

Terms and Conditions of Assembly



1. Binding Nature of Terms and Conditions of Assembly

Assembly work and the assignment of assembly workers of any nature shall always be governed by the following terms and conditions; once an order was placed, these terms and conditions shall be deemed to have been acknowledged and shall be binding for contractors (hereinafter "Contractor") and principal (hereinafter "Principal"). Any deviating agreement on certain issues shall be valid only if Contractor has expressly confirmed these in writing. These terms and conditions of assembly shall apply also to any future assembly work and any future assignment of assembly workers, even if they were not expressly referred to as forming part of a contract in a particular case.

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

2. Delivery of Material

Principal 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 Time

The statutory weekly working time shall be the normal working time; time management shall be governed by Principal's work regulations, if notified to Contractor in advance.

4. Assembly Rates (Hourly Rates)

- a) Assembly work will be charged at the rates and conditions stated in the attachment, unless a lump-sum price was agreed in a particular case.
- b) The agreed rates are exclusive of value added tax, the latter being payable to Contractor at the statutory rate.
- c) Principal shall separately pay to Contractor any changes requested by Principal which trigger extra work.
- d) Principal shall ensure at its own cost and expense that assembly parts can be stored in a suitable manner at the place where they are to be used and that suitable aids, such as hoisting machinery and high-lift platforms, are available, ready for use and operational there, that sufficient electricity is available to operate electric equipment and that the assembly space can be used without any restrictions and that it is safe to drive heavy machinery, such as fork-lift trucks, cargo trucks and truck-mounted cranes there.

5. Compensation for Work on Sundays and Public Holidays

When work is performed on a public holiday, Contractor will charge Principal the working hours as well as overtime, if any, at the rates stated in the attachment

Principal will be invoiced only for the compensation for distance assemblies at the rates stated in the attachment 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 local 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 Principal.
- 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) If Principal insists on assembly to continue despite bad weather, Principal shall be liable to Contractor for and against any and all damage, costs, expenses etc incurred, and Principal shall hold harmless and indemnify Contractor also for and against any and all claims of third parties.
- d) 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. Surcharges on Hourly Rates

Surcharges at the rates set forth in the attachment will be added for work under aggravating circumstances (such as health risks, dirt, danger, bad weather, etc) as well as for work in shifts and on night shift.

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8. Distance and Duration Allowances and Accommodation

- a) Unless otherwise agreed in the attachment, 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 attachment 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 Principal provides reasonable accommodation, overnight stay allowance will not be charged. If actual accommodation costs at the place of assembly exceed the overnight stay allowances stated in the attachment, Principal shall pay and reimburse Contractor for actual accommodation costs, plus value added tax.

9. 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 Principal. Contractor's preparatory and follow-up work shall not be travel times and will be charged to Principal at the rates set forth in the attachment.

10. Principal's Precautions

Principal 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 Principal 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 Principal for all relevant deliverables Contractor will have to provide in this context. Principal 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.

Principal 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.

11. Principal's Obligation to Procure Insurance and to Exercise Care and Diligence

Principal shall take into due care and custody all working aids provided by Contractor and all personal items of assembly workers, and Principal 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.

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

12. Documentation

Unless otherwise agreed, Contractor will prepare daily construction reports to document all material facts pertaining to the contractual services, such as weather, headcount and status of equipment, material supplies, work progress, quality inspections and function tests, cost-plus services as well as any other important circumstances. These reports shall also document all relevant events at the place of performance, including but not limited to those which have or could have a material effect on the execution of the services, as well as any determination which, if made later on, would not be possible or no longer reasonable. At Principal's request, these daily construction reports shall be produced to Principal, and Principal may inspect these every working day at the place of performance.

In this event, Principal shall counter-sign the daily construction reports in writing and confirm in writing that he has inspected those reports. All entries in daily inspection reports shall be deemed to be confirmed by Principal, unless he objects to these by written notice to Contractor within two weeks after an entry was made. Principal may not lodge complaints later on.

13. Warranty and Liability, Complaints

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

Contractor shall be liable that the assembly work to be performed by its assembly workers is executed in conformity with the contract.

The warranty period is six months and commences as soon as Contractor has executed the assembly services.

Contractor is not liable for any damage caused by slight and plainly gross negligence. Contractor shall not be liable for consequential damage, including but not limited to lost profit.

In no case shall Contractor's liability exceed the amount of the order total.

14. Additional Work Due to Imminent Danger

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

15. Attestation and Acceptance of Assembly Work

Principal 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. Principal shall attest termination and completion of the work on the assemblers' last work record, regardless of minor flaws and follow-up work.

Principal shall accept Contractor's assembly services as soon as Principal has been notified that the respective work is completed and if the installed item has been subjected to testing, if contractually agreed. Such notice shall state an acceptance date which allows Principal to prepare for acceptance or to assign a representative to be present then. Contractor will draw up an acceptance test certificate. Should Contractor's assembly services prove not in conformity with the contract, Contractor shall be required to rectify the flaw, unless any such flaw is irrelevant or insignificant or based on a circumstance attributable to Principal's control.

Should there be any delay in acceptance without Contractor's fault or if Principal refuses to accept the assembly work, acceptance shall be deemed to have taken place after expiry of 2 weeks after Contractor has sent the assembly completion notice.

Any and all costs Contractor incurs in connection with acceptance (e.g. personnel costs, items of equipment, cost of material, resources) shall be payable by Principal.

16. Target Dates

Whenever Contractor realizes that he will not be able to complete assemblies in due time, he shall notify Principal 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, such as labour conflicts, natural disasters, armed conflicts, general mobilization, insurrection, seizure, embargo, and limitations of energy consumption
- b) unpredictable reconstruction work due to statutory provisions or Principal's special or additional requests
- c) any action or omission of Principal or any other circumstances within Principal's control (such as payment arrears) or Principal's failure to fulfil other obligations.

17. Terms of Payment

At Contractor's request, Principal 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 without delay and without deduction. Should assembly work take more than one month, Contractor shall issue and Principal shall pay an interim invoice every four weeks. Payments may not be withheld due to warranty claims or any other counterclaims of Principal which are not acknowledged by Contractor.

18. Jurisdiction, Applicable Law, Place of Performance

- a) All legal relationships between Contractor and Principal are governed by Austrian substantive law, to the exclusion of the UN Sales Convention.
- b) If the customer is seated in the European Union or EFTA, all disputes arising out of or in connection with the contractual relationship between Künz and Customer shall exclusively be referred to the courts in 6800 Feldkirch, Austria. If the customer is seated outside the European Union or EFTA, all disputes arising out of or in connection with the contractual relationship between Künz and Customer 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. 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 Künz may sue the customer also before any other court having jurisdiction for the customer.
- c) Place of performance for delivery and payment shall be Contractor's seat.