

For use in the case of:

1. a person who, at the time the contract is concluded, is exercising their commercial or self-employed professional activity (entrepreneur);
2. a legal entity under public law or a special assets fund under public law.

## **I. Scope of application**

These terms and conditions apply to installations that are undertaken by a mechanical engineering company (installation contractor), unless deviating agreements have been made in individual cases. These terms and conditions also apply to foreign transactions. Deviating contractual terms and conditions of the purchaser shall not be part of the contract even if the order is accepted.

## **II. Installation price**

1. The installation shall be charged according to the time calculation offered, unless an all-inclusive price has been expressly agreed.
2. The agreed amounts do not include value added tax, which is additionally to be paid to the installation contractor in the statutory amount.

## **III. Participation of the purchaser**

1. The purchaser must support the installation personnel in the execution of the installation at its own expense.
2. The customer must take the necessary special measures to protect persons and items at the installation location. The customer must also inform the person in charge of the installation about existing special safety regulations, insofar as these are important for the installation personnel. The customer shall notify the contractor of any breach of the safety instructions by the installation personnel. In the case of serious infringements, the customer may refuse access to the installation site to the infringing party in consultation with the person in charge of the installation.

## **IV. Technical assistance of the purchaser**

1. The purchaser is obligated to provide technical assistance at its own expense, in particular to:
  - a. Provide the necessary suitable auxiliary personnel (builders, carpenters, metal workers and other specialists, labourers) in the quantity and time required for the installation; the auxiliary personnel must follow the instructions of the person in charge of the installation. The contractor assumes no liability for the auxiliary personnel. If a defect or damage has arisen due to the instructions of the person in charge of the installation, Section VII and Section VIII shall apply correspondingly.
  - b. Carry out all earthworks, construction, underlay and scaffolding work including procurement of the necessary building materials.
  - c. Provision of the necessary equipment and heavy tools (e.g. hoists, compressors) as well as the necessary consumable goods and materials (e.g. construction wood, wedges, pads, cement, plastering and sealing material, lubricants, fuels, drive cables and drive belts).
  - d. Provision of heating, lighting, operating power, water including the necessary connections.
  - e. Provision of the required dry and also lockable rooms for the storage of the tools of the installation personnel.
  - f. Transport of installation parts to the installation site, protection of installation location and materials against harmful influences of any kind, cleaning of the installation location.
  - g. Provision of suitable, theft proof rooms and work areas (with heating, lighting, washing facilities, sanitary facilities) and first aid for the installation personnel.
  - h. Provision of the materials and the performance of all other actions necessary for the adjustment of the object of installation and for the carrying out of a contractually scheduled test.
2. This technical assistance service of the purchaser must ensure that the installation can be started immediately upon arrival of the installation personnel and can be carried out without delays until the

acceptance by the purchaser. Insofar as special plans or instructions are required from the installation contractor, the contractor shall make them available to the purchaser in good time.

3. If the purchaser does not fulfil its obligations, the installation contractor after the setting of a deadline shall be entitled but not obligated to perform the actions incumbent on the purchaser in place of and at the expense of the purchaser. For the rest the statutory rights and claims of the installation contractor shall remain unaffected.

## **V. Installation deadline, installation delay**

1. The installation deadline is met if the installation is ready for acceptance by the purchaser before its expiry, in the case of a contractually foreseen test if it is ready for its execution.
2. If the installation is delayed as a result of measures in the context of industrial disputes, in particular strikes and lockouts, pandemics (esp. COVID-19) as well as the occurrence of circumstances which are beyond the control of the installation contractor, insofar as such hindrances are proven to have a considerable influence on the completion of the installation, a corresponding appropriate extension of the installation deadline shall be granted.
3. If the purchaser sets a reasonable deadline for performance to the installation contractor after expiry and the deadline is not met, taking the legal exceptions into account, the purchaser shall be entitled to withdraw from the contract within the scope of the statutory provisions it undertakes to declare, at the request of the installation contractor, within a reasonable time, whether it is exercising its right of withdrawal.
4. The purchaser is entitled to withdraw from the contract without setting a period of grace if the supplier is finally unable to provide the complete services before the transfer of risk. In addition, the purchaser is entitled to withdraw from the contract if, in the case of an order, the performance of part of the delivery becomes impossible and the customer has a legitimate interest in rejecting the partial delivery. If this is not the case, the purchaser shall pay the contract price for the partial delivery. The same shall apply in the event of the inability of the supplier. Section VII.2 applies otherwise.
5. The installation contractor is released from timely delivery if the reason for the delay in delivery is not the fault of the installation contractor, but is directly or indirectly due to the outbreak of the COVID-19 virus (Corona). In this respect, there is then force majeure. This also applies if the installation contractor is not supplied by his sub-suppliers or is not supplied on time because they or the logistics chain are impaired by the outbreak.

