



# General terms and conditions for erection work and commissioning in Germany and abroad

## 1. Scope

- 1.1. These terms and conditions shall apply to erection and/or commissioning work (hereinafter exclusively referred to as erection work) which is undertaken by Kubota Brabender Technologie GmbH unless as otherwise agreed on a single case basis.
- 1.2. These terms and conditions shall not be applicable unless to enterprises as defined in section 310, subsection 1 of the German Civil Code (BGB)

## 2. Price for erection work

- 2.1. Erection work shall be invoiced according to timing as defined in the "Quotation for erection, commissioning and service work" unless an express lump-sum price has been agreed upon. All payments shall be made in Euros. If a lump-sum price has been agreed, the following will apply:
  - a. Every service to be provided by the purchaser as defined in these provisions must have been performed as planned and in good time.
  - b. It must be possible to perform erection work in a normal and uninterrupted process.
  - c. If and where the foregoing prerequisites are not complied with, we shall be entitled to invoice any additional costs incurred by such failure to comply in addition to the lump-sum price agreed.
- 2.2. Any amount agreed upon shall be deemed exclusive of value-added tax which shall be paid to us in addition in the applicable statutory amount. Any other taxes, charges, fees, customs duties, etc. shall be borne by the purchaser.

## 3. Cooperation by the purchaser

- 3.1. During the performance of any erection work, the purchaser shall provide assistance to the erection personnel at the purchaser's own expense.
- 3.2. The purchaser shall take any specific action as required for protecting both personnel and assets at the erection site. The purchaser shall also inform our erection manager about any specific safety regulations in place where such regulations are important for the erection personnel. The purchaser shall notify us of any infringement of such safety regulations committed by the erection personnel. In the event of any serious infringement, the purchaser, acting in consultation with the erection manager, may refuse access to the erection site to any person committing such infringement.

## 4. Technical assistance by the purchaser

- 4.1. The purchaser shall be obliged to provide technical assistance including but not limited to the following:
  - a. Provide suitable auxiliary personnel as needed (bricklayers, carpenters, fitters and any other skilled personnel, auxiliary workers) in the number and for the time as required for erection work. Any such auxiliary personnel shall follow the instructions given by the erection manager. We shall not assume any liability for such auxiliary personnel. Section 7 or section 8 shall apply if any defect or damage has been caused by auxiliary personnel due to the instructions given by the erection manager.
  - b. Performance of all earthwork, construction, bedding or ballasting and scaffolding work including the procurement of any construction material as required;
  - c. Provision of jigs and heavy tools as needed (e.g., lifting equipment, compressors, field forges) and of any utensils and supply materials as required (e.g., scaffold timber, wedges, support material, cement, cleaning and sealing material, lubricants, fuels, driving ropes and belts);
  - d. Provision of heating, lighting, power for operation, water, including any connection as required;

- e. Provision of dry and lockable rooms as needed for storing the tools used by the erection personnel;
  - f. Transport of erection components to the erection site, and protection of the erection site and materials against harmful influence of any kind, cleaning the erection site;
  - g. Provision of suitable and theftproof recreation rooms and workrooms (heating, lighting, washing facility, sanitary facility), and first aid for the erection personnel;
  - h. Provision of materials and performance of any other activities as required for adjusting the object to be erected, and for performing any trial as provided for under the contract.
- 4.2. The technical assistance provided by the purchaser must be so as to ensure that erection may commence immediately after the arrival of the erection personnel and may be performed without any delay until its acceptance by the purchaser. If required, any specific plan or instruction shall be provided to the purchaser by us in good time.
- 4.3. If the purchaser fails to comply with the purchaser's obligations, we shall be entitled but not obliged to perform any action incumbent on the purchaser by ourselves at the purchaser's place and at the purchaser's expense. Our legal rights and claims shall remain unaffected in other respects.

## 5. Erection period, delay in erection

- 5.1. The erection period shall be deemed observed if, until such period elapses, the erection is ready for acceptance or for the performance of any trials if provided for in the contract.
- 5.2. If erection is delayed by any industrial action including, but not limited to any strike or lockout, or by the occurrence of any circumstance through no fault on our side, the erection period shall be extended by a reasonable prolongation where any such obstruction is proven to exert a significant influence on the completion of erection; the foregoing shall also apply if any such circumstance occurs after we have incurred any delay.
- 5.3. If any damage or loss arises to the purchaser due to any delay caused by us, the purchaser shall be entitled to claim a lump-sum compensation for default. Such compensation shall amount to 0.5% in full for every full week of delay but not to more than 5% of the erection price for the part of the plant to be erected by us which may not be used in good time due to such delay.
- 5.4. If, after any due date, the purchaser specifies a reasonable period for performance by us, taking account of the exceptions as provided for by law, and if such period is not observed, the purchaser shall be entitled to rescind the contract subject to statutory provisions. The purchaser shall agree to declare within a reasonable period of time upon our request whether the purchaser will make use of such right to claim rescission of contract. Any other claim resulting from any delay shall be subject exclusively to section 7.3 of these terms and conditions.
- 5.5. Every deadline or erection period tentatively promised shall be deemed merely approximate in general unless a fixed deadline or a fixed period has been expressly promised or agreed.

