

## Terms and Conditions of Assembly TRINAC GmbH (Status: April 01, 2017)

### 1. Scope of Application

- 1.1 The present Terms and Conditions of Assembly shall apply to business people, legal entities under public law and to public assets under Section 310(1) German Civil Code.
- 1.2 All assembly contracts are exclusively subject to these Terms and Conditions of Assembly. These Terms and Conditions shall be considered recognized as decisive and binding without any express declaration on the total duration of the business relationship.
- 1.3 Client's own Terms & Conditions shall not be binding on Contractor except where Contractor has expressly agreed to such terms.

### 2. Offer, Conclusion of Contracts

- 2.1 Unless otherwise agreed, the offers made by Contractor are non-binding.
- 2.2 Amendments, alterations or other supplementary agreements must be recorded in writing. This does not rule out the possibility of oral supplementary agreements. The written form may not be replaced by the electronic form.
- 2.3 The written confirmation by Contractor will be decisive with regard to the scope of work, based on the local conditions and the participation obligations of Client.

### 3. Prices

- 3.1 Contractor's rates and overtime surcharges (25% for the first two hours, 50% for each further hour, 25% for Saturdays, 100% for Sundays, and 200% for holidays) applicable at the time the order is made shall apply (based on the given valid rate of calculation at the time the order is placed).
- 3.2 For agreed flat rate charges the following shall apply:
  - a.) Client's obligatory services shall be provided as planned and on time.
  - b.) it must be possible to carry out the assembly work and testing in a single, uninterrupted work process.
  - c.) where these conditions are not fulfilled, Contractor shall be entitled to charge for additional costs.
- 3.3 Travel time is deemed as working time. The calculation of mileage allowances, overnight stays and expenses shall be made based either on the flat rates valid at the time the order is placed or on actual outlay.
- 3.4 Other costs such as replacement parts, telephone, telegrams, freight, etc. shall be invoiced separately on receipt basis.
- 3.5 Contractor will base the assembly based on the weather forecast. If an unexpected wind, storm, Frost, etc. make the assembly impossible, Client will bear the costs of the associated downtime (e.g. staff, wrecking cranes, truck-mounted cranes, etc. pontoons, jack-up platforms, etc.). The same will apply if Contractor is instructed to perform the assembly irrespective of the weather risk or postpones the assembly for reasons that are the responsibility of Client.
- 3.6 Costs for transportation permits or traffic management measures and other expenses and ancillary provisions for the maintenance of security and the easing of and/or for the protection of the road surfaces will be invoiced separately.

### 4. Terms of Payment, Credit Information

- 4.1 The payment of the assembly fee inclusive of other expenses shall be payable immediately and in full on acceptance of the item, unless otherwise agreed. All prices are to be understood net plus statutory value-added tax applicable on the invoicing date.
- 4.2 Contractor is entitled to demand that Client make part payments for contractual services provided in the case of individual parts of the work which have been completed. This shall also apply with regard to any necessary materials or parts which have been specially manufactured or delivered. This right shall only apply

where title to the parts of the work, the materials or the parts has been transferred to Client or collateral for such has been provided.

- 4.3 Bank drafts, checks, or bills of exchange will only be accepted in case of a special agreement and with all collection fees and discount charges considered and always only on account of payment.
- 4.4 Interest on arrears will be calculated in accordance with Section 288(2) Civil Code at a rate of 9% points above the base interest rate.
- 4.5 Contractor hereby authorizes Client to obtain information about its creditworthiness and ability to pay from credit institutions, credit insurers, etc.

### 5. Offsetting, Assignment, and Right of Retention

- 5.1 Client will only have the right to retain payments, or to offset them against counterclaims to the extent that its counterclaims are undisputed or have been legally determined; in addition, there will be all right to retain wages for work if the counterclaims result from the same contract for work.
- 5.2 Client assigns its claims to wages for work from its Client to Contractor on account of payment for the fulfillment of its payment obligations to Contractor on account of payment to secure outstanding wages for work. Contractor will only disclose the assignment to Client if the contractor is more than 1 month in arrears with payment. Client must submit to Contractor with accounting upon request – generally only after payment is in arrears – copies of the outstanding claims for wages for work/invoices to its Client on whose construction site the cranes are being used. Client of the ordering party must be informed of this assignment at the time of the conclusion of the contract.