Further claims as a result of delays shall be determined pursuant to Section VIII.3 of these terms and conditions.

## **VI. Acceptance**

1. The purchaser is obligated to accept the installation work as soon as the completion of the installation work has been notified and a contractually scheduled test of the installation object has been carried out. Should the installation prove not to be according to the contract, the contractor is obligated to remedy the defect. This shall not apply if the defect is irrelevant to the interests of the purchaser or is due to a circumstance attributable to the purchaser. If there is a non-essential defect, the purchaser can not refuse acceptance.
2. If acceptance is delayed without a fault on the part of the installation contractor, acceptance shall be deemed to have taken place two weeks after the notification of completion of the installation.
3. With the acceptance, the liability of the installation contractor for recognisable defects is cancelled, insofar as the purchaser has not reserved the assertion of a specific defect.

## **VII. Claims for defects**

1. After acceptance of the installation, the installation contractor is liable for any defects in the installation, excluding all other claims of the purchaser, without prejudice to no. 5 and 6 and Section VIII in such a way that it has to eliminate the defects. The purchaser shall immediately notify the installation contractor of any defect discovered.
2. The liability of the installation contractor does not apply if the defect is irrelevant to the interests of the purchaser or is due to a circumstance attributable to the purchaser.

3. The liability of the installation contractor shall be waived for the consequences arising from any improper modifications or repairs made by the purchaser or third parties without the prior consent of the installation contractor. Only in urgent cases of endangering operational safety and to avoid disproportionate damage, whereby the installation contractor must be informed immediately, or if the installation contractor, taking into account the statutory exceptions, has let a reasonable deadline set for remedying the defect elapse unsuccessfully, the purchaser has the right to have the defect rectified itself or by a third party, within the scope of the statutory provisions, and to demand compensation from the installation contractor for the necessary costs.
4. In the event of a justified complaint, the installation contractor shall bear the costs for the defect remedy, insofar as no disproportionate burden occurs thereby on the installation contractor.
5. If the installation contractor, taking into account the statutory exceptions, allows a reasonable deadline to set for it to remedy the defect to elapse unsuccessfully, the purchaser shall have a right of reduction within the scope of the legal regulations. Only if, despite the reduction, the installation is demonstrably of no interest to the purchaser, can the purchaser withdraw from the contract.
6. Further claims are governed exclusively by Section VIII.3 of these terms and conditions.

## VIII. Liability of the installation company, disclaimer

1. If, during installation, an installation part supplied by the installation contractor is damaged due to the fault of the installation contractor, it shall, at its discretion, repair or re-supply it at its own expense.
2. If, due to the fault of the installation contractor, the installed item can not be used by the purchaser for the contractually agreed purpose, due to negligence or faulty execution of proposals or advice given before or after conclusion of the contract or by the culpable violation of other subsidiary contractual obligations, in particular instructions for operating and maintaining the installed item, the provisions of Sections VII and VIII shall apply accordingly to the exclusion of further claims of the purchaser. 1 and 3.
3. For damages, which did not originate on the installation object itself, the installation contractor shall be liable, for whatever legal reasons, only
  - a. for intentional acts or gross negligence
  - b. for culpable injury to life, body, health,
  - c. for defects it has fraudulently concealed,
  - d. as part of a guarantee commitment,
  - e. insofar as liability exists under the Product Liability Act for personal injury or damage to privately used objects.

In the event of the culpable breach of essential contractual obligations, the installation contractor shall also be liable for simple negligence, albeit limited to the contractually typical, reasonably foreseeable damage.

Further claims are excluded.

## IX. Limitation period

All claims of the purchaser, for whatever legal reason, expire in 12 months. For damage claims according to Section VIII. 3 a-c and e, the statutory periods apply. If the installation contractor provides the installation services to a building and thereby causes its defectiveness, the statutory periods shall also apply.

## X. Compensation of the purchaser

If, without the fault of the installation contractor, the devices or tools provided by it are damaged on the installation site or if they are lost without its fault, the purchaser shall be obligated to compensate for such damages. Damages due to normal wear and tear are not considered.

## XI. Applicable law, place of jurisdiction

1. All legal relations between the installation contractor and the purchaser are exclusively subject to the law of the Federal Republic of Germany.
2. The place of jurisdiction is the competent court where the registered office of the installation contractor is located. The installation contractor shall, however, be entitled to take legal action at the registered office of the purchaser.

MKW GmbH Digital Automation  
Derken 15  
42327 Wuppertal  
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