

General Terms and Conditions of Assembly, Commissioning and Service of Reineke Meß- und Regeltechnik GmbH

§ 1 General – Scope of Application

- (1) The Terms and Conditions shall apply to assembly, commissioning and service work carried out by our personnel on equipment delivered by us.
- (2) Our General Terms and Conditions, as amended, shall apply to all current and future orders that the domestic or foreign ordering party places with us, unless we have expressly and in writing acknowledged deviations from such terms and conditions. Collateral agreements and subsequent amendments shall only be binding on us if they have been confirmed by us in writing. This shall also apply to a rescission of the clause stipulating the written form. The call for our personnel shall be considered to be an acknowledgment of these Terms and Conditions. These General Terms and Conditions shall apply even in the event that we, having knowledge of Terms and Conditions of the ordering party which are conflicting or deviating from our terms and conditions, carry out the assembly, commissioning and/or service order of the ordering party without reservation.
- (3) Any terms of the ordering party shall be binding on us only after we have expressly acknowledged them in writing. The same shall apply to any other GTC of the ordering party.
- (4) Agreements made by the ordering party with travelling salesmen, agents and authorized representatives shall only be binding on us upon our written confirmation. Only upon presentation of an authority to collect, shall our agents, authorized representatives and travelling salesmen be entitled to accept cash and cheques.
- (5) We shall be entitled to process data of the ordering party that refer to the business relationship with the ordering party in the manner defined by the Federal Data Protection Act.
- (6) All agreements made between us and the ordering party with regard to the execution of this agreement shall be laid down in writing.
- (7) The provisions specified in the BMTV (Bundesmontagetarifvertrag (Federal Collective Agreement on Assembly)) shall be supplementary to the present General Terms and Conditions.

§ 2 Offer and Conclusion of Contract

Our offers shall be non-binding. A contract shall be brought about only when we confirm the order or another job in writing or when we start performing a contract (in particular the deployment of personnel).

§ 3 Performance

- (1) The point in time at which we are to deploy our personnel has to be agreed with us in good time, not later than 14 days before the desired time of execution of the work, stating the usual times for starting and finishing work at the place of the ordering party. This period will be extended by the time needed for the personnel to travel to the place of work. The ordering party has to communicate the precise address of the construction site and the name of the site manager commissioned by the ordering party.
- (2) Time limits and deadlines for our performance proposed by us shall always be considered to be approximate, unless a fixed time limit or deadline has been expressly promised by us or agreed with us. The time limit for the performance shall be considered observed if the performance has been completed by its expiry or, in the event of an acceptance by the ordering party, if the performance is ready for acceptance by the ordering party, and, in the event that the contract provides for testing, if the performance is ready for testing.
- (3) The number of workers and the workers as such shall be determined by us.
- (4) Unless the time of execution was expressly referred to as "fixed" by the ordering party, after we have exceeded the time limit the ordering party may grant us an additional period of time of reasonable length. Only after expiry of such period of grace can we be in default.
- (5) Time limits and deadlines shall be extended, without prejudice to our rights arising from delays in payment by the contracting party, by the period during which the contracting party fails to carry out its obligations towards us.
- (6) Unforeseeable, exceptional events for which we cannot be held responsible, e.g., industrial disputes, operational breakdowns, measures taken by the authorities, interference with transportation or other events of Force Majeure shall discharge us from our obligations arising from the respective contract; if the obstacles are of a temporary nature, however, we shall only be discharged for the duration of the hindrance plus a reasonable starting period. If, as a result of such events, performance subsequently becomes impossible or unreasonable for one of the parties, both parties shall be entitled to rescind the contract.
- (7) We shall not be liable for damage caused by delay resulting from a slightly negligent breach of duty unless such breach of duty results in injury to life, limb or health. The above regulations shall not shift the burden of proof to the prejudice of the contracting party.

§ 4 Working Hours

Working time shall be the standard daily or weekly working time laid down for the metal industry in North Rhine-Westphalia. Should our personnel be working for longer than for the time stated in this section, this may only happen in the presence of personnel of the ordering party.

§ 5 Costs

- (1) Should the ordering party request us to work on Saturdays, Sundays or holidays, the ordering party shall owe us the respective surcharges in line with the following provisions.
- (2) Labour cost: For the calculation of the labour cost for our personnel our rates, listed separately, for working hours, travelling and waiting time shall apply. Travelling time shall also be considered time for preparing the trip, looking for accommodation and, if applicable, for reporting arrival and departure to the authorities. For excess working time, i.e. working time exceeding the working time laid down in § 4, the following overtime surcharges shall be charged:
 - a) For the first two overtime hours from Monday through Friday, as well as the first two hours on a Saturday 25 %
 - b) for all additional overtime hours 50 %
 - c) for all working hours between 2000 hours and 0600 hours, also in addition to b), 50%
 - d) for all hours on a Sunday 70 %
 - e) for all working hours on 1st of January, Easter Sunday, 1st of May, Whit Sunday, Christmas day 150 %
 - f) for all working hours on all other statutory holidays 100 %
 - g) for late work on 24.12. from 1700 hours to 2000 hours, as well as night work in the night before Christmas day and New Year's day 150%.

