

General Terms and Conditions for assembly work/installations of the Amatec GmbH

I. Validity of the general terms and conditions

The following terms and conditions apply to the assembly and installation of photovoltaics systems and industrial plants undertaken by the contractor.

The terms and conditions apply to both the contractor as the main contractor, the customer and the contractor as a subcontractor for a general contractor, notwithstanding other individual agreements.

All offers as well as the acceptance of orders by the contractor shall be based exclusively on these General Terms and Conditions. Conflicting general terms and conditions are hereby expressly objected to. They constitute no obligations on the part of the contractor even if the contractor does not object at the time of the conclusion of the contract.

This shall not apply if the contractor expressly agrees in writing to the validity of the terms and conditions of the customer or the general contractor.

II. Conclusion of contract

Offers by the contractor made to the customer as well as a general contractor shall be without obligation and subject to the written order confirmation of the contractor unless something else has been expressly agreed on in writing.

Orders placed with travelling salesmen or sales representatives are subject to acceptance and also require the written order confirmation of the contractor.

III. Assembly price

1. The contractor usually stipulates the prices and the payment methods in the offer, the order confirmation or in a contract to be concluded; they do not include the statutory VAT.
2. Invoices shall be due in the full amount upon receipt of the invoice, notwithstanding possible other agreements to be made in writing.
3. Advance payments by the customer as well as down payments are to be agreed on separately. In case of assembly work that take more than a month the contractor may charge down payments in the amount of 90% of the respective value of the work performed even if there is no agreement to the contrary.
4. The assembly costs include especially travel costs, a daily allowance for the working hours of the assembly personnel according to the applicable charge rates of the contractor including additional fees for overtime work (plus 25 %), night work (plus 50 %) and work on Sundays and public holidays (plus 100 %). Normal work time is from Monday to Friday 07:30 am to 04:30 pm.
5. Preparation, travel, waiting and transit times will be considered as work time and charged accordingly. In case the setup or commissioning is delayed through no fault of the contractor, then the customer shall bear all costs for the waiting time and any further required travels. Agreed package prices for assembly work do not include additional charges for any required overtime work, night work, work on Sundays and public holidays. These prices can be charged in addition. The assembly work related to the installation of the system shall be deemed completed with the commissioning by way of trial.

IV. Retention and offset

The offset of claims shall be permissible only in case of undisputed, legally binding or admitted claims.

The right of retention shall be exercised only in case of undisputed, legally binding or admitted counterclaims as well as based on the same contractual relationship.

V. Assistance by the customer - general contractor

1. The customer has to assist the assembly personnel with the assembly at his expense.
2. He has to take the special measures required for the protection of people and objects on the site of the assembly. He also has to inform the site supervisor about existing safety regulations insofar as these pertain to the assembly personnel. He shall inform the contractor about violations against such safety regulations by the assembly personnel. In case of serious violations he can refuse the offender from having access to the assembly site in consultation with the site supervisor.
3. Should the contractor carry out the assembly as the subcontractor, the general contractor shall be obligated to commit his customer/ orderer to provide assistance according to the above paragraphs 1./2. and, if necessary, to ensure the compliance and co-operation of his customer.

In case of violations by his customer/ orderer, he shall be liable to the contractor as if it would be his own fault.

VI. Obligations of the customer - general contractor

1. The customer shall be obligated to provide technical support at his own expense, especially to the following:
 - a) The provision of the required suitable assistants, skilled workers and handymen, in the numbers and time required for the assembly; the assistants have to follow the instructions of the site supervisor. The contractor shall not be liable for the assistants. If a fault or damage is caused due to instructions by the site supervisor, section VII and section VIII shall apply.
 - b) The execution of all excavation, building, bedding and scaffolding work including the provision of required building materials.
 - c) The provision of the required devices and heavy-duty equipment (e.g. hoisting gear, compressors) as well as commonly required goods (e.g. lumber for scaffolding, wedges, supports, cement, facing and sealing material, lubricants, fuel, driving ropes and belts)
 - d) The provision of heating, lighting, power, water including the required connections.
 - e) The provision of required, dry and lockable rooms for the tools of the assembly personnel.
 - f) The transport of the assembly parts to the place of assembly, the protection of the assembly site and materials against damaging influences of any kind, cleaning of the assembly site.
 - g) The provision of suitable, theft proof common rooms and work rooms (with heating, lighting, washing and sanitary facilities) and first aid for the assembly personnel.
 - h) The provision of the materials and execution of all other measures required for the installation of the delivery item to be assembled and the execution of a contractually agreed trial operation.
2. The technical assistance of the customer must ensure that the assembly can start immediately after the arrival of the assembly personnel and be carried out without delay until the acceptance by the customer. Should special plans or instructions from the contractor be required, the contractor shall make them available to the customer.

