

## **General Terms and Conditions of Assembly, Commissioning and Repairs**

### **I. Area of Application**

1. Only the Terms and Conditions set forth below shall apply to assembly, commissioning and repairs, except and insofar as, in individual cases, agreements deviating from this have been reached in writing. Terms and conditions of the customer deviating herefrom shall not become part of the contract even through acceptance and execution of the order.
2. The term "Assembly" shall be used consistently hereinafter to refer to assembly, commissioning and repairs.

### **II. Working Hours**

1. Working time is 35 hours per week and 7 hours per day from Monday to Friday. These times are also charged if shorter working hours have to be adhered to (for reasons for which we are not accountable). Overtime is performed insofar as this is necessary and agreed upon. The framework for working hours per day is limited to 10 hours; work in excess of 10 hours and work on the location site on Sundays and public holidays shall only be performed in urgent exceptional circumstances and requires our consent. Travel time is charged in accordance with our "Charge Rates for Working, Travel and Waiting Time". The costs of daily journeys shall be refunded by the customer. Waiting time and also the time required to look for accommodation and make any official registrations is charged as working time. Public holidays are deemed to be the statutory public holidays applying at the location site. The customer shall confirm, on the form submitted to the customer, the working hours of the service personnel on a daily or weekly basis or after conclusion of the work. In case of doubt, the customer's site manager shall be deemed authorised to do this.

### **III. Prices and Payment**

1. Assembly shall be invoiced in accordance with the special conditions "Charge Rates for Working, Travel and Waiting Time" applying on the date the contract is entered into, unless an all-inclusive price is explicitly agreed. The amounts agreed are exclusive of VAT, this is payable to us in addition at the statutory rate. Assembly invoices are payable immediately net. The customer only has a right of retention and authority to offset insofar as the counterclaims are undisputed or recognised by final and binding judgment.
2. If a period of time in excess of 6 months lies between the order confirmation date and commencement of the Assembly or if the Assembly takes longer than 6 months, we have the right to reasonably increase the prices by a maximum of 5 percent if thereafter there is any increase in energy prices, raw material prices, freight or in the prices of parts to be purchased by us.
3. Oral agreements reached with our personnel are only valid if confirmed in writing by us.

### **IV. Assembly Period, Delays to Assembly**

1. Specialist and assembly personnel shall be deployed after a request in accordance with our respective confirmation, whereby we endeavour to take the customer's desired dates into consideration as far as possible. Dates are only binding if we have explicitly confirmed that they are binding.
2. If the Assembly is delayed due to the occurrence of circumstances which are not imputable to us, the Assembly period shall be reasonably extended. This shall also apply if such circumstances occur after we are in default. In particular strikes and lockout are deemed to be circumstances not imputable to us.
3. If we are in default of Assembly and if the customer incurs a loss as a result, then the customer is entitled to demand lump sum compensation for default. This amounts to 0.5 % of the Assembly price of that part of the plant to be assembled which

cannot be used on time due to the delay, for each complete week of default, but not exceeding, on aggregate, 5 % of such Assembly price.

4. If, in the event of default, the customer sets us a reasonable time period for performance (taking the exceptional cases of statute into consideration) and if we do not adhere to this period, then the customer shall be entitled to rescind within the framework of the provisions of statute.
5. Further claims based on default of delivery shall be solely governed by Section IX (3).

### **V. Collaboration by the Customer**

1. The customer must support the Assembly personnel during performance of the Assembly at its own expense.
2. The customer must take the necessary action to protect persons and property on the location site and must instruct the Assembly personnel or the Assembly manager with regard to special safety regulations. The customer shall advise us of violations against such safety regulations by the Assembly personnel.

### **VI. Technical Assistance by the Customer**

1. The customer is obliged to provide technical assistance at its expense, in particular to:
  - a. Provide the numbers of necessary and suitable auxiliary staff (plant operators, welders, electricians, mechanics and other specialist staff) required for the Assembly and for the requisite period. We do not assume any liability for the auxiliary staff unless the auxiliary staff acts upon the instruction of the Assembly manager. In this case we are liable for loss or defects caused, in accordance with Sections VIII und IX.
  - b. Undertake all earth-moving, construction, bedding and scaffolding work, including procuring the requisite construction materials.
  - c. Provide the necessary equipment and heavy tools (e.g. hoisting gear, in particular cranes, trusses, etc., compressors) and the necessary items and materials of use (e.g. scaffolding wood, wedges, bases, cement, plaster and sealing material, lubricants, fuels, endless ropes and drive belts).
  - d. Provide heating, lighting, operating energy, water, including the necessary connections.
  - e. Provide the necessary dry and lockable, burglar-proof rooms for the tools and equipment brought to the site and for the assembly personnel.
  - f. Transport the Assembly parts to the location site, protect the Assembly parts and materials against all kinds of damaging influences and clean the Assembly parts.
  - g. Provide suitable burglar-proof rest rooms and working rooms (with heating, lighting and washing facilities, sanitary facilities) and first aid for the Assembly personnel.
  - h. Provide the material and undertake all other action, in particular safety measures which are necessary for the adjustment of a testing provided for under the contract.
2. Technical support must ensure that Assembly can be commenced as soon as the Assembly personnel arrives and that it can be conducted without any delay until acceptance. Insofar as any special plans or instructions of the customer are necessary, these shall be provided by the customer.
3. If the customer does not comply with its obligation to collaborate or provide support even after being set a deadline, we have the right, but are not obliged, to carry out the action incumbent on the customer at the customer's expense. In all

other respects the statutory rights and claims shall remain unaffected.

