

The General Terms and Conditions of Sale - Ekomex

§ 1. Preamble

1. General Terms and Conditions of Sale and Warranty, hereinafter referred to as "GTCS, apply to the sale of equipment offered by EKOMEX-PILŚNIAK Spółka z ograniczoną odpowiedzialnością Spółka Komandytowa, with its registered office in Panki 42-140 at 49a Częstochowska Street, entered into the Register of Entrepreneurs kept by the District Court in Częstochowa, Commercial Division of the National Court Register under the number KRS 0000592307, hereinafter referred to as "Ekomex", unless the sales contract, hereinafter referred to as the "contract", provides otherwise.
2. The GTCS constitute an integral part of the offer, order or contract.
3. The GTCS are in force from 01/01/2021.

§ 2. Offers

1. If the addressee to whom Ekomex's offer was addressed, accepts the offer without reservations and the GTCS attached to it, it is understood that this entity, hereinafter referred to as the "Buyer", has read and agrees that the sale may be made in accordance with GTCS.
2. Ekomex is bound by the offer within the period specified in it, and if the offer binding period during which Ekomex could, in the ordinary course of activities, receive the addressee's reply without undue delay, was not specified, then it is assumed that the offer is binding for a period not longer than 30 days from the date of its receipt. If the offer does not specify the offer validity period, Ekomex may cancel the offer before it is accepted by the addressee.

§ 3. Retention of title

1. Ekomex reserves itself on the basis of art. 589 of the Polish Civil Code, ownership of the device sold until the Buyer pays the full price. The transfer of ownership of the device will take place under the condition precedent. The date of payment is the date when the entire price specified in the contract is credited to Ekomex's bank account.
2. The buyer may use the device from the date of its release to the date on which the price payment deadline has expired.
3. If the price is not paid within the time limit specified in the contract, Ekomex may set an additional payment date under pain of withdrawal from the contract or withdraw from the contract.
4. If Ekomex withdraws from the contract, after the expiry of the payment deadline or the designated additional payment deadline, the Buyer will hand over the device within 3 days from the date of receipt of the declaration of withdrawal from the contract.
5. Upon receiving the device, Ekomex may demand remuneration for its use (wear) or damage. The amount of remuneration for the normal use of the device (the degree of wear and tear of the device) will be determined according to the Ekomex price list for the rental of this type of equipment. In the event of damage to the device, the Buyer shall pay Ekomex the difference between the value of the new device and the damaged one. Ekomex will also keep the amount of the advance paid by the Buyer towards the costs of performing the contract.
6. In the event of the Buyer's delay in releasing the device within the time limit referred to in sec. 4, he will be obliged to pay Ekomex compensation for non-contractual use of the device in the amount of 0.3% of the price specified in the contract for each day of delay.

§ 4. Price and its payment

1. If the price in the contract is specified in a foreign currency and its payment is to be made in EUR, it shall be converted according to the average exchange rate of the given currency specified by the National Bank of Poland on the date of issuing the invoice. If the sales contract specifies the price in Polish zlotys, this provision does not apply. The price may also be paid in a foreign currency to the currency account indicated on the invoice.
2. The price includes customs duties (customs, customs and forwarding fees) related to the import of the device by Ekomex, the cost of insurance and transport of the device to the Buyer's plant and installation of the device, unless the offer or a separate agreement provides otherwise.

§ 5. Payment deadline

1. The Buyer is obliged to pay the price of the device within the time limits specified in the offer, order confirmation or on the basis of a separate contract, and in the absence of such contract, within 14 days from the date of delivery of the device on the basis of a VAT invoice issued by Ekomex.
2. Ekomex is a tax payer on goods and services and has VAT EU-tax number PL5741795834. The deliveries in the area of European Union are understood as a tax free, intraship deliveries.
3. The price will be paid by bank transfer to the Ekomex bank account indicated in the invoice each time.

§ 6. Delivery and passing the risk

1. Any agreed trade term shall be construed in accordance with the INCOTERMS 2020 in force at the formation of the Contract. If no trade term has been specifically agreed, the delivery shall be Free Carrier (FCA) at the place named by a Supplier.
2. If, in the case of delivery Free Carrier, the Supplier, at the request of the Purchaser, undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier. Partial delivery shall not be permitted, unless otherwise agreed.
3. The delivery date is each time specified in the order or the sale and purchase agreement.
4. In the event of non-performance or improper performance of the delivery within the period specified in the General Terms and Conditions or the contract for reasons attributable to Ekomex, the Buyer has the right to charge a contractual penalty of 0.1% for each day of delay in delivery, but not more than 5% of the value of the device. being the subject of delivery.
5. In the event that the Buyer withdraws from the contract for reasons referred to in sec. 4, Ekomex's liability is limited to the amount of the agreed contractual penalty.

§ 7. FAT/ Training

1. Ekomex, together with the delivered device, will provide the possibility of FAT and training in the use and maintenance of the device. The FAT and training can also be made online at the Buyer's request.
2. Training of persons designated by the Buyer may take place online during FAT as well as at Ekomex's premises.
3. The costs of delegation, travel and accommodation of training participants shall be borne by the Buyer.

