

Terms and Conditions of Assembly and Payment CHIRON Werke GmbH & Co. KG, Tuttlingen

I. Conclusion of contract

1. All agreements and offers are subject solely to these terms of assembly and payment; they are deemed to have been accepted once the order has been placed or the purchaser has assisted in the assembly. We will not be bound by any terms and conditions of the purchaser unless we have expressly acknowledged them in writing even if we have not expressly objected to them.
2. Amendments or additions to the agreements made by persons other than directors or authorized signatories (Prokuristen) are not valid unless confirmed in writing by our management. Any amendment to this written form requirement must be in writing.
3. Our offers are non-binding. Orders shall be deemed to be an invitation to conclude an agreement. We can accept such offers within 14 calendar days. All agreements do not become valid until we have confirmed them in writing. The content of the confirmation alone is authoritative. There are no oral collateral agreements.
4. The documents associated with the offer such as illustrations, drawings, weights and dimensions are only approximations. They do not constitute a quality agreement or a guarantee, but should only be seen as descriptions or designations of the supply or service. We reserve title and copyright in cost estimates, drawings and other documents. These shall not be disclosed to third parties.

II. Assembly deadline, delay

1. Assembly deadlines and assembly dates are only approximate, unless expressly set out otherwise in writing.
2. The assembly deadline shall be deemed kept if - until expiration of the deadline- the assembly object is ready for acceptance by the purchaser, or if testing is provided in the contract, the assembly object is ready for the test run.
3. The term of delivery begins as soon as all details of the execution have been finalised and both parties have agreed to the terms of the contract, unless otherwise agreed.
4. Compliance with assembly dates and other deadlines shall be subject to our having been supplied in a correct and timely manner as long as we are not responsible for such delay. Should it become apparent that delays are likely, the purchaser will be notified as soon as possible.
5. If assembly is delayed due to force majeure, industrial action, particularly strikes and lockouts, unrest, official measures and other unforeseeable, external, unavoidable and serious occurrences or owing to other circumstances for which we are not responsible, the agreed assembly term shall be extended by the length of the disruption plus a reasonable start-up time.
6. If a schedule is delayed at the request of the purchaser or for reasons, which fall within the purchaser's sphere of responsibility, the purchaser shall bear any costs incurred thereby.
7. If we are in default in rendering the assembly services, the purchaser can demand not only delivery, but also reimbursement of any loss incurred by the delay. However, provided we have not acted with intent or gross negligence, this claim is restricted to 0.5 % of the contract value of the order concerned per week of default and to a maximum of 5 % of the contract value. The purchaser's right to withdraw from the agreement once a reasonable subsequent deadline has expired and/or to compensation owing to the non-fulfilment in accordance with XI. shall remain unaffected.

III. Cooperation of purchaser, technical assistance

1. The purchaser shall support the assembly personnel during assembly without charge.
2. The purchaser is obliged to provide technical assistance without charge, in particular to
 - a) provide the required suitable specialists and assistance in sufficient number and for the required time, unless set out otherwise expressly in writing. The assistants shall follow the instructions of the assembly supervisor. We shall not assume liability for these assistants. If there is a defect or damage caused by the assistants on the basis of our instructions, our liability shall be subject to X. and XI. of the Terms and Conditions of Assembly and Payment
 - b) perform all earth, construction, bedding and scaffolding work, including the procurement of the necessary construction materials;
 - c) provide the necessary fixtures and heavy tools, such as compressors and the necessary commodity goods and materials e.g. wooden blocks, supports, underlayments, sealing materials, lubricants, fuels, transmission cables and straps, unless expressly set out otherwise in writing,
 - d) provide heat, light, power, water, including the necessary connections;
 - e) provide the necessary dry and lockable rooms for storing our tools;
 - f) transport the assembly parts on the assembly site, protect the assembly site and materials from detrimental influence of any kind, clean the assembly site,
 - g) provide suitable, theft-proof recreation and work rooms with heat, light, rest room facilities and first aid facilities for the assembly personnel;
 - h) provide parking and access options and areas to store material and containers close to the assembly location;
 - i) provide unsolicited information regarding the location of gas, electricity, water and other supply lines in the assembly area;
 - j) provide the materials and carry out all other acts which are necessary for the adjustment of the object to be assembled and for performing a contractually agreed test.
3. The purchaser's technical assistance must ensure that the assembly work can be started without undue delay after the arrival of the assembly personnel and continue without any delay until acceptance by the purchaser. We shall provide the purchaser with any diagrams or instructions in due time, if these are required. The plans and instructions shall remain our property, unless expressly set out otherwise in writing.
4. If the purchaser fails to comply with its obligations, after we have set a reasonable deadline we shall be entitled, to perform the purchaser's duties in its place and at the expense of the latter. However, there is no obligation in this respect. This shall have no effect on our statutory rights and claims. We shall not be entitled to perform such duties ourselves if the purchaser is not responsible for the breach of duty.

