

## General Terms & Conditions of Assembly of KBA-FT Engineering GmbH

(hereinafter referred to as "the Assembler")

These General Terms & Conditions of Assembly are to be used with regard to:

1. a person practicing a commercial or independent professional activity at the conclusion of the contract (entrepreneur);
2. corporate bodies governed by public law or a special fund governed by public law.

Should there be any individual contractual agreements between the Assembler and the Contracting Entity beyond the points regulated in these Terms & Conditions of Delivery then these shall have priority. In such a case the General Terms & Conditions of Delivery of the Assembler shall only apply additionally.

### I. Scope

1. These General Terms & Conditions of Assembly apply between the Service Technician and the entity contracting an assembly (hereinafter referred to as "the Contracting Entity"), unless otherwise expressly agreed in writing between the parties to the contract, for the assembly of machinery or aggregates as well as for all other work to be carried out by the Assembler's staff on site.
2. Any differing terms & conditions of assembly of the Contracting Entity shall not become part of the contract, even if an order is accepted.
3. If assemblies for a Contracting Entity are carried out in connection with machinery deliveries by the Assembler then the Assembler's general terms & conditions of delivery shall also apply.
4. Side agreements and changes require the written confirmation of the Assembler.

### II. Assembly price

1. The assembly will be invoiced using time accounting in accordance with the Appendix unless the parties have agreed to a lump-sum price.
2. Services of sub-suppliers of the Assembler will be invoiced separately. The hourly rate charged by the sub-supplier plus a surcharge, but at least the amount of the respective rate of the Assembler (see Appendix) will be invoiced for this.
3. Invoiced incidental expenses will be passed on to the Contracting Entity without mark-up.
4. Taxes and levies as well as costs for the procurement of visas, work permits, etc. to be paid by the Assembler, municipal administrations, or governments in the country in which the assembly is carried out shall be borne by the Contracting Entity and the Assembler shall invoice the Contracting Entity for them.
5. The respective statutory value added tax is to be paid by the Assembler in addition.

### III. Terms & conditions of payment

1. The assembly invoices are to be paid in full immediately upon receipt. Any advance payments from the Assembler's assembly staff received against receipt are to be offset.
2. Retention of the owed amounts without offsetting is excluded.
3. If the Contracting Entity for the assembly is in arrears with its payments, including those from a delivery transaction, then the Assembler can postpone the fulfillment of its own obligations until the delinquent payments have been made, unless the arrears are due to an action or failure to act on the part of the Assembler. If the Assembler is also the supplier of the machinery to be assembled then the deadline from the delivery contract for as long as the delay in payment.

### IV. Support of the assembly staff by the Contracting Entity

1. The Contracting Entity is to support the assembly staff in the performance of the assembly at the Contracting Entity's own expense. The Contracting Entity is to take the necessary measures for protection against personal injury and property damage at the assembly location. The Contracting Entity is to ensure that there is always a contact person on site for the Assembler's staff during the assembly times. The Contracting Entity is also to instruct the assembly manager about existing safety regulations, insofar as these are to be applied by the assembly staff. The Contracting Entity shall notify the Assembly of violations of such safety regulations by the assembly staff. In the event of serious violations, the Contracting Entity can refuse the violating person access to the assembly area in consultation with the assembly manager.
2. If necessary, the Contracting Entity is to provide competent interpreters to the assembly staff at the Contracting Entity's own expense during working hours.
3. The Contracting Entity's due diligence also includes the provision of theft-proof rest and work areas (with heating, lighting, wash facilities, and sanitary installations) and first aid equipment for the assembly staff.
4. The assembly staff shall be insured against accident by the Assembler during the travel and assembly times. There are existing insurance policies with health insurance providers in the event of illness. In the event that the assembly staff suffers an illness or accident, however, the Contracting Entity is to provide for medical treatment and medication as well as any hospital stay required. Unless the costs for this are borne by the social insurance system of the country of the Contracting Entity due to an intergovernmental agreement with that country,

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the Contracting Entity shall undertake to pay all costs. The Assembler shall then compensate the Contracting Entity for these costs in the final invoice.

5. The Assembler's assembly staff shall perform the contractually agreed services only within the framework of the Working Hours Act that applies to them and may only be put to work within the parameters regulated by law.

