

General Terms and Conditions of the Tönsmeier Group

1. General, Scope of Application

(1) These General Terms and Conditions apply solely for individual, however, also for repeated and constant order of containers and rubbish disposal services. Any contradictory stipulations of the Contracting Principal, or any deviating from the following, will not be recognised by Tönsmeier, unless Tönsmeier has explicitly recognised their application in writing.

(2) The Contracting Principal entitles Tönsmeier, within the scope of the Bundesdatenschutzgesetz (Federal Data Protection Act) to electronically handle their data for internal purposes and order processing. As far as it is legally obligatory, the Contractual Partners are obligated, in the sense of § 14 of the BGB (German Civil Code) to keep electronic records in the sense of the Nachweiserordnung (Ordinance on Waste Recovery and Disposal Records) from 20/10/2006 in the relevant valid version.

(3) Any changes made to these Terms and Conditions will be given in writing to the Contracting Principal. They will be seen as accepted if the Contracting Principal does not contest in writing within a month. The Contracting Principal will be made aware of the consequences.

2. Conclusion of Contract

(1) Upon conclusion of the contract, Tönsmeier assumes all regular deliveries and performances for the Contracting Principal. During the term of contract, all agreed disposal services are to be performed solely by Tönsmeier.

(2) Any retrospective agreements regarding the ordered services and deliveries, for example changes to the order, reclamations, or any similar declarations, will become binding for Tönsmeier only if Tönsmeier has confirmed them in writing. Silence may, therefore, not be taken as agreement.

(3) Should a service be owing to more than one person, these shall be seen as joint debtors.

3. Containers and Loading

The rubbish disposal will be collected in containers usually leased by Tönsmeier. The regulations regarding letting and tenancy in accordance with § 535 et seq. BGB (German Civil Code) apply to the rental relationship, as long as this contract stipulates nothing to the contrary. The Contracting Principal is obliged to adhere to the manufacturer's loading instructions and those of Tönsmeier, especially the weight specifications. The maximum filling height may not exceed the edge height of the container. Should the filling regulations not be adhered to, thereby causing damages, the Contracting Principal is obliged to compensate Tönsmeier any damages. Furthermore, only the labelled materials may be placed in the container; especially excluded from disposal: explosives; breakable and flammable materials; animal carcasses; materials, which as a result of their high acidic content or for another reason, attacks, damages, or otherwise extraordinarily dirty the other rubbish, containers or vehicles; ashes or glowing cinders; rubbish materials which are excluded from normal rubbish disposal in the statutes of the governmental bodies responsible; snow and ice. Rubbish which is damaging to health in the sense of the Kreislaufwirtschafts- and Abfallgesetz (Closed Substance Cycle and Waste Management Act) and all other applicable laws and ordinances etc. are excluded from disposal and removal. Should other disposed materials be in the containers, Tönsmeier is entitled to invoice the Contracting Principal for the additional costs, caused by the removal of the contravening rubbish (and any other costs caused by transport to other plants and raised removal prices). Any other written agreements made between the parties remain unaffected by the aforementioned regulations.

4. Removal and Disposal Obligations

Within the boundaries of the legal stipulations, Tönsmeier is obliged to remove the contractual rubbish placed ready for disposal. Tönsmeier is released from service in case of Force Majeure, in case of war, natural catastrophes, unreasonable traffic circumstances and strikes or lockouts. The same applies if, for reasons Tönsmeier is not responsible, the body responsible for the final receipt of the rubbish refuses to accept the delivery and does not offer replacement storage. Tönsmeier has the right to deny service should the Contracting Principal's property deteriorate significantly, especially in the case of impending insolvency.

5. Deadlines

The containers will be emptied as arranged. In case of a delay caused by Tönsmeier, the Contracting Principal has the right to give Tönsmeier a reasonable period of grace, after the fruitless lapse of which he is entitled to rescind the contract. All further claims of the Contracting Principal are excluded, unless Tönsmeier, his legal representative or vicarious agent is responsible for them.

6. Duties and Responsibility of the Contracting Principal

(1) The Contractual Principal is responsible for the proper and contractual filling of the transport containers. In the case of a deviant use - regardless for what reason - Tönsmeier or his vicarious agents have the right to deny acceptance or return the container to the Contracting Principal. Tönsmeier will inform the Contracting Principal when such a deviation from the contractual use has occurred. Instead of returning the container, the Contracting Principal can demand the proper disposal and removal of the rubbish, as far as no legal requirements are to the contrary. The Contracting Principal is to carry any further costs.