IV. Accident prevention

1. The purchaser shall take whatever special measures are necessary to protect persons and objects on the assembly site. The purchaser shall also notify the assembly supervisor in writing of any specific safety regulations without special request before assembly begins.
2. If the purchaser provides suitable assistants for assembly work in the context of technical assistance such personnel shall observe the instructions of the assembly supervisor, in particular with regard to accident prevention measures.
3. Both the purchaser and we ourselves shall provide the other with the names of those responsible for compliance with and monitoring of accident prevention regulations.

V. Acceptance

1. The purchaser is obliged to accept the assembly provided as soon as notification has been provided of the completion thereof and any contractually agreed testing of the assembled item has taken place. If the work is to be competed in tranches, each individual tranche shall be accepted separately. Should it transpire that the assembly does not comply with the contract, we are obliged at our option to either remedy the defect or to repair the defect by a renewal of the assembly. This does not apply if the defect is caused by a circumstance for which the purchaser is responsible. If the defect is not material the purchaser cannot refuse acceptance.
2. If acceptance is delayed without us being responsible therefore, acceptance is deemed to have taken place two weeks after the notification that assembly has been completed.
3. Upon acceptance our liability for obvious defects shall cease to exist, except for those defects for which the purchaser has reserved the right to make a claim for defect.

VI. Prices

1. Our prices shall apply to the scope of supply and service as set out in our order confirmations. They exclude prevailing VAT. Assembly shall be charged in accordance with time spent, unless expressly set out otherwise in writing.
2. If fixed prices are agreed, they shall be calculated on the basis of assembly in a 40-hour week from Monday to Friday with the exception of public holidays at the place of assembly. A working day shall be no more than 8 hours during the period from 08.00 hours to 17.00 hours. Work which has been ordered by the purchaser or assembly work on Saturdays, Sundays and public holidays which has been ordered by the purchaser shall be paid subject to a special rate as set out in our price list.
3. The fixed price only includes the work and services which are expressly listed. Any auxiliary and additional work over and above this shall be provided by the purchaser or remunerated in addition.
4. We may demand an additional rate for work under difficult conditions if difficult conditions emerge in the course of the assembly work which were not known and which were not apparent at the time the contract was concluded, subject to any express agreement to the contrary.
5. The purchaser shall be obliged to examine and countersign the weekly reports without undue delay. Any objections shall be reported without undue delay in writing.

VII. Terms of Payment

1. Invoices for repairs and assembly shall be due for payment net immediately on receipt.
2. Even if there are complaints on the grounds of defects or counterclaims, the purchaser is only entitled to offset and to retain, if the counterclaims are undisputed or declared final and absolute by a competent court.
3. All our claims shall be due immediately, irrespective of the term of the bills of exchange accepted and credited, if the purchaser is in partial default of payment. In such a case we are also entitled to carry out outstanding work only in return for advance payment or a deposit and, if neither is provided, to withdraw from/terminate the contract after a due deadline and to demand compensation due to non-fulfilment. This shall also apply, if we become aware of the fact, that the purchaser is unable to perform in full and that this jeopardises fulfilment of our claims.