(3) The bases for overtime surcharges stated in paragraph 2 can have a cumulative effect. In this case, they will be owed cumulatively. The overtime surcharges stated above shall also apply to travelling time if our personnel is requested by the ordering party to travel on a Sunday or holiday.

(4) Short and long distance separation allowance shall be charged at the BMTV rates.

(5) Sickness: In the event of disability for work during assembly confirmed by a physician, in the event of hospitalization, in cases of serious illness, accidents and deaths, the BMTV terms shall apply.

(6) Hardship allowance shall be owed by the ordering party based on the BMTV reference rates.

(7) Travelling expenses:

a) If, in our opinion, the use of a vehicle is more favourable in view of the expenditure of time, or is necessary because spare parts have to be taken along, we shall charge the distances driven based on kilometres. Air travel shall be subject to prior agreement.

b) In all other cases we shall charge for the journey there and back the costs for the train journey (2nd class) as well as the use of other public transport, as applicable, including surcharges incurred. Should no public transport be available between the next train station or accommodation and the construction site, our personnel shall be entitled to use a hired car at the expense of the ordering party. In any case, costs incurred for travelling between accommodation and construction site and the required travelling time will have to be reimbursed.

c) In addition, we charge for the costs of transport and safekeeping of luggage and tools as well as for expenses on letters, faxes and long-distance calls. The same shall apply to the provisions of official or medical certificates, to the extent they are required for the work.

§ 6 Delimitation of Work

(1) Assistance:

a) The ordering party shall assist at its expense the assembly personnel during the execution of the assembly. It shall take the special measures required for protecting people and property at the assembly site. It shall also inform the assembly manager of applicable special safety regulations to the extent that they are of importance for the assembly personnel. It shall be obliged to inform us of infringements of such safety regulations by the assembly personnel.

b) The ordering party shall be obliged to render technical assistance at its expense, in particular to protect the assembly site and materials against harmful effects of any kind and to clean the assembly site.

c) Our personnel shall be allocated a heatable room suitable for washing and changing. A lockable container for keeping clothes and tools shall be made available free of charge, otherwise the ordering party shall be liable for their loss. The ordering party shall be liable for the safekeeping of the equipment and assembly materials supplied by us.

d) The equipment supplied by us in advance shall be transported to the place of installation and, if applicable, placed on foundations prior to the arrival of our personnel. The ordering party shall provide helpers and their supervision. The ordering party shall execute at its expense all bricklaying, welding, painting and electrical fitting work. In addition, if required, the ordering party shall provide free of charge water, gas, electricity, acetylene, oxygen, electric welding apparatus, ladders and scaffolds as well as a suitable workbench with vice. A suitable facility has to be made available for the pickling of pipes welded together by gas or electric welding.

e) If needed, the ordering party shall make available to our personnel free of charge protective clothing or protective facilities. Should the ordering party fail to assume the above-mentioned assistance or assume it only in part, we shall be entitled to commission respective third-party personnel with the work at the expense of the ordering party.

f) Should the ordering party fail to honour its obligations or honour them belatedly after having been granted a period of grace, we shall be entitled, but not obliged, to perform the acts incumbent on the ordering party in its place and at its expense. Other statutory rights and claims to which we are entitled based on these Terms and Conditions or other agreements with the ordering party shall remain unaffected.

(2) Assembly: Unless otherwise agreed in writing, the assembly work shall cover laying of the connecting cables (measuring and control cables and pressure oil transmission pipes) as well as preparation of the equipment for commissioning.

(3) Commissioning: The work shall cover commissioning of the equipment delivered, ready-mounted and connected by us, in particular calibration and adjustment to the specific conditions of the plant as well as instruction of the operating personnel. We proceed on the assumption that commissioning will be executed based on operation conditions of which our personnel has to be informed by the ordering party.

(4) Service: Service work shall cover finding and clearing of faults in our equipment, to the extent possible on the spot, as well as inspections at regular intervals. Any parts to be replaced during inspections shall be replaced by our personnel, insofar as this is possible, and shall be mentioned in the time report sheet as a basis for our charge.

(5) Miscellaneous: Should there be a need to observe specific industrial safety regulations on the assembly site, the ordering party shall be obliged to expressly point this out to our personnel.

