

GENERAL TERMS AND CONDITIONS for Assembly Work in Germany and the EU

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1. Scope of Application

These assembly work terms and conditions shall apply to assembly work that an engineering company (assembler) undertakes unless in an individual case differing agreements are entered into.

2. Assembly Work Price

- 2.1. The assembly work is charged for on an actual time basis unless a lump-sum price is expressly agreed.
- 2.2. The agreed amounts exclude VAT which is to be additionally paid to the assembler at the statutory rate.

3. Co-operation by the Buyer

- 3.1. The buyer must, at its expense, support the personnel carrying out the assembly work.
- 3.2. The buyer must make the necessary special arrangements to protect persons and objects at the assembly site. It must also inform the assembly work manager about existing special safety regulations if these are relevant for the personnel carrying out the assembly work. It shall inform the assembler if the personnel carrying out the assembly work are in breach of such safety regulations. In the event of serious breaches, it can, in consultation with the assembly work manager, refuse to allow the offender to enter the assembly site.

4. Technical Assistance by the Buyer

- 4.1. The buyer is obliged, at its expense, to provide technical assistance, in particular to
 - a) provide the required qualified auxiliary personnel (bricklayers, carpenters, fitters and other skilled personnel, labourers) in the quantity required for the assembly work and for the required time; the auxiliary personnel must comply with the instructions of the assembly work manager. The assembler assumes no liability for the auxiliary personnel. If a defect or damage is caused by the auxiliary personnel on the basis of instructions given by the assembly work manager, Section 7 or Section 8 shall apply.
 - b) carry out all earthwork, building work, foundation and scaffolding work including the procurement of the required building materials.
 - c) provide the required appliances, devices and heavy tools (for example, lifting gear, compressors, portable forges) as well as the required commodities and materials (for example, scaffold timbers, wedges, supports, cement, cleaning and sealing materials, lubricants, fuel, driving cables and belts).
 - d) provide heating, lighting, power, water, including the required connections.
 - e) provide the required dry and lockable rooms for the safe storage of the tools that belong to the assembly work personnel.
 - f) transport the assembly parts to the assembly site, protect the assembly site and materials from any kind of harmful influence and clean the assembly site.
 - g) provide suitable, thief-proof rest rooms and workrooms (with heating, lighting, washing and sanitary facilities) and First Aid for the assembly work personnel.
 - h) provide materials and carry out other action that is required for adjusting and regulating the object that is to be assembled and for carrying out testing, as may be provided for in the contract.

4.2. The technical assistance by the buyer must guarantee that the assembly work can commence immediately after the assembly work personnel arrive and that it can be carried out without delay until accepted by the buyer. If special plans or instructions are required from the assembler, it will provide the buyer with these in good time.

4.3. If the buyer does not comply with its obligations, then, having set a time limit, the assembler is entitled, but not obliged, to carry out the work that was incumbent upon the buyer in lieu of the buyer and at the buyer's expense. Furthermore, the statutory rights and claims of the assembler remain unaffected.

5. Assembly Period, Assembly Delay

- 5.1. The assembly period is adhered to if, by the time it expires, the assembly work is ready for inspection and acceptance by the buyer. If testing is provided for in the contract, the period is adhered to when this has been carried out.
- 5.2. If the assembly work is delayed as a result of measures ensuing from industrial disputes, particularly strikes and lock outs, as well as the occurrence of events that are not the fault of the assembler, then, if such obstacles demonstrably have a considerable influence on the completion of the assembly work, the assembly period will be extended; this shall apply even if such events occur after the assembler is behind schedule with its work.
- 5.3. If the buyer incurs a loss as a result of the assembler falling behind schedule, then it is entitled to demand flat-rate compensation for delayed performance. For each complete week of delay, this amounts to 0.5 % in total, with a maximum however of 5 %, of the assembly work price for that part of the plant to be assembled by the assembler that cannot be used in good time as a result of the delay.

- 5.4. Taking into account the statutory exceptional cases, if the buyer sets a reasonable time limit for performance by the assembler after due date and if the time limit is not adhered to, the buyer is entitled to cancel the contract within the scope of the statutory provisions. Further claims due to delay are determined exclusively by Section 8.3 of these terms and conditions.

