

» **General Terms for Installation and
Repair Works for Germany and Abroad
from Maschinenfabrik Möllers GmbH**

I. Scope of application

These General Terms for Installation and Repair Works for Germany and Abroad apply to installation, servicing, commissioning and alterations. Unless otherwise agreed in writing, they supplement the General Terms of Sale and Delivery. The individual installation services arise from a separate Specification. Collateral agreements and amendments must be made in writing.

II. Installation price

1. Unless otherwise expressly agreed, performance shall be billed according to time and expenditure. Our current installation rates shall apply.
2. The agreed amounts are exclusive of VAT or comparable local sales taxes, which are to be additionally paid at the applicable statutory rate.
3. The regulations concerning statutory public holidays and Sunday working at the respective installation site shall apply.
4. The agreed accommodation allowance must not only be paid for every working day but also for such days on which the service technician must be present in connection with his activities at the installation site. During the period of any hospitalisation at the installation site, the accommodation allowance shall be reduced by 70% but with the addition of any further accommodation costs.
5. Travel costs shall be charged for both the outward and return journeys based in each case on the most practical means of transport (e.g. rail, aircraft, car, ship etc.). Reasonable costs will also be invoiced for freight charges for installation tools and other ancillary costs as well as cash outgoings in connection with the outward journey (insurance, luggage storage, taxis etc.). If the service engineer is unable to find accommodation in the vicinity of the installation site, additional travel costs between the installation site and the accommodation will be payable by the Customer.
6. Home journeys
 - a) After a period of four weeks' uninterrupted employment at the installation site our service engineers are entitled to return home, provided that the installation site is at least 180 km away from the service engineer's home address in Germany. The home journeys must be calculated such that the service engineer has 3 calendar days available apart from the travel days. The costs of the home journeys will be charged to the Customer orientation; there are no charges for the free days.
 - b) One home journey shall be respectively at Christmas, Easter, Whitsun and the start of the holidays. The remaining home journeys must always be taken in conjunction with a Sunday or public holiday.
 - c) An additional home journey must be granted in the event of the death of parents, parents-in-law, children, siblings and spouses living in a domestic setting, and the confinement of the service engineer's wife.
 - d) The Customer shall pay for the travel costs and accommodation during the home journey (to Germany) and back to the place of work in the cases listed under Clause II. 6a), b) and c).
 - e) Appropriate special arrangements can be agreed for installations in countries outside Europe.
7. Costs resulting from accidents or sickness at the installation site including any home travel costs will be borne by the Customer. The time of the doctor's visit including transit time at the installation site will be charged as working time.
8. Billing
 - a) The billing of the installation hours and accommodation charges will take place after completion of the installation works, in the case of installation works that exceed one month's duration, billing will be in the form of partial invoices not later than the end of the month.
 - b) The Customer shall confirm the actual time worked each day by using a form to be submitted by the service engineers, which shall form the basis for the billing.
 - c) Installation invoices are always payable immediately in cash without deductions, even when other payment terms may be applicable for some material deliveries.
 - d) Voluntary cash payments and payments in kind made by the Customer to our service personnel, which have not been expressly agreed with us in writing, cannot be taken into account in the invoice.
9. Lump sum price
 - a) Where the installation is being carried out for a lump sum, the cost estimate includes all work to be performed in accordance with the written specification. However, if for any reason the duration of the installation is prolonged or if, due to the actions of the Customer or one of his contractors, additional expenditure becomes necessary such that the work of the service personnel is interrupted or prolonged, then the waiting time, the additional working time, the total subsistence costs and any additional travel will be invoiced separately.
 - b) One-third of the lump sum price is due on commencement of the installation. A further third will become due after the half of the scheduled installation period has elapsed with the remainder becoming due on completion of the installation works.
 - c) Value-added tax at the respective statutory rate shall be added to the lump sum installation prices

III. Service personnel

1. We shall adapt the number, grade and composition of the service personnel according to the requirements of the job.
2. Our service engineers are not authorised to issue or receive letters of intent for Maschinenfabrik Möllers GmbH. For this reason, oral arrangements are only effective if they are confirmed by an authorised employee of Maschinenfabrik Möllers GmbH in writing.
3. Oral instructions given to service personnel to order materials or requirements for additional personnel are only binding on us if they have been notified to us by the Customer and confirmed by us in writing.

