

## Terms and Conditions of Assembly (as at 29.07.2019)

### 1. Relevant Terms

Assemblies and the assignment of assembly technicians shall only be made according to the below conditions which shall be deemed to have been accepted when an order is placed and which shall be binding upon Contractor and Customer. Any deviating agreements on individual items shall previously require the prior written confirmation of Contractor.

Customer's contradictory terms and conditions shall entirely be invalid without Contractor having to object to these.

### 2. Delivery of Material

Customer shall always be required to pay for the material which is needed to execute the work, as well as for the costs of transporting it to the job site.

### 3. Working Times

The respectively applicable statutory weekly working hours shall be deemed to be the normal working times; the time schedule shall be guided by Customer's internal regulations.

### 4. Assembly Charges (Hourly Rates)

- a) Assembly operations shall be invoiced according to the assembly rates and framework conditions of Contractor, unless the parties have agreed on a lump-sum price.
- b) The agreed rates are exclusive of value added tax (VAT), the latter being payable to Contractor at the statutory rate.
- c) Customer shall separately pay to Contractor any changes requested by Customer which trigger extra work.

### 5. Compensation for Work on Sundays and Public Holidays

When work is performed on a public holiday, the working hours as well as overtime will be charged according to the Contractor's assembly rates. Customer will be charged the amounts stated in the contractor's assembly rates for Saturdays, Sundays and Public holidays where no work is carried out. If no work is performed due to a local holiday, company holidays or any other holiday at the place of assembly, the compensation for work on holidays will be charged at those rates for the number of hours which the assembly worker would have worked that day if that day had been a work day.

### 6. Interruption of Work

- a) If work is interrupted without Contractor's fault and requires assembly workers to be called in or re-assigned, the costs thereby incurred will be charged to Customer.
- b) If Contractor's assembly workers are prevented from working full shifts through no fault of their own, the normal statutory working time will be charged.
- c) Should Contractor's assembly supervisor be of the opinion that the upcoming assembly work or the assembly assignment in general is non-executable or too dangerous or risky for any reason whatsoever, Contractor may reject or interrupt the execution or performance of the work until the obstacle has been removed. The originally agreed execution period will be extended accordingly.

### 7. Distance and Duration Allowances and Accommodation

- a) Unless otherwise agreed, the amounts set forth in the framework union contract of the Austrian machinery and steel building industry, as amended from time to time, shall apply.
- b) The rates set forth in the Contractor's assembly rates will be charged for assembly work which does not allow Contractor's assembly workers to return to the enterprise carrying out the assembly on a daily basis for each day a worker was not present at the factory.
- c) If Customer provides reasonable accommodation, overnight stay allowance will not be charged. If the actual accommodation costs exceed the overnight rates indicated in the Contractor's assembly rates, the actual accommodation costs, including value-added tax, shall be charged.

### 8. Travel Times, Travel Expenses, and Fares

Travel times will be charged as normal working time. Actual travel expenses of assembly workers as well as any costs for the transport of tools and obtaining passports and visas shall be payable by Customer. Contractor's preparatory and follow-up work shall not be travel times and will be charged to Customer separately.

### 9. Customer's Precautions

Customer shall make all preparations and take all measures in terms of personnel and material in due time prior to the agreed commencement of assembly work and also during execution thereof, which are necessary for or conducive to the proper commencement of the assembly work, the unobstructed execution and proper completion thereof, and Customer shall do so for its own account and at its own cost and risk. Unless Contractor has issued special instructions for that purpose, this includes but is not limited to setting up the corresponding structures for the job site, providing the necessary facilities, tools, equipment, changing and sanitary facilities and other work tools, the necessary materials, supplies, providing the necessary auxiliary staff etc. Contractor will separately charge Customer for all relevant deliverables Contractor will have to provide in this context. Customer shall also pay all costs for special tools and special equipment such as working platforms, hoisting gear (cranes, fork-lift trucks etc), if these are to be or will be provided by Contractor.

Customer shall support Contractor's assembly workers during assembly, take all measures to protect individuals and property at the place of assembly and notify in due time and instruct Contractor's assembly supervisor of all special safety regulations applicable at the place of assembly to the extent these are significant for Contractor's assembly staff.

### 10. Customer's Obligation to Procure Insurance and to Exercise Care and Diligence

Customer shall take into due care and custody all working aids provided by Contractor and all personal items of assembly workers, and Customer shall be liable in any event for any damage to, destruction and loss of those working aids and personal items, even in case of force majeure.

Customer shall give safety instructions and issue further risk notices and take also fire safety measures.

