

1. Scope

These conditions are valid for orders from SMS Schumag GmbH for the provision of personnel for the Service department, including erection and installation work in connection with repairs, spare parts deliveries and inspections as well as for the monitoring of erection/installation, commissioning, on-site training and trial operation.

All services are based on these terms and conditions and on any separate contractual agreements. Purchasing conditions of the ordering party that deviate from these terms conditions shall not be incorporated into the contract even upon acceptance of the order. We shall not be bound by the purchasing conditions of the ordering party even if we do not expressly contradict them. We shall not be bound by declarations which deviate from our terms and conditions, for example, in the order acknowledgement of the ordering party sent after conclusion of the agreement; we shall contradict any such declarations right at the outset.

All provisions not included in these terms and conditions, such as numbers and duties of the personnel, terms of payment, etc. shall be agreed upon separately.

2. Quotation and conclusion of contract

The documents belonging to the quotation, such as illustrations, drawings, and specified weights and dimensions, are only approximately relevant unless they have been expressly deemed binding.

The right of ownership and copyright in respect of cost estimates, drawings and other documents shall remain with us; these may not be used or made available to third parties without our approval. The same shall apply to other technical details which are obtained from our service or which we reveal to the ordering party in the quotation, in other correspondence or during negotiations. Already by commencing contractual negotiations with us, the ordering party shall recognise these obligations regardless of whether a delivery order becomes effective.

All our quotations which do not contain an acceptance date are subject to change without notice. The order shall become binding for us only when we have confirmed acceptance in writing.

Conclusions and other agreements, in particular insofar as they modify these terms and conditions, shall become binding only with our written confirmation.

3. Scope of work, period of service

The services are listed at the end of the order confirmation, including any possible annexes thereto.

For repair orders, the activities of the personnel are quantified according to the scope defined in the written order.

The period of service depends on the agreements made between the contracting parties. The prerequisite for honouring the agreements is that all commercial and technical questions between the contracting parties must be clarified. If this is not the case, the period of service shall be extended accordingly.

All times indicated for performance of the work are only approximately relevant. The duration of the work is determined principally by the on-site conditions and by the amount of support granted by the ordering party.

If no period of service has been agreed, it shall be decided upon between the parties at the latest four weeks before commencement of the service.

The precondition for sending out the personnel in good time is the punctual issuing of the necessary official certifications, visas and import and export licences for the luggage and tools.

If we default on the service, the ordering party can, insofar as the delay is attributable entirely to us and the ordering party has suffered damage as a result of the delay, demand for each week starting from the expiry of the appropriate grace period 0.5%, in total however maximum 5% of the value of that part of the overall service which has been adversely affected by the delay.

Other claims, in particular for further compensation, such as consequential damage and loss of profit, are excluded regardless of the legal grounds for this.

Should it become evident at the beginning of the repair work that a much greater scope of repair work will be necessary, then this shall be considered as approved by the ordering party, provided that he does not contradict this immediately upon being notified of the situation by our personnel.

If such repairs cannot be made on-site or by our personnel, it shall be the responsibility of the ordering party to arrange for these repairs to be made.

4. Working hours

The regular weekly working hours are indicated in the applicable version of the price list. They are basically always distributed over five working days. The allocation of the working hours to the individual working days can be adapted according to the conditions on site.

Working hours extending beyond the regular weekly working period require the acceptance by the personnel.

Within Europe, the rules governing public holidays in Germany apply, outside of Europe the public holidays applicable to the location of the site are valid. Public holidays are considered to be those days on which resting from work is generally customary. Easter Sunday, Whit Sunday and 25th December are public holidays in all cases.

In the case of assignments abroad, the specialists are entitled to a journey home after a stay of four months at the site location, provided that it is foreseeable at that time that the work will continue for a further two months.

5. Prices and ancillary costs

The costs of providing personnel, tools, instruments, etc. shall be calculated according to expenditure of time and material as follows:
The calculation basis is our price list valid at the time of order confirmation, unless a lump-sum price has been expressly agreed.

5.1 Personnel costs For work within the regular weekly working hours the rates of charge according to the price list shall be applicable.

For those hours worked in excess of the regular weekly working hours and for work on Sundays and public holidays, the supplements listed in our price list shall be paid. Overtime working is also considered to be those hours worked in excess of eight hours daily, provided that the preconditions indicated in the price list are satisfied.

The time expenditure for outward and return journeys of up to twelve hours per day as well as an adequate period of time for order-related preparation and handling are considered to be working time and shall be calculated according to the rates of charge indicated in our price list.

