

1. Validity, form, and applicability of the VOB/B

1.1. The following provisions are applicable to any agreements concluded by and between

- elling refractory solutions GmbH,
- e-r-s projects GmbH,
- e-r-s basic GmbH

(hereinafter referred to as: **e-r-s**)

and the relevant customer for works and construction agreement services.

1.2. The terms and conditions are applicable in business transactions with companies, legal entities under public law and special funds under public law to regulate the agreements as intended in article 1.1 within the scope of our business operations.

1.3. The terms and conditions are exclusively applicable. Deviating terms and conditions of the customer that are not recognised by e-r-s in writing remain without binding effect on e-r-s, even if e-r-s does not expressly object to them. This requirement of consent is applicable in any case, for example even if the customer refers to its terms and conditions in the order and e-r-s does not expressly object to this.

1.4. Any and all agreements concluded by and between the customer and e-r-s for the fulfilment of orders are set forth in text form in agreements concluded for this purpose.

1.5. The German Construction Contract Procedures (VOB/B) (version 2016) are included and applicable unless stipulated otherwise below.

2. Offer and conclusion of agreement

2.1. The order shall only be processed after receipt of the order in text form that must clearly identify the invoice recipient. It is made clear that oral orders are not accepted. An order by the customer, which is to be qualified as a binding offer to conclude an agreement, can be accepted by e-r-s within two weeks by sending an unconditional order confirmation.

2.2. If several payments on account were agreed then they can individually not exceed the limit of the commercial credit insurance. The payment instalments must be agreed in such a way that the limit cannot be exceeded between the individual instalments due to agreed payment targets.

2.3. The offers submitted by e-r-s are subject to change and do not have binding effect, unless e-r-s has expressly designated them to have binding effect.

2.4. e-r-s reserves the right to demand reasonable advance payments and/or instalments from the customer, taking the scope of the order and its processing into account, and to make the provision of further services dependent on this.

3. Price and payment conditions

- 3.1. Unless stipulated otherwise in individual cases, our current prices at the time of conclusion of the agreement are applicable, ex warehouse, plus VAT at the applicable statutory rate.
- 3.2. Unless stipulated otherwise, the prices of e-r-s are quoted in euros ex works plus the applicable statutory value added tax. Transport costs are not included.
- 3.3. Any customs duties, fees, taxes, and other public charges shall be borne by the customer.

Our receivables from works and construction services are continuously ceded to the Deutsche Factorizing Bank. The fulfilment of the payment by the customer can only be made by bank transfer to the account at the:

Institution: Landesbank Hessen-Thüringen Girozentrale:

Account no.: 72000706

IBAN: DE24300500000072000706

BIC: WELADEDXXX

- 3.4. Partial invoices and final invoices are generally due for payment immediately (§ 271 Subsection 1 of the German Civil Code) after receipt of the invoice by the customer, unless the order confirmation of e-r-s specifies a different payment term. The final payment period in accordance with § 650g Subsection 4 of the German Civil Code for construction agreements remains unaffected.
- 3.5. In the event of late payment, the statutory provisions shall apply. § 16 Subsection 5 under 3 of the German Construction Contract Procedures (VOB/B) is applicable with regard to the amount of interest.
- 3.6. In the event of non-fulfilment or late payment, e-r-s shall be entitled to withhold the documentation of the work carried out or the service provided until the customer has complied with its contractual obligations, § 320 of the German Civil Code.

4. Delivery and performance periods

- 4.1. Unless stipulated otherwise, services shall be provided from the Klötze location, which is also the place of fulfilment for the delivery and any subsequent fulfilment.
- 4.2. Performance periods or deadlines are agreed individually or are specified by us upon acceptance of the order. Performance periods or deadlines that have not expressly been stipulated as binding shall be deemed to be non-binding.
- 4.3. e-r-s is always entitled to make partial deliveries and provide partial services, provided that this is reasonable for the customer.
- 4.4. If the customer is in default of accepting delivery then e-r-s shall be entitled to demand compensation for the resulting damages and any additional expenses. The same shall apply if the customer negligently breaches its duty to co-operate. The risk of accidental deterioration and accidental loss shall pass to the customer upon the occurrence of default of taking delivery or default of payment.

5. Transfer of risk

§ 7 of the German Construction Contract Procedures (VOB/B) is applicable to the transfer of risk.

6. Claims for defects of the customer

6.1. § 13 of the German Construction Contract Procedures (VOB/B) is applicable to claims for defects.

6.2. The customer must immediately notify the supplier in writing of any material defects. §§ 377 and 381 of the German Commercial Code are applicable insofar as their statutory requirements are met.