(2) The Contracting Principal is obliged to provide a suitable place for storage; he is especially responsible for the floor characteristic of the storage space and for the suitable access of the vehicle designated for transport (e.g. a lorry). Tönsmeier will give the Contracting Principal, upon request, information about the devices used in each case, especially in regard to weight, height, breadth, wheel base and turning circle, as long as this is necessary for performance of the Contracting Principal's obligations. Should the materials have a different constitution than agreed upon, or should extraordinarily long waiting times occur at the Contracting Principal's premises or collection point (e.g. should the set-up area not be accessible for the disposal vehicles); or this causes unplanned empty runs, Tönsmeier reserves the right to invoice the Contracting Principal for the additional costs incurred.

(3) Should special permits be required in order to set up the container (e.g. if the container is to be placed in a public area), the Contracting Principal is obliged to obtain said permits; the same is also responsible for the adherence to health and safety instructions (e.g. sufficient lighting when dark). The Contracting Principal is responsible for damages made to the container, or the loss of the same. If possible, the Contracting Principal will take out a so-called off premises insurance policy with his commercial or private insurance provider.

(4) The Contracting Principal is responsible for all damages and hereby releases Tönsmeier from all claims, including those based on public legal regulations, caused to him, or his vicarious agents by the improper entry of tendered materials into the transport container, or improper placement of the container for transport, as far as these are caused by a circumstance for which the Contracting Principal is responsible.

7. Responsibility for Defects

(1) The Contractual Partner is also obliged to accept delivery even if the goods only display insignificant defects.

(2) In case of defects, Tönsmeier is entitled to demand the remedy of the defect, or the delivery of a container free of defects, at his discretion. Tönsmeier may refuse supplementary performance if it requires excessive extra costs.

(3) All warranty is excluded, as long as the goods only show insignificant defects. Insignificant defects are present, especially, when there are no significant deviations from the contractually agreed characteristics and only in the case of slight limitations to the contractually agreed use. Above and beyond that, warranty is excluded when the contractual partners, or a third party, have conducted repair or remedy work, without this being absolutely necessary.

(4) Compensation on the grounds of any accompanying damages, which occur independent of the supplementary performance (loss of production, claims on grounds of delayed delivery to the Contractual Partner's customer etc., § 280 BGB (German Civil Code)), can only be lodged if Tönsmeier has been given a reasonable period for supplementary performance in writing.

(5) The Contractual Partner's claims due to defects in the purchased item will lapse within a year of the item being delivered. The warranty period will not be shortened in the case of intention or malevolent fraud.

(6) As far as the products are delivered by Tönsmeier via a delivery chain to an end user, the applicable legal regulations apply. Tönsmeier cannot be held liable or responsible in accordance with §§ 478, 479 BGB (German Civil Code) if his customer is abroad and has excluded the application of the UN purchase law.

(7) Above and beyond the aforementioned regulation of warranty, Tönsmeier assumes no guarantee for the characteristics of the item delivered. Tönsmeier will only assume guarantees in special written agreements, clearly labelled as such. The reference to DIN norms or other technical regulations only serves to describe the purchased item and does not constitute a guarantee.

8. Liability for Compensation and Futile Expenditures

(1) Tönsmeier's liability, for whatever reason, for damage compensation and for the replacement of futile expenditure is limited to intention and gross negligence. This also applies to the violation of duties caused by his legal representatives and vicarious agents.

(2) In all other cases, Tönsmeier can be only be held liable - regardless of the legal grounds - for violating significant contractual duties. The liability is limited to the amount covered by the current commercial or environmental liability insurance. Liability for all other resulting damages, lack of economic success, indirect damages and for damages resulting from third party claims is excluded.

9. Payment

As far as nothing else has been agreed upon, the prices will be based on the relevant, regionally valid price list and are exclusive of statutory VAT. The invoice of the agreed remuneration is to be paid immediately after receipt of the bill (or at the time agreed upon in writing), without deduction of a discount. Payment is seen as defaulted upon receipt of the first official reminder, however at the latest 30 days after receipt of the invoice. Should the payment term be exceeded, Tönsmeier will levy default interest of 5%, in the case of traders 8% above the relevant base interest rate; the assertion of any other claims is not excluded by this. Rental costs are to be paid in advance and are payable at the latest on the 1st day of the month following that of the invoice. In the case of default of payment, Tönsmeier reserves the right to deny service until payment is made; duty of subsequent performance does not result from this.

