

## B1 - General terms and conditions for assembly (AUSLAND) of DI MATTEO Förderanlagen GmbH & Co. KG

### I. General provisions

These Terms and Conditions for Assembly apply to assemblies provided by DI MATTEO Förderanlagen GmbH & Co. KG (hereinafter referred to as the "Supplier"), unless deviating agreements have been made in individual cases. They are an integral part of the General Terms and Conditions of Delivery (effective May 2019), provided that an assembly has been agreed between the parties. The scope of assembly is specified in the technical specification (hereinafter referred to as the "Service"). These Terms and Conditions also apply to supervisions of assembly, unless special agreements are made in this respect.

### II. Drawings and technical documents

Each party reserves all rights to drawings, plans and technical documentation provided to the other party. The receiving party recognizes these rights and shall not make the documents accessible to third parties in whole or in part without prior written authorization of the other party or use them for another purpose than for the fulfilment of the contract.

### III. Assembly price

1. The assembly shall be invoiced by the Supplier on a timely basis according to the Service prices valid at the time of the Service provision, unless a lump sum has been expressly agreed.
2. All prices are net prices and to be understood plus legal value-added tax (if any).

### IV. Service provision

1. The Services are generally to be provided on working days during normal working hours
2. If the Buyer requests Services outside the usual working hours and the Supplier agrees to this request, the Buyer shall bear the costs incurred in this regard.

### V. Cooperation of the Buyer

1. The Buyer shall assist the assembly personnel of the Supplier in carrying out the Services at his expense.
2. The Buyer has to ensure that the Service provision can begin immediately after the arrival of the assembly personnel of the Supplier and can be carried out without delay.
3. The Buyer has to take the special measures necessary to protect persons and property on the assembly site. He shall inform the assembly manager on existing special safety regulations, as far as these are of importance to the assembly personnel. He shall notify the Supplier of violations by the assembly personnel against such safety regulations. In the event of serious violations, he may refuse the offender access to the assembly site in consultation with the assembly manager.

### VI. Technical assistance of the Buyer

1. The Buyer is obliged to provide technical assistance at his own expense, in particular to:
  - a. Provision of the necessary suitable assistants (masons, carpenters, locksmiths and other trained staff, helpers) for the Service in the required number and for the required time. These assistants must follow the instructions of the assembly manager. The Supplier assumes no liability for the auxiliary staff.
  - b. Execution of all earth, construction, ballast and scaffolding works including procurement of the necessary building materials.
  - c. Provision of the necessary equipment and heavy tools (e.g. lifting tools, compressors) as well as the consumption items and materials required (e.g. assembly wood, wedges, supports, cement, cleaning and sealing material, lubricants, fuels, driving ropes and belts).
  - d. Provision of heating, lighting, power supply, 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 assembly parts on the assembly site, protection of the assembly site and materials against harmful influences of any kind.
  - g. Provision of suitable recreation rooms and work rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for the assembly personnel.
  - h. Provision of materials necessary to carry out contractually agreed test runs.
2. The technical assistance of the Buyer must assure that the Services begin immediately after the arrival of the assembly personnel and can be carried out without delay until acceptance by the Buyer. As far as special plans or documents of the Supplier are required, these shall be made available by the Supplier to the Buyer in a timely manner.
3. If the Buyer does not comply with his obligations, the Supplier is entitled after setting a deadline, but not obliged, to carry out the duties for which the Buyer is responsible on his behalf and at his expense. In all other respects, the legal rights and claims of the Supplier remain unaffected.
4. The Buyer is not authorized without the written approval of the Supplier to use the Supplier's personnel for work that is not contractually agreed.

### VII. Assembly period, delay in assembly

1. The assembly period shall be deemed to be met if by its expiry the Service is ready for acceptance by the Buyer in case of a contractually provided test run for its execution.

2. If the Service is delayed due to measures within the framework of labor disputes, in particular strikes, lockouts as well as the event of circumstances not attributable to the Supplier, the assembly deadline shall be extended reasonably as far as such circumstances can be proven to have significant influence on the completion of the Service.
3. If the Supplier is in delay for reasons for which he is responsible for and the Buyer incurs thereby a damage, the Buyer shall be entitled to claim for liquidated damages for delay at rate of 0,5 % for each full week of delay, however, maximal limited to 5 % of the assembly price for such part of the plant to be installed by the Supplier which cannot be used in due time as a result of the delay.
4. If the Buyer sets the Supplier - taking into account the legal exceptions - a reasonable deadline for the Service after the due date and if the deadline is not met, the Buyer shall be entitled to termination within the framework of the legal provisions. He commits himself, at Supplier's request, to declare within a reasonable period of time as to whether he makes use of his right of termination. Further rights and claims arising from delay are exclusively subject to clause X. of these Terms and Conditions.

