

A1 - General terms and conditions for assembly (INLAND) of DI MATTEO Förderanlagen GmbH & Co. KG

For use vis-à-vis:

1. a person who, when concluding the contract, is acting in the exercise of his commercial or self-employed professional activity (entrepreneur);
2. legal persons under public law or special funds under public law.

I. Scope of application

These terms of assembly apply to assemblies that are carried out by a mechanical engineering company (assembly contractor), unless agreements to the contrary have been made in individual cases.

II. Assembly price

1. Unless a lump sum price has been expressly agreed, installation will be invoiced according to the appendix and calculated on the basis of time.
2. The agreed amounts are exclusive of value-added tax, which is to be paid additionally to the assembly contractor at the statutory rate.

III. Participation of the Purchaser

1. The Purchaser shall support the assembly personnel in carrying out the assembly work at his own expense.
2. He must take the special measures necessary to protect persons and property at the assembly site. He must also inform the installation supervisor of existing special safety regulations, insofar as these are of importance to the installation personnel. He notifies the assembly contractor of violations of such safety regulations by the installation personnel. In the event of serious violations, he may refuse the offender access to the installation site in consultation with the installation supervisor.

IV. Technical assistance of the Purchaser

1. The Purchaser is obliged to provide technical assistance at his own expense, in particular:
 - a) Provision of the necessary suitable assistants (masons, carpenters, fitters and other skilled workers, handymen) in the number and for the time required for assembly; the assistants must follow the instructions of the assembly supervisor. The installer accepts no liability for the auxiliary personnel. If the auxiliaries have caused a defect or damage as a result of instructions from the assembly supervisor, Sections VII and VIII shall apply.
 - b) Carrying out all earthworks, construction, bedding and scaffolding work including procurement of the necessary building materials.
 - c) Provision of the necessary equipment and heavy tools (e.g. hoists, compressors), as well as the necessary materials and supplies (e.g. scaffolding timbers, wedges, supports, cement, plaster and sealing materials, lubricants, fuels, drive cables and belts).
 - d) Provision of heating, lighting, operating power, water, including the necessary connections.
 - e) Provision of necessary, dry and lockable rooms for the storage of the tools of the assembly personnel.
 - f) Transport of the installation parts to the installation site, protection of the installation site and materials against harmful influences of any kind, cleaning of the installation site.
 - g) Provision of suitable, theft-proof recreational and work rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for the assembly personnel.
 - h) Provision of materials and performance of all other actions necessary for the adjustment of the object to be assembled and for carrying out a contractually stipulated test.
2. The Purchaser's technical assistance must ensure that assembly can begin immediately upon arrival of the assembly personnel and can be carried out without delay until acceptance by the Purchaser. If special plans or instructions are required from the installation company, the latter shall make them available to the Purchaser in good time.
3. If the Purchaser does not fulfil his obligations, after setting a deadline, the assembly contractor shall be entitled, but not obliged, to perform the actions incumbent on the Purchaser in his place and at his expense. In all other respects, the statutory rights and claims of the installation company shall remain unaffected.

V. Assembly time, assembly delay

1. The installation period shall be deemed observed if the installation is ready for acceptance by the Purchaser by the end of the period, in the event that a contractually agreed test is to be carried out.
2. If assembly is delayed by measures within the scope of industrial disputes, in particular strikes and lockouts, as well as the occurrence of circumstances for which the assembly contractor is not responsible, an appropriate extension of the assembly period shall occur, provided that such obstacles are demonstrably of considerable influence on the completion of the assembly.
3. If the Purchaser incurs damage as a result of the installation company's delay, he shall be entitled to demand a lump-sum compensation for the delay. It amounts to 0.5 % for each full week of delay, but in total to not more than 5 % of the installation price for that part of the system to be installed by the installer that cannot be used in time due to the delay.

When - taking into account the statutory exceptions - the Purchaser sets the assembly contractor a reasonable deadline for performance after the due date, and if the deadline is not met, the Purchaser shall be entitled to withdraw from the contract within the framework of the statutory provisions. He undertakes, at the assembly contractor's request, to declare within a reasonable period of time whether he will make use of his right of withdrawal.

Further claims arising from delay shall be determined exclusively in accordance with Section VIII.3 of these terms and conditions.

