

Terms and Conditions of Assembly and Service

ELBA-WERK GmbH

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1. Scope

These Terms and Conditions apply to all assembly, maintenance and repair work as well as other services (hereinafter: the Service) performed on plants, machines, equipment and devices (hereinafter: the Equipment) except where otherwise agreed in individual cases. Our Terms and Conditions of Business and Delivery apply supplementarily, unless they conflict with these Terms and Conditions. Our Terms and Conditions will become part of the contract by or before the time the Service is performed. Any conflicting terms and conditions of the customer do not become part of the contract even if the order is accepted or carried out. This also applies if we fail to expressly object to such terms. Side agreements and amendments must be made in writing. Our terms apply regardless of our legal relationship with the persons engaged in performing the Service (hereinafter: the Workers).

2. Quotations, Cost Estimates

Our quotations and cost estimates are subject to change without notice, unless we expressly indicate in writing that they are binding. No contract is formed until a written confirmation has been provided or the Service has been performed. If a written order confirmation exists and has not been rejected, it will control.

The validity of the contract is not affected if a non-binding cost estimate is exceeded. Likewise, such a cost estimate will not form the basis of the contract.

3. Payment

Except where a flat fee is expressly agreed upon, the Service will be billed on a labor and materials basis using our rates as they may change from time to time. All prices are listed net of statutory value-added tax.

The Workers' normal working hours are determined by the working hours agreement in place at the time. Workers will only work overtime, Saturdays and Sundays in urgent cases and at the customer's express request. Overtime and holiday surcharges will be billed in accordance with the collective wage agreements.

The customer agrees to confirm on every workday the number of hours worked by Workers with his signature. The signed confirmation slips constitute an approved record of the number of hours worked.

Working hours are understood to mean the plain working hours, plus any time spent giving or receiving instructions, providing tools and equipment, troubleshooting, preparing for the Service, giving reports at the place of Service; as well as any waiting time caused by the customer due to omissions, unsuccessful attempts to perform the work, or delays in the work to be performed by the customer; and such time may be subject to an overtime surcharge. Working hours include travel time. Travel time means the time spent traveling from our location to the place of Service and then back to our location. When traveling from another location, the travel time means the time spent traveling from this other location to the place of Service and then back to our location.

We determine the means of transport and the necessary number of Workers.

The customer only has a right to refuse performance until counter-performance is made – including, without limitation, with respect to defects – and a right of setoff wherever his claims against us are undisputed, upheld by

final and absolute judgment or ripe for decision. The customer is not entitled to assign any rights he may hold against us.

If providing the Service proves to be impossible for reasons beyond our control, or if the cost is grossly disproportionate to the value of the Equipment, with the result that the order is not performed in full, we may still demand such portion of our remuneration as is appropriate for the Service provided, and may require the reimbursement of expenses not covered by the remuneration.

4. Customer's Duty to Cooperate

The customer is responsible for securing necessary permits and approvals, and complying with any special regulations that apply to the customer's place of business. The customer's obligations to us are not affected by the absence of necessary permits and approvals.

The customer must assist the Workers with the Service at his own expense. The customer must arrange for and provide the following accessory services in such a way as to ensure we can perform without delay:

a. The customer must without delay provide us with the documents, information, error reports, test data, etc. required to provide the Service.

b. The customer must perform all preliminary work in a timely fashion, including, without limitation, excavation, scaffolding work, construction work and foundation-laying in accordance with the designated plans.

c. The customer must provide the necessary apparatuses, heavy tools, cranes, materials, implements and equipment in a timely fashion.

d. The customer must provide the assistants required to provide the Service for the entire duration of the Service. These assistants must follow the Workers' instructions. If the assistants cause damage, we are only liable within the limits of our liability clause and only if they were acting on our instructions.

e. The customer is responsible for ensuring the availability of energy, light, water, heat, consumables, etc.; this includes the necessary lines, sockets and connections.

f. The customer must provide dry, lockable rooms for storing material and tools on request.

g. The customer must take such safety and security precautions as we require and as are necessary to protect people and property. He will inform us of any special safety and security regulations of relevance to us. We must be informed without delay if our Workers violate these regulations.

h. The customer will protect the place of Service against all manner of harmful influences. He will clean the place of Service at his own expense after the Service has been rendered.