3. Should the customer fail to fulfil his obligations, the contractor shall, after the appointment of a date, be entitled but not obligated to carry out himself the above mentioned measures at the customer's place and expense. Incidentally, the legal rights and claims of the contractor shall remain unaffected.
4. In case the contractor works as a subcontractor, the general contractor shall in turn be obligated to ensure that his customer/ orderer will fulfil his obligations stipulated in paragraphs 1/ 2.

In case his customer violates an obligation the general contractor shall be held responsible as it would be his own fault and shall be obligated to take the required measures himself and to meet the obligations in case of a default of his customer.

VII. Permits

1. The customer shall be obligated to apply for and obtain any required official permits; the contractor assumes that they will be provided at the start of the assembly.
2. This shall also apply to a structural analysis that might be required.
3. The contractor shall not be obligated to check the requirements of a building permit and its existence. Likewise, he shall not be obligated to check the correctness of the plans and structural analyses on which the project is based.
4. In case the contractor works for a general contractor, the general contractor in turn shall be obligated to inform the customer about these circumstances.

VIII. Assembly deadline - assembly delay

1. The assembly deadline is deemed met if the assembly is ready for acceptance by the customer within its time limit or, if a trial operation has been contractually agreed, with the execution of the same.
2. Should the assembly be delayed due to labour disputes, especially strikes and lock-outs, or due to circumstances for which the contractor is not responsible, the assembly deadline shall be extended by a reasonable period of time if such hindrances have a demonstrable considerable influence on the completion of the assembly.
3. The above terms and rules shall also apply to the contractual relations between the contractor and a general contractor.

IX. Acceptance

1. The customer is obligated to accept the assembly as soon as he has been notified of the completion of the assembly and any contractually stipulated trial operation of the assembled delivery item has been carried out. If the assembly has not been carried out in compliance with the contract, the contractor shall be obligated to eliminate the defect. This shall not apply if the defect does not pertain to the interests of the customer or if the defect is based on circumstances for which the customer is to be held responsible. If an immaterial defect exists, the customer shall not be entitled to refuse the acceptance.
2. Should the acceptance be delayed through no fault of the contractor, the acceptance shall be considered given after a period of two weeks following the notification of completion of the assembly.
3. With the acceptance, the liability of the contractor for recognisable defects shall no longer apply in so far as the customer has not reserved the assertion of a certain defect.

4. The above terms and rules shall also apply to the contractual relations between the contractor and a general contractor.

X. Claims arising from defects

1. After acceptance of the assembly, the contractor shall be held liable for assembly defects under the exclusion of all other claims of the customer, notwithstanding no. 5 and section XI in such a manner that he has to eliminate the defects. The customer shall immediately notify the contractor of an identified defects in writing.
2. This contractor shall not be held liable if the defect is irrelevant for the interests of the customer or if the defect is based on circumstances for which the customer is to be held responsible.
3. The contractor shall not be held liable for the resulting consequences due to alterations or repair work carried out improperly by the customer or a third party and without prior approval by the contractor. Only in urgent cases in which the operating safety is at risk and in order to prevent disproportionate damage, in which case the contractor shall be notified immediately, or if the contractor - considering statutory exceptions - has let a reasonable period for the elimination of the defect expire, shall the customer be entitled within the scope of legal provisions to remedy the defect himself or through a third party and demand compensation for the required costs from the contractor.
4. Of the costs incurred directly by the elimination of the defect the contractor - if the complaint has been proven justified - shall pay the costs for the replacement part including shipment. He shall also bear the costs for the dismantling and the installation as well as the costs for any required assemblymen and assistants including travel expenses as long as this does not result in unreasonable costs for the contractor.
5. Should the contractor - considering statutory exceptions - let a reasonable period set for the elimination of the defect expire, the customer shall within the scope of the legal provisions be entitled to claim a reduction. The customer shall be able to withdraw from the contract only if the assembly is demonstrable without interest to the customer despite the reduction. Other claims are exclusively subject to section X.3 of these terms and conditions.
6. The above terms and rules shall also apply to the contractual relations between the contractor and a general contractor.

