

# Terms and Conditions for Installations and Repairs of the Michael Weing AG

## 1. Application

- 1.1. These terms and conditions shall apply to installation and repair with and without delivery, also in case of future contracts. They may be amended by ourselves for future contracts. Contrary conditions shall be ineffective, even if we do not explicitly contradict them; they shall only apply if they are in the individual case acknowledged by ourselves in writing. The ineffectiveness of individual provisions incidentally shall not affect the effectiveness of these terms and conditions.
- 1.2. Telephonic or verbal agreements prior to or at the conclusion of the contract with our employees in so far as they have not been granted a legal power of representation require the written confirmation by ourselves in order to become effective.
- 1.3. After the conclusion of the contract verbal amendments and supplements have to be confirmed by ourselves in writing as well.
- 1.4. In addition, our customer service rates shall apply provided that they have become an essential part of the contract.
- 1.5. Our terms and conditions for installation and repair shall only apply to business people as contemplated by the sect. 1 et seq. HGB <German Commercial Code>.

## 2. Installation deadline and installation

- 2.1. The duration of the installation and the start of the installation are only considered as roughly agreed.
- 2.2. All temporary impediments of performance due to force majeure shall release us for the duration of their existence from the accepted obligation of the installation, in particular from the timely sending of the mechanics and from providing the mechanics in sufficient numbers. This shall also apply if there exist other unforeseen impediments we are not responsible for, particularly in case of fire, flooding, measures of industrial or official action. The customer shall bear the costs caused by the delay.
- 2.3. The installation deadline is kept to schedule if up to its end the installation is ready for the acceptance by the customer, in case of a test provided by the contract it is ready for its execution.
- 2.4. If the installation performance prior to the acceptance has perished or declined without any fault of the installing employer, then he/she shall be entitled to demand the price for installation minus the saved expenses. The same shall apply in case of the impossibility of the installation that is not the fault of the installation employer. The customer may demand a repetition of the installation performance if and to the extent this is reasonable for the installation employer, particularly in view of his/her other contractual obligations. For the repetition a renewed remuneration on the basis of the contract prices shall be paid to the installation employer.
- 2.5. The request for the mechanic should at least be made 10 working days prior to the start of the installation.
- 2.6. As a supplement the references in the installation and operating instructions of the relevant types of machines shall be binding.

## 3. Installation price and payment

- 3.1. The installation shall be charged according to the time used unless an all-inclusive price has been explicitly agreed.
- 3.2. The agreed amounts shall be understood without added-value tax that shall be additionally reimbursed to the installation employer in its legal amount.
- 3.3. Charging of the installation costs shall be carried out in accordance with the installation employer's discretion on a weekly, monthly basis or after the completed installation. Upon request of the installation employer the customer shall pay reasonable wage advances to the installation personnel. The above regulations shall not apply prior to the acceptance of the installation in case of defective installation performances.
- 3.4. All the payments by the customer shall be made in Euro.
- 3.5. Unless we offered something different all our invoices are immediately due and shall be paid absolutely net cash (without any deductions) within 14 days after the date of the invoice. For every reminder – with the exception of the first reminder due to default – the customer will be charged Euro 5.00 by ourselves unless the customer proves that a loss was not caused at all or that it is considerably lower than the lump sum. We reserve the right of further claims for compensation.
- 3.6. The deduction of cash discounts shall require a special written agreement.
- 3.7. Bills of exchange and checks shall only be credited to the account subject to the correct receipt of the full amount. We reserve the right to take in third-party or own bills of exchange. Expenses for costs and discount shall be borne by the customer. We do not accept any guarantee for presentation and protest. Levying the protest against the customer's own bills of exchange or the not immediate coverage of protested third-party bills of exchange shall entitle us to return all the still circulating bills of exchange. At the same time all our accounts receivable shall fall due. Predated checks are not accepted.
- 3.8. The date the amount is available to us or is credited to our bank account shall be considered the day of the receipt of the payment. The risk of the method of payment shall be assumed by the customer.
- 3.9. The customer shall only be entitled to set off and retain payments if his/her counterclaim is uncontested by us or has been determined legally valid. The regulation regarding the right of retention shall not apply in case of defective installation performances prior to the acceptance.
- 3.10. Payments with debt-discharging effect can only be made to the account mentioned by us at the presentation of the invoice. Our employees or representatives do not have a collection authority.

