

General terms of installation

I. Applicability

These terms of installation apply to installation, repairs, instructions etc., unless agreements to the contrary have been made in writing. Collateral agreements and amendments must be confirmed in writing.

II. Installation Cost

1. Installation shall be invoiced according to the seller's installation rates valid from time to time, unless a flat-rate price has been expressly agreed.

The installation staff's normal working time is 8 hours a day from Monday to Friday. The working times shall be arranged according to the customer's usual factory hour or according to arrangements made with the customer on commencement of installation. The obligatory bank holidays of the federal state of North Rhine-Westphalia (Federal Republic of Germany) apply as holidays with extra pay/allowance. If a bank holiday of the host country occurs during the installation period on which work cannot be performed, 8 standard hours shall be invoiced.

The hourly rates shall be paid for working, travelling, waiting and preparation hours. Working time invoiced also includes time spent searching for accommodation and any registration required by the authorities, in as much as this causes loss of working time.

2. Overtime pay:

Weekdays: 9th and 10th hour 25%, all further hours 50%

Saturdays: 1st and 2nd hour 25%, all further hours 50%

Sundays: in general 50%,

holidays: in general 50%

3. The travel expenses incurred for the means of transport used (air, rail etc.) including any additional charges incurred shall be invoiced according to justification. Journeys by car shall be invoiced according to the number of kilometres driven on the basis of the current valid rate.

The expenses which the seller reimburses to his installation staff for board and lodging (daily allowance) will be charged to the customer. The amounts thereof will be based on the seller's rates valid at the time.

If several installations are performed consecutively the travel expenses shall be assigned on a pro-rata basis.

4. The installation cost will be invoiced after completion of the installation. The seller reserves the right to make out interim invoices for installations which take more than 4 weeks.
5. Any advance payments received by the installation staff from the customer shall be credited on submission of the signed receipts.
6. The allowance amount to be paid for out-of-pocket expenses and accommodation shall conform with the current valid installation rates.
7. The allowance shall also be charged for work-free days during installation as well as if the installation staff become ill or have an accident, unless the installation staff's living expenses no longer apply and immediate return is neither necessary nor possible.
8. Installation encompasses the delivery scope specified in the order confirmation/AK plan. Any agreements reached between the installation staff and the customer deviating from this delivery scope are not valid unless confirmed in writing by the seller. Spare parts and accessories ordered through the installation staff can only be supplied if such verbal orders are subsequently confirmed by the customer in writing.
9. All specifications regarding the duration of installation are only approximate. The beginning and duration may be delayed due to unforeseen circumstances beyond the control of the installation staff. However, if the specified deadlines are exceeded, the customer is not entitled to make price deductions or claim compensation.

10. For installations where a flat rate has been agreed this will only be valid for a non-interrupted installation. If the installation is delayed or interrupted due to circumstances beyond the seller's control the customer will have to take over all costs incurred.
11. The turnover tax/VAT is the legal amount applicable on the day the invoice is made out shall be added to the prices for installation within Germany. If the revenue authorities of the customer's country subsequently claim the turnover tax, the customer is obliged to refund the additionally claimed amount to the seller.
12. Installation invoices are payable immediately after receipt of invoice without any deduction.

III. Customer co-operation

1. The customer shall undertake to assist the installation staff in performing the installation work at his own charge. He shall undertake to provide the installation staff with the support required for performing the installation work. This also applies to any support not previously agreed, such as the provision of interpreters and assistants, filling out forms and applications, telephone calls and fax messages, use of workshop facilities etc. The support shall be provided to the contractor – in the following termed 'seller' – free of charge, unless other agreements have been reached in writing.
2. The customer has to provide all necessary measures to protect the persons and material in the place of installation. He also must instruct the installation staff about existing security provisions as far as they are relevant. He shall inform the seller of infringements of these provisions by the installation staff. In case of grave violations he can refuse the infringer access to the place of installation in consultation with the seller's service department.
3. The customer shall assist the installation staff in finding suitable accommodation, daily journeys between the accommodation and installation sites as well as transport from and to the place of arrival (airport, station etc.).
4. In the event of illness or accident the customer shall provide the installation staff with the necessary assistance for medical attention or accommodation in hospital. The customer shall inform the seller immediately with regard to the nature and severity of the illness/accident and shall co-ordinate all further measures to be taken together with the seller.
5. The customer is not entitled to the provision of particular service technicians. After informing the customer, the seller may remove service technicians and replace them by others. If a service technician is replaced for a reason not acceptable to the seller, the costs incurred shall be invoiced.
6. Sufficient operating and maintenance staff of the customer (plant mechanics and plant electricians) has to be made available for instruction.
7. Small quantities of materials of different formats have to be made available for the training of make readies for new jobs on the machines and the following production test.
8. In case of multi-shift operation it has to be made sure that the all machine operating and maintenance staff across all the shifts of the customer can be trained.

