

# General Contractual Conditions for the Scaffolding and Formwork Business Area of Streif Baulogistik GmbH – work performance contracts, particularly for special formwork units

As at: 01.11.2008

## 1. Scope and formation of contract

- 1.1 The contractual conditions hereinbelow are exclusively definitive for offers and contracts placed. These conditions are, without express declaration of such, recognised as definitive and binding for the entire duration of the business relationship.
- 1.2 The client's own terms and conditions are not binding on the contractor unless the supplier has expressly agreed to such terms and conditions.
- 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 contractor's written order confirmation is definitive in relation to the scope of delivery.
- 1.5 Partial deliveries are permissible provided the agreed delivery period for the entire scope of delivery is not exceeded thereby.
- 1.6 These General Contractual Conditions apply to businesspersons, public-law legal entities and public-law special assets under section 310.1 of the German Civil Code.
- 1.7 Unless otherwise agreed, all the contractor's offers are subject to change.

## 2. Delivery time

- 2.1 Observance of the delivery time requires timely and correct fulfilment of any obligations to cooperate on the part of the client.
- 2.2 If the client is late in acceptance or breaches other obligations to cooperate, the contractor is entitled to claim compensation for any losses that it incurs including any additional expenses. This does not affect the right to make other claims.
- 2.3 If the contractor is responsible for late delivery and thereby incurs a loss for the client, the latter is entitled to claim flat-rate compensation for delayed delivery. This compensation will amount to 0.5% of the value for each full week of delay but at most 5% of the value of the total consignment that has not been received on time or that cannot be used for its agreed contractual purpose because of such delay. If, with due consideration of legal exceptions, the client sets the contractor an appropriate deadline for performance and if such deadline is not met, the client is entitled according to legal regulations to withdraw from the contract. All other claims arising out of delayed delivery are regulated exclusively by sections 5 and 6 hereof.

## 3. Price and payment terms

- 3.1 Unless otherwise agreed, payments must be made in full within fourteen (14) calendar days of receipt of invoice.
- 3.2 If the client's counterclaims are recognised by the contractor or are judicially established, the client may offset its counterclaims against the contractor's claims or refuse or withhold payments. If counterclaims are not recognised by the contractor or judicially established, the client may not refuse or withhold its payments on account of its counterclaims nor may it offset against them.
- 3.3 All prices stated are net ex factory and subject to VAT at the rate valid on the invoice issue date.

## 4. Transfer of risk

- 4.1 The risk of accidental loss and accidental deterioration of the goods passes to the client when the work performance property is handed over.
- 4.2 If the work performance property is dispatched at the client's request, the risk of accidental loss or accidental deterioration of the goods passes to the client at the time of handover to the haulier, carrier or other person or office charged with the transport, irrespective of whether dispatch is from the place of performance and who is liable for the dispatch costs. If the work performance property is ready for dispatch and dispatch or acceptance is delayed for reasons beyond the contractor's control, the risk passes to the client on receipt of notification of the contractor's readiness to dispatch.
- 4.3 Packaging, whether for transport or for other purposes, in accordance with packaging regulations is not returned, with the exception of (Euro) pallets, transport containers and piling frames. The client must dispose of packaging at its own expense.
- 4.4 If so desired by the client, the contractor will take out transport insurance cover for the consignment; all costs incurred will be borne by the client.

## 5. Liability for defects

- 5.1 The client must inspect the work performance property immediately but at the latest within two (2) working days of receipt. The client must notify the contractor in writing of any defects in the work performance property immediately but at the latest within three (3) working days of receipt in respect of visible defects and within three (3) working days of having been identified in respect of non-visible defects; otherwise the property is deemed to be accepted. Non-visible defects may not be notified after expiry of one year from receipt of the work performance property. Notwithstanding this

provision, however, each notice of defects must at all times be prepared before the work performance property is used.