## 4. Working hours and remuneration

- 4.1. The installation personnel shall adapt itself as far as possible to the working hours introduced by the customer.
- 4.2. The customer shall certify the working hours and the working performance of the installation personnel on the form presented to him/her.
- 4.3. In case of remote installations the required travelling hours (inclusive of arriving and leaving hours) shall be charged as working hours. Waiting hours as well as in case of remote installations the time necessary to find accommodation and potential registrations with the authorities shall also be charged to the extent working hours are dropped. In case of remote installations the complete daily working hours are charged, at least, however, the number of hours shall be charged that is defined in the relevant, valid basic collective agreement for employees in the iron, metal and electrical industry, even if the installation personnel without its own fault is prevented to work during the full working hours.
- 4.4. For overtime as well as for the work on Sundays and holidays the percentages provided in the collective agreement shall be taken into account. Overtime shall be provided to the extent this is necessary and agreed. For work to be carried out under particularly difficult, dirty or particularly aggravating or dangerous circumstances an appropriate surcharge shall be paid.

## 5. Travelling expenses

- The travelling expenses of the installation personnel (inclusive of the costs of the transport and the transport insurance of the personal luggage as well as of the tools taken along or forwarded) shall be charged in accordance with the expenses of the installation employer. The costs for the agreed return journeys to the family during the installation times are also part of the travelling expenses.
- 5.1. Car travel at the relevant valid rate
  - 5.2. Hired car according to receipt
  - 5.3. For railway journeys the railway costs of 1<sup>st</sup> class shall be charged for the chief engineers, for the other installation personnel the railway costs of 2<sup>nd</sup> (plus surcharges).
  - 5.4. Flight expenses according to costs.

## 6. Travel allowance

In case of remote installations the relevant valid rate shall be charged as the travel allowance per day of the absence from the plant of the installation employer (inclusive of Sundays and holidays). If it is agreed that the customer provides accommodation and food, this will reduce the travel allowance. The travel allowance shall also be charged for the duration of inability to work caused by illness or accident.

## 7. Cooperation of the customer

- 7.1. The customer shall support the installation personnel during the performance of the installation at his/her own expense.
- 7.2. The customer shall take the special measures that are necessary to protect people and things at the place of the installation. He/she shall also inform the supervisor of the installation about existing special safety rules to the extent these are of significance for the installation personnel. He/she shall inform the installation employer about violations of such safety rules. In case of serious violations he/she may refuse the contravening person the access to the place of installation.

## 8. Technical assistance of the customer

- 8.1. The customer is obliged to provide technical assistance at his/her expense, in particular:
  - a) Providing necessary, suitable supporting staff (bricklayers, carpenters, metalworkers and other experts, handymen) in the numbers required for the installation and for the required time. The supporting staff shall obey the instructions of the installation supervisor. The installation employer does not accept any liability for the supporting staff. If a defect or damage was caused by the supporting staff on the basis of the installation supervisor's instructions, then no. 10, 11 or 12 shall apply.
  - b) Carrying out all earthwork, building work, bedding work and scaffolding work inclusive of obtaining the required building materials.
  - c) Providing the necessary devices and heavy tools (e.g. lifting gear, compressors, portable forges) as well as the required needed objects (e.g. scaffolding timber, wedges, bases, cement, plaster and sealing material, lubricants, fuels, driving ropes and belts).
  - d) Providing heating, illumination, operational power, water inclusive of the required connections.
  - e) Providing required, dry and lockable rooms for keeping the tools of the installation personnel.
  - f) Transport of the installation components at the place of installation, protection of the installation components and materials against any type of damaging influences, cleaning the installation place.
  - g) Providing suitable thief-proof recreation and working rooms (with heating, illumination, washing facilities, sanitary installations) and first aid for the installation personnel.
  - h) Providing the materials and carrying out all other activities that are necessary for the adjustment of the delivery item and for implementing a planned, contractually agreed test.
- 8.2. The technical assistance of the customer has to guarantee that the installation can be started immediately upon the arrival of the installation personnel and be carried out without any delay until the acceptance by the customer. To the extent special plans or instructions of the installation employer are required, he/she shall make them available to the customer in good time.
- 8.3. If the customer does not fulfil his/her obligations then the installation employer after advance notice shall be entitled, but not obliged, to carry out the activities incumbent upon the customer instead of the customer and at his/her expense. Incidentally the legal rights and claims of the installation employer shall remain unaffected.