IV. Technical assistance on the part of the customer

1. All construction work such as factory building, foundations, scaffolding, lighting and heating of the installation site etc. must be completed before installation begins. The customer must guarantee that the load bearing capacity of the foundations at the installation site meet with the seller's specifications.

2. Provision of all necessary devices and tools (e.g. lifting means, fork lift trucks, compressors, etc.) as well as the necessary auxiliary products and materials (e.g. scaffolding, wedges, bolsters, cement, plaster and sealing material, lubricants, fuels, driving ropes and belts, floor fixing materials, levelling plates).
3. The Seller Service Department and customer shall agree on the necessary auxiliary devices before installation commences.
4. All necessary electrical connections, cable ducts as well as any other utility supply and return connections (air, extraction etc.) must be installed. The assembly and installation site must be clear and freely accessible.
5. Provision of appropriate, dry lockable rooms for the storage of tools of the installation staff.
6. Transport of the installation parts to the place of installation, protection of the installation place and materials against any damaging influences, cleaning of the installation place.
7. The customer shall attend to the unloading and transport of the machine and plant components to the installation site and/or from the intermediate storage site to the installation site, if these are not identical, as well as removal of packing material – after sufficient acclimatization. If the customer desires the presence of a qualified service technician this is subject to a separate arrangement and invoice. In this case the qualified service technician shall only carry out an advisory function, i.e. the customer shall assume responsibility, in particular, as far as safety regulations are concerned.
8. Provision of appropriate, lockable recreation and work rooms (with heating, lighting, washing facilities, sanitary installations), first aid for the installation staff and adequate car parking facilities.
9. Provision of material and all necessary actions which are necessary for the setup of the goods to be installed and for the realisation of any contractual trials.
10. The customer must guarantee that the installation may commence immediately on arrival of the installation staff and can be performed without delay until acceptance by the customer. In as much as specific seller's plans or instructions are required the seller shall provide them to the customer in due time.
11. The customer shall bear the costs for support and assistance unless another agreement has been reached in writing.
12. If installation cannot immediately commence on delivery of the machines and components the customer shall protect the machines and components at the storage and/or installation site against environmental influences and damage of any kind.
13. As soon as the customer/agent is informed of the delivery date he/they shall arrange for commencement of installation with the seller's Service Department in due time.
14. If the customer does not meet his obligations the seller shall be entitled but not obliged to carry out the actions incumbent upon the customer at his place and on his charge. All other legal rights and titles of the seller shall be not concerned.

V. Duration of installation, delay of installation

1. The installation will be deemed as completed once it is ready for inspection by the customer or for a trial run if contractually agreed upon, before the due date.
2. Commissioning will be effected immediately after the end of installation. In case of a later taking into operation the date has to be agreed with the seller in due course.
3. Commissioning will be performed with reject material. If the machine/machine line is commissioned using production material at the customer's request, the seller shall not accept liability for any possible deterioration in quality of the products.

Commissioning may only be performed by personnel appointed by the seller. Otherwise, the possible costs for remedying damage to machine or components shall be borne by the customer.

4. Technical safety specifications and devices.

- The installation staff are directed to instruct the machine operators and maintenance personnel with reference to the safety specifications and devices on the basis of the operating manual. The customer is obliged to ensure that all safety specifications, information/instructions and devices are strictly observed.
5. If the installation is delayed by actions caused by labour disputes, particularly strikes and lockouts, or by circumstances not imputable to the seller the installation period will be reasonably extended in as far as such obstacles are proved to have considerably affected the completion of the installation.
6. If the customer has to bear a damage caused by a delay of the seller he shall be entitled to claim for a lump-sum compensation for the delay. This will be 0.5% per complete week of delay but not more than 5% of the installation price for that part of the line to be installed by the seller that cannot be used in time due to the delay. If the customer fixes to the seller a reasonable deadline for the performance – taking into consideration the legal exceptions – after the due date and if the deadline is not respected the customer shall be entitled to restrain within the scope of the legal provisions.

Any further claims for delay shall be exclusively determined by section VIII 3 of these terms.

