

Standard Terms and Conditions of the Sorg-Group (Valid from 1 July 2015)

A. General provisions

1. Subject matter

The standard terms and conditions contained herein shall apply to all contractual relationships entered into between Nikolaus Sorg GmbH & Co. KG, Sorg Feuerungsbau und Service GmbH, as well as to other companies of the Sorg Group which make reference to these standard terms and conditions, (all hereinafter referred to as "the Contractor") and the Customer for

- the engineering of industrial and commercial glass melting furnaces and glass conditioning systems (Part B).
- the supply of glass melting furnaces, glass conditioning systems, components or materials used to build glass melting furnaces and glass conditioning systems (Part C).
- the provision of technical services (Part D).

The general provisions (Part A) and the relevant special provisions (Parts B, C, and D) are an integral part of every contract. In the event of any conflict, the special provisions shall take precedence over the general provisions.

2. Exclusivity of application

These Standard Terms and Conditions shall be exclusively applicable. Any contractual terms and conditions of the Customer that deviate from or conflict with these Standard Terms and Conditions have no validity.

3. Conclusion of contract

Offers of the Contractor shall always be subject to change. The Customer shall be bound by his orders for a period of 30 days after the Customer has send such orders to the Contractor. A contract is deemed to be concluded when the Contractor has confirmed the order to the Customer within this period in writing.

4. Quotation documents / Product Quality

- a) The Contractor shall retain title and copyrights to cost estimates, drawings, and other technical documents that are provided to the Customer in the course of contract negotiations. Such documents shall be treated as confidential and under no circumstances may they be given to third parties. This applies to documents as well as electronically saved documents if the latter are not already subjected to nr. 14 of these terms.
- b) The quality and condition of the supplied glass melting furnaces, glass conditioning systems or the materials used to build such furnaces or systems shall be solely defined by reference to the oral representations made publicly by the Contractor or his agents in connection with the respective delivery, and the written representations made in respect of the product supplied. In cases where engineering services are concurrently provided, the quality and condition of the supplied glass melting furnaces, glass conditioning systems or materials used to build such furnaces or systems shall be exclusively defined by reference to the representations contained in the cost estimates, drawings, and other technical documents.

5. Cost increase

- a) Additional costs, which occur as a result of modifications requested by the Customer or which result from delays for which the Customer is responsible, shall be calculated in accordance with the prices and rates agreed in the contract and shall be borne by the Customer in addition to the agreed price.
- b) Additional costs arising as a result of delays for which neither the Customer nor the Contractor are responsible shall be borne by the Customer. If such additional costs exceed 15% of the order amount, the Contractor shall inform the Customer thereof in writing. If the Customer is not prepared to assume the additional costs, the Customer shall be entitled to rescind the contract. The rescission rights must be exercised within two weeks in writing. After the rescission right has been exercised, the contract shall be wound up pursuant to Section 8 b).

6. Customer's duties of co-operation / Breach of co-operative duties

- a) The Customer is obliged to provide the agreed data and any further information requested by the Contractor and necessary for the proper performance of the contract in good time. The Customer shall, of his own accord, also provide the Contractor with any facts and data which are relevant for implementing the contract.
- b) The Customer shall allow the Contractor timely access to complete versions of any technical, police, safety, building or other types of regulations relevant to the fulfilment of the contract and which are not valid at the Contractor's registered office. The Customer shall indemnify the Contractor from the legal consequences of incorrect data and/or the failure to adhere to such regulations that the Customer has failed to disclose to the Contractor.
- c) The Customer shall obtain the necessary official permits.
- d) If the Customer fails to fulfil his duties, the Contractor has the right but is not obliged to perform whatever actions are required of the Customer in his stead and at the Customer's cost, provided that the Contractor first grants to the Customer a reasonable grace period within which to fulfil his duties, and such period expires without result. In all other respects, the Contractor's statutory rights and claims shall remain unaffected. In cases where the Customer is obliged to co-operate, the Contractor shall not be subject to any duties of his own.