If the customer fails to perform his obligations, and this results in a delay, the customer will bear the costs incurred thereby, regardless of whether a flat fee had been agreed on. In such a case, we may perform or have third parties perform the action owed by the customer at the customer's expense. This is without prejudice to our legal rights.

5. Duration of Service

Deadlines regarding the duration of the Service are approximate. They are only binding if expressly identified as such in writing. The agreed upon duration of Service does not begin running until the customer has carried out all the cooperative acts he owes. Compliance with deadlines is subject to correct and timely delivery by our own suppliers. We will provide notice of any impending delays as soon as possible. If additional orders are placed later, the duration

of Service will be extended accordingly. Force majeure, requirements set by the authorities, and other circumstances for which we are not at fault (for example, strikes, difficulties in procuring materials, civil unrest, embargos, travel warnings issued by the German Federal Foreign Ministry) that significantly impede performance or make performance impossible other than temporarily, exempt us from our obligation to perform for the duration of their effects. We agree to notify the customer of any such events without delay. We may withdraw from the agreement if we cannot be reasonably expected to perform for the above reasons; this does not entitle the customer to damages. This also applies if an impeding event occurs while we are in default.

6. Acceptance

The customer is required to inspect and accept the Service as soon as he has been notified of its completion and asked to accept it. The customer cannot refuse acceptance for an immaterial defect. If the acceptance is delayed through no fault of our own, it will be deemed as granted two weeks after notification was given that the Service was completed. The acceptance discharges our liability for identifiable defects, unless the customer reserves the right in writing to assert a certain defect.

7. Claims Arising from Defects

The customer must notify us without delay of any obvious defects in the Service. Otherwise, the Service is deemed as approved.

If the Service proves to be defective, we are required to cure the defect, unless it stems from a circumstance caused by the customer. If the customer or a third party performs improper reworking without giving us the opportunity to cure the defect, we will not assume liability for the consequences. The customer is entitled to correct the defect himself, or to have third parties correct it, and to demand compensation from us for the necessary expenses, solely in emergencies that jeopardize operating safety, or to avert unreasonably severe damage, provided we are notified in advance, or we are in default in curing the defect.

8. Liability

We are liable for written warranties identified as such, and for willful misconduct, including that committed by our agents, managerial employees and menial servants and delegates.

In cases of gross negligence, including that committed by our agents and managerial employees, our liability is restricted to typical, predictable damages. In cases of gross negligence committed by our menial servants and delegates, we are only liable for typical and limited damages for violations of material contractual obligations. Material contractual obligations are obligations (a) that must be discharged for the contract to be performed properly and (b) that the contracting partners consistently rely upon being discharged.

In cases of slight negligence, including that committed by our agents, managerial employees and menial servants and delegates, we are only liable for typical and limited damages and the order amount, and only for violations of material contractual obligations.

Our liability is excluded in all other regards. This includes, without limitation, liability for compensation for bad faith in precontractual negotiations, for other breaches or for tort claims for compensation for property damage pursuant to German Civil Code § 823 [BGB].

Liability for culpable injuries to life, limb or health remains unaffected thereby; this also applies to mandatory liability under the Product Liability Act [*Produkthaftungsgesetz*].

These limitations do not apply if more extensive loss or damage is covered by existing business liability insurance. The customer must maintain insurance in the scope customary for the customer's industry and structure (e.g., business interruption insurance).

9. Replacements

If our property is damaged or lost at the place of performance through no fault of our own, the customer must provide a replacement.

10. Retention of Title and Liens

We retain title and copyright to samples, cost estimates, drawings and other tangible and intangible information – including electronic information; they may not be made accessible to third parties. We retain title to all accessories or spare parts until all payments arising from the business relationship with the customer have been received. We may impose a possessory lien with a power of sale on the Equipment or on any other items owned by the customer in our possession to satisfy any and all claims arising from the underlying contract.

11. Final Provisions

The customer's claims for defects become time-barred 12 months after completion/acceptance of the Service. The periods prescribed by law apply to claims for damages.

These provisions also apply to companies affiliated with the customer within the meaning of German Stock Corporation Act § 15 [*AktG*].

Should individual provisions of these Terms and Conditions prove invalid, the validity of the remaining provisions and of the contract as a whole will be unaffected thereby. German law applies. The sole place of jurisdiction is the place of our registered office. We are entitled to file suit against the customer at the customer's place of business.