### 6. Cooperation of Client and Liability

- 6.1 Client is responsible for the on-site conditions. Client shall ensure adequate working conditions and safety on site.
- 6.2 Client must put into place all of the technical prerequisite necessary for the proper and risk-free performance of the order – and maintain these during the assembly.
- 6.3 Client must obtain the necessary approval of the owners for driving on third-party property, routes, and spaces and release the contract from any third-party claims that may result from authorized use of third-party property.
- 6.4 Client is responsible for the ground, space, and other conditions at the deployment site permitting proper and risk-free performance of the order. In particular, it must ensure that the ground conditions at the loading and unloading site or crane location, as well as the access routes are suitable for the ground pressures and other loads. The responsibility of Client extends to all duties relating to subterranean cable ducts, supply lines, other ground cables, and cavities, which could have a negative effect on the bearing capacity of the ground at the deployment site or the access routes. The location of free and overhead lines, subterranean cables, pipes, ducts, and other cavities, which should have a negative effect on the structural stability operating safety must be stated. Statements and declarations by third parties employed by Client to fulfill its obligations, will be considered declarations by Client itself.
- 6.5 Client must not issue any instructions to staff employed by Contractor that are contrary to the contractual agreements without the agreement of Contractor.
- 6.6 Client is to ensure that the assembly can be commenced immediately after arrival of the assembly personnel Any delays for which Client is responsible shall be at Client's expense. In addition, it must assume

responsibility for all damages that result from the insufficient access or preparation of the property.

## **7. Obligations of Contractor**

- 7.1 Contractor must perform all tasks issued to it with all of the available technical options considering the applicable rules of technology and in a professional manner. It can also employ sub-contractors to participate in the fulfillment of its duties.
- 7.2 Contractor will generally visit the locations with Client and determine special features. Client will be provided with the information on ground pressures for the location where the crane will be set up, as well as the earth pressures with regard to the truck mounted cranes that are to be used. Client must prove at the latest to 3 days before the request for the assembly that the construction site has been prepared to the necessary extent by means of the submission of statics. If the evidence is not provided, the planning will be postponed.

## **8. Assembly Deadlines**

All statements with regard to dates and assembly deadlines are subject to change and are only approximate.

## **9. Acceptance**

Where acceptance is delayed for reasons beyond Contractor's control, the acceptance shall be deemed as effected when 2 working days from receipt of the notice of assembly completion have elapsed.

## **10. Defect-Related Rights**

- 10.1 Where Client requires supplementary performance, Contractor may at his own discretion either remedy the defect or produce a new item. Contractor may refuse supplementary performance if it is only possible at disproportionate cost or in the event of only a minor defect. In the event of failure or economic disproportion of the supplementary performance, Client reserves the right at his own discretion to reduce payment or, where a construction service is not the object of the defect claim, withdraw from the contract.
- 10.2 Where Client has himself undertaken assembly or maintenance work on the object or had such work undertaken by a third party without Contractor's permission, Contractor's warranty obligation shall lapse.
- 10.3 Where supplementary performance claims are justified, Contractor shall bear only those costs which are made necessary by such supplementary performance.
- 10.4 Client's defect claims shall be time limited to 12 months from acceptance. Where assembly work is carried out on a construction and Contractor thus causes such construction to be defective, however, the statutory time limits shall apply.

## **11. Liability**

- 11.1 Client may make no alternative claims against Contractor other than those accorded to him under these General Conditions of Assembly, including any claims associated with the assembly arising out of non-contractual action or other rights, irrespective of the legal basis.
- 11.2 Contractor will be liable in accordance with the statutory provisions if Client asserts claims for compensation for damages that result from intention or gross negligence, including intention or gross negligence on the part of its representative or agent.
- 11.3 Contractor will be liable in accordance with the statutory provisions in case of culpable breach of significant contractual obligations including liability for gross negligence on the part of non-management employees and in case of slight negligence, in the latter case, however, this will be limited to damages that are

typical regarding the contract, and are reasonably foreseeable.

- 11.4 Contractor will be liable in accordance with the statutory provisions in case of damages resulting from injury to life, body, or health, that result from a negligence breach of obligation on the part of Contractor or an intentional or negligent breach of obligation on the part of its representative or agent liability to pay compensation for damages is limited to the foreseeable damages that typically occur.
- 11.5 Claims for compensation for damages against Contractor, in particular compensation for damages that have not occurred to the assembly item itself can only be asserted by Client in case of
  - a.) Intent by Contractor,
  - b.) gross negligence on the part of the Owner, the organs or executives of Contractor,
  - c.) culpable injury to life, limb and health,
  - d.) for defects, which were deliberately concealed by Contractor or where he has guaranteed that they do not exist.

## **12. Severability Clause**

- 12.1 Where these Terms and Conditions of Purchasing do not contain a provision, the statutory provisions shall apply, unless the contractual parties have explicitly agreed otherwise in writing.
- 12.2 Should one or several provisions of these Terms and Conditions of Purchasing be ineffective or unenforceable, the effectiveness of the remaining provisions shall remain unaffected. The ineffective/unenforceable provision shall be deemed replaced by such effective provision that most closely resembles the economic intent by the parties. The same shall apply in the event of gaps, if any.

## **13. Contract Language**

The language of negotiation and of the contract is German. This also means that the processing of the contract verbally and in writing shall be performed in German.

## **14. Applicable Law**

The laws of the Federal Republic of Germany shall apply in exclusion of the United Nations Convention of the International Sale of Goods and the conflict of laws provisions of private international law.

## **15. Legal Venue**

Essen Unless opposed by mandatory statutory provisions, legal venue for any and all claims under the respective contract is, at TRINAC's option, Essen, Germany.