VI. Acceptance

1. The Purchaser shall be obligated to accept the assembly as soon as he has been notified of its completion and any contractually agreed testing of the assembled item has taken place. When the installation proves not to be in accordance with the contract, the assembly contractor is obliged to remedy the defect. This shall not apply if the defect is irrelevant to the Purchaser's interests or is due to a circumstance attributable to the Purchaser. The Purchaser may not refuse acceptance in the presence of a minor defect.
2. When acceptance is delayed through no fault of the assembly contractor, acceptance shall be deemed to have taken place two weeks after notification of completion of installation.
3. Upon acceptance, the liability of the installation company for visible defects shall cease, unless the Purchaser has reserved the right to assert a specific defect.

VII. Claims for defects

1. After acceptance of the assembly, the assembly contractor shall be liable for defects in the assembly to the exclusion of all other claims of the Purchaser, notwithstanding Nos. 5 and 6 and Section VIII, in such a way that he shall remedy the defects. The Purchaser shall immediately notify the assembly contractor in writing of any defects found.
2. The liability of the assembly contractor shall not apply if the defect is irrelevant to the Purchaser's interests or is due to a circumstance attributable to the Purchaser.
3. In the event of improper modifications or repair work carried out by the Purchaser or third parties without the prior approval of the installation company, the liability of the installation company for the consequences arising therefrom shall be waived. Only in urgent cases of danger to operational safety and so as to prevent disproportionately large damage, whereby the assembly contractor must be notified immediately, or if the assembly contractor - taking into account the statutory exceptions - has allowed a reasonable deadline set for him to rectify the defect to expire without success, the Purchaser shall have the right, within the framework of statutory provisions, to rectify the defect himself or have it rectified by third parties and to demand reimbursement of the necessary costs from the assembly contractor.
4. In the event of a justified complaint, the assembly contractor shall bear the direct costs arising from the rectification of defects, insofar as this does not impose a disproportionate burden on the assembly contractor.
5. If the assembly contractor - taking into account the statutory exceptions - allows a reasonable deadline set for him for the rectification of defects to expire without result, the Purchaser shall be entitled to a reduction within the framework of the statutory provisions. The Purchaser may only withdraw from the contract if the Purchaser can prove that assembly is of no interest, despite the reduction.
6. Further claims shall be determined exclusively in accordance with Section VIII.3 of these terms and conditions.

VIII. Liability of the assembly contractor, exclusion of liability

1. If, due to the fault of the installation company, an assembly part supplied by the assembly contractor is damaged during assembly, the latter shall, at its own discretion, either repair it or replace it at its own expense.
2. If, as a result of culpably omitted or incorrect suggestions or advice by the assembly contractor, the Purchaser is unable to use the assembled object in accordance with the contract, which took place before or after conclusion of the contract, or through culpable violation of other contractual ancillary obligations - in particular instructions for operation and maintenance of the assembled object -, the provisions of Sections VII and VIII 1 and 3 shall apply to the exclusion of further claims by the Purchaser.
3. For damages that have not occurred on the object of installation itself, the installation contractor - for whatever legal reason - shall only be liable
 - a) in the event of wilful misconduct,
 - b) in the event of gross negligence on the part of the owner / the executive bodies or senior employees,
 - c) in the event of culpable injury to life, limb or health,
 - d) in the event of defects which he maliciously concealed,
 - e) within the scope of a guarantee promise,
 - f) insofar as liability for personal injury or property damage to privately used objects is assumed in accordance with the Product Liability Act.

In the event of culpable violation of essential contractual obligations, the installation contractor shall also be liable for gross negligence on the part of non-executive personnel members and for slight negligence, in the latter case limited to reasonably foreseeable damage typical for the contract.

Further claims are excluded.

IX. Statute of limitations

All claims of the Purchaser - on whatever legal grounds - become statute-barred after 12 months. For claims for damages according to Section VIII 3 a-d and f, the statutory periods shall apply. If the assembly contractor performs the assembly work on a building and thereby causes its defectiveness, the statutory periods shall also apply.

X. Replacement by the Purchaser

If, through no fault of the installation company, the devices or tools provided by him are damaged on the installation site, or when they are lost through no fault of the company, the Purchaser shall be obliged to compensate for such damage. Damage caused by normal wear and tear is not taken into account.

XI. Applicable law, place of jurisdiction

1. All legal relationships between the Supplier and the assembly contractor shall be governed exclusively by the law of the Federal Republic of Germany applicable to the legal relationships between domestic parties.
2. The place of jurisdiction is the court responsible for the registered office of the assembly contractor. However, the assembly contractor is entitled to file a suit at the Purchaser's headquarters.