following stipulated rights in the case of material defects:
 - Material defects shall be eliminated by CemeCon within a reasonable period (subsequent performance). This shall take place, at CemeCon's option, either through elimination of the defect (remedy of defect) or renewed performance of the work and services (new production).
 - If a significant material defect exists, Customer has the right to cancel the contract or reduce the payment. The prerequisite for exercising the right of cancellation is that Customer has previously set a reasonable deadline, coupled with a warning of rejection, for CemeCon to carry out subsequent performance and that this deadline has elapsed fruitlessly. Such a setting of a deadline with a warning of rejection is not required if subsequent performance fails because of a significant material defect, it is unreasonable for Customer or is rejected by CemeCon or this is justified for other reasons in consideration of the interests of both parties.
 - If subsequent performance fails because of an insignificant material defect, it is unreasonable for Customer or is rejected by CemeCon or this is

justified in the case of an insignificant material defect for other reasons in consideration of the interests of both parties, Customer has the right to reduce payment.

- Customer's right to elimination of the defect himself and to compensation for the expenditures necessary for this (Section 637 of the German Civil Code [BGB]) is expressly excluded.
2. There shall be no claims arising from defects if defects are caused by the delivery of unusable material or are due to improper provision of information in accordance with subsection

IX. Liability

1. CemeCon shall be liable for compensatory damages according to the statutory provisions for personal injury and for damagee in accordance with the Product Liability Act.
2. Unless otherwise specified in a warranty assumed by CemeCon, the latter shall be liable for other damage exclusively in accordance with the following provisions:
 - CemeCon shall be liable according to the statutory provisions for damage that has been caused by malicious action as well as for damage that has been caused due to wilfulness or gross negligence on the part of the legal representatives or senior executives of CemeCon.
 - CemeCon shall be liable for compensatory damages limited to the amount of the foreseeable damage typical for the contract with respect to damage arising from a slightly negligent violation of major contractual or cardinal obligations (1st alternative) and with respect to damage that has been caused with gross negligence or intent by ordinary vicarious agents of CemeCon without violation of major contractual or cardinal obligations (2nd alternative).
 - Within the framework of the first alternative mentioned in subsection IX. 2., second bullet point, CemeCon shall not be liable for lost profit, indirect damage, consequential damage and claims of third parties, with the exception of claims arising from violation of industrial property rights of third parties.
3. Contributory negligence on the part of Customer shall be set off by the amount of any claim for damages.
4. Otherwise any liability on the part of CemeCon shall be excluded.
5. Customer shall be required to give prompt written notice to CemeCon of any damage or allow CemeCon to record such damage in accordance with the above liability provisions in such a way that CemeCon is informed as early as possible and can possibly minimize the loss together with Customer.

X. Period of limitation

1. Provided the case does not involve malice, claims of Customer because of a material defect or defect in title shall expire by limitation within one year, beginning with the acceptance of the performance concerned. This shall also apply to claims arising from an unlawful act based on a defect.
2. Otherwise the statutory periods of limitation shall apply.

XI. Confidentiality

1. Customer shall be required to maintain confidential all information that comes to the attention of the former and is identifiable as company or business secrets of CemeCon for the duration of the contractual relationship and after its termination and neither to record it, pass it on or otherwise utilize it – provided this is not necessary to achieve the purpose of the contract.
2. In particular, Customer shall maintain secrecy indefinitely with regard to all information on the know-how and any material handed out by CemeCon that comes to the attention of the former during the period of the contractual relationship with CemeCon and neither record it, pass it on or otherwise utilize it – provided this is not necessary to achieve the purpose of the contract.
3. Through suitable contractual agreements with the employees and authorized persons working for Customer the latter shall ensure that such persons shall also refrain from any utilization, dissemination or unauthorized recording of the information for which secrecy is required for an indefinite period of time.

XII. Payment

1. Payment shall be based on the contractual agreements.
2. All payments and prices apply exclusive of VAT and, furthermore, in the case of delivery from or to foreign countries, exclusive of any charges and customs duties incurred.
3. If not otherwise agreed, the invoices shall be paid within 30 days from the invoice date. The payment shall apply as effected at the time it is credited to CemeCon's account.
4. If several accounts receivable are due to CemeCon from Customer and Customer does not expressly designate his payment as settlement of the respective receivable, the incoming payment of Customer shall be allocated in accordance with Section 366 subsection 2 of the German Civil Code (BGB).
5. If Customer is more than three months in arrears with a payment, CemeCon shall have the right to cancel the contract after sending a reminder and expiration of a reasonable period and to demand compensation for the resulting loss. Furthermore, CemeCon shall be entitled to demand interest for arrears as from the due date. If the parties have not specified the respective interest rate, CemeCon shall have the right to demand interest to an amount of 8% p.a. above the respective base rate.

XIII. Right of lien

1. The parties agree that CemeCon shall have a right of lien on the materials and Refined materials.
2. The right of lien serves as security for all existing and future claims to which CemeCon is entitled based on the contractual relations with Customer. The contractual right of lien can also be exercised because of claims from previously performed work, spare part deliveries and other performance provided that they are connected with the subject matter of the order. For other claims based on the current business relationship the contractual right of lien applies only to the extent this is uncontested or legally effective.

XIV. Termination of the contract

1. The individually agreed contract between the parties shall end on expiration of the agreed term. If no fixed term has been agreed upon, the contract shall have an indefinite term and can be terminated by giving one month's notice prior to the end of the quarter.
2. Both contracting parties shall have the right to extraordinary termination if the other contracting party respectively violates major contractual obligations to a substantial degree.
3. After termination of the contract each of the parties must promptly return to the other party all technical documents, materials and tools provided by this other party in accordance with the contract as well as all copies that may exist in this connection.

XV. Setting-off, retention, assignment

1. Customer can set off or exercise a right of retention because of his own claims only if his claim has been legally established, is uncontested or has been legally recognized.
2. CemeCon shall have the right to assign its claims arising from the current business relations with Customer to a third party (Section 354 a German Commercial Code [HGB]). The parties agree that corresponding assignment exclusions in the general terms and conditions of Customer shall not apply.
3. The assignment of claims against CemeCon without CemeCon's written consent shall be excluded.

XVI. Final provisions

1. CemeCon reserves the right to amend these General Terms at any time. CemeCon shall notify Customer of the changes made in writing. Customer agrees to the change if he does not object to it in writing within a period of 14 days from the notice of the change. CemeCon shall inform Customer of this consequence in the communication.
2. Side agreements, amendments and additions to these General Terms must be in writing to obtain effect; the same shall apply to any rescission of this requirement of written form.
3. Should any provisions of these General Terms be or become invalid, this shall have no effect on the effectiveness of the other provisions. In this case the client shall be required to agree to a provision that most closely approximates to the purpose and business intention of the ineffective provision. This shall also apply to the closure of any loopholes or gaps in the provisions.
4. The place of performance is CemeCon's registered place of business.
5. The place of jurisdiction for any disputes arising from the contractual relationship is Aachen. However, CemeCon shall have the right to sue Customer at any other permissible place of jurisdiction.
6. The laws of Germany shall apply to all legal relations of the contracting parties. The UN Sales Convention of 11 April 1980 (Vienna CISD Convention) shall not be applicable.

Status as at: 6th January 2005