IV. Working conditions

1. The Customer must take the necessary special measures to protect people and property on the installation site. The Customer and Contractor must each name in writing a responsible representative (hereinafter referred to as "installation supervisor") whose task will be to maintain contact while carrying out the work in progress and coordinate the work.
The Customer must inform the Contractor's installation supervisor of any existing special safety regulations that are important for our service engineers. He shall inform the Contractor about any infringements of such safety regulations by the Contractor's service personnel. In cases of serious infringements, he can, with the agreement of the installation supervisor, have the offender banned from the site. The Contractor must inform the Customer about the particular hazards that may arise from the execution of the installation works.
2. The unhindered progress of the installation requires that all workspaces in which installation works take place are covered and equipped with windows and industrial doors such that the occupancy of the space neither harms the health of the service personnel nor impairs the condition of the material.
3. It is the responsibility of the Customer to ensure that the workspaces are adequately heated and to provide the service personnel with the necessary sanitary facilities and first aid equipment that is easily accessible in the event of accidents.
4. The Customer shall create modern means of communication for our service engineers, i.e. telephone, fax and internet access will be provided.

V. Technical assistance and the Customer's duty of cooperation

1. The Customer must provide technical assistance to ensure that the installation can start immediately on the arrival of the ser-

vice personnel and proceed without delay.

2. The Customer is obliged to provide technical assistance and cooperation at his own expense, in particular: to undertake all necessary auxiliary works he must provide:
 - a) unhindered transport routes directly to the installation site,
 - b) all tools and equipment necessary for the installation such as groundworks, the formation of chases and openings, erection of scaffolding, the casting of supports and anchors, the building-in of beams, brackets and balustrades, pipe clamps, other preliminary works and special facilities. Where a subsequent laying of the floor finish is envisaged, the levelling and determination of the foundation level as well as the provision of these materials must be arranged by the Customer.
 - c) All auxiliary consumables and equipment that do not form part of our scope of delivery, such as refractory materials, discharge pipes, installation scaffolding, fixings and power outlets in connection with the building and electro-pneumatic connecting lines between the individual power plants must be available in a timely manner, so that no interruption or delay ensues to the installation works.
 - d) The supporting personnel necessary for the auxiliary works and, when required also bricklayers, carpenters, metalworkers, electricians and other tradespeople must be made available in the numbers deemed necessary by us. These supporting personnel shall remain available to our installation management for the duration of the installation or repair works. They will nevertheless remain under the supervision, responsibility and duty to insure of the Customer.
 - e) The Customer must provide the necessary qualified personnel in the number and for the time necessary for the installation, who will provide the necessary collaborative services which are not part of the contractual services of Maschinenfabrik Möllers GmbH (e.g. personnel for carrying out technical work which is not the subject matter of the contract or Customer personnel who are to undergo training). After consultation with our installation supervisor, the Customer's installation supervisor will give the necessary instructions to the personnel, which they must comply with. For safety reasons, a Customer employee must be present during work outside the regular plant operating hours. The Contractor accepts no liability for the personnel provided by the Customer.
 - f) The Customer must provide: - all necessary auxiliary substances such as: gas, lubricants, oil, oxygen, acetylene, compressed air including the connecting lines to the installation sites;
 - g) all lifting equipment and transport devices for the tools

and necessary consumable items and substances (e.g. scaffolding boards, wedges, underlays, cement, plastering supplies and sealants, lubricants, fuels etc.);

- h) a suitable dry, lockable room exclusively for the installation personnel to store tools, machine parts and other items of equipment. The Customer must also protect the installation site and materials from harmful influences of any kind and to provide for cleaning of the installation site.
- 3. If, in the course of the installation, we are responsible for transport to the assembly site, unloading and storage of the material forming the object of the installation, these services shall be provided at the expense and risk of the Customer.
- 4. The Customer shall be liable for personal injury and damage to property caused by his personnel, the supporting personnel provided by him or third parties. He shall also bear full responsibility for accidents, the consequences of accidents and damage to property caused by a culpable breach of the Customer's duty to cooperate. The Customer shall be liable in particular for damage caused by the inadequate condition of the scaffolding and lifting gear and other equipment provided by the Customer, even if these have been used by our personnel without complaint.
- 5. If the Customer does not fulfil his obligations, the Contractor shall after notification and expiry of a reasonable period of time set for performance, be entitled but not obliged to carry out the actions incumbent upon the Customer in his place and at his expense. Otherwise, the statutory rights and claims of the Contractor shall remain unaffected, in particular the costs incurred thereby (e.g. waiting time, return journey) shall be borne by the Customer.
- 6. It is the responsibility of the Customer to expressly draw the attention of our service personnel in good time to any matters that should be taken into consideration regarding his operations.