## **VII. Acceptance**

1. The customer is obliged to perform acceptance of the Assembly as soon as we have notified the customer of completion thereof. If it should transpire that the Assembly is not in compliance with the contract, then we are obliged to remedy the defect and the customer is entitled to refuse acceptance pending such remedy. This shall not apply if it is a minor defect with regard to the customer's interests or if the defect is based on a circumstance which is imputable to the customer.
2. If the customer does not perform acceptance within two weeks of our notification that the Assembly is completed, then the Assembly shall be deemed accepted unless we are accountable for this delay.

## **VIII. Claims with Regard to Defects**

1. With regard to defects in the work conducted which arise within a 12 month period after acceptance, we are liable to the exclusion of all further claims, notwithstanding Section VIII (3) and Section IX, in that we are obliged to remedy the defects within a reasonable period of time. We must be notified without delay of any defects established.
2. The customer has the right, after prior notification, to effect the repair itself or to have it repaired, at our expense, insofar as this is necessary in urgent cases of danger to operating safety or to avert a disproportionately larger loss, or if, after we have been set a reasonable extended period for the remedy, we have culpably failed to remedy the defect.
3. If a repair is impossible or abortive, the customer has the right, within the framework of the statutory provisions, to demand a reduction in the Assembly price agreed. This shall also apply if we culpably allow a reasonable period of time set for us to remedy the defect to elapse to no avail. The customer may only rescind the Assembly contract if the Assembly is provably of no interest to the customer.
4. Claims with regard to defects do not exist if the defect is a minor defect with regard to the customer's interests or if it is due to a circumstance which is imputable to the customer.
5. Similarly, claims with regard to defects do not exist if the customer or a third party performs alterations or repair improperly or without our permission.

## **IX. Liability and Exclusion of Liability**

1. If an Assembly part delivered by us is damaged by us during Assembly, we shall either repair it at our expense or deliver a replacement.
2. If, due to our fault, the assembled item cannot be used by the customer in compliance with the contract on account of a failure to put into effect proposals or advice made or given prior to or after entering into the contract or on account of the defective execution of such proposals or advice and of other ancillary contractual duties – in particular instructions for operating and servicing the item assembled – then the provisions of Section VIII and of the other provisions of Section IX shall apply accordingly, to the exclusion of all further claims by the customer.
3. The customer may not assert any claims for compensation against us in excess of such claims to which the customer is entitled in accordance with these Terms and Conditions, in particular the customer cannot assert claims on the basis of non-contractual liability, nor any other rights on account of any disadvantages in connection with the Assembly delivered by us, irrespective of the legal ground invoked by the customer therefor. This exclusion of liability also applies, in particular, to damage not incurred by the item assembled, but not, however

- a. in the event of intentional acts,
  - b. in case of gross negligence by the owner/statutory representatives or managerial employees ("Organe" or "leitende Angestellte"),
  - c. in the event of culpable fatal or physical injury or damage to health,
  - d. in the event of defects which are fraudulently non-disclosed or if the absence thereof was guaranteed,
  - e. in the case of liability for physical injury and property damage caused to items privately used pursuant to the German Product Liability Act.
4. In the case of a culpable breach of material contractual duties, we are also liable in the case of gross negligence by non-managerial employees and in the case of slight negligence, in the latter case limited to reasonably foreseeable damage typical of the contract.

## **X. Limitation Period**

All claims by the customer for whatsoever legal ground shall become time-barred in 12 months. The statutory limitation periods apply to claims for compensation pursuant to Section IX subsections 3 a. – e.

## **XI. Compensation by the Customer**

If the equipment or tools provided by us are damaged on the assembly site through no fault of our own or if they are lost through no fault of our own, the customer is obliged to compensate us for such loss or damage.

## **XII. Jurisdiction and Applicable Law**

If the customer is a registered merchant, a public law legal entity or a public law special fund, it is agreed that the courts with jurisdiction at the registered office of our company have jurisdiction or venue over all disputes arising from the contractual relationship. We may also take legal action at the courts with jurisdiction over the customer. The laws of the Federal Republic of Germany shall apply exclusively. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.

## **XIII. Partial Invalidity**

In the event of individual provisions hereof being invalid, the remainder of the provisions shall remain binding.