#### **11. Documentation**

Unless otherwise agreed, the contracting parties shall also write daily progress reports. Contractor shall record, on a continuous basis, all important facts relating to the contractual performance, such as weather conditions, level of staff and equipment, material deliveries, performance progress, quality and operating tests, administrative work as well as all other circumstances. The reports shall list all events at the performance site, especially those that may essentially affect the workmanship of the performance, as well as all observations that may not, or only partly, be made meaningfully at a later date. Upon Customer's request, these daily progress reports shall be shown to Customer, and Customer may inspect them at the performance site on every working day. In such an event, Customer shall confirm the inspection in writing. All entries shall be deemed to have been accepted by Customer if Customer does not protest against them in writing within two weeks after Contractor has made an entry.

#### **12. Liability**

Contractor shall be liable for the diligent and proper performance of the work to be performed by Contractor's assembly staff.

Contractor is not liable for any damage caused by slight and plainly gross negligence. Contractor does not accept any liability beyond the aforementioned one, especially not for indirect damages and consequential damages. Contractor shall in any case not be liable for indirect damages and consequential damages, including but not limited to lost profit, business interruption, loss of use, losses regarding contracts or any other consequential damages. In no case shall Contractor's liability exceed the amount of 50% of the respective order, as far as legally permissible. Contractor shall not assume any liability for any staff or temporary staff provided by Customer, nor for any third parties.

#### **13. Warranty and Complaints**

The warranty period is six month and commences as soon as Contractor has executed the assembly services. The presumption rule of Section 924 ABGB [General Civil Code] shall be excluded.

Unless Customer promptly notifies any detected deficiencies by written notice to Contractor, Customer shall not be entitled to any claims on any legal ground whatsoever.

#### **14. Additional Work Due to Imminent Danger**

Customer shall be deemed to have approved those services which were necessary for the execution of the order and for which Customer's consent could not be obtained due to imminent danger. Customer shall be notified of services of that nature which were executed. Customer shall separately compensate Contractor for those services, subject to an itemization of extra costs.

#### **15. Attestation and Acceptance of Assembly Work**

Customer shall attest the working time of the assembly workers assigned by Contractor on a weekly basis. The invoices issued for assembly work will be based on these attestations. Customer shall attest termination and completion of the work on the assemblers' last work record, regardless of minor flaws and follow-up work.

Contractor shall inform Customer in writing that the works are ready for acceptance. This notice shall contain a date for the acceptance test, which should provide customer with adequate time to prepare for the test, or to be represented at the test respectively. Any costs arising from the acceptance test (staff costs, equipment items, material costs, auxiliary means) shall be borne by Customer. If the Customer has been informed by Contractor in time of the date of the acceptance test and if Customer cannot meet the date, or be represented respectively, the test shall be deemed to have been completed successfully on the date that is indicated as acceptance test date in Contractor's notice. Unless otherwise agreed, the acceptance test shall be made during normal working hours. Contractor shall draw up a record of the acceptance test.

#### **16. Target Dates**

Whenever Contractor realizes that he will not be able to complete assemblies in due time, he shall notify Customer thereof in writing and, if possible, disclose the expected new assembly completion date. Contractor is entitled to a reasonable extension of the completion period if any delay is caused by:

- a) any circumstances beyond Contractor's control, especially but not limited to labour conflicts, natural disasters, armed conflicts, general mobilization, insurrection, seizure, embargo, and limitation of energy consumption
- b) unpredictable reconstruction work due to statutory provisions or Customer's special or additional requests
- c) any action or omission of Customer or any other circumstances within Customer's control (such as payment arrears) or Customer's failure to fulfil other obligations.

#### **17. Terms of Payment**

Payments must be made in accordance with the terms of payment stated in the order confirmation.

At Contractor's request, Customer shall make reasonable down payments or partial payments both prior to the assignment of workers and also during assembly work; these payments will be balanced subsequently. Payments shall be made upon receipt of the respective invoice without delay and without deduction. Should assembly work take more than one month, Contractor shall issue and Customer shall pay an interim invoice every four weeks. Payments may not be withheld due to warranty claims or any other counterclaims of Customer which are not acknowledged by Contractor.

#### **18. Jurisdiction, Applicable Law, Place of Performance**

- a) This contract is exclusively governed by the laws of Austria – excluding the United Nations Convention on Contracts for the International Sale of Goods (UN CISG).
- b) If the Customer is seated in the European Union or EFTA, all disputes arising out of or in connection with the contractual relationship shall be referred to the court with competences for Contractor's principal place of business and jurisdiction. Contractor may, however, also resort to the court with jurisdiction for Customer. If the Customer is seated outside the European Union or EFTA, all disputes arising out of or in connection with the contractual relationship shall be referred to the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules). The place of arbitration shall be Vienna, Austria. The language to be used in the arbitral proceedings is German. If the contract is executed in a language other than German, the language to be used in the arbitral proceedings shall be English. The number of arbitrators is one or more. Notwithstanding the jurisdiction of the arbitral tribunal, a party may seek preliminary or injunctive measures from a state court and a court may order those measures prior to or during the arbitral proceedings. However, in all cases Contractor may sue the Customer also before any other court having jurisdiction for the Customer
- c) Place of performance for delivery and payment shall be Contractors registered office.