Waiting times for which the contractor is not responsible shall be calculated as working time.

The daily home-to-site time for the direct distance between accommodation and site shall be calculated as working time without supplements, provided that it exceeds half an hour for a one-way journey. The costs for the necessary use of adequate means of transport shall be reimbursed by the ordering party, insofar as such means of transport cannot be made available free of charge.

The ordering party shall provide the erection personnel with confirmation of the hours worked each week on the employment certificates submitted to them. If the ordering party does not issue the certificates in good time, the own records of the erection personnel shall serve as the accounting basis.

The rates of charge are based on the wages and salaries valid in the Federal Republic of Germany at the time of order confirmation or, if no quotation has been submitted, of conclusion of the contract. Should these change before completion of the erection/installation work, the right is reserved to adapt the rates of charge accordingly from the point of time in question.

5.2 Travel expenses and ancillary travel costs The costs of outward and return journeys and for order-related journeys within the country of assignment, including the necessary ancillary expenses, e.g. for transport, import and export of luggage, passport and visa fees, issuing of entry, residence and work permits, tropical medical examination at the times of leaving and returning to the country, and inoculation of the erection personnel, shall be reimbursed by the ordering party according to the expenditure. The type and class of transport are governed by the individual agreements.

The costs for journeys home (travel expenses, etc.) shall be borne by the ordering party.

5.3 Accommodation expenses: Accommodation costs during the journey and at the site location shall be disbursed by our personnel and then invoiced to the ordering party together with the other costs. At the request of the ordering party, the ordering party can also provide accommodation to Central European standard at the place of work at his own expense.

No payments shall be made by the ordering party to the contractor's personnel.

5.4 Equipment allowances: If the personnel are assigned to areas with extraordinary climatic conditions, the ordering party shall pay an equipment allowance for the provision of the relevant equipment in accordance with a separate agreement between the parties.

5.5 Costs for tools and instruments: In cases where the provision of tools, measuring and testing devices, etc. is agreed upon, fees shall be calculated in accordance with separate agreements between the parties from the day of dispatch until the arrival back at the place of dispatch. Consumable tools shall only be sold to the ordering party, at the correspondingly valid prices and delivery conditions of the contractor.

The transportation as well as the importing and exporting of the above equipment shall be performed at the expense and risk of the ordering party. Damage caused to tools and instruments shall be eliminated by the contractor at the expense of the ordering party.

6. Obligations of the ordering party

6.1. Unless an alternative agreement has been made, the ordering party shall provide to us at the place of work, punctually and free of charge, all necessary cranes, lifting tools, equipment for transportation at the place of work, auxiliary tools, machines, material and operating supplies (including petrol and other fuel, oil, grease and other materials, gas, water, electricity, steam, compressed air, heating, light etc.) as well as the measurement and test devices belonging to the ordering party and available at the place of work.

6.2. If necessary, the ordering party shall provide suitable interpreters.

6.3. The ordering party shall make available telephone, fax and internet connections.

General conditions for the provision of personnel

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6.4. Upon being requested to do so in good time by us, the ordering party shall provide us free of charge with skilled and unskilled auxiliary personnel in conformity with the order or as suitable for the purpose of the order. Any liability on our part towards the auxiliary personnel or for the actions or omissions of such personnel is excluded.

6.5. The ordering party is obliged to take all measures which are required for industrial safety and environmental protection and to consider all official and legal regulations. He must inform the erection personnel about the valid safety regulations in writing.

The ordering party shall ensure, at his expense, the possibility of rendering first aid and medical attention at the site location as well as the availability of suitable means of transport for immediate transfer to hospital.

6.6 The ordering party shall bear responsibility for the material to be installed during the execution of the work and for the tools, equipment and materials made available by him

We retain our entitlement to the agreed remuneration, even in cases where the erection/installation cannot be performed, or only partially performed, due to destruction or partial destruction of the equipment to be erected/installed.

6.7. The ordering party must support and ensure to the best of his ability the punctual issuing of visas for the personnel and the granting of other official authorisations, such as entry and exit permits, export licences and work permits, as well as the tax certifications required in the country of the ordering party. He must also ensure that the personnel have access to the place of work.

7. Terms of payment

The prices are calculated according to the correspondingly valid price lists at the time of order confirmation. Should there be an increase in the cost factors decisive for the pricing, such as prices of materials, operating materials, wages and freight, we are entitled to adapt the price accordingly. The same applies in the case of unforeseeable circumstances which justify a price adaptation.

Our prices do not include the statutory VAT; this shall be itemised separately in the invoice in the statutory amount on the date of invoicing.

