



## **SALES AND SERVICE AGREEMENT Special Assembly Conditions**

Upon request of the purchaser, the vendor supplies a construction supervisor in accordance with the following conditions.

1. The travelling costs of the supervisor resp. technicians, i. e. time, mileage, tickets, as well as accommodation and board are to the debit of the buyer. This is also valid for meantimely return travels. The allowances for boarding and night's lodging conform to the travelling charge table of the German Financing Administration.
2. If installation is made overseas, a car or motor-cycle is to be placed at the supervisor`s disposal.
3. The purchaser is obliged to make 10 -12 capable and keen helpers available, one or two of them have to be welders and one or two grinders. Those helpers have to be able to lift the construction components into position, following to the instructions and decision of the supervisor.
4. The supervisor is permitted to refuse unsuitable helpers and to request their replacement by suitable ones.
5. Responsibility of an appropriate insurance for the helpers has to be born by the purchaser.
6. Arrangements of the complete earthworks have to be made by the purchaser and carried out in strict accordance to the survey and plans.
7. The purchaser will place all necessary and suitable machinery at the disposal of the supervisor who decides and directs its use.
8. The buyer is responsible for compliance with local or national building codes and regulations and shall notify the sellers supervisor. From breaches arising from disregard of rules or laws, the seller is not at fault.
9. The supervisor may engage the helpers to work overtime even on Saturdays and Sundays, if required.
10. Due to bad weather conditions, the unusual working hours have to be paid by the buyer up to 70%. Calculation is based on a workday of 10 hours.
11. If additional work has to be done in agreement with the buyer in form of overtime hours, work on Sundays or holidays, the valid legal German extra charges are calculated.
12. In case of strikes or other interruptions for which neither the vendor, nor the supervisor are responsible, the purchaser has to bear the total cost of lost time (each working day is charged at 8 hours).
13. The final bill is based on an inventory of the actual number of elements used, preferably made by the purchaser`s and vendor`s staff in common. The inventory and the daywork sheets are to be signed by the purchaser.
14. Furthermore our sales and delivery conditions are applicable.  
Any alteration is only valid if agreed and confirmed in writing.

# -GENERAL CONDITIONS OF DELIVERY

## JOSEF WIEGAND GMBH & CO. KG

### A General

1. Our Conditions of Delivery apply to all transactions and take precedence over the Buyer's usual Conditions of Delivery. We do not recognise the Buyer's usual Conditions of Delivery unless they have been expressly agreed by us and we have accepted them in writing.
2. Our Conditions of Delivery apply to all future business transactions and do not have to be expressly agreed. When the Buyer accepts our goods or services, these Conditions are deemed to have been accepted.

#### Offer/Confirmation of Order/Extent of Delivery

1. Our offers are without obligation. The nature and extent of our delivery obligation is determined exclusively according to our written Confirmation of Order. Services not mentioned in the Confirmation of Order are not part of the Extent of Delivery.
2. Supplementary agreements and alterations require our written confirmation for their validity.
3. Weight, power, velocity and other performance details and any illustrations, models or descriptions are to be regarded as approximate only. Deviations up to 20% acceptable. Estimates of costs are only binding where specifically agreed in writing.
4. If in our opinion a change from the agreed method of construction is necessary we are entitled, after notification to the Buyer, to employ a different design or method that serves the same purpose. The different design or method, including any alteration in the cost and the delivery time caused thereby, is deemed to have been accepted by the Buyer unless an objection is lodged in writing within 14 days from the date of despatch of the notification. Following any such objection the agreed design or method stands, but in consequence there may be an appropriate change to the original time of delivery.
5. We reserve our right of ownership and copyright of all estimates, drawings, calculations, technical data and any other documents, which must not be made available to third parties.
6. Site inspections, pegging out on site, surveys, technical drawings and calculations are charged separately at cost.
7. All earthworks as well as foundations are carried out by the Buyer.

### C Price/Payment/Reservation of Proprietary Rights

1. Our prices and/or reimbursements are always in respect of deliveries or services ex-works, excluding packaging. Packaging is charged at cost and is not returnable. Deliveries and Orders for which fixed prices have not been expressly agreed are charged at the prices or daywork rates applying at the date of delivery or service plus postage, freight, packaging and value added or equivalent tax, without discount or other reduction. If payment in a foreign currency has been agreed, all changes to the currency or to the exchange rate after the date of the Confirmation of Order are at the charge of the Buyer.
2. Payments are due in full in cash without deduction:
  - a) For domestic transactions
    - 1/3 of the price on receipt of our Confirmation of Order
    - 1/3 of the price when the principle portion of the goods is ready for delivery
    - The balance within a further month.
  - b) For export transactions
    - ½ of the price on receipt of our Confirmation of Order
    - The balance in cash against documents or by means of an irrevocable and accepted letter of credit to be opened when the goods are ready for delivery.
  - c) Money orders, cheques, drafts or bills of exchange are accepted by special agreement only, and only on account of payment due subject to deduction of all collection costs, discounts and other bank charges
3. We reserve the right if the agreed date of payment is exceeded, without notification of default, to charge interest at 5% above the current bank rate of the Deutsche Bundesbank for sums due and for such time as the payment remains unpaid. Partial deliveries can be calculated separately.
4. The Buyer has the right to withhold or reduce payment if its