XI. Liability of the contractor - exclusion of liability

1. Should an assembly part delivered by the contractor be damaged during the assembly through the fault of the assembly contractor, the contractor shall have the choice of either repairing or replacing the part at his own expense.
2. Should the customer not be able to use the assembled object as stipulated in the contract through the fault of the contractor due to the omission or faulty execution of suggestions and advice given before or after the conclusion of the contract and of other collateral contractual obligations - especially instructions for the operation and maintenance of the assembled object -, the provisions of sections VII and VIII 1 and 3 shall apply under the exclusion of other claims of the customer.
3. The contractor shall be liable for any damage on the object of the assembly itself - on whatever legal grounds - only
 - a) in case of intent,
 - b) in case of gross negligence of the owner/bodies or managers,,
 - c) in case of a culpable damage to life, limb and health,
 - d) in case of defects that he has maliciously concealed,
 - e) within the scope of a guarantee promise,,
 - f) insofar as liability exists for damage to persons or property in private use in accordance with the Product Liability Act.

In case of a violation of more essential contractual obligations, the assembly contractor shall be held liable also in case of gross negligence of non-executive employees and in case of slight negligence; in the latter case limited to the reasonably foreseeable damage typical to the contract. Further claims are excluded.

4. The contractor shall not be liable for defects of his assembly or damage to the site or objects of the customer if they are due to the fact that the customer has not or not sufficiently satisfied the required advance payments and obligations.

The contractor shall also not be held liable if such defects or damage are the result of errors in the structural analysis or plans unforeseeable to the contractor.

The contractor shall also not be held liable if defects or damage have been caused because the previous trades had not been properly carried out or if the site or objects of the customer already showed damage or defects, insofar as they were unforeseeable for the contractor and he would not have been obligated to raise his concern.

5. The above terms and rules shall also apply to the contractual relations between the contractor and a general contractor.

XII. Statute of limitation

1. All claims of the customer - on whatever legal grounds - shall fall under the statute of limitations after 12 months. The statutory periods apply for claims of compensation according to section XI. 3 a - d and f. Should the contractor render his assembly services on a structure and should this cause its defectiveness, the statutory periods also will apply.
2. The limitation rules shall also apply to the contractual relationship between the contractor as the subcontractor and a general contractor.

XIII. Compensation by the orderer

1. Should the equipment or tools on the assembly site provided by the contractor be damaged or lost through no fault of the contractor, the customer shall be obligated to compensate for such damage. Damage attributable to normal wear and tear shall be disregarded.
2. In case the contractor works as a subcontractor, the general contractor shall be obligated to provide the compensation in the above mentioned scope.

XIV. Applicable law, place of jurisdiction

1. The law of the Federal Republic of Germany relevant for the legal relationships of domestic parties shall apply exclusively for all legal relationships between the contractor and the customer.
2. The place of jurisdiction shall be the competent court for the place of the registered office of the contractor. However, the assembly contractor shall be entitled to file suit at the place of the registered office of the customer. The place of performance shall also be the place of the registered office of the contractor.
3. All agreements between the contractor and the customer are to be put in writing, the written form shall also apply to any amendments and/or collateral agreements made before, during or after the signing of the contract.
4. The invalidity of individual provisions does not affect the remaining provisions. The invalid provision will be replaced by the one that is closest to the intended economic purpose.

5. The above terms and conditions shall also apply to the contractual relationship between the contractor as the subcontractor and the general contractor.