- 5.2 The client's defect liability rights require that it has duly complied with its inspection and notification obligations under section 5.1 hereof.
  - 5.3 If the purchased goods are defective, the contractor may, at its discretion, either remedy the defect or deliver the goods free of defect. The client retains the right either to reduce payment or to withdraw from the contract if defects are not remedied or replacement delivery not made.
  - 5.4 The contractor provides no warranty particularly with regard to the following:
    - natural wear and tear,
    - inappropriate or improper use,
    - incorrect assembly, operation or commissioning on the part of the client or any third party,
    - incorrect or negligent handling of the work performance property, particularly with regard to the operating instructions,
    - use of inappropriate machinery materials and substitute materials.
  - 5.5 If a guaranteed quality of the work performance property is absent, the contractor will be liable in accordance with legal regulations.
  - 5.6 The contractor is liable in accordance with legal regulations if the client claims damages on grounds of wilful intent or gross negligence, including wilful intent or gross negligence of its servants and agents.
  - 5.7 The contractor is liable in accordance with legal regulations in the event of culpable breach of major contractual obligations including liability for the gross negligence of non-executive employees and for lesser negligence, the latter case being limited, however, to losses that are typical for this type of contract and are reasonably foreseeable.
  - 5.8 The contractor is liable in accordance with legal regulations for losses to life, limb or health incurred by negligent breach of obligations on the part of the contractor or in the event of wilful or grossly negligent breach of obligations on the part of a servant or agent of the contractor.
  - 5.9 Liability under the Product Liability Law for personal or material losses with regard to privately used objects is unaffected hereby. Also unaffected hereby is liability in the case of a guarantee given by the contractor and of deliberate concealment of a defect.
  - 5.10 In all other instances liability for loss is excluded; the contractor is in particular not liable for losses not incurred on the work performance property itself.
  - 5.11 All the client's claims, irrespective of the material or legal grounds, become time-barred after twelve (12) months. The statutory periods apply to compensation claims under sections 5.5, 5.6, 5.7, 5.8, 5.9 and 6.1. The statutory periods also apply to defects related to a construction or to objects that, in accordance with their usual use, were used for a construction and caused its defectiveness.
  - 5.12 Used goods are sold as inspected to the exclusion of all defect liability, except in the event of deliberately concealed defects or a guarantee given by the contractor or a breach of third-party rights. This exclusion does not apply to compensation claims arising out of defect liability incurred by the wilful or grossly negligent breach of the contractor's obligations or in the event of injury to life, limb and health.
- ## 6. Other compensation claims
- Any other liability for loss than that stipulated in sections 2.3 and 5 hereof is excluded, irrespective of the legal nature of the claim asserted. This applies in particular to claims arising out of breach of pre-contractual or contractual obligations, delay or impermissible action.
- ## 7. Force majeure
- 7.1 If the contractor is prevented from fulfilling its obligations owing to the occurrence of unforeseen, extraordinary circumstances, which despite all possible care to be expected with regard to the given circumstances, it is unable to prevent, irrespective of whether such circumstances occur in its own works or in the works of its subcontractors, e.g. business interruption, official intervention, delay in the delivery of important raw materials and construction materials, or difficulties with the supply of energy, the delivery time will be extended by an appropriate period if delivery is not impossible. If, owing to the aforementioned circumstances, delivery is impossible, the contractor will be released from its obligation to perform.
  - 7.2 In the case of strike and lockout too, the delivery time will be extended by an appropriate period if delivery or performance is not impossible. If performance is impossible, the contractor will be released from its obligation to perform.
  - 7.3 If in the aforementioned cases the delivery time is extended or the contractor is released from its obligation to perform, the client's right to claim for losses thus incurred and its right to withdraw will be set aside.

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7.4 However, the contractor may call on the circumstances stipulated here only if the contractor has informed the client immediately and at the latest within fourteen (14) days.

## 8. Reservation of title

8.1 The contractor reserves title to the work performance property (conditional property) until payment in full of all claims arising under the business relationship between the contractor and the client. The cancellation of individual claims from an open account, striking a balance and the acknowledgment thereof do not affect the contractor's right to reservation of title. Payment is deemed to have been made when the contractor has received the equivalent amount.

8.2 If the client behaves in breach of contract the contractor is entitled to recover the conditional property. The recovery or distraint of the conditional property by the contractor represents a withdrawal from the contract.

8.3 The client herewith assigns to the contractor any claims out of the resale of the conditional property and the contractor accepts such assignment. Irrespective of the assignment and the contractor's right to collection, the client is entitled to collect as long as it fulfils its obligations to the contractor and does not succumb to financial collapse. The client must, at the contractor's request, provide the contractor with all information necessary for the collection of assigned claims and must inform its debtors of such assignment.

8.4 The client must inform the contractor immediately of any third-party enforcement proceedings in the conditional property and hand over any documentation required for any intervention. If the third party is unable to reimburse the contractor for the judicial and extrajudicial costs of any action under section 771 of the German Code of Civil Procedure, the client will be liable to the contractor for the resulting costs. In the event of distraint of the conditional property, any costs incurred by the contractor to have the property returned must also be reimbursed by the client.

If a third party asserts rights in the work performance property through seizure, distraint or similar, the client must immediately notify the contractor and advise the third party of same by registered letter.

8.5 At the client's request, the contractor undertakes to release the securities accorded to it under the aforementioned terms at its own discretion insofar as their value exceeds the asserted claim by 20% or more.

8.6 The client must adequately insure the conditional property at its own expense against theft, destruction and damage.

8.7 The client must handle the conditional property with care. If maintenance and inspection are necessary with regard to the conditional property, the client must have such work undertaken in good time at its own expense.

## 9. Place of jurisdiction

If the client is a businessperson, public-law legal entity or public special asset, the place of performance and sole place of jurisdiction, summary procedures included, for both parties and for all present and future claims arising out of the business relationship will at the contractor's discretion be either the place of the contractor's head office, Essen, or the place at which the contractor has a branch when the contract was concluded.

## 10. Other provisions

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