counter-claim has been established as legally binding, is uncontested and has been accepted by us. The exercise of the Buyer's rights of retention and set off is only valid insofar as it relates to the uncontested counter-claim and to no other separate Contracts between us.

5. We reserve the right of ownership on all goods delivered by us to the Buyer until the Buyer has discharged its full obligations under the Agreement, including future obligations, and all interest costs and expenses arising hereunder. The goods whilst remaining our property must be insured by the Buyer against loss of any and all kind.

6. In case of distraint, seizure or similar action of any authority or other third party, the Buyer must inform us immediately, supply all information and make requested evidence available to us. In asserting our right of ownership, the validity of this Agreement will take precedence to any subsequent agreements made by the Buyer. Once in our possession, we are entitled to dispose of the goods, the proceeds of which, after deduction of the reasonable costs of disposal, to be credited against the obligation of the Buyer.

7. If our right of ownership in accordance with the preceding paragraph is not legally valid under state law where the reserved goods are located, the next best possible security available under the law of that state is taken in lieu. The Buyer must assist in all events and with any measures we may take to protect our right of ownership over the goods or, failing that, another right to the goods.

8. We reserve the right to demand advance payments or the provision of securities or to rescind the contract if circumstances arise or become known which appear to endanger our claims.

9. The incorporation of reserved goods in a site or building by either ourselves or the Buyer always takes place only for temporary purposes and they do not become part of the land or building. We are able to remove the goods at any time until full payment is received.

10. With an accepted order the Buyer acknowledges validity of our extended right of ownership and has not expressly opposed it. In case of onward sale, the Buyer must inform the Purchaser of our right of ownership.

### D Delivery Date/Force Majeure/Delay

1. The agreed delivery time commences with the receipt of order in writing, receipt of all technical information required for the execution of the contract and receipt of deposit. The delivery date is deemed to have been observed if the goods are ready for despatch. The observance of delivery time presupposes the due performance of the Buyer's obligations.

2. Partial deliveries are permissible.

3. Force Majeure or unforeseen circumstances which are outside our control whether or they occur with us or our subcontractor and with regard to personnel, energy or raw material shortages, instructions of any authority, results of labour disputes, traffic delays, factory breakdowns or similar delivery obstacles, suspend our delivery obligation and entitle us to extend delivery time by an appropriate amount or, if the execution of the delivery is rendered substantially more difficult, to withdraw from the contract in whole or in part. This also applies when sub-contractors do not supply us correctly, but in this case we cede to the Buyer all claims against the sub-contractor due to the sub-contractor's failure to deliver on time. Claims for damages against us by the Buyer are excluded in such cases.

The above circumstances are also not our responsibility if they occur during an already existing delay in delivery.

4. If we are responsible for delay in delivery time, the Buyer is entitled to demand a flat rate compensation of 0.5% of the contract value for each complete week of delay with a maximum amount payable limited to 5% of the contract value.

5. The Buyer is entitled to claim compensation for a delay in delivery time up to the total of the anticipated loss only if the delay is caused intentionally or is due to our gross negligence. The liability for compensation is limited to 20% of the proven damages, but not more than 30% of the contract price.

6. If the Buyer delays acceptance of the goods or fails in its duty to assist delivery, we are entitled to demand compensation for the damage we have suffered and any costs. In such case, the risk of accidental loss or accidental damage to the goods is the Buyer's responsibility from the time the Buyer delays acceptance.

7. If the Buyer refuses to permit the execution of the contract, we may demand a lump sum compensation of 30% of the contract price.

#### **E Passing (Transfer/Passage) of Risks/Packing Costs**

1. Unless stated otherwise in the confirmation of order, delivery ex-works is agreed.

2. The risk in the goods passes to the Buyer with the despatch of goods including partial deliveries. If the Buyer requests a delay in despatch or delay is due to circumstances for which we are not responsible, the risk passes to the Buyer on the day on which we notify our readiness to despatch.

3. Transport and packing materials are not returnable. The Buyer is responsible for the disposal of the packaging at its own cost.