7. Acceptance

- a) The Customer shall accept the goods/services supplied immediately after receiving notice of their completion. If the Customer fails to respond to the request for acceptance, the (partial) delivery/ (partial) services shall be deemed to be accepted four weeks after notice has been given of their readiness for acceptance. The Contractor shall make the Customer aware of this in the notice of completion. Upon demand, parts of the goods/service, which can be considered to be a complete entity, shall be accepted separately.
- b) If the subject matter of the contract is the supply and/or installation of a complete system, the Customer shall accept delivery immediately after the Contractor has demonstrated the performance criteria agreed in the contract during operation of the installation over a 24-hour period (test run).

If during the test run the promised performance criteria are not achieved, the Customer shall grant the Contractor three

opportunities to make improvements, as long the Contractor or its vicarious agents are not responsible for the first two opportunities to fail or a third opportunity would cause unbearable economic hardship for the Customer. In these cases, the number of opportunities for the Contractor is limited to two opportunities.

The Customer is obliged to support the Contractor during the test run(s) by providing the necessary personnel, correct process materials (in particular: raw materials, cullet, energy, cooling water, fan and compressed air) and to issue a certificate of acceptance upon demand.

If the acceptance is delayed for reasons not attributable to the Contractor, or cannot be carried out because the Customer has not fulfilled his obligations, then the acceptance shall be deemed effected four weeks after the notification of completion. The Contractor shall make the Customer aware of this in the notice of completion.

8. Premature termination of the contract

- a) Both parties may only terminate the contract when good and sufficient grounds exist. If the contract is terminated for reasons attributable to the Contractor, the Customer shall be liable to pay only for those supply/performances provided prior to notice of termination.
- b) In all other cases, the Contractor shall be entitled to remuneration as agreed, after deduction of the expenses thereby saved. Insofar as the Customer does not prove a higher percentage of expenses saved in a specific case, these shall be agreed to be 25% of the remuneration due for performances not yet completed by the Contractor, unless the Contractor chooses to specifically itemise the expenses saved.

9. Invoices and payment default

- a) All prices include the cost of adequate packing, without any statutory value added tax which may be due. In the absence of any agreement to the contrary, the invoiced amounts are due and payable in full upon receipt of the invoice. Payment is to be made in the full amount at the Contractor's place of payment.
- b) Unless a fixed price has been agreed upon, prices shall be valid for six months after the date of contract conclusion. Thereafter, prices can be adjusted accordingly if any price increases or reductions for labour and materials occur. The Contractor shall substantiate price changes upon the Customer's demand.
- c) If the Customer is in default of payment, the Contractor may charge interest from the due date at a rate of 9 percentage points above the base interest rate pursuant to Section 247 of the German Civil Code. The Contractor may assert claims for a greater amount if he can prove higher actual damage caused by a delay in payment. The Customer has the right to prove that the Contractor suffered substantially lower or no actual damage resulting from the delay in payment.

10. Warranties / Exclusions of warranties

- a) Unless otherwise specified in these Standard Terms and Conditions, the legal relationship between the Customer and the Contractor will be governed by the statutory regulations concerning movables. In recognition of the expected lifespan and special kind of execution of constructing a glass melting furnace or a glass conditioning system, the parties agree that the warranty provisions that apply to buildings are not applicable.
- b) If there is a defect as to quality ("material defect") or a title defect, then the Contractor may at his option remedy the defect, deliver a defect-free replacement or produce a new work (substitute performance). The Contractor shall bear all expenses necessitated thereby, in particular freight, travelling,

labour and material costs. Parts exchanged shall be handed to the Contractor upon request.

