§ 1 General Terms and Conditions

(1) These General Terms and Conditions (GTC) apply to all services provided by EST Energetics GmbH (EST) to its clients. They also apply to all future transactions between the parties, without the need for any further notice.

(2) Only these GTC apply to contracts concluded with EST. All opposing and/or additional terms and conditions of the client are excluded; they do not apply, unless EST has expressly agreed in writing.

§ 2 Prices, Due Dates and Payments

(1) Unless otherwise agreed in writing, the agreed prices shall apply exclusive of loading, packaging, transport and any applicable VAT.

(2) Payments must be made to the specified account of EST. Deduction of cash discount is only permitted in case of express agreement in writing.

(3) Unless otherwise agreed, all payments must be made within 30 days of invoicing.

(4) If client defaults or if circumstances questioning his creditworthiness become apparent after contract closing, EST, without prejudice to any other rights, shall be entitled to immediate payment of the entire remaining debt, to advance payments or security deposits or, after setting a reasonable period of grace, to withdraw from the contract. A doubtful creditworthiness of the client shall be seen in particular, if the client stops its payments or if insolvency proceedings into his assets are initiated.

(5) In addition to the rights under section (4), EST is entitled to withhold services due (as well from other contracts) and, if it has already provided services, to demand the immediate payment of all outstanding claims.

(6) Unless a fixed price agreement has been made, reasonable price changes due to increased costs for wages, energy, material, consumables and/or supplies are reserved.

§ 3 Set-off and Right of Retention

Client is entitled to set-off only if its counterclaims are legally established or undisputed. The client may exercise a right of retention to the extent only that its counterclaim is based on the same contractual relationship.

§ 4 Performance and Performance Periods

(1) Performance deadlines afford the receipt in due time of all properly packaged disposal items and supplies, documents and permits as well as compliance with the agreed terms of payment including down payments and all other required obligations. Otherwise, the service period shall stand extended by a reasonable period of time. If client fails to fulfill its respective obligations, EST may withdraw from the contract after expiry of a reasonable grace period. Furthermore, client must compensate for any damage caused by the delay; a specific reminder note is not required (§§ 280 (2), 286 (1), (2) no.2 German Civil Code).

(2) In the event of industrial disputes, official actions, force majeure or the occurrence of similar events affecting the performance of EST, the performance period shall stand extended for an appropriate period of time. If the hindrance continues more than 3 months or if the disposal of the goods by the aforementioned events is permanently impossible, both parties are entitled to rescind the contract regarding services not yet performed.

(3) If EST is unable to perform as agreed due to non-supplies by its subcontractors, EST shall be entitled to provide a service of equivalent quality and price. § 2 (6) above remains unaffected. If an equivalent service is not available, EST may withdraw from the contract. In this case, EST will inform the client immediately and reimburse client for any payment made with respect to the unavailable service.

(4) Client’s claims for damages based on late performance or damages in lieu of performance are excluded in all cases of delayed performance, even after expiry of a notice period for performance. This does not apply if liability is mandatory in cases of intent, gross negligence or injury to life, limb or health. Except in case of a material defect, client may only withdraw from the contract if EST is in default of a material obligation. This does not affect statutory rules regarding the burden of proof.

(5) Upon request by EST, client must declare within reasonable time whether he withdraws from the contract due to the delay in performance or insists on performance of contractual obligations.

(6) Packaging must be provided free of charge for EST. After completion of the services, EST shall be free to utilize or dispose of the packaging at its own discretion or to make it available to the client for collection. Any compensation for utilization or collection of used packaging is excluded.

§ 5 Acceptance, Rejection, Rescission

(1) Unless otherwise agreed, the service shall be deemed accepted upon receipt of the destruction declaration or a comparable proof of disposal.

(2) EST is entitled to reject the delivery of disposal goods should the client
- make false statements about the nature or origin of the goods,
- disregard contractual conditions - especially on delivery dates - or regulatory requirements, or
- violate operational rules of EST.
(3) EST is entitled to rescind the contract if
- the disposal goods have an impact that is or is feared to be detrimental on the disposal site or the environment and was unknown at the time of the contract's conclusion;
- the disposal becomes inadmissible or impossible as a result of a legal or regulatory order issued after the conclusion of the contract;
- EST subsequently becomes aware of circumstances that question the creditworthiness of the client or
- the insolvency proceedings are opened against the assets of the client or the opening of such proceedings is refused due to lack of assets.

(4) In the case of rejection or rescission, the client is obligated to take back already delivered and not yet disposed of or treated disposal goods at its own expense.

§ 6 Warranty

(1) Client must inspect the services of EST without culpable hesitation and shall immediately notify EST in writing of any defect detected.

(2) Warranty claims expire one year from the date of receipt of the proof of disposal provided in § 5 above. This does not apply if statutory law provides for longer periods or in case of injury to life, limb or health, in case of intent or gross negligence by EST or in case of fraudulent concealment of a defect.

(3) Services in defect and reported by client within the statute of limitations will be corrected free of charge at the discretion of EST, provided that the cause was already present at the time of receipt of the proof of disposal in accordance with § 5.

(4) If any correction of defects fails more than twice, the client may withdraw from the contract or reduce remuneration accordingly.

(5) In case of defects, the client may withhold payments to the extent reasonably proportionate to the defects at stake. If the notice of defect was unjustified, EST may charge all costs incurred.

(6) Further warranty claims beyond those regulated in this § 6 are excluded.

§ 7 Liability

(1) Client's claims for damages and reimbursement of expenses, for whatever legal reason, based on default of obligations or tort, are excluded. In particular, liability of EST in case of willful misconduct of its vicarious agents is excluded.

(2) This shall not apply insofar as liability is mandatory under statutory law, e.g. in cases of intent or gross negligence, for injury to life, limb or health or for fraudulent concealment of defects or for breach of essential contractual obligations. The compensation for breach of essential contractual obligations, however, is limited to the foreseeable damage typical to the contract, unless based on intent or gross negligence or due to injury to life, limb or health.

(3) Any exclusion or limitation of liability in favor of EST also extends to personal liability of its employees, representatives and vicarious agents.

(4) The limitation period of § 6 (2) above shall also apply to claims for compensation to which client is entitled under this § 7.

(5) Provisions under this § 7 do not establish a change to the burden of proof under statutory law to the detriment of client.

(6) Client's liability under statutory law shall not be limited. Client warrants that all requirements for packaging and transport have been fulfilled and that all necessary approvals have been obtained. Client further warrants that only the agreed disposal items are delivered in a condition conforming to the contract. To this respect, any obligation of EST for immediate inspection of deliveries is excluded. If client violates the above obligations, he is liable to compensate EST for any damage and expenses.

§ 8 Miscellaneous

(1) All contracts are subject exclusively to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

(2) For all disputes arising from legal relationships based on these GTC, the ordinary courts at the seat of EST shall have exclusive jurisdiction.

(3) Client's personal data are stored and treated in accordance with the Federal Data Protection Act.

(4) Should any clause of these GTC be or become wholly or partially invalid, this shall not affect the validity of the remaining clauses or the remaining parts of such clauses. Any invalid regulation shall stand replaced by a regulation closest to the economic purpose under the contract.