## 6. Acceptance

- 6.1. The purchaser shall agree to grant acceptance of the erection work as soon as its completion has been notified to the purchaser, and any trial of the item erected has been performed if provided for in the contract. If erection turns out to be non conforming to the contract, we shall be obliged to correct any such non-conformance. The foregoing shall not apply if such non-conformance is not material to the purchaser's interests, or based on any circumstance which is under the purchaser's control. The Purchaser may not refuse acceptance on account of any nonessential defect.
- 6.2. If acceptance is delayed through no fault on our side, acceptance shall be deemed granted after two weeks have elapsed since the completion of erection has been notified.
- 6.3. Our liability for apparent defects shall end upon acceptance unless the purchaser has reserved the right for asserting any particular defect.

## 7. Claims based on defects

- 7.1. After the acceptance of erection, we shall be liable for any defect in the erection such that we shall correct any such defect, excluding any other claim of the purchaser and without prejudice to No. 5 and section 8. The purchaser shall notify us of any defect detected without delay.

- 7.2. Our liability shall not apply if such defect is not material to the purchaser's interests, or based on any circumstance which is under the purchaser's control.
- 7.3. Our liability shall be cancelled for the consequences brought about by any modification or repair work which, without our prior authorisation, has been performed improperly either by the purchaser or by any third party. The purchaser shall not be entitled, within the scope of statutory provisions, neither to correct any defect on his or her own nor have any defect corrected by any third party, and claim compensation from us for any expenditure required thereby unless in urgent cases which cause a hazard to operational safety or where required to avert any disproportionately high damage or loss, in which case we shall be notified thereof with no delay, or if, taking account of the exceptions as provided for by law, we have allowed to expire a reasonable time limit for defect correction which has been set for us.
- 7.4. From the immediate cost caused by defect correction, we shall pay the cost of any replacement part including shipping if and where such complaint is proven to be justified. We shall also bear the cost incurred by removal and erection, and the cost of any provision of fitters and auxiliary personnel on our side as required unless this would constitute any disproportionate burden. Travel expenses for any assignment abroad shall not be assumed unless in the amount which arises up to the German border.
- 7.5. The purchaser shall have a right of reduction within the scope of statutory provisions if, taking account of the exceptions as provided for by law, we have allowed a reasonable time limit for defect correction set for us to elapse without fulfilment. The purchaser's the right of reduction shall also exist in any other case in which defect correction fails. The purchaser may not rescind the contract unless the erection is proven not to be of any interest to the purchaser even after reduction. Any other claim shall be subject exclusively to section 7.3 of these terms and conditions.

## 8. Liability and exclusion of liability

- 8.1. If any erection component supplied by us is damaged during erection work through any fault on our side, we shall, at our option and at our expense, either repair such component or deliver a new component.
- 8.2. The provisions as set forth in sections 7 and 8 1 and 3 shall apply mutatis mutandis excluding any further claim of the purchaser if the installed item may not be used by the purchaser as provided for in the contract through any fault on our side, due to any failure to perform or any defective performance of any proposal or consulting made or given either before or after contract conclusion or any other subsidiary duty under the contract, including but not limited to any instruction for the operator control and maintenance of such installed item.
- 8.3. We shall not assume liability for any loss or damage which, irrespectively of its legal basis, has not been caused in the erected item itself unless:
  - a. caused intentionally;
  - b. caused by gross negligence committed by the proprietor, by any executive body or by any executive employee;
  - c. in the event of any culpable injury to life, body, health;
  - d. for any defect we have fraudulently concealed;
  - e. within the scope of any promise of guarantee;
  - f. if and where the German Product Liability Act provides for liability for personal injury or material damage of objects used for private purposes.

In the event of any culpable non-observance of essential duties under a contract, we shall also be liable for gross negligence by non-executive employees, and for ordinary negligence, while the latter cases shall be restricted to the reasonably foreseeable contract-typical damage.

Any further claim shall be excluded.

## 9. Statute of limitations

- 9.1. Every claim made by the purchaser shall become statute-barred in 12 months irrespectively of its legal basis. Any claim for damage compensation pursuant to section VIII. 3 a – d and f shall be subject to the statutory time limits. Statutory time limits shall also apply if we perform erection services in a building structure and thus cause the structure's defectiveness.

## **10. Due date and payment of invoice, reservation of title**

- 10.1. Erection shall be payable without any deduction immediately upon invoice receipt.
- 10.2. We may request reasonable advance payment.
- 10.3. Any complaint about an invoice shall be notified in writing and within a period of 14 days after the invoice date.
- 10.4. No right to retain any payment shall be available to the purchaser unless if and where the purchaser's counterclaims are uncontested or recognized by declaratory judgment, or ready for a decision in any proceedings pending in court.
- 10.5. Any existing reservations of title resulting from any previous delivery shall also be used as collateral for securing any claim arising from erection or other services provided.

## **11. Compensation by the purchaser**

- 11.1. The purchaser shall be obliged to provide compensation for any damage if any jig or tool provided by us is damaged or lost at the erection site through no fault on our side. Any damage caused by normal wear and tear shall not be taken into consideration.

## **12. Choice of law, place of jurisdiction**

- 12.1. Any legal relationship between us and the purchaser shall be subject exclusively to the law of the Federal Republic of Germany governing the mutual legal relationships between domestic parties.
- 12.2. The place of jurisdiction shall be the court of law competent for our registered office. But we shall be entitled to bring action at the purchaser's principal place of business.