- c) If the Contractor fails to comply with the Customer's demand for substitute performance within a reasonable time (as stipulated by the Customer), or if the attempt to render substitute performance ultimately fails, then the Customer may claim a reduction of the contract price, remedy the defect himself and demand reimbursement or withdraw from the contract. The Customer shall not be entitled to claim compensatory damages, unless the defect was caused by the wilful or grossly negligent conduct of the Contractor.
- d) A delivery or performance shall not be considered defective if the deviation does not substantially diminish the contractually stipulated purpose of use. On account of such deviations acceptance cannot be refused.
- e) Insofar as notices of defects and claims are proved to be without foundation, the Customer shall bear any costs incurred by the Contractor as a result of the claims and any repair attempts.
- f) The following are excluded from the warranty:
 - the delivery of components which are particularly subject to wear. Such components include but are not limited to refractory materials, electrodes, electrode holders and measuring sensors;
 - all damage which is a consequence of normal wear and tear, incorrect or negligent treatment (in particular failure to constantly comply with the operating instructions for heating up, commissioning and continuous operation of the glass melting furnace/glass conditioning system), overloading, the use of unsuitable materials, faulty building workmanship, defective construction of foundations and load bearing structures or unsuitable building ground, weather or other natural influences;
 - damage to control equipment and fittings or other sensitive devices and equipment caused by foreign bodies of any kind, such as welding beads, dirt or similar substances, unless such damage is caused by a construction defect attributable to the Contractor;
 - damage to system components caused by the Customer or third parties.
 - damages, resulting from modifications or updates of the supplied software made by the Customer or by third parties on behalf of the Customer.
- g) The Customer's warranty rights require that the Customer examines the goods/services promptly after the delivery by the Contractor, insofar this is feasible in accordance with the regular course of business, and, if a defect is revealed, written notice is given of defects in the goods/services. Such notice must contain an exact description of the defects. As long as the Customer has not fulfilled his obligations, the Contractor may refuse to remedy the defects.
- h) Subject to any terms to the contrary in the special provisions of these Standard Terms and Conditions, any claims on the part of the Customer based on defects in the goods/services shall become statute-barred 12 months after delivery of the relevant goods or acceptance of the relevant services.

11. Liability

At variance from the breach of warranty provisions under section 10 of these Standard Terms and Conditions, the Contractor's liability shall be unlimited in the event of wilful misconduct, gross negligence, injury to life, physical injury or injury to health. Furthermore, the Contractors are liable for the negligent breach of material obligations, if the violation endangers the purpose of the contract, and for the violation of duties the fulfilment of which allows for the proper execution of

the contract and on whose compliance the Customer regularly relies on. In this case, however, the Contractor shall be liable only for the foreseeable damages typical for the contract. The contractor is not liable for other than those mentioned in the preceding sentences obligations if they have been caused by simple negligence. The foregoing shall apply analogously in cases where the Contractor is held vicariously liable for the acts of his agents and representatives by law. This limitation of liability shall apply to claims brought against the Contractor in both contract and tort. This provision shall not affect any claims the Customer may have against the Contractor under the German Product Liability Act (*Produkthaftungsgesetz*).

12. Force majeure

The contractual duties of both Parties are suspended by *force majeure* or similar events. The term "*force majeure*" refers to circumstances which arise after conclusion of the contract as a consequence of unforeseeable and unavoidable events which hinder the execution of the contract, including but not limited to: war, warlike acts, natural disasters, fire, earthquakes, floods, industrial disputes and public authority action. The Party hindered in the performance of its contractual duty by *force majeure* shall inform the other Party in writing as soon as possible about the onset and end of the effects of the *force majeure*. The dates scheduled for the affected Party's performance shall be extended by the time period during which the *force majeure* event(s) arose and continued.

13. Industrial property rights

If the system or plans to be supplied and/or the processes to be carried out in the system are protected by the Contractor's patents or registered designs, the delivery of the system shall include a licence for the Customer to use such systems/plans/processes. Even if the Customer has obtained licensing rights by payment of a licensing fee, such licences are limited to the Customer and any possible legal successor in title of his. These licensing rights are not assignable and shall expire the moment any of the following action is taken, if such action would result in an infringement of the Contractor's industrial property rights: major repairs or conversions of the system by third parties not associated with the Contractor or not authorised by him, dismantling the system into its component parts and/or units and rebuilding it at a different location, and/or selling the system to a third party who is not identical with the Customer or his legal successor in title.

