Terms of Assembly

of the Austrian Association for the Machine-Building and Steel Construction Industry
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The present Terms of Assembly have primarily been drafted for legal transactions between companies. If, in exceptional cases, they are used as a basis for legal transactions with consumers, as defined in § 1, paragraph 1, item 2 of the Consumer Protection Act, Federal Law Gazette No. 49/1979, they shall only apply to the extent that they do not conflict with the provisions of the first main section of the aforementioned law.

Austrian substantive law shall apply. It is mutually agreed that the UN law of sales shall not apply.

1. Binding Character of the Terms of Assembly
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 expressly require the written confirmation of Contractor.

2. Material Supplies
The materials required for the performance of the works and the costs of their transport to the work site shall always be borne by Customer.

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 that are indicated in the Annex, unless the parties have agreed on a lump-sum price.
b) The agreed rates shall be without value-added tax, which shall be additionally refunded to Contractor in the statutory amount.

5. Remuneration for Sundays and Holidays
If work is done on a statutory holiday, the working hours and any possible extra hours shall be invoiced as agreed in the Annex.
When no work is done, only the agreed expense allowance for field assembly projects shall be invoiced for Saturdays, Sundays and statutory holidays.
If no work is done on account of a national or other holiday customarily celebrated by the plant or at the assembly location, the holiday remuneration shall be calculated at those rates for the number of hours that the assembly technician would have worked if this had been a working day.

6. Interruption of Work
a) In the event of an interruption of work not caused by Contractor and which requires that Contractor's assembly technicians are recalled or dispatched again, the costs incurred thereby shall be charged to Customer.
b) If the assembly technicians are prevented, without any of their fault, from working full shifts, the normal statutory working hours will nevertheless be charged.
c) If Customer insists that the assembly work is continued in spite of adverse weather conditions, Customer shall be liable for any damage that may possibly be caused thereby.

7. Surcharges on the Hourly Rate
For work performed under aggravating circumstances (such as damage to health, dirt, danger, adverse weather conditions, etc.) as well as in case of shift and night shift work, the respective rates indicated in the Annex will be charged.

8. Surchages on Field Work (Daily Allowance) and Accommodation
a) Unless the Annex does not contain any other arrangements, those amounts shall apply that are contained in the respectively applicable framework collective bargaining agreement of the Austrian Association for the Machine-Building and Steel Construction Industry.
b) In the case of assembly projects where the assembly technicians cannot return to the plant performing the assembly job every day, the rates listed in the Annex shall be charged for every day of absence from the plant.
c) If Customer provides reasonable accommocation, no overnight rate will be charged. If the actual accommodation costs exceed the overnight rates indicated in the Annex, the actual accommodation costs, including value-added tax, shall be charged.

9. Travel Time, Travel Expenses and Travel Fares
The travel time - including the prepations for a trip, up to a period of 5 hours each for the journey in each direction - shall be charged as normal working time. The actual costs of travel for the assembly staff, as well as for the transport of the tools, and the procurement of passports and visa shall be borne by Customer.

10. Preparations by Customer
Customer shall make all necessary preparations and take all necessary measures at Customer's expense and risk, both in due time before the agreed start of the assembly work and during their performance, regarding staff and material, that are necessary for a proper start of the assembly work, their performance without any obstructions and their proper completion.
Unless Contractor issues special instructions in this connection, the foregoing shall include, in all events, the necessary structural preparation of the assembly site, the provision of the necessary devices, tools, equipment, changing and sanitary facilities and other working utensils, the necessary materials, ancillary and auxiliary materials, the provision of the required ancillary staff, etc. All provisions which Contractor has to make in this connection shall be charged separately.

Since Contractor only has to provide the usual hand tools, the use of any other special tools and special appliances, which Contractor has to provide if Customer fails to make these provisions, will be invoiced separately on the basis of a separate agreement, in addition to the transport costs in both directions.

11. Customer's Obligation to Provide Insurance and Supervision
Customer shall provide adequate supervision for the work utensils provided by Contractor and the personal belongings of the assembly staff, and Customer shall be liable for them until the assembly work is finished, or until the work utensils and personal belongings are removed and shipped away. In the event of damage, destruction or loss of the working utensils and personal belongings, Customer shall be liable, also in the event of force majeure.
Customer shall provide all safety instructions and any further references to dangers, as well as all precautions relating to the prevention of fires.

12. 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.

13. Liability
Contractor shall be liable for the diligent and proper performance of the work to be performed by Contractor's assembly staff. Contractor does not accept any liability beyond the aforementioned one, especially not for indirect consequential damage. Contractor shall not assume any liability for any staff or temporary staff provided by Customer, nor for any third parties.

14. Additional Work Due to Imminent Danger
Customer's approval shall be deemed to have been provided for such performances that became necessary for the fulfilment of a contract and where it was impossible to obtain the approval of Customer due to an imminent danger. Customer shall, however, be informed without delay of the performances made without Customer's order. Since these are necessary performances provided by Contractor, Customer shall acknowledge them and also reimburse them. Contractor shall invoice such performances separately. The additional expenses shall be listed in detail.

15. Work Records and Acceptance of Assembly Work
In all events, Customer shall acknowledge on a weekly basis the working times worked by Contractor's assembly staff. The work records will be taken as a basis for the assembly invoices. Customer is responsible for acknowledging to the assembly technicians on the final work record the completion and acceptance of the work. Minor defects and reworkings shall not relieve Customer from this obligation.
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 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. Time Limits
If Contractor is in a position to anticipate that he will not be able to complete a project in time, Contractor shall inform Customer thereof without delay and in writing, indicating at the same time the prospective completion date, if possible.
Contractor shall be entitled to an adequate extension of the completion date if the delay is due to
a) circumstances beyond the control of Contractor, such as for example industrial conflicts, natural disasters, warlike disputes, general mobilization, revolution, seizure, embargo, as well as restrictions on energy consumption,
b) unexpected restructuring work due to statutory regulations or Customer's special or additional requests,
c) any action or omission on the part of Customer, or other circumstances within the domain of Customer (such as delay in payments), or if Customer does not meet other obligations respectively.

17. Conditions of Payment
Customer shall pay to Contractor upon Contractor's request, both before staff is dispatched and in the course of the assembly work, reasonable payments on account, or part payments respectively, which shall be accounted for subsequently.
The assembly invoice shall be due for payment immediately upon presentation of the invoice, in cash and without any deduction. If the assembly work lasts for more than one month, Contractor shall issue interim invoices every four weeks, which Customer shall pay. It shall be inadmissible to retain payments for reason of warranty claims or other counter-claims of Customer that Contractor has not accepted.

18. Place of Jurisdiction, Applicable Law, Place of Performance, Language
a) The place of jurisdiction for all disputes arising directly or indirectly from a contract shall be the relevant Austrian court with competences for Contractor's principal place of business. Contractor may, however, also resort to the court with jurisdiction for Customer.
b) The parties may agree that an arbitral tribunal has jurisdiction.
c) Contracts shall be subject to Austrian substantive law to the exclusion of the UN law of sales.
d) Contractor's principal place of business shall be the place of performance for deliveries and payments.
e) In the event of disputes arising from the present certified translation of the contract, the German text shall prevail.