



## **Assembly and Repair Terms and Conditions of GKD Gebr. Kufferath AG**

### **§ 1**

#### **Application of these Terms and Conditions**

- 1.1 These Terms and Conditions shall apply to the exclusion of all others for all assembly and repair work done by us (hereinafter: these Terms and Conditions) Terms and conditions of business of the contracting party, which conflict with or deviate from these Terms and Conditions, shall only apply if a member of our management board or one of our holders of commercial powers of attorney or a person authorized by us for this purpose expressly accepts them. The general terms and conditions of business of the contracting party shall not be binding, even if we have not expressly rejected their application. Any tacit acceptance of the general terms and conditions of business of the contracting party through acceptance inferred from our conduct shall be excluded hereby. Part B of the Rules for the Award of Public Works Contracts shall also be considered as part of the general terms and conditions of business of the contracting party.
- 1.2 These Terms and Conditions shall also apply to future contractual relationships. They shall apply irrespective of whether reference has been made to them in any specific case.
- 1.3 Amendments or additions which deviate from these Terms and Conditions must be made in writing. This shall not apply to amendments agreed upon with members of our management board or one of our holders of commercial powers of attorney or other persons authorized by us to agree on amendments or additions.



## **§ 2**

### **Offer to Contract and Conclusion of Contract**

- 2.1 Our offers shall be subject to change without notice and are not binding. A contract shall not be concluded until we have confirmed our acceptance of the contracting partner's assembly or repair order. A contract between us and the contracting party shall also be concluded without any confirmation on our part if we do the agreed work and the contracting party accepts it.
- 2.2 We shall have two weeks after receipt to accept orders.

## **§ 3**

### **Assistance by the Contracting Party**

- 3.1 The contracting party shall be obliged to provide our personnel with the assistance required in carrying out assembly and/or repair work. This shall include, in particular, the obligations specified in the following provision.
- 3.2 The contracting party must take all necessary steps to protect people and objects at the assembly and/or repair site. It shall inform the manager in charge of our personnel with regard to all of the safety regulations affecting the protection of our personnel. In addition, it shall inform the manager in charge of our personnel in the event that assembly personnel breach safety regulations. The contracting party shall only be entitled to expel a member of the assembly personnel from the assembly site for breaching the safety regulations if the manager in charge of our personnel agrees thereto.

3.3 Moreover, the contracting party shall be obliged to provide the following assistance:

- Making available a sufficient number of assistant workers (technicians, mechanics and other skilled personnel) for the assembly and/or repair work, however the temporary workers must follow the instructions of the assembly personnel,
- Carrying out all building and scaffolding work including the procurement of the necessary building materials,
- Making available the necessary tools and equipment (lifting gear, compressors) and the necessary material and operating supplies (for example, scaffolding wood, wedges, documents, lubricants, fuel and straps),
- Making available heating, lighting, electricity and water including the necessary connections,
- Making available a sufficient number of dry and lockable rooms for our assembly personnel to keep their tools in,
- Transporting assembly parts at the assembly site, protection of assembly frames and materials from damaging influences as well as an assembly frame cleaned prior to the commencement of the assembly work,
- Making available suitable, lockable common rooms and work rooms (with heating, lighting, washing and sanitary facilities) as well as, if applicable, first aid for the assembly personnel,
- Making available the materials and taking all actions which are necessary for setting the item to be assembled and for carrying out the contractually agreed test.

- 3.4 Prior to the commencement of assembly and/or repair, the contracting party must make available to us unrequested all of the plans, instructions and other documents which we require for carrying out the work agreed.
- 3.5 All assistance from the contracting party must be given in good time so that assembly can commence immediately after the arrival of the assembly personnel and so that it can be carried out without delay.
- 3.6 Following the conclusion of the assembly and/or repair the contracting party must arrange for waste disposal at its own expense as required by statutory or other provisions and, if applicable, carry out the necessary cleaning of the assembly site.
- 3.7 If the contracting party does not fulfill its obligations, we shall be entitled to exercise without restriction all of our statutory rights arising from this breach of obligations. In addition, we shall be entitled to exercise the rights pursuant to § 642 and § 643 of the German Civil Code (*Bürgerliches Gesetzbuch*).

#### **§ 4**

##### **Time Limit for Assembly and/or Repair; Force Majeure; Use of Third Parties**

- 4.1 The time limit for undertaking assembly and/or repair work shall have been complied with if our work is ready for acceptance by the contracting party by the expiration of the time limit.
- 4.2 Disruptions to operations due to *force majeure*, strikes and lockouts for which we are not responsible as well as shortages of supplies and raw material shall entitle us to rescind the contract, although we have not performed our duties under it, if the aforementioned circumstances prevent, more than temporarily, the performance of our work and where moreover this was not foreseeable at the time the contract was concluded.
- 4.3 The contracting party shall not be entitled to rescind the contract due to delays in delivery for which we are not responsible.