## V. Technical assistance by the Contracting Entity

1. The Contracting Entity is obligated to provide technical assistance at its own expense.
2. The Contracting Entity is to ensure that the assembly is begun immediately after the arrival of the assembly staff and can be carried out without interruption until the acceptance of the machinery by the Contracting Entity.
3. The Contracting Entity is to accordingly ensure that the access routes to the installation area of the machinery can bear the load and that the foundation for the machinery according to the drawings provided by the Assembler as directed by the Contracting Entity's architects and structural engineers is fully completed and can bear the load. In the case of new buildings under construction, doors and windows must be installed in the installation area and the option for constant temperature and humidity regulation according to the specifications stipulated for the respective objects of assembly must be provided in the installation area.
4. The free-of-charge technical assistance further includes the following, in particular:
  - a. Provision of the necessary suitable supporting staff (e.g. locksmiths, mechanics, and electricians) in the number and for the time required for the assembly, during which the supporting staff are to follow the instructions of the assembly manager. The Assembler does not assume any liability for the supporting staff. If a defect or damage results from the supporting staff due to instructions of the assembly manager the Sections IX and X shall apply accordingly.
  - b. Provision of the necessary devices and heavy equipment (e.g. lifting gear, pulleys, transport rollers, ropes) as well as the necessary items and materials for use (e.g. scaffolding, wedges, cement, facing and sealing material, and lubricants).
  - c. Transport of the parts for assembly to the assembly location, protection of the parts and materials for assembly from harmful influences of any type, avoidance of dust-generating and noise-generating work at the assembly location, cleaning of the parts for assembly.
  - d. Provision of heating, Internet access, lighting, operating power, water, and compressed air including the necessary connections.
  - e. Provision of suitable dry and lockable rooms for the storage of the tools of the assembly staff.
  - f. Provision of the materials and performance of all other actions that are necessary to adjust the machinery and to perform contractual testing.
5. If the Contracting Entity does not fulfill its duties then the Assembler has the right, after giving prior notice, to perform the actions that are the obligation of the Contracting Entity in place of

the Contracting Entity and at the Contracting Entity's expense, but is not required to do so. The legal rights and claims of the Assembler remain otherwise unaffected.

## VI. Assembly period; delay in assembly

1. Any specifications regarding the assembly period are only approximate.
2. If by exception an assembly deadline is indicated as binding then it shall be considered met if the object of the assembly is ready to commence production (manufacturing salable products) by the Contracting Entity or the Assembler by the end of that date.
3. The assembly period is heavily dependent on the preparations of the Contracting Entity, particularly the number and quality of supporting staff members. The work shall be performed as quickly as possible.
4. If the Contracting Entity suffers damage that results from a delay on the part of the Assembler for which the Assembler is responsible and which does not result from circumstances that entitle the Assembler to extend the assembly period (e.g. Section VI Subsection 5) then the Contracting Entity has the right to request lump-sum damage compensation. It amounts to 0.5% per each full two-week period of delay up to a maximum amount of 5% of the assembly price for the part of the machinery to be assembled by the Assembler that cannot be used on schedule as a result of the delay.
5. If the assembly is delayed due to measures within the framework of labor disputes, in particular strike and lockout, waiting times as well as the occurrence of force majeure or circumstances for which the Assembler is not responsible, then the assembly period shall be extended accordingly. This shall apply even if such circumstances arise after the Assembler has fallen behind. Costs incurred due to the delay shall be borne by the Contracting Entity.
6. Further claims due to delay are determined exclusively in accordance with Section X Subsection 4.

## VII. Bearing of risk

Unless otherwise agreed, the Contracting Entity bears the risk of the assembly, i.e. the damage or loss of an item, at the assembly location so it is recommended for the Contracting Entity to take out an assembly insurance policy.

## VIII. Acceptance of the assembled machinery

1. The Contracting Entity is obligated to accept the assembly as soon as it has been shown to the Contracting Entity to be completed and any contractual testing of the assembled delivery item has been carried out.
2. If the assembly proves to not meet the specifications of the contract then the Assembler is obligated to correct the defect at the Assembler's expense. This shall not apply if the defect is irrelevant to the interests of the Contracting Entity or is due to a circumstance attributable to the Contracting Entity. If there is a minor defect then the Contracting Entity cannot refuse acceptance if the Assembler

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expressly acknowledges its duty to correct the defect.

3. If the acceptance is delayed through no fault of the Assembler then the acceptance procedure shall be considered to have been carried out once two weeks have passed since the Assembler has indicated that the assembly is completed.
4. When the acceptance procedure has been carried out, the service shall be considered accepted in accordance with the contract.
5. Unless otherwise agreed, machinery acceptance procedures shall be strictly invoiced to the Contracting Entity. This applies in particular for additionally provided technical staff such as instructors, technicians, and engineers. The costs for the posting of technical staff noted in Appendix 1 are used as the basis for this.