14. Software

- a) Where software is included in the delivery, the Customer will be granted a non-exclusive, non-transferable right to use the software supplied, including the accompanying user documentation. The software will be transferred for use on the delivered item for which it was designed. The software may not be used on more than one system.
- b) The Customer may copy, redesign or translate the software, or convert it from object code to source code only to the extent permitted by law (§§ 69a *et seq.* of the German Copyright Act (*Urheberrechtsgesetz*, or "UrhG")). The Customer agrees not to remove any manufacturer's details (particularly copyright notices) or to change such details without the prior express consent of the Contractor.
- c) The Contractor or the Contractor's software supplier shall retain all other rights in the software and the accompanying documentation, including copies thereof. The Customer may not sub-license the software.
- d) If use of the software results in the infringement of the industrial property rights or copyrights of third parties, then the Contractor shall, at his own expense, secure a general right for the Customer to continue using the software, or modify the software (to the extent that this can be reasonably expected of the Contractor) so that there is no longer any infringement of industrial property rights. If neither of the above alternatives is possible on economically feasible conditions or within a reasonable time, the Customer may rescind the contract. In

addition, the Contractor will indemnify the Customer against any and all undisputed or judicially upheld claims on the part of the industrial property rights holders concerned, insofar as the Contractor is responsible for the infringement.

15. Miscellaneous

- a) The Customer shall have the right to set-off and/or of retention only in the case of counterclaims which are not contested or are legally fixed and enforceable. Excluded are claims of the Customer for the remedy of claims and completion costs.
- b) The Customer shall not assign any rights and/or transfer any obligations under this contract without the written consent of the Contractor.
- c) The place of performance for payment and delivery is the Contractor's registered office.
- d) The place of jurisdiction for any disputes arising in connection with this contract is Frankfurt am Main. However, each contracting partner shall have the right to file a legal action in a court that has jurisdiction at the location of the respective defendant's registered office.
- e) Any and all legal relationships between the Contractor and the Customer shall be governed exclusively by the Law of the Federal Republic of Germany, excluding the Vienna UN Convention on Contracts for the International Sale of Goods.

B. Engineering of industrial and commercial glass melting furnaces and glass conditioning systems

The following provisions deviate from and shall supplement the Standard Terms and Conditions (Part A):

1. Confidentiality

Any and all documentation supplied, such as drawings, specifications and process descriptions may not be published, made accessible to third parties, reproduced or used for any but their original purpose without the consent of the Contractor. In particular, the documentation supplied may not be used for follow-on deliveries and replacement installations carried out by third parties. The Customer shall also impose this obligation upon its employees. This applies for both, written and electronically filled documentation.

2. Exclusion of warranty

Defects resulting from a design modification requested by the Customer and opposed by the Contractor are not covered by the warranty.

3. Warranty and liability period

Customer claims based on faulty engineering shall become statute-barred 12 months after the planning documentation due under the contract has been handed over. If engineering services were provided in connection with the initial construction, reconstruction or delivery of a glass melting furnace or a glass conditioning system by the Contractor, then the Customer's claims shall become statute-barred 12 months after his acceptance of the glass melting furnace or glass conditioning system.

C. Delivery of glass melting furnaces, glass conditioning systems, components or materials used to build glass melting furnaces or glass conditioning systems

The following provisions deviate from and shall supplement the Standard Terms and Conditions (Part A):

1. Scope of delivery / time of delivery

- a) Partial deliveries are permitted concerning parts which are already at the disposal of the Contractor.
- b) Should the weight of the materials delivered deviate from the values laid down in the contract, then the delivery shall be deemed to be in accordance with the contract if the deviation does not exceed a tolerance of +/- 5% and the deviation is reasonable for the Customer having regard to the Contractor's interests. The foregoing shall also apply to tolerances customary in the industry in the case of ceramic products and metal products.
- c) A delivery deadline shall be deemed to have been met if the item for delivery has left the factory or notice of its readiness for shipment has been given to the Customer by the expiration of such delivery deadline.