VI. Insurance of personnel / sickness

- 1. Our personnel are insured on installation sites. The auxiliary personnel provided by the Customer are not covered by this insurance policy.
- 2. In cases of sickness and accidents, the Customer shall immediately implement measures for the care and restoration of the health of the sick or the accident victims, particularly the calling of a doctor and – where necessary – admission to a hospital managed on modern principles. We must be immediately notified in the event of such incidents. The reimbursement of costs arising from necessary curative treatments will be handled by our insurance company. Any recourse claims of

the insurance company remain unaffected. All costs associated with the deployment of a substitute person shall be borne by the Customer.

VII. Acceptance tests

- 1. If a formal handover has been agreed, the date for the acceptance tests must be notified by the Contractor in advance and the tests must be carried out in the presence of both parties to the technical conditions envisaged in the contract.
- 2. The Customer shall at his own expense implement all necessary precautions to carry out the acceptance tests and for the adjustment of the delivery items for operational readiness, particularly the necessary auxiliary and operating materials and to provide the necessary personnel.
- 3. Should defects become apparent during the acceptance tests, we shall remedy them within the framework of our contractual obligations. After remediation of the defects we shall be entitled and, upon the request of the Customer, obliged to repeat the acceptance test.
- 4. The Customer shall provide us with a certificate of the proper completion of the installation with the result and the date of acceptance. Insignificant defects do not release the Customer from his obligation to accept and to provide an acceptance report; however, they shall be noted in the report and entitle the Customer to assert his contractual rights in respect of defects. In the case of insignificant defects and reworking, the Customer cannot demand a repetition of the acceptance test.
- 5. If the Customer prevents the acceptance test from being carried out contrary to duty or if it cannot be carried out for other reasons for which we are not responsible, the acceptance of the plant shall be deemed to have taken place two weeks after notification of completion of the installation.
- 6. The commissioning of the completed plant for the manufacture of goods, that are suitable for sale by the Customer shall in all cases be deemed to constitute acceptance.

VIII. Installation period

- 1. If an installation period has been agreed, this shall only apply subject to the undisturbed progress of the installation works. This assumes the conditions laid down in these Conditions for Installation and Repair Works have been met by the Customer.
- 2. If the installation or repair works or the acceptance testing are delayed or interrupted through no fault of our own, then the Customer shall bear the resulting additional costs, particularly for waiting time, extended working time and if our personnel have to be withdrawn, also the associated travel costs.

3. If the carrying out of the work is impeded by force majeure including strikes and lockouts, the installation period shall, in the circumstances set out above, be extended to a reasonable extent. We reserve the right to agree with the Customer new terms adapted to the changed circumstances. Should it become impossible to carry out the works, we shall be released from our contractual obligations, but retain our claim to remuneration for services rendered and reimbursement of expenses incurred up to that point.

IX. Breach of contract by the Customer

1. Should the Customer fail to meet his contractual obligations within a reasonable grace period, we shall be entitled to take action to remedy the situation ourselves.
2. The Customer will be invoiced for and bear the costs thereby incurred if he has failed to meet a previously given deadline or has been sent a reminder to cooperate. We reserve the right to assert claims for further losses incurred.

X. Claims for defects

1. If there is a defect in the installation, we shall be under an obligation to subsequent performance at our own discretion either in the form of a rectification of the defect or by providing a new installation free from defects. The obligation to rectification applies only to those defects that have been notified to us in writing immediately after their detection.
2. The Customer must give us the necessary time and opportunity to rectify the defect or for subsequent performance. Otherwise we shall be released from liability for the resulting consequences.
3. If we are not willing or able to provide subsequent performance, in particular if such performance is delayed beyond reasonable periods for reasons for which we are responsible, or if subsequent performance fails in any other way, or if the type of subsequent performance to which the Customer is entitled is unreasonable, the Customer shall be entitled, at his discretion, to withdraw from the contract or to demand a reduction in payment. If there is only an insignificant defect, the Customer shall only be entitled to a reduction in the payment. Insofar as the Customer has suffered losses due to defects in the services provided by us or has incurred wasted expenditure, our liability for this shall be governed by Clause XI.
4. If the Customer or a third party contracted by the Customer carries out improper repairs we shall not be liable for the consequences arising from such repairs. The same shall apply to changes to a delivery item carried out without our prior consent that have led to a defect or damage.

5. If defects in our performance become apparent which, through no fault of our own, cannot be remedied immediately, we shall only be liable for those costs which would have arisen if we had remedied the defects immediately. If the Customer prevents us from rectifying identified defects, he shall bear the costs for the resulting damage, waiting time or other expenses.