§ 10. Warranty and inspections

1. Ekomex guarantees the efficient operation of the equipment it sells and provides the Buyer with a quality guarantee for the item of sale. Efficient operation of the device means operation in accordance with its technical and operational conditions described in the offer for a given device.
2. The warranty period is 24 months from the date of delivery of the device to the Buyer in accordance with the General Terms and Conditions and the date of the device delivery protocol. The warranty period applies to a one-shift (8-hour) operation mode, unless separate provisions provide otherwise. In the case of multi-shift operation, the warranty period is reduced in proportion to the number of hours worked.
3. The warranty covers breakdowns of the device caused by faulty parts or construction defects. Device failure means a condition that prevents the proper operation of the device, caused by reasons attributable to it and spontaneously resulting from it, and not related to its improper use, and not resulting from using the device in a manner inconsistent with the operating instructions. The warranty covers only defects resulting from reasons inherent in the device sold.
4. Detailed warranty conditions are included in the warranty card attached to the device, containing the type and serial number of the device and the date of issue of the document. In special cases ie.warranty for the electric parts, HMI and PLC units, drives etc., the terms of the guarantee may be specified in a separate document.
5. International guarantee terms warranty for brand new machines cover only the spare parts. The Purchaser is obliged to pay the transport cost of the spare parts sent under the warranty.
6. Spare parts sent under warranty will be send without charge only under the condition of sending back the faulty or damaged parts. In other cases the Purchaser will be obliged to pay for the parts.
7. The Purchaser is obliged to pay all cost regarding the replacement of faulty or damaged elements or the Manufacturer's service if its necessary. The cost of service outside the territory of Poland includes:
 - cost of service crew travel (costs are understood as cost of air or railway tickets/ or the cost of transit per each km + 150 Euro/a day of trip for 1 person – costs to be agreed individually before eventual service).
 - cost of visa (if necessary)
 - cost of accommodation of a serviceman/crew (in a hotel + food)
 - cost of work = 800 Euro for a day for each serviceman (estimated cost, in some specific cases the cost can be negotiated individually).
8. The Manufacturer is obliged to react with service within 48 hours counting from the time of receiving the information about incorrect work of the machine . This information should be sent by fax (+49 34 317 94 81). In some specific cases eg. when the delivery time of spare parts is longer than 48 hours the time of reaction with service may be longer. Time of reaction with service refers only to normal working days and does not refer to holidays. The reaction with service is meant also by the phone or email help with solving the problem
9. The Manufacturer is not responsible for any possible Purchaser's losses regarding any damages or defective functioning of the machine.
10. The warranty is valid only under the condition of the periodical services given by the Manufacturer's service or its authorized representatives to the machine at least every half of the year. Periodical services are paid by the Purchaser.
11. The warranty does not cover:
 - a. Periodical technical service and repair or replacement of the parts or the components as the result of their common usage;
 - b. Operating and easy wearing parts and spare parts changed while periodical service (eg. gaskets, bearings, knives, pneumatic wires, heaters, buttons, heating board, chains etc.);
 - c. Damages and failures caused by the wrong installation, usage and maintenance inconsistent with the instruction manual, standards of safety, damages caused while shipping.
 - d. The improper usage of the product caused by physical damage such as surface damages, LCD displays, control unit damages;
 - e. Service or repair carried out by the other people than the worker of EKOMEX-PILSNIAK or authorized service representative;
 - f. Increase of machine's parameters more than given in the instruction manual;
 - g. Any replacements and modifications without previous agreement with the Manufacturer;
 - h. Damages and failures caused by any external forces (hit, accidents, fire, fluid- effect, chemicals and other substances, flood, vibrations, overheating, inappropriate ventilation, fluctuation of voltage, connection to excessive or faulty voltage, radiation, electric discharge etc.);
12. Sales representatives/ dealers of EKOMEX-PILSNIAK machines in particular countries are obliged to provide their own service including periodical services according to the information given by the manufacturer. EKOMEX-PILSNIAK as a manufacturer of the machines can provide free training in the EKOMEX-PILSNIAK factory for the representative's employes regarding service and maintenance of the EKOMEX machines.
13. EKOMEX-PILSNIAK company is obliged, according to the present warranty, only to repair or replace the parts according to the conditions of the present warranty. The company is not responsible for the losses or damages related to the economical or immaterial losses.

§ 11. Limitations of Liability

1. Ekomex shall not be liable for any damage related to the use by the Buyer of a faulty device or its use after previous disassembly and assembly.
2. Ekomex shall not be liable for the consequences of claims by third parties against the Buyer regarding infringement of their copyrights, patents, licenses, trademarks or other rights related to the use of the device for purposes that may infringe the rights of these persons.

§ 12. Trademark

1. In the case of sale of devices which Ekomex is not the manufacturer, but the sole distributor in Poland, Ekomex has been authorized by the manufacturer of the devices to use the trademarks belonging to the manufacturer with which the devices are marked.
2. On the basis of the Agreement, the Buyer shall not acquire any rights to use the trademarks denoting the manufacturer of the device, except for the rights related to the proper use of the device marked by the manufacturer with the trademark.

§ 13. Change of the general terms of sale

1. The general terms and conditions of sale may only be changed by changing the sales contract. Any changes to the sales contract must be made in writing, otherwise being null and void.

§ 14. Force majeure

1. Ekomex shall not be liable to the Buyer for any delay in delivery, repair or malfunction of the Device, if the delay is caused by force majeure, including in particular: flood, fire, war, state of emergency, strikes or malfunction of the systems. common electronic systems or malfunction of standard electronic systems or computer programs and other factors beyond Ekomex's control. Ekomex will immediately notify the Buyer in writing of any reasons preventing the timely delivery of the device. If, as a result of the above events, delivery of the device within the next 30 days from the date of sending the above notification turns out to be impossible, Ekomex will notify the Buyer about this fact and then either party will be able to withdraw from the contract with immediate effect.