6.3. In the event of notices of defects, the customer can withhold payments to an extent that is in reasonable proportion to the material defects that have occurred.

6.4. Claims for defects shall be out of the question in the event of natural wear and tear or damages arising after the transfer of risk as a result of incorrect or negligent handling, excessive use, unsuitable operating materials, unsuitable building ground or due to special external influences that are not foreseen in the agreement. If the customer or third parties carry out improper modifications or repair work on the work / construction then no claims for defects shall exist for the same and for the resulting consequences.

6.5. Claims of the customer for expenses necessary for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are excluded if the expenses increase on account of the fact that the object of the delivery has subsequently been taken to a place other than the branch office of the customer, unless the transfer corresponds to its intended use.

6.6. Article 7 below is applicable to claims for damages or reimbursement of wasted expenses (§ 284 of the German Civil Code).

7. Other liabilities of e-r-s

7.1. Unless stated otherwise in these terms and conditions, including the following provisions, e-r-s shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

7.2. e-r-s shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in cases of intent and gross negligence. In the event of simple negligence, e-r-s shall only be liable, subject to statutory limitations of liability (e.g. diligence in its own affairs, insignificant breach of duty), for

a) damages resulting from injury to life, body or health,

b) damages arising from the breach of an essential contractual obligation (obligation of which fulfilment is essential for the proper implementation of the agreement and on compliance of which the contractual partner regularly relies and may rely); in this case, however, the liability of the e-r-s shall be limited to compensation for the foreseeable, typically occurring damages.

- 7.3. The limitations of liability resulting from article 7.2 are also applicable to third parties and in the event of breaches of duty by persons (including in their favour) for whose fault e-r-s is responsible in accordance with statutory provisions. They are not applicable if a defect was fraudulently concealed or a guarantee was given for the quality of the service and for claims of the customer under the German Product Liability Act.
- 7.4. The customer can only rescind the agreement due to a breach of duty that does not consist of a defect if e-r-s is responsible for the breach of duty. Otherwise, the statutory requirements and consequences are applicable.

8. Limitation period

In derogation from § 634a of the German Civil Code, the limitation period for material defects shall be governed by § 13 Subsection 4 of the German Construction Contract Procedures (VOB/B). This is not applicable if the law mandatorily prescribes a longer period, as well as in cases of injury to life, limb or health, in the event of an intentional or grossly negligent breach of duty by e-r-s and fraudulent concealment of a defect. The statutory provisions on suspension of expiry, suspension and recommencement of time limits remain in full force and effect.

9. Subcontracting and construction electricity, construction water, and construction insurance

- 9.1. e-r-s is authorised to outsource works and construction services to subcontractors.
- 9.2. The customer shall procure and bear the costs for the consumption of construction water and construction electricity and for any and all authorisations, if and insofar as they are required for the performance of the works / construction services.
- 9.3. If and insofar as the customer requires e-r-s to take out construction insurance then the customer shall bear the insurance premium.

10. Assignment

Assignment of the claims of the customer requires the prior written consent of e-r-s in order to be effective. e-r-s can refuse its consent if there is a legitimate interest in maintaining the accounts receivable relationship with the customer. § Section 354a of the German Commercial Code remains unaffected.

11. Settlement

Settlement of counterclaims of the customer with payment claims of e-r-s is only permitted if these claims are undisputed or were legally established.

12. Warranty declarations

Recommendations given by or on behalf of e-r-s by employees with regard to the quality, composition, handling, and properties of the services provided shall never be qualified as a guarantee. Guarantees by e-r-s are only given by written declaration on the part of e-r-s.

13. Planning services, ownership and copyright of planning documents of e-r-s

Planning services are only provided by e-r-s if and insofar as this is expressly stipulated in the agreement. e-r-s retains ownership of any and all illustrations, drawings, calculations, plans and any and all other documents that it submits to the customer as part of an order. They are subject to the copyright of e-r-s and, where applicable, other property rights. The customer can only disclose these documents to third parties with the written consent of e-r-s, regardless of whether they are labelled as confidential.

14. Applicable law and place of jurisdiction

These terms and conditions and the contractual relationship between us and the customer shall be governed by the laws of the Federal Republic of Germany with the exclusion of international standardised law, in particular the UN Convention on Contracts for the International Sale of Goods. The place of jurisdiction for any and all disputes arising from agreements between the parties, including those relating to the validity of such agreements or these General Terms and Conditions for Works and Construction Agreements, shall be the court with local jurisdiction for the town of Klötze.



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