- 4.4 If we are late in doing our work or if it becomes impossible for us to do it, any claims for damages by the contracting party shall be limited in accordance with clause 8 of these Terms and Conditions.
- 4.5 We shall be entitled to engage third parties to fulfill our obligations.

## **§ 5**

### **Acceptance of our Work**

- 5.1 The contracting party is obliged to state its acceptance of the work immediately after we have informed it that we have completed our work and, if applicable, after a contractually agreed inspection test has been carried out. The contracting party may not refuse to accept the work if it has an insignificant defect.
- 5.2 We shall be entitled to set the contracting party a time limit within which it must state its acceptance of the work. If it does not accept our work within this time limit, our work will be deemed to have been accepted.

## **§ 6**

### **Prices and Terms of Payment; Rights of Set Off and Retention**

- 6.1 Unless another agreement has been made, we shall charge for our work on the basis of the time worked. Our remuneration is based on our price list for assembly and repair work.
- 6.2 The applicable value added tax is not included in our prices. The value added tax will be charged and shown separately in the amount prescribed by law on the invoice date if our work is subject to value added tax. In the case of exports, the contracting party must pay, if applicable, the fees and charges incurred for doing the work in the recipient country. If we must ourselves initially pay the fees and/or charges related to exports, the contracting party must reimburse us for these.

- 6.3 Our invoices shall be immediately due and must be paid within 30 days from the customer's receipt of them. Upon the expiration of the payment period, the contracting party shall be in default without need of a payment reminder. In the event of a default in payment, we shall be entitled to request the default interest stipulated by law. Our rights to claim for further damage shall not be prejudiced hereby.
- 6.4 The contracting party shall only be entitled to set off its counter-claims against our claims where its counter-claims have been established as valid by a non-appealable judgment or are uncontested. This shall also apply to the assertion of any retention right.
- 6.5 We shall only accept discountable bills of exchange if this has been expressly agreed; our acceptance shall be without any warranty regarding protest and solely on account of payment. Bills of exchange and checks shall only be considered as payment once they have been successfully redeemed.

## **§ 7**

### **Liability for Defective Work**

- 7.1 The statutory provisions on defective work shall apply subject to the following amendments:
- 7.2 The limitation period for defects shall be one year commencing upon the acceptance of the work. This shall also apply to damages claims based on defective work. This limitation shall not apply for damages claims based on intentional or gross negligence on our part and damages claims based on injury to life, body or health.
- 7.3 If one form of supplementary performance has been unsuccessful so that the contracting party is entitled to choose either another form of supplementary performance or instead to exercise its statutory rights, we shall be entitled to request that it notify us of its decision within a reasonable time limit. The contracting party must notify us in writing of its decision.

Decisive for the compliance with the time limit shall be our receipt of the contracting party's written notification. If the contracting party fails to exercise its rights in due time, it may only assert such rights, particularly the right to rescission or damages, if a supplementary performance has not been successful within a new, reasonable time limit it set.

## § 8

### Limitation of Claims for Damages

- 8.1 We shall be liable for the intentional or grossly negligent conduct of the organs of our company and our vicarious agents; our liability for damage caused by injury to life, limb or health shall exist irrespective of the degree of fault involved.
- 8.2 Moreover, we shall be liable for the slight negligence of the organs of our company and our vicarious agents in the case of impossibility, delay in performance or the breach of a warranty or other fundamental duty. In these cases, our liability shall be limited to the usual contractual damage, which we could reasonably be expected to foresee at the time we concluded the contract.
- 8.3 Any liability on our part beyond the liability in accordance with clauses 8.1 and 8.2 of these Terms and Conditions regardless of the legal ground shall be excluded hereby. This shall apply in particular to all claims made on account of a breach of contract, *culpa in contrahendo* and tortious conduct.
- 8.4 All restrictions of liability in accordance with clauses 8.1 to 8.3 of these Terms and Conditions shall also apply for the benefit of the organs of our company and our vicarious agents.
- 8.5 Any claims in accordance with the Product Liability Act (*Produkthaftungsgesetz*) shall not be affected hereby.

## § 9

### Final Provisions

- 9.1 All legal relationships arising in connection with the conclusion, performance or termination of these Terms and Conditions shall be subject to the substantive law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 9.2 Düren shall be the place of performance.
- 9.3 The courts of Düren shall have exclusive jurisdiction for all litigation. However, we shall also be entitled to sue the contracting party at other venues laid down by statute if we wish to.

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