2. Transfer of risk and acceptance

- a) The parties agree that delivery shall be effected ex works (according to the ICC Incoterms as amended from time to time).
- b) Where goods have been notified as ready for dispatch by the agreed date, the Customer must request delivery of these goods within ten days. Failing this, and after the expiry of a reasonable grace period without any progress being made, the Contractor is entitled to dispatch or store the goods at his option and at the Customer's expense and risk.
- c) Within the scope of application of the Packaging Ordinance, the Customer shall be entitled to return transport packaging in accordance with the Packaging Ordinance to the registered office of the Contractor. The Customer shall bear the costs of transporting the transport packaging to the registered office of the Contractor. The return may be exclusively made during the Contractor's business hours. The transport packaging to be returned must be clean, free of foreign substances and sorted by the various types of packaging. Otherwise, the Contractor shall be entitled to demand from the Customer the additional costs arising from the disposal.

3. Retention of title

- a) Title shall not pass to the Customer until the price agreed in the contract as well as ancillary costs and value-added tax have been paid in full. The assertion of reservation of proprietary rights shall not be deemed a rescission from the contract.
- b) Any processing or transformation of the item delivered shall always be carried out for the benefit of the Contractor. If the item delivered is, together with items that do not belong to the Contractor, manufactured or processed into a new item, then the Contractor shall acquire co-ownership rights to the newly created item proportionate to the value of the contract item to the other items modified at the time the work is performed.

4. Warranty period

- a) Claims on the part of the Customer based on defects in a delivered glass melting furnace or glass conditioning system shall become statute-barred 12 months after the Customer's acceptance of the glass melting furnace or glass conditioning system.
- b) Claims on the part of the Customer based on defects in components or material used to build glass melting furnaces or glass conditioning systems, particularly defects in movable or "moved" components, shall become statute-barred 12 months after physical delivery.

D. Performance of technical services

The following provisions deviate from and shall supplement the Standard Terms and Conditions (Part A):

1. Contractor's services

Technical services comprise erection and installation, supervision of erection and installation, heating-up, starting up, maintenance and repair of glass melting furnaces or glass conditioning systems or parts thereof. They do not form part of the pure contract for delivery (*Liefervertrag*) (Part B). The scope of technical services shall be determined by the terms of the individual agreement.

2. Modifications

The Contractor is entitled to carry out any small or urgent technical modifications that arise during the performance of technical services and are deemed unavoidable, even without the Customer's consent, provided this is reasonable for the Customer having regard to the Contractor's interests.

3. Customer's duty of co-operation

- a) Unless agreed otherwise, the Customer is obliged to assume overall responsibility for construction and is responsible for the necessary safety measures.
- b) The Customer is obliged to support the Contractor in the performance of technical services. The Customer shall provide lighting, requisite energy supplies and process materials at no charge insofar as they are required for the provision of technical services. Persons of the Customer assigned to assist must obey the technical instructions of the Contractor. The Contractor shall not be liable for defects, delays or damage caused by the assisting personnel unless such were caused by the Contractor's instructions. In particular, the Customer must ensure that the personnel provided are familiar with the work to be done or the operation of such a system. The Customer shall provide accident and liability insurance coverage for the duration of the contract for the personnel assigned to work.
- c) The Customer shall unload and inspect all materials, machines and tools received at the construction site at his own risk and store and secure them in an appropriate manner no further than 30 metres from the construction site.
- d) The Customer must guard the construction site during those hours of the day and night when no glass melting furnace or glass conditioning system installation work is taking place, and take those precautions necessary to protect persons and property on the building site. This obligation shall continue during periods in which construction and installation work is suspended due to *force majeure*.
- e) The technical assistance given by the Customer must ensure that technical services can begin immediately after the arrival of the Contractor's personnel and that the work can be carried out without delay until acceptance by the Customer.

4. Warranty period

- a) Claims on the part of the Customer based on defective repair work shall become statute-barred 12 months after such repair work is accepted.
- b) Claims on the part of the Customer based on defective technical services of any other kind shall become statute-barred 12 months after such services are accepted.