§ 7 Assembly Material

The assembly material shall be provided by the ordering party. To the extent that the required material is delivered by us, it will be charged based on expenditure. We do not assume any liability for the completeness of assembly material supplied by us.

§ 8 Delays

(1) Should work, installation or commissioning to be carried out by our personnel be delayed without any fault on our part, the ordering party shall bear the costs for waiting time and for any further required travelling of our personnel.

(2) Should our personnel be forced to carry out the work on the construction site slowly or not be in a position to carry out the work at all due to circumstances for which we cannot be held responsible, we shall be entitled to withdraw our personnel from the construction site until a smooth sequence of work has been ensured on the part of the ordering party. The additional travelling expenses and costs of waiting times, if applicable, shall be borne by the ordering party.

(3) Should the ordering party fail to accept delivery or should it infringe any other duties to assist, we shall be entitled, without prejudice to the other regulations in these General Terms and Conditions, to claim damages incurred by us, including any additional expense.

§ 9 Acknowledgment and Acceptance of Work

(1) The ordering party shall acknowledge for our personnel the working, travelling and waiting time on a form provided by us. The forms shall serve as basis for the submission of invoices. Should the ordering party refuse acknowledgment, or should our personnel for any other reason not be in a position to obtain acknowledgment, we shall be entitled, but not obliged, to base our invoice on the form filled in by our personnel.

(2) Upon completion of the work by our personnel, the ordering party, as far as necessary, shall inspect and approve the work and shall provide the personnel with a respective acknowledgment.

(3) Notwithstanding par. 2, should acceptance be required, acceptance shall be considered performed if

- our work has been completed,
 - we notified the ordering party referring to this acceptance fiction and requested the ordering party to perform acceptance,
 - twelve working days have elapsed since performance, or the ordering party has started using the item, e.g., the ordering party commissioned the item delivered and assembled by us, and in this case six working days have elapsed since completion of our work, and
 - if the ordering party failed to perform acceptance within this period for another reason than due to a notification of defect given to us, which defect makes it impossible to use the item or essentially impairs such use.
- (4) Should the ordering party wish our personnel to be present again for acceptance, our costs incurred thereby shall be charged to the ordering party.

§ 10 Warranty

- (1) In the event of a justified notice of defects, the contracting party shall first only have a claim to subsequent performance which we shall effect by a removal of defects.
- (2) We shall not be obliged to effect the warrant if the defect is irrelevant for the interests of the ordering party or if it is based on a circumstance which can be attributed to the ordering party.
- (3) In the event, for example, that the ordering party or a third party made improper changes or repairs without obtaining our prior consent, we shall not be liable for the consequences resulting therefrom. Only in urgent cases, when industrial safety is endangered, and in order to prevent disproportionately severe damage, of which situation we have to be notified without delay, or if we let a reasonable time limit for removal of defects pass, which limit was set for us, shall the ordering party be entitled to remove the defect itself or have it removed by third parties. Par. (3) sentence 2 shall not apply insofar as our performance (assembly, commissioning, service) in accordance with the law (§ 434 par. 2 sentence 1 BGB (German Civil Code)) is mandatorily a primary duty of the performance according to contract.
- (4) In the event that subsequent performance failed or is unreasonable for the contracting party or unnecessary because
- we finally refuse subsequent performance,
 - we fail to effect subsequent performance by a deadline laid down in the contract or within a certain period, and in the contract the contracting party had made continuation of its interest in the performance conditional upon timely performance, or
 - special circumstances prevail justifying an immediate withdrawal on weighing mutual interests (§ 323 par. 2 BGB (German Civil Code)),
- the contracting party shall be entitled to reduce the remuneration or, at its discretion, to rescind the agreement on assembly, commissioning and/or service work, and to claim damages or reimbursement of futile expenses in accordance with §§ 10 and 11 of these Terms and Conditions.
- (5) We shall bear the expenses required for the purpose of subsequent performance, in particular transport, travelling, labour and material costs. This shall not apply if the expenses increase because after our delivery or performance the product was taken to another place than the domicile or place of business of the contracting party, unless such transport is in line with the contractual use of the item.
- (6) Should the contracting party accept defective performance even though it recognizes the defect, it shall only be entitled to claims and rights in the event of defects if the contracting party reserves such rights based on the defect during acceptance.
- (7) Any assignment to third parties of the contracting party's claims based on defects shall be excluded. In the event of notices of defects, payments of the contracting party may only be withheld to an extent which is in reasonable proportion to the asserted defects.
- (8) The warranty period shall be twelve months as of completion of our work or, insofar as acceptance is required, as of acceptance or as of the point in time at which the acceptance is considered effected.