10. Adjustment to Remuneration in Long-Term Contracts

(1) Should Tönsmeier be commissioned with constant disposal of the Contracting Principal's rubbish (Continual Obligations), Tönsmeier reserves the right to adapt the agreed remuneration at his own discretion, if, after conclusion of the contract, raises or decreases in costs occur - especially on the grounds of changes to the costs of disposal (e.g. recycling fees). Tönsmeier will inform the Contracting Principal of the changes upon request.

(2) New regulations of the tariff contracts between the Bundesverband der Deutschen Entsorgungswasser- und Rohstoffwirtschaft e.V. (German Association of Waste, Water and Raw Materials Management) and the Verdi workers' union will be adapted as follows: 75 % of the remuneration, at the same percentage by which tariff salaries change including all additional salary costs in accordance with the new tariff adaptation; 25 % in accordance with the changes in the area of vehicle costs for the period since the last tariff adaptation in accordance with the notification from the Statistical Office Wiesbaden, Specialist series 17, band 2, index notification for commercial products. The day upon which the new agreements have become effective will be taken as the point in time for the increase in remuneration. Tönsmeier is subject to legal and governmental regulations (e.g. KrW-/AbfG (Waste Recycling and Management Law) and various other applicable ordinances, acceptance systems, treatment regulations etc.). These form the price base of the contract. Should the adaptations cause additional costs, Tönsmeier is entitled to adapt the remuneration as of the day upon which the changes take effect, subject to proof.

11. Subsidiary Agreements

Oral subsidiary agreements and retrospective contractual adaptations require written confirmation by Tönsmeier. This does not apply to existing, written adaptations, but to adaptations to remuneration whose amounts are yet to be determined. In individual cases, Tönsmeier is however entitled to apply retrospective contractual changes through actual performance.

12. Transfer Pricing

(1) In the case of claims against other companies which do not belong to the Tönsmeier Company Group, Tönsmeier is entitled - upon permission from the companies of the Tönsmeier Company Group - to offset all demands for disposal services to which he is entitled vis-à-vis the Contractual Partner, or the company connected with the same, in accordance with §§ 15 et. seq. AktG (Stock Corporation Act) and to offset all demands to which the Contractual Partner, or the connected company are entitled vis-à-vis Tönsmeier, the Tönsmeier Company Group, or a company belonging to said group. The Tönsmeier Company Group's companies are, therefore, joint creditors; the Contractual Partner's affiliated companies are joint debtors of these claims.

(2) This also applies if one side pays in cash and the other side makes payment as a draft, or other services have been agreed upon for processing only. If applicable, these agreements only refer to the account balance. Should the demands be payable at different times, the value date of invoice will be taken as a basis.

(3) Companies of the Tönsmeier Company Group can be recognised by the »a Company of the Tönsmeier Group« letter head on their correspondence. A complete list of these companies will be provided upon request.

(4) Securities, which exist for Tönsmeier, or one of the aforementioned companies, will be held liable for the claims of all the companies of the Company Group.

13. Place of Performance and Jurisdiction

Tönsmeier's premises will be taken as place of payment and performance. The court, responsible at Tönsmeier's premises, has exclusive jurisdiction for all disputes resulting from this contract. Tönsmeier is, however, also entitled to raise a lawsuit against the Contractual Party at any other court of law. The law of the Federal Republic of Germany apply.

14. Term of Contract

The term of the contract is based on its content. Should, when commissioning services, the term of this contract not be apparent, or become apparent based on the scope, or time frame of the disposal, the contract will apply for two years and will be extended for a further year, if it is not terminated with a period of three months to the end of the term of contract. Termination is to be made in writing. The right to terminate extraordinarily for important reasons remains unaffected.

15. Final provisions

(1) Therefore, Tönsmeier will not take part in any dispute settlement procedures before a consumer arbitration board.

(2) Should one of the aforementioned regulations be or become invalid in whole or in part, this does not affect the validity of the remaining regulations. The invalid regulation is, in such a case, to be replaced such that the intended economic purpose is fulfilled in a legally admissible manner; the same applies if loopholes become apparent in the contract, during the term of the contract, which then require filling.

(3) Tönsmeier's premises will be taken as place of payment and performance. The court, responsible at Tönsmeier's premises, has exclusive jurisdiction for all disputes resulting from this contract. Tönsmeier is, however, also entitled to raise a lawsuit against the Contractual Party at any other court of law.

(4) The law of the Federal Republic of Germany applies, the validity of the UN purchase law is excluded.