## IX. Warranty

1. Once the object of the assembly has commenced production, the Assembler provides a warranty for defects in assembly that arise within six months after acceptance, to the exclusion of all other claims of the Contracting Entity, notwithstanding Subsections 7 and 8 of Section X, such that the Contracting Entity is to correct the defects.
2. The Contracting Entity is to immediately notify the Assembly of a detected defect and to set an appropriate period for its correction.
3. If the defect ultimately fails to be corrected then the Contracting Entity can request a reduction of remuneration. The Contracting Entity cannot withdraw from the contract unless the assembly is verifiably of no interest to the Contracting Entity despite the reduction or the defect is substantial.
4. There shall be no warranty obligation of the Assembler if the defect is irrelevant to the interests of the Contracting Entity or is due to a circumstance attributable to the Contracting Entity.
5. If an assembly part supplied by the Assembler is damaged during assembly through the fault of the Assembler then the Assembler is to have it repaired at the Assembler's expense.
6. The Assembler bears no liability for the consequences of alterations or repairs incorrectly performed by the Contracting Entity or third parties without the prior consent of the Assembler. Only in urgent cases of risk to operating security and in order to prevent disproportionately heavy damage, in which case the Assembler is to be immediately informed, or if the Assembler (taking the statutory exceptions into consideration) has failed to perform defect correction within an appropriate period of time set for this, the Contracting Entity has the right to correct the defect or have it corrected by a third party and to request reimbursement for the required costs within the framework of statutory provisions.
7. If the Assembler (taking the statutory exceptions into consideration) has failed to perform defect correction within an appropriate period of time set for this, the Contracting Entity shall have a right to reduce the price within the framework of statutory provisions. The Contracting Entity cannot withdraw from the contract unless the assembly is verifiably of no interest to the Contracting Entity despite the reduction and the defect is minor.
8. Further claims are determined exclusively in accordance with Section X Subsection 4 of these Terms & Conditions.

## X. Limitation of liability

1. The Assembler shall not be liable if the defect is due to a circumstance for which the Contracting Entity or its vicarious agents are responsible.
2. The Assembler shall not be liable if the Contracting Entity has alterations or repairs performed by its staff or by third parties without the consent of the Assembler.
3. The Assembler is not required to accept liability for defects notified to or other declarations submitted to the assembly staff. Side agreements and orders issued verbally to assembly staff shall only be valid if they are confirmed in writing by the Assembler.
4. The Assembler shall be liable for damages that did not occur to the object of the assembly itself, regardless of what legal grounds there may be, only
  - a. in the case of intent,
  - b. in the case of gross negligence of the bodies or executive employees of the Assembler,
  - c. in the case of culpable injury to life, limb, or health,
  - d. in the case of defects that the Assembler fraudulently failed to disclose or whose absence the Assembler guaranteed,
  - e. and insofar as there is mandatory liability for personal injury or property damage.

If there is a culpable violation of material contractual obligations (i.e. obligations characterizing the contractual relationship and upon which the Contracting Entity can reasonably rely) then the Assembler shall also be liable in the case of the gross negligence of non-executive employees and in the case of slight negligence, but in the latter case to an extent limited to the damages typically reasonably foreseeable for this type of contract.

Further claims are excluded.

## XI. Limitation period

All claims of the Contracting Entity, regardless of what legal grounds there may be, expire after six (6) months. The statutory periods apply for claims in accordance with Section X Subsections 4 a) - e).

## XII. Liability of the Contracting Entity to pay compensation

Handling devices such as lifting gear, suspension devices, and strutting for the transport of the complete aggregates as well as assembly tools shall be provided on loan by the Assembler. These are to be returned to the Assembler carriage paid and free of expense immediately after the completion of the assembly. Devices or tools that have not been received by the Assembler by two months after the completion of the assembly shall be invoiced at their present value.

If the devices or tools lent out by the Assembler are damaged during transport or at the assembly location through no fault of the Assembler or if they are lost through no fault of the Assembler then the Contracting Entity is obligated to provide

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compensation for these damages. Damages that can be traced back to normal wear and tear shall not be taken into consideration.

## **XIII. Non-contractual work, labor piracy**

1. The Contracting Entity is not permitted to use the Assembler's staff to perform work that does not fall under the contract.
2. Furthermore, the Contracting Entity is only permitted to use the assembly staff for work that is properly settled with the Assembler.
3. The Contracting Entity is to refrain from enticing away staff.
4. In the event of infringement the Contracting Entity shall be obligated to pay damage compensation.

## **XIV. Place of jurisdiction, applicable law, court of arbitration**

1. The law of the Federal Republic of Germany applicable for the legal relations between domestic parties shall apply exclusively for all legal relations between the Assembler and the Contracting Entity.
2. All disputes resulting from or in connection with this contract are to be decided by the Regional Court which is substantively and territorially competent for the headquarters of the Assembler. The Assembler also has the right to legally assert its claims in the court competent for the Contracting Entity.