§ 11 Liability for Damages

- (1) We shall be liable for damages due to injury to life, limb or health in line with the statutory provisions.
- (2) In other respects, our liability due to breach of duty and our non-contractual liability shall be limited to intent and gross negligence. Any liability for gross negligence of our employees, members of staff and simple vicarious agent shall be excluded in this context.
- (3) The limitation on liability or the exclusion of liability in accordance with § 11 (2) sentence 1 shall not apply in the event of breach of such contractual duties which make the due performance of the contract possible in the first place and adherence to which the contracting party may rely on (so-called cardinal duties or duties essential to the contract).
- (4) Liability shall be limited to the damage typical for this type of contract, the occurrence of which damage we had to expect when the contract was concluded based on the circumstances known to us at that point in time.
- (5) Any further liability shall be excluded regardless of its cause in law. In particular, we shall not be liable for lack of economic success, lost profit, indirect damage / damage arising not on the subject matter of delivery or performance itself, consequential harm caused by a defect and damage as a result of third-party claims.
- (6) The limitations on liability stated above shall apply mutatis mutandis to claims for the reimbursement of futile expenses (§ 284 BGB (German Civil Code)).
- (7) Claims for damages directed against us, regardless on what legal ground, shall become statute-barred within two years as of the beginning of the limitation period, latest, however, as of delivery of the item or, insofar as acceptance is required, as of effected, refused or fictitious acceptance.
- (8) The above regulations shall not shift the burden of proof to the prejudice of the contracting party.
- (9) To the extent that our liability is excluded or limited in accordance with these General Terms and Conditions, this shall also apply to the personal liability of our employees, workers, members of staff, representatives and vicarious agents.

§ 12 Remuneration and Charges; Payments

- (1) Unless specific agreements have been made, all assembly, commissioning, inspection and service work shall be charged based on expenditure of time.
- (2) Agreed remunerations shall be net amounts without turnover tax, which tax, however, the ordering party shall pay in the applicable statutory amount. Unless otherwise specified, the remuneration amounts are quoted in the European currency (euro). Deductions of any kind shall not be permitted without a specific agreement in writing.
- (3) Any discounts granted shall be cancelled in the event of a delay in payment by the ordering party, institution of insolvency proceedings against the assets of the contracting party or rejection of such opening for lack of assets.
- (4) Invoices shall be due for payment immediately upon receipt without deductions. This shall apply irrespective of any payments agreed for delivery of the equipment. We shall be entitled to ask for reasonable payments on account. This shall apply in particular in the event of assembly work or other performance taking a relatively long time. Our right to ask for payments on account for the performance effected with regard to completed parts of our performance shall remain unaffected.
- (5) Payments have to be effected in euro (€) and have to be made free of postage and free of charges. They may only be made to the paying agents specified by us. Bills of exchange and cheques shall be considered payment only after redemption/cashing and will be accepted without obligation for timely presentation and protesting.

(6) When terms of payment are exceeded, we shall be entitled to demand interest amounting to 8 percentage points above the basis interest rate (§ 247 BGB German Civil Code) p.a. Claims for other reasons shall remain unaffected.

(7) The ordering party shall not be entitled to withhold payments. Any offsetting by the contracting party against counterclaims shall only be permitted if these counterclaims are uncontested or have become res judicata.

(8) If payment is not made in due time we shall be entitled to:

- immediately assert all claims against the ordering party, which claims arise from the respective transaction or from other transactions, even those claims which have not yet become due;
- withhold supplies or other performance arising from the respective order or from other orders until all our claims still outstanding from the respective order or from other orders have been satisfied in full by the ordering party;
- demand appropriate security.

(9) If, after entering into the contract, we obtain knowledge of facts evidencing an essential worsening of the contracting party's financial condition, which facts, based on due commercial assessment of the circumstances, may endanger the claim for consideration (which includes, in particular, a petition to open insolvency proceedings), we shall up to the time of its performance be entitled to demand provision of suitable security within a reasonable period or performance upon consideration. If the contracting party fails to comply with our justified request in due time, we may rescind the contract or claim damages. In this situation, we shall be entitled to call for immediate payment of all amounts, which also includes any amounts for which deferment has been granted.

§ 13 Venue and applicable law

(1) If the contracting party is a merchant or an entity under public law as defined by § 29 a) par. 2 ZPO (Code of Civil Procedure), exclusive venue for all disputes shall be our place of business as specified in the Commercial Register. However, we shall also be entitled to bring an action against the contracting party at its legal venue.

(2) The relationship between us and the contracting party shall be subject to German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the rules laid down by private international law.

(3) Should individual provisions be ineffective or unenforceable or lose their effectiveness as a result of circumstances occurring at a later date, this shall not affect the effectiveness of the remaining provisions.

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