6. Acceptance

- 6.1. The buyer is obliged to accept the assembly work as soon as it is notified that the work is complete and that testing has been carried out if provided for in the contract. If the assembly work proves to be not in accordance with the contract, then the assembler is obliged to remedy the defect. This shall not apply if the defect is immaterial as far as the interests of the buyer are concerned or is based on a circumstance that is attributable to the buyer. If there is no major defect present, the buyer cannot refuse acceptance.
- 6.2. If acceptance is delayed through no fault of the assembler, then acceptance is deemed to have taken place when two weeks have expired following notification of completion of the assembly work.
- 6.3. Upon acceptance, the assembler's liability for detectable defects lapses unless the buyer has reserved the right to raise a warranty claim for a specific defect.

7. Claims arising from Defects

- 7.1. Notwithstanding No. 5 and Section 8, following acceptance of the assembly work, the assembler is liable for defects in the assembly work, to the exclusion of any other claims by the buyer, in such a way that it must remedy the defects. The buyer must notify the assembler immediately of any detected defect.
- 7.2. The assembler is not liable if the defect is immaterial as far as the interests of the buyer are concerned or is based on a circumstance that is attributable to the buyer.
- 7.3. If the buyer or a third party carry out improper changes or repair work without the prior approval of the assembler, the assembler is not liable for the ensuing consequences. The buyer only has the right to remedy the defect itself or to arrange for it to be remedied by a third party and to claim a refund of the costs incurred from the assembler if there is a threat to operational and industrial safety and excessive damage needs to be averted. The assembler must be informed of this immediately. The buyer can also exercise this right if the assembler has allowed a reasonable time limit for remedying the defect to expire without taking the necessary action.
- 7.4. As regards the costs that ensue directly from the remedying of the defect, the assembler bears the costs of the provision of assembly workers and auxiliary personnel that may be required, including travelling expenses if the notice of defect proves to be justified, provided that as a result the assembler does not incur a disproportionate expense.
- 7.5. Taking into account the statutory exceptions, if the assembler allows a reasonable time limit for remedying the defect to expire without having taken the necessary action, then the buyer has a right to a reduction of the purchase price within the scope of the statutory provisions. The right to a reduction of the purchase price also applies in other cases of failure to remedy a defect. The buyer can only withdraw from the contract if, despite the reduction of the purchase price, the assembly work is demonstrably of no interest to it.

8. Liability of the Assembler, Exclusion of Liability

- 8.1. If, when carrying out the assembly work, an assembly part supplied by the assembler is damaged through the fault of the assembler, then it must opt to either repair or replace the assembly part at its own expense.
- 8.2. If, through the fault of the assembler as a consequence of failing to follow or follow correctly proposals and advice provided by the buyer before or after the contract is concluded or due to the breach of other contractual accessory obligations, particularly instructions concerning the servicing and maintenance of the assembled object, the assembled object cannot be used by the buyer in accordance with the contract, the regulations contained in Sections 7 and 8.1 and 8.3 shall apply accordingly, to the exclusion of further claims by the buyer.
- 8.3. The assembler is only liable, for whatever legal reason, for damages that have not occurred to the assembled object itself,
- a) in the event of intent,
 - b) in the event of gross negligence by the owner/the executive bodies or executive personnel,
 - c) in the event of culpable injury to life, body or health,
 - d) in the event of defects which it has fraudulently concealed or whose absence it has guaranteed,
 - e) if it is liable in accordance with the Product Liability Act for personal or material damages to privately used objects.

In the event of culpable breach of fundamental contractual duties, the assembler is also liable in the case of gross negligence by non-executive personnel and in the case of slight negligence, in the latter case liability is limited to contract-typical reasonably foreseeable damage.

Further claims are ruled out.

9. Statutes of Limitation

All claims by the buyer, for whatever legal reason, become statute-barred in 12 months. The statutory periods shall apply to claims for damages according to Section 8.3 a) - e). If the assembler carries out assembly work on a building and as a result causes its defectiveness, the statutory time limits shall also apply.

10. Compensation Payment by the Buyer

If, through no fault of the assembler, the devices, appliances or tools made available by it at the assembly site are damaged or lost, the buyer is obliged to pay compensation for this damage. Damages that occur due to normal wear and tear are ruled out.

11. Applicable Law, Place of Jurisdiction

- 11.1. The law of the Federal Republic of Germany which is authoritative for legal relationships between German parties shall apply exclusively to all the legal relationships between the assembler and the buyer.
- 11.2. The place of jurisdiction is the court that has jurisdiction over the assembler's registered office. The assembler is entitled however to institute legal proceedings at the buyer's headquarters.