4. At the Buyer's request and cost, we will insure the delivery with an appropriate transport insurer.

#### **F Planning and Building Consents**

The Buyer must obtain building or other consents in good time. Cancellation or refusal of such consents does not entitle the Buyer to rescind the contract. All official conditions, insofar as they concern our delivery, only have any significance for us if we have written notification of them prior to the commencement of the Contract. The costs of official inspections or tests are the Buyer's responsibility.

#### **G Warranty [against faults]**

1. The warranty commences with the passing of the risk and is of six months duration. When we effect installation ourselves, the warranty begins with the completion of installation. If such installation is delayed at the request of the Buyer or is due to circumstances for which we are not responsible, the warranty ends six months after the passing of the risk.

2. We guarantee that the goods are free from faults in accordance with the current state of technology and all expressly promised design features. We reserve the right to repair or replace all parts ex-works free of charge within the warranty period if they are shown useless or considerably impaired in their use due to circumstances occurring prior to the passing of risk. Claims for cancellation of the sale contract, voidance, indemnification of all kinds, including consequential damages, are excluded. We are not liable for losses suffered by the Buyer or third parties arising out of the nature of our delivery or due to a breach of any duty to protect, or other collateral duty. Where the repair of faults takes place on an open site, the buyer is obliged to actively assist with their repair.

3. If we are unwilling or unable to repair faults or to deliver replacements, or if the repair or replacement is in excess of a reasonable delay for reasons for which we are not liable, or if the repair or replacement fails or miscarries in some other way, the Buyer is entitled to a corresponding reduction of the contract sum. The defects must however be so serious that the total use of the goods is substantially impaired. Except as contained below, other claims by the Buyer, irrespective of whether reasonable in law, are excluded. We are not therefore liable for any damages which have not occurred to the goods themselves. We are not liable for loss of earnings or other loss to assets of the Buyer.

Exemption from liability is not valid where the damages originate intentionally or are due to gross negligence

4. The warranty period of six months, calculated from the date of passing of the risk, is the period of limitation and is valid for claims for consequential damages, insofar as no claims arising out of prohibited use are made. Concerning notified complaints

properly made within the warranty period, the right of the Buyer to claim under the warranty expires six months from the date of the complaint, at the earliest the end of the original warranty period.

5. For parts which we do not manufacture ourselves e.g. electrical equipment, special structures etc our warranty is limited to the assignment of any claims which we may have against our sub-contractors.

6. Our liability in respect of the warranty rights of the Buyer ceases, if

a) the Buyer does not immediately or within 10 days of the discovering the defect – which the Buyer must prove – complains to us in writing.

b) the goods are not maintained or treated properly and parts are not fitted properly according to instructions or if the intended loading is exceeded,

c) non-original spare parts are fitted,

d) the goods are repaired by the Buyer or by third parties without our consent.

7. Defects or impairment of the goods due to normal wear and tear or due to chemical influences are not covered by the warranty.

8. A precondition for our warranty is that the buyer has fulfilled its contractual obligations, particularly those concerning payment.

#### **Buyers Right to Rescind (the Contract)**

1. The Buyer can only rescind the contract in writing if we are in default of delivery and a reasonable extension of time (at least 6 weeks) has elapsed without delivery being effected and the Buyer notifies us in writing its intention to rescind when setting the extension of time.

2. The Buyer can only rescind if the delay or fault has resulted in its interest in the delivery being substantially impaired or invalidated.

#### **Conditions of assembly**

Assembly is calculated at cost plus collateral costs and is payable upon presentation of invoice. Labour supplied by the Buyer must be properly insured by the Buyer. We are not liable for injuries sustained by labour supplied by the Buyer. The Buyer must sign the daywork sheets on completion of the assembly.

#### **Liability for Subsequent Deliveries etc**

For subsequent deliveries, supply of spare parts and repairs these General Conditions of Contract apply equally.

#### **Overall Liability**

Any extended liability for damages beyond that provided for in the above conditions is excluded irrespective of the nature of the claim. This applies particularly to personal injuries that occur on our sports and leisure installations. The Buyer agrees to prevent such claims by means of suitable liability insurance.

#### **Final Conditions**

1. Side agreements and alteration require our written confirmation in order to be valid.

2. From the commencement of our business relationship, we are entitled to store and, as far as necessary, make use of the Buyer's relevant data including any personal data.

3. Domicile for obligations arising out of this contract, including delivery and payment, is our place of business [Huenfeld].

4. The competent court is the court with jurisdiction over our place of business. We reserve the right however to sue the Buyer at the court with jurisdiction over its place of business.

5. The law of the Federal Republic of Germany apply to all claims under this agreement. The application of UN commercial law is excluded

6. If one or more of the clauses of these General Conditions of Contract are not valid the validity of the remaining clauses is not affected.