4. In the case of payment in the form of bills of exchange
 - a) We reserve the right to accept bills of exchange which are only accepted on account of performance;
 - b) Discount is ruled out.
 - c) The debtor shall bear all expenses for bills of exchange;
 - d) credit notes shall be made so that we may dispose of the equivalent value on the value date.

VIII. Reservation of Title

1. We reserve title in all goods, which we have used for assembly purposes and in all goods which are delivered by us until the purchaser has settled all liabilities arising from its business relationship with us, including any liabilities which arise in future.
2. The purchaser shall treat the goods with care; in particular it shall insure the goods sufficiently against fire, water and theft at reinstatement value at its own cost.
3. If any goods in which we have title are combined or mixed with other items to form a new single item in such a way that one of the new items must be regarded as the principal item, we shall have pro rata (co-) title in the new item thus created, such (co-)title being the ratio of the value of the goods (co-)owned by us to the value of the combined or mixed items at the time of such combining or mixing, and the purchaser shall transfer title and possession therein here and now. We hereby accept this transfer / transfer of title. The purchaser shall hold the item created by combination or mixing for us free of charge.
4. In the event of seizure or any other measure taken by third parties in relation to the goods, the purchaser shall notify us in writing without delay so that we can initiate legal proceedings pursuant to § 771 German Code of Civil Procedure (*Zivilprozessordnung*) in order to prevent execution of any court order. If the third party is not able to reimburse us for costs incurred in or out of court pursuant to § 771 German Code of Civil Procedure, the purchaser shall be liable for our loss.
5. If the realisable value of the securities provided to us exceeds the total value of the claims secured by more than 10 %, we shall be obliged to release the securities of our choice upon request by the purchaser.

IX. Software

1. The software is only supplied in machine-readable form (object code). The source code is not subject of the contract and is not supplied with the software.
2. We grant the purchaser the non-exclusive right to use, i.e. install, load and run the software in accordance with the provisions below. The right of use is limited to the agreed period, or if an agreed period has not been agreed, the software may be used for an indefinite period.
3. We grant the purchaser the right to transfer the above right to third parties, in which case the purchaser must ensure that the third party is not granted broader rights of use in the software than those granted to the purchaser under its contractual agreement with us and that the third party is subject at least to the same obligations in respect of the software as stipulated under this contractual agreement with us. In doing this the purchaser may not keep copies of the software. The purchaser is not entitled to grant sub-licences. If the purchaser passes the software on to a third party, it is responsible for compliance with any export licences and will indemnify us from any related obligations.
4. The purchaser may only make a copy of the software for back-up purposes (back-up copy). Apart from cases stipulated in section 69e German Copyright Act (*Urheberrechtsgesetz*) (decompiling), the purchaser may not modify, reverse engineer, translate or extract parts of the software.
5. We are not liable for losses caused by the purchaser culpably modifying the software itself or having it modified by third parties without our express written consent, using it in or with hardware or software other than that agreed or stated in the documentation or using it for purpose not stated in the documentation.
6. We are not obliged to perform any software service work such as maintenance, hotline or updates which goes beyond the scope of what is covered by warranty. Any such additional work must be agreed separately.
7. The purchaser will make all necessary and reasonable efforts to prevent or limit damage caused by the software. In particular, the purchaser must ensure that programs and data are backed up at regular intervals. As far as the purchaser breaches this obligation we will not be liable for any consequences, particularly not for replacing lost or damaged data or programs. The above provision has no effect on the burden of proof.
8. If the goods supplied by us (e.g. machines) contain third-party software from other manufacturers then the software conditions of the respective manufacturer of the third-party software apply in addition to supply and use of this third-party software. On request in written or electronic form we will provide the purchaser with these software conditions.