VI. Acceptance

1. The customer is obliged to accept the installation as soon as he has been notified of its completion and the installed item has been tested as possibly specified in the contract. An acceptance protocol shall be prepared to be signed by the customer and the installation staff. If the installation proves not to be in accordance with the order, the seller is obliged to remedy the defect at his own expense. This does not apply if the defect is insignificant with regard to the customer's interests or is due to circumstances imputable to the customer. In case of an insubstantial defect the customer cannot refuse acceptance if the seller expressly acknowledges his obligation to remedy the defect. A note shall be made in the acceptance protocol of any imperfect parts or functions.
2. If the acceptance is delayed for reasons not imputable to the seller the acceptance is deemed as completed after two weeks from notification of the completion of installation.
3. On acceptance the seller's liability for recognisable defects will expire unless the customer has reserved the right to claim for remedy of a particular defect.
4. A responsible employee of the customer shall certify the working hours of the installation staff on the prepared working hour sheets once the order is completed.
5. If the customer or his delegate is not present at the end of installation to confirm the working hours and material for installation staff the ascertainment made by the installation staff shall be deemed as binding.

VII. Warranty claims

1. After acceptance of the installation the seller will be liable for defects of the installation, exempt from all other claims of the customer irrespective of section VII 5 and section VIII, in the way that he has to remedy the defect. The customer shall immediately inform the seller of any defects detected.
2. The customer shall immediately inform the seller in writing of any defects detected.

3. The liability of the seller shall not apply if the defect is irrelevant for the customer's interests or is due to circumstances attributable to the customer.
4. The seller's warranty shall be reversed for consequences generated by alterations or repair works carried out by the customer or a third party without the seller's prior consent. Only in urgent cases of endangerment of the operational security or to prevent exceptionally grave damage of which the seller has to be informed immediately, or if the seller is in default remedying the defect in due course then the customer shall have the right to remedy the damage by himself or by a third party and then to claim from the customer the reimbursement of necessary expenses incurred.
5. Of the direct costs resulting from the repair the installation company shall bear the cost of the replacement part including the freight – in as much as the complaint proves to be justified. He shall also bear the cost of disassembly and assembly as well as the cost of the possibly necessary provision of installation staff and assistants including travelling expenses unless this places a disproportionate burden on the seller.
6. The seller shall not be liable for the placing on site of the goods to be installed even if a service technician is present. In this aspect the service technician may give advice but has no legally binding functions.
The customer shall assume full liability for all damage resulting from the insufficient or defective condition of the scaffolding equipment and lifting gear as well as any other equipment.
7. The customer's liability for machines and installation parts against theft, fire and water as well as any other damage not caused by the installation staff remains unaffected.
8. The seller will not accept liability for damage resulting from non-observance of the manufacturer's specifications and which are necessary for the operation of the machine/line, e.g. insufficient care and maintenance, use of incorrect lubricants, insufficiently dimensioned air supply or extraction, etc.
9. The installation staff is not authorised to make binding promises in particular with respect to questions of warranty.
10. Costs incurred by waiting times occurring while remedying warranty claims for reasons not attributable to the seller must be borne by the customer.
11. If the seller fails to meet the deadline given to him for the remedy of a warranty – taking into consideration the legal exceptions – the customer shall have the right to a reduction in price within the legal limitations. The right to a reduction in price will also apply in other cases of failure to remedy defects. The customer can only cancel the contract if the installation proves to be worthless for the customer despite the reduction

VIII. Liability of the seller, exemption from liability

1. If an assembly part is damaged due to a fault of the seller during the installation the seller shall decide whether to repair or replace it free of charge.
2. If through fault negligence of the seller the installed item cannot be used by the customer in accordance with the contract as a result of no or incorrect recommendations and advice before or after conclusion of the contract as well as of other contractual accessory obligations – in particular instructions for use and maintenance of the installed item – the provisions contained in section VII and VIII 1 and 3 shall apply accordingly to the exclusion of further claims brought forward on part of the customer.

3. The seller will be exempted from liability for defects which did not occur on the installed item itself – for whatever reason – except in case of:
 - a) wrongful intent,
 - b) gross negligence of the owner/bodies or executives,
 - c) injury to life, body or health,
 - d) defects that he intentionally withheld or whereof he guaranteed that they did not exist,
 - e) personal or material damages on privately used goods in as much as liability must be taken over according to the product liability act.

In case of faulty injuring of substantial clauses of the agreement the seller shall also be held liable for gross negligence the latter being limited to the contractually reasonable damages.
Any further claims are excluded.

IX. Limitation

All claims by the customer shall fall under the statute of limitations – for whatever reason – after 12 months. Damage claims according to section VIII 3a are subject to the legal time-limits.

X. Compensation of the customer

If devices or tools provided by the seller at the place of installation are damaged or lost without liability of the seller the customer will be liable to pay compensation. Damages due to usual wear are exempted.

XI. Law in force, place of jurisdiction

1. All business relations between the seller and the customer shall be governed by the law of the Federal Republic of Germany applicable for legal relationship between national parties.
2. The place of jurisdiction shall be the court competent at the seller's registered office. The seller, however, shall be entitled to take legal action at the place of the customer's registered office.

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