## 9. Acceptance

- 9.1. The customer shall be obliged to accept the installation as soon as its completion has been announced to him/her and a contractually agreed test of the delivery item has been implemented. If the installation proves that the installation is not as stipulated in the contract, then the installation employer shall be obliged to remedy the defect at his/her expense. This shall not apply if the defect is insignificant for the customer's interest or is based on a circumstance that has to be attributed to the customer. If a non-essential defect exists, the customer cannot refuse the acceptance if the installation employer explicitly recognizes his obligation to remedy the defect.
- 9.2. If the acceptance is delayed through no fault of the installation employer, then the acceptance shall be considered carried out upon the expiry of two weeks since the announcement of the completion of the installation.
- 9.3. With the acceptance the liability of the installation employer for recognizable defects shall lapse to the extent the customer has not reserved the enforcement of a certain defect.

## 10. Other liability of the installation employer

If during the installation an installation component delivered by the installation employer is damaged by fault of the installation employer, then he/she according to his/her choice shall again repair or deliver it new at his/her expense.

## 11. Warranty

The customer shall only be entitled to claims for compensation on account of a warranted characteristic if the acceptance of a warranty should just protect the customer against the occurred damage. Other claims for compensation from the warranty with the exception of claims resulting from injuries of the life, the body or health we, our legal representatives or persons employed in performing an obligation are responsible for, shall be ruled out, if we, our legal representatives or persons employed in performing an obligation are accused of slight negligence unless these are foreseeable, typical damages resulting from the violation of essential contractual obligations; not ruled out shall be claims for compensation, if our legal representatives or persons employed in performing an obligation are accused of intent or gross negligence. The warranty period shall be 1 year after the acceptance of the performance. The regulation regarding the warranty period shall not apply to claims for compensation if we did not rule out or limit the warranty.

## 12. Liability

Any claims for compensation that are not based on warranty rights of the customer, regardless of what type and of what legal basis, against us, our legal representatives, persons employed in performing an obligation and employees of our company shall be ruled out unless they are foreseeable, typical damages resulting from the violation of essential contractual obligations or the damages are based on intentional and/or grossly negligent violations of duty by ourselves, our legal representatives or persons employed in performing an obligation. Any Claims for compensation resulting from the injury of the life, the body or health, we, our legal representatives or persons employed in performing an obligation are responsible for shall remain unaffected by this exclusion of liability.

## 13. Place of jurisdiction

Place of jurisdiction for all claims resulting from the business relationships shall be Tauberbischofsheim. This place of jurisdiction, primarily also existing for summary proceedings for the recovery of debt, shall also be in force for disputes about the origin and effectiveness of the contractual relationship. We shall, however, be entitled to also take proceedings against the customer to the courts competent for his/her headquarters. If the customer has his/her headquarters outside the Federal Republic of Germany we shall be according to our own choice entitled to have these disputes resulting from this contract or its effectiveness finally decided according to the Composition Code and Court of Arbitration Code of the International Chamber of Commerce, Paris, by one or several arbitrators appointed in accordance with this Court of Arbitration Code whilst excluding the ordinary jurisdiction. The court of arbitration should have its seat in Tauberbischofsheim.