X. Claims for defects

1. After acceptance of assembly, we are liable for defects of the assembly excluding all other claims of the purchaser subject to the provisions below and XI. in such a way that we must remedy the defects, if the purchaser has reported defects discovered to us in writing without undue delay, at the latest 10 days after discovery.
2. Claims for defects do not exist, if the purchaser is responsible for the defect.
3. We shall not bear liability for damage and defects caused by any modifications or repair work improperly carried out by the purchaser or third parties without our prior permission. In urgent cases only, i.e., where operational safety is at risk and to avert disproportionately high damage, where we are to be notified immediately, or - taking into account statutory exceptions - where we failed to remedy the defect within a reasonable time limit set by the purchaser, the purchaser shall be entitled - in accordance with statutory provisions - to remedy the defect itself or have it remedied by third parties - and to demand reimbursement of the necessary proven costs from us.
4. If we, taking into account the statutory exceptions, let a reasonable deadline placed upon us for the remedy of defects pass without remedying the defects concerned or if remedying the defect fails or if we unjustifiably refuse to remedy the defect, the purchaser shall be entitled to claim reduction of the purchase price in accordance with the statutory provisions. The purchaser may only rescind the agreement if the assembly is of no interest to the purchaser despite the reduction.
5. Claims owing to defects other than compensation claims as set out in XI. and in the event that a defect has been fraudulently concealed shall be statute-barred within one year from acceptance of assembly, unless the work concerned is work on a building.
6. Further claims of the purchaser shall be determined exclusively under XI. of these Terms and Conditions of Assembly and Payment. This shall have no effect on the purchaser's claims in as far as we have accepted a guarantee for the quality or the durability of the work supplied. The scope of liability depends of the content of the guarantee.

XI. Liability for damages

1. If an assembly part delivered by us is damaged during assembly and we are responsible therefore, we shall choose to either repair the damage or arrange for a new delivery at our own cost.
2. We shall be liable in cases of intent and gross negligence.
3. We shall also be liable in the event of negligent injury to life, body and health caused by us, our legal representatives or vicarious agents and in the event of fraudulent concealment of a defect or assumption of a guarantee (*Garantie*). In the latter case the extent of liability depends on the guarantee declaration.
4. We shall also be liable if we, our legal representatives or vicarious agents negligently breach duties the fulfilment of which guarantees the proper execution of the agreement in the first place and which the purchaser relies on or is entitled to rely on being fulfilled. If we have not acted with intent or gross negligence liability is restricted to the typical, foreseeable damage.
5. We shall also be liable in instances of mandatory statutory liability, for example pursuant to the Product Liability Act.
6. Otherwise liability is excluded irrespective of the legal ground.
7. The purchaser shall notify and consult us comprehensively and without undue delay, if it intends to claim for damages in accordance with the aforementioned provisions. The purchaser shall provide us with an opportunity to examine the loss occurrence.

XII. Final provisions

1. The place of jurisdiction for any disputes arising from or related to business relationship between us and the purchaser shall at our discretion either be Rottweil or the purchaser's place of registration. The exclusive place of jurisdiction for claims against us shall be Rottweil, Germany.
2. The relationships between us and the purchaser shall be subject exclusively to the laws of the Federal Republic of Germany. The application of the United Nations Conventions on Contracts for the International Sale of Goods (CISG) shall be excluded.
3. The headings in these Terms of Assembly and Payment serve only for better orientation. They have no relevance to interpretation of the provisions.
4. If one or more provisions of these Terms of Assembly and Payment or of this contract should be or become invalid this shall not affect the validity of the other provisions. The parties shall be obliged to agree on a new provision, which as far as possible reflects the economic intent of the invalid provision. The same shall apply in the event of a lacuna.