Payments are to be made immediately upon receipt of the corresponding invoice, but not later than within a period of 30 days from the date of the invoice.

The ordering party is under no circumstances entitled to exercise a right of retention, not even if he has objections to the services. If we accept bills or cheques, the debt shall be cancelled only upon encashment. Discount charges and all costs incurred in conjunction with the encashment of the bill or cheque amount shall be borne by the ordering party.

If the agreed payment dates are exceeded, we can demand interest and commissions according to the relevant bank rates for short-term loans as from the date of exceeding the deadline, without need for a special notice of default. This shall not exclude the assertion of a further claim for damages in the event of delay on the part of the ordering party. We can withdraw from the contract as soon as an appropriate grace period set by us has also expired unsuccessfully.

Taxes, fees and other fiscal charges imposed on the contractor or his erection/installation personnel in the country of assignment in connection with the contractual activity shall be borne by the ordering party.

8. Force Majeure

If the fulfilment of the contract is delayed by the occurrence of cases of force majeure or by action or omission of the ordering party, an adequate extension of time for completion, as justified by the circumstances, shall be granted to us.

If the fulfilment of contract is delayed for more than four months for reasons of force majeure and if the parties have not agreed upon a new basis for the continuation of work at the end of the delay, both parties can cancel the contract after this time, if the reason for the non-fulfilment continues to exist, in writing vis-à-vis the other party and subject to a deadline of at least 30 days.

9. Liability and warranty

9.1. Possible claims can only be asserted within six months after completion of the work.

Under exclusion of all other claims, we are liable only for the careful selection of the assigned specialists. Claims or rights because of possible disadvantages connected with the work are excluded, irrespective of the legal grounds on which they are based.

In the event of a grossly negligent breach caused by us against these obligations, we shall be liable for the damages resulting from this in individual cases by up to 25% of the actual remuneration or of the remuneration to which we would probably have been entitled had the contract been fulfilled. The overall liability, insofar as permitted by law, is limited to the value of order under exclusion of all other claims, irrespective of the legal grounds.

The ordering party must inform us of any defect immediately in writing.

9.2. The liability shall not be applicable in cases where the damage would have occurred even had the personnel been carefully selected or assigned in good time. Other claims of the ordering party against the contractor and his personnel, irrespective of the legal grounds, are excluded.

2/2

Any alterations or repair work made improperly by the ordering party or third parties without our prior authorisation shall have the effect of cancelling our liability for defects.

Our specialists are not entitled to make any statements that are binding for us.

9.3. The ordering party cannot assert any claims for damages over and above those to which he is entitled under these provisions, and especially no claims for compensation, including those arising from non-contractual liability, nor other rights arising from possible disadvantages connected with the service, irrespective of the legal grounds on which they may be based.

9.4. The ordering party is responsible for accidents, consequences of accidents and damage to property that are attributable to the deficient condition of the devices, equipment and auxiliary materials made available by him, even if these are used by our specialists without objections. The personal liability of our personnel is excluded in all cases.

10. Software

Should we provide software, this is intended exclusively for the purposes indicated in the order.

Any other use, particularly passing-on to third parties, is not allowed without our prior written authorisation.

We retain all rights of ownership and copyright.

The warranty for software is six months. It begins when the software is put into use.

We shall not assume any warranty for inappropriate utilisation, erroneous handling or other influences that lie outside our sphere of influence.

You shall inform us of defects without delay and attach the documents and information required for re-creating the fault. Defects affecting the software shall be eliminated by means of rectification or by new supply according to our discretion.

Liability for the software delivered by us is limited to max. 50% of the remuneration received.

11. Insurance

The ordering party shall take out adequate insurance at his own expense to cover all risks arising during the erection/installation and repair work, with inclusion of our own interests. Recourse claims by the insurer against us and the specialist personnel must be excluded here.

12. Secrecy

The contracting parties undertake to keep secret any information which is made available to them in conjunction with this contract or within the scope of the business relationship and which is described as confidential or can be identified as a business or operating secret on the basis of other circumstances and not to record or use them in any way unless appropriate for attaining the contractual purpose.

13. General provisions

Unless otherwise agreed, the Swiss substantive federal law shall apply. The application of United Nations Convention on Contracts for the International Sale of Goods is excluded.

Any and all disputes arising from or in conjunction with the present contract shall be definitively resolved according to the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed according to these rules. Place of arbitration is Zurich, Switzerland. The language of the court is English.

Should individual provisions of the present contract be or become invalid or ineffective, this shall not affect the validity or effectiveness of the other provisions.