### VIII. Acceptance

1. The Buyer is obliged to accept the Service as soon as he has been notified of its completion and any contractually agreed test run of the installed delivery item has taken place. If the Service proves not to be in accordance with the contract, the Supplier is obliged to remedy the defect. This shall not apply if the defect is insignificant for the interests of the Buyer or is based on a circumstance attributable to the Buyer. In the event of a non-significant defect, the Buyer may not refuse acceptance.
2. If the acceptance is delayed for reasons not attributable to the Supplier, the acceptance shall be deemed to have taken place after expiry of two weeks from notification of the completion of the Service.

### IX. Warranty

1. After acceptance of the Service, the Supplier shall be liable for any defects in the Service in such a way that he has to remedy any defects occurring during the warranty period. The Buyer has to immediately notify the Supplier in writing of a detected defect.
2. The warranty period is 12 months from the completion of the Service. The warranty period expires at the latest two years after the agreed commencement of the Service.
3. The liability of the Supplier shall not apply if the defect is insignificant for the interests of the Buyer or is based on a circumstance attributable to the Buyer.
4. In the event of any changes or repair works improperly carried out by the Buyer or third parties without prior approval of the Supplier, Supplier's liability for the consequences resulting therefrom is voided. Only in urgent cases that endanger operational safety and to prevent unreasonably high damages, whereby the Supplier is to be informed without delay, or if the Supplier - taking into account the legal exceptions - fails to meet the reasonable deadline set to him for remedy of the defect, the Buyer shall be entitled - within the framework of the legal exceptions - to remedy the defect himself or to have the defect remedied by a third party and to demand reimbursement of the necessary expenses from the Supplier.
5. In case of a justified complaint, the Supplier shall bear the costs necessary to remedy the defect, insofar as no unreasonable burden for the Supplier arises thereby.
6. If the Supplier - taking into account the legal exceptions - fails to meet the reasonable deadline set to him for remedy of the defect, the Buyer shall also be entitled within the framework of the legal provisions to a right of reduction. Only if the Services are proven not to be of interest for the Buyer despite the reduction, the Buyer may terminate the contract (the "Wandlung").
7. Further claims and rights resulting from defects are excluded. This shall not apply in case of intent or gross negligence of the Supplier or insofar mandatory law provides otherwise.

### X. Liability of the Supplier, exclusion of liability

1. The Supplier shall be liable for breaches of duties in the fulfilment of this contract exclusively in accordance with the provisions of this contract. The above does not apply to damages resulting from injury to body and life; insofar the legal claims apply in addition.
2. The Supplier shall not be liable for loss of profit, unsuccessful expenses, loss of production, loss of use, lost business opportunities or loss of orders or financing costs as well as consequential damages or indirect damages.
3. Limitations of liability and exclusions of liability shall not apply in case of intent or gross negligence of the Supplier or insofar mandatory law provides otherwise.
4. Further claims are excluded.

### XI. Compensation from the Buyer

If the equipment or tools provided by the Supplier are damaged on the assembly site or if they are lost for reasons for which the Supplier is not responsible, the Buyer shall be obligated to compensate for these damages and losses. Damages due to normal wear and tear shall not be considered.

## **XII. Applicable law, arbitration**

1. The law governing the contract shall be the Swiss substantive law. The United Nations Convention on Contracts for the International Sales of Goods of 11.04.1980 (CISG) applies to this contract.
2. The parties will endeavour that any dispute or difference which may arise from or in connection with this contract will be settled amicably and in mutual agreement. Should a mutual agreement not be possible, any dispute or difference arising out of or in connection with this contract or its validity shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by an Arbitration Tribunal of three Arbitrators nominated according to these rules. The arbitration tribunal shall meet in Zurich/Switzerland. The language for arbitration proceedings shall be English.

## **XIII. Miscellaneous**

1. Amendments and additions to this contract must be made in writing. This also applies to the waiver of the written form requirement
2. Any kind of assignment of rights and obligations arising out of this contract to third parties as well as changes thereof shall be deemed null and void, unless agreed and confirmed in writing by both contractual parties.
3. In case any provision of this contract should be void or become invalid, this shall have no effect on the validity of the remaining provisions. In this case a provision which is closest to the legal and economic purpose of the invalid provision is deemed as agreed between the parties. Should these Terms and Conditions contain a gap, a provision is deemed to be agreed, the parties would have agreed according to the meaning and purpose of the contract if they had considered the gap in advance.