XI. Liability

1. We shall be liable to the Customer and third parties for damage and wasted expenditure on whatever legal grounds only if the damage or wasted expenditure was:
 - a) caused by us or our vicarious agents through a culpable breach of an obligation, the fulfilment of which is essential for the proper performance of the contract and the compliance with which the Customer may regularly rely (essential contractual obligation), or
 - b) is due to a grossly negligent or intentional breach of duty by us or our vicarious agents.Notwithstanding Clause XI. 1 a), we shall only be liable for damage or wasted expenditure caused by advice and/or information that is not separately remunerated in the event of intentional or grossly negligent breach of duty, insofar as this breach of duty does not constitute a defect.
2. If we are liable pursuant to Section XI. 1. a) for the breach of an essential contractual obligation without gross negligence or intent, our liability for damage shall be limited to the foreseeable, typically occurring damage.

In this case, we shall in particular not be liable for lost profit of the Customer and not for foreseeable indirect consequential damages. The limitations of liability pursuant to sentences 1 and 2 shall apply in the same manner to damages caused by gross negligence or intent on the part of our employees or agents, unless they belong to our managing directors or executive employees.
3. The above limitations of liability stated in Clause XI.1 and 2. shall not apply to the extent that the liability is based on the provisions of the Product Liability Act or if claims arising from injury to life, limb or health are asserted against us. If the service provided by us lacks a guaranteed quality, we shall only be liable for such damage whose absence was the subject of the guarantee.
4. Any further liability for damage other than that provided for in Clauses XI. 1.-3. is excluded – irrespective of the legal nature of the asserted claim. This applies in particular to claims for damages arising from culpa in contrahendo, in the event of positive breach of contract or claims arising in tort.

5. Insofar as our liability for damages towards the Customer or third parties is excluded or limited in accordance with Clauses XI. 1.-4., this shall also apply with regard to the personal liability for damages of our employees, workers, staff, representatives and vicarious agents.

XII. Limitation period

1. Claims of the Customer due to defects due to services provided by us in breach of duty – including claims for damages and claims for reimbursement of wasted expenditure – shall become statute-barred within one year, unless otherwise specified in the following Sections XII. 2. and 3. In the case of contracts for work and services, the limitation period for claims of the Customer within the meaning of sentence 1 shall commence with acceptance and in all other cases with the statutory commencement of the limitation period.
2. For building defects or for delivery items which are used for a building in accordance with their usual use and which are the cause of the defectiveness of the building, the claims of the Customer shall become statute-barred within 5 years, beginning with acceptance or in other cases with the statutory commencement of the limitation period.
3. If we have provided advice and/or information in breach of duty which does not have to be remunerated separately without having provided services in connection with the information or advice or without the advice or information in breach of duty representing a defect in the service provided, claims against us based on such advice or information shall become statute-barred within one year of the statutory commencement of the limitation period.
4. Insofar as the advice or information in breach of duty constitutes a defect in the services provided by us in connection with the advice or information, the provisions made in Clauses 1, 2 and 4 shall apply to the statute of limitations of the rights based thereon. The provisions made in clauses 1 to 4 do not apply to the limitation of claims due to injury to life, limb or health as well as to the limitation of claims according to the Product Liability Act and due to defects in title of the services rendered by us, which consist in an urgent right of a third party on the basis of which the surrender of the service rendered can be demanded. Furthermore, they shall not apply to the limitation of claims of the Customer based on the fact that we fraudulently concealed defects in services rendered. In the cases specified in this Section XII.4, the statutory limitation periods shall apply to the limitation of claims.

XIII. General

1. The contracting authority may not use the Contractor's staff for work not covered by the contract without the Contractor's prior written consent. When using the Contractor's service technicians, the Customer shall observe the work restrictions in accordance with the applicable statutory provisions. Approvals in writing by the competent authorities for exceptional deviations must be available to the Customer.
2. The service engineers are not permitted to carry out work on third party machines or systems. The Contractor therefore assumes no liability for such work, even if it is carried out in connection with the installation of a machine supplied by the Contractor. The service engineers are not entitled to enter into agreements with the Customer on behalf of the Contractor.
3. Information given in advance by the Contractor on the duration of the installation is calculated according to the current state of knowledge and is therefore non-binding. The Customer undertakes not to offer the employees seconded to it an employment contract or to conclude such a contract without the Contractor's consent.
4. In the event that any provision of these Terms and Conditions be ineffective or subsequently loses its legal effectiveness, the validity of the remaining provisions shall not be affected thereby. The invalid provisions shall be replaced by the statutory provisions.

XIV. Applicable law; place of jurisdiction

1. The contractual relations shall be governed exclusively by German law to the exclusion of the following provisions United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our head office. We are also entitled to bring an action at the Customer's head office.

XV. Additional provisions

In addition, and insofar as these „General Terms and Conditions for Installation and Service Conditions for Germany and Abroad“ do not contain a deviating provision, our „General Terms and Conditions of Sale and Delivery for Germany and Abroad“ shall apply.