

General Contractual Terms and Conditions for the Business Area Construction Machinery & Equipment, Streif Baulogistik GmbH – Assembly Conditions

As at: 01.11.2008

1. **Ambit and Conclusion of Contract**

- 1.1 The present Conditions of Assembly shall apply to all contracts on the provision of assembly work on construction machinery and equipment. All of these contracts are exclusively governed by these Conditions of Assembly. These Conditions shall, without express declaration of such, be recognised as definitive and binding for the entire duration of the business relationship for the performance of assembly services.
- 1.2 The Client's own Terms & Conditions shall not be binding on the Contractor except where the Contractor has expressly agreed to such terms.
- 1.3 Amendments, alterations or other supplementary agreements must be recorded in writing. This does not rule out the possibility of oral supplementary agreements. The written form may not be replaced by the electronic form.
- 1.4 The present Conditions of Assembly shall apply to business people, legal entities under public law and to public assets pursuant to Art. 310, para. 1 German Civil Code.
- 1.5 Unless otherwise agreed, all of the Contractor's offers are subject to change.

2. **Price and Payment Terms**

- 2.1 The Contractor's rates and overtime surcharges (25% for the first two hours, 50% for each further hour and 100% for Sundays and holidays) applicable at the time the order is made shall apply. (Based on the given valid rate of calculation at the time the order is placed).
- 2.2 For agreed flat rate charges the following shall apply:
 - the Client's obligatory services shall be provided as planned and on time.
 - it must be possible to carry out the assembly work and testing in a single, uninterrupted work process.
 - where these conditions are not fulfilled, the Contractor shall be entitled to charge for additional costs.
- 2.3 Travel time to and from the site is deemed as working time. The calculation of mileage allowances, overnight stays and expenses shall be made based either on the flat rates valid at the time the order is placed or on actual outlay.
- 2.4 Other costs such as replacement parts, telephone, fax, and freight,, shall be invoiced separately on receipt basis.
- 2.5 The payment of the assembly fee inclusive of other expenses shall be payable immediately and in full on acceptance of the item, unless otherwise agreed. All prices stated are net and subject to VAT at the rate valid on the invoice issue date.
- 2.6 The Contractor is entitled to demand that the Client make part payments for contractual services provided in the case of individual parts of the work which have been completed. This shall also apply with regard to any necessary materials or parts which have been specially manufactured or delivered. This right shall only apply where title to the parts of the work, the materials or the parts has been transferred to the Client or security for such has been paid. Where the Client is more than four weeks in arrears with part payments, the Contractor is entitled to suspend the work, provided that the Client fails to make the due part payment or provide an advance payment or security amounting to the sum of the next due part payment.
- 2.7 The Client shall be entitled to withhold or offset payments only where he has counterclaims which are undisputed by the Contractor or which are legally binding.

3. **Client's Obligation to Cooperate**

- 3.1 With regard to the performance of assembly work, the Client shall provide support to the assembly personnel at his own expense. Where necessary, this shall also apply to suitable auxiliary personnel for whom the Contractor accepts no liability. Energy, including all necessary connections, is to be provided at the Client's expense.
- 3.2 The Client is responsible for the protection of persons and material at the place of assembly.
- 3.3 The Client shall ensure adequate working conditions and safety on site.
- 3.4 The assembly manager is to be informed on site of any safety regulations precautions to be observed.
- 3.5 The Client shall ensure that assembly starts immediately upon the arrival of the assembly personnel. The Client shall bear the costs of any delays for which the Client is responsible.

4. **Assembly Deadline and Transfer of Risk**

- 4.1 All statements with regard to dates and assembly deadlines are subject to change and are only approximate.
- 4.2 Where assembly work is delayed due to circumstances beyond the control of the Contractor, the assembly deadline

shall be extended by an appropriate period without any rights to make claims accruing to the Client. The Contractor shall be liable for costs incurred by delay only where he has caused such delay through deliberate action or gross negligence.

- 4.3 Demonstrable loss suffered by the Client through the Contractor's delay will be compensated but in the event of minor negligence such compensation shall amount to a maximum of 5% of the net assembly charge. All other claims shall be governed exclusively by No. 7 of these Conditions of Assembly.

5. **Acceptance**

Where acceptance is delayed for reasons beyond the Contractor's control, the acceptance shall be deemed as effected when 2 working days from receipt of the notice of assembly completion have elapsed.

6. **Defect Liability**

- 6.1 Where the Client requires supplementary performance, the Contractor may at his own discretion either remedy the defect or produce a new item. The Contractor may refuse supplementary performance if it is only possible at disproportionate cost or in the event of only a minor defect. In the event of failure or economic disproportion of the supplementary performance, the Client reserves the right at his own discretion to reduce payment or, where a construction service is not the object of the defect claim, withdraw from the contract.
- 6.2 Precise details of any identified defect must be notified to the Contractor in writing immediately.
- 6.3 Where the Client has himself undertaken assembly or maintenance work on the object or had such work undertaken by a third party without the Contractor's permission, the Contractor's warranty obligation shall lapse.
- 6.4 Where supplementary performance claims are justified, the Contractor shall bear only those costs which are made necessary by such supplementary performance.
- 6.5 The Client's defect claims shall be time limited to 12 months from acceptance. Where assembly work is carried out on a construction and the Contractor thus causes such construction to be defective, however, the legal time limits shall apply. The legal time limits shall also apply for claims pursuant to No. 7, sentence 2 below.

7. **Other Liability**

- 7.1 The Client may make no alternative claims against the Contractor other than those accorded to him under these General Conditions of Assembly, including any claims associated with the assembly arising out of non-contractual action or other rights, irrespective of the legal basis.
- 7.2 These liability restrictions shall not apply in the following cases:
 - deliberate action,
 - gross negligence on the part of the Owner, the organs or executives of the Contractor,
 - culpable injury to life, limb and health,
 - for defects which were deliberately concealed by the Contractor or where he has guaranteed that they do not exist,
 - insofar as liability shall apply pursuant to the Product Liability Act for personal or material losses with regard to privately used objects.

In the event of culpable breach of major contractual obligations the Contractor shall also be liable for the gross negligence of non-executive employees and for minor negligence, the latter case being however limited to losses which are contract typical and may be reasonably anticipated.

8. **Place of Jurisdiction**

Where the Client is a businessman, a legal entity under public law or a public asset, the place of performance and sole place of jurisdiction, summary procedures included, for both parties and for all current and future claims arising out of the business relationship shall at the discretion of the Contractor be either the place of the Contractor's head office, Essen, or the place at which the Contractor has a branch at the time the contract was concluded.

9. **Other Provisions**

German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.