

# General Assembly and Repair Terms and Conditions of Heinz Lutze GmbH & Co. KG

We take over the assembly of good delivered by us or repairs and service assignments (generic term: "Assemblies") according to these General Assembly and Repair Terms and Conditions (hereinafter referred to as "Assembly Terms and Conditions").

## I. GENERAL INFORMATION - SCOPE

1. Our Assembly Terms and Conditions shall apply exclusively; we do not recognise contradictory General Terms and Conditions of our contractual partner (the "Orderer") or General Terms and Conditions which deviate from our Assembly Terms and Conditions, unless we have explicitly approved their validity.  
Our Assembly Terms and Conditions shall also apply exclusively if we carry out the assembly without reservation in the knowledge of contradictory terms and conditions of the Orderer or terms and conditions which deviate from our Assembly Terms and Conditions.
2. Our Assembly Terms and Conditions shall only apply towards entrepreneurs (§ 14 Par. 1 BGB [German Civil Code]) and legal entities under public law or special assets under public law within the meaning of § 310 Par. 1 BGB.
3. Our Assembly Terms and Conditions shall also apply to all future business with the Orderers from regular business relationships.
4. In addition to these Assembly Terms and Conditions the General Terms of Delivery and Sale of Lutze Conveying Deutschland GmbH shall apply. In case of contradictory regulations these Assembly Terms and Conditions shall have precedence.

## II. PRICES AND TERMS OF PAYMENT

1. Assembly costs are principally calculated according to required time.
2. When calculating the costs for the assignment of the assembly personnel we use the previously notified rates, otherwise our price list, as a basis.
3. If wages, accommodation allowances or social security contributions should increase before completion of the assembly we are entitled to adjust these rates accordingly in total however as a maximum up to an increase in the assembly price by **five** per cent.
4. We make the trade tools, which are necessary for the assembly, available to our personnel. The Orderer shall be liable for theft, loss and damages to these objects and devices during the transport and on the building site insofar as he is at fault. The costs for outward and return transport shall be charged.
5. With the settlement of the assembly costs we are entitled to issue monthly instalment invoices. The final settlement is carried out directly after completion of the assembly. For the purpose of execution of the settlement the Orderer shall certify the hours of work performance by our personnel at our choice daily or weekly. Objections are to be noted on the hourly time sheet. In addition, the orderer shall hand over a written confirmation to our assembly manager concerning the completion of the assembly immediately and without request.
6. All invoices are to be settled without deduction upon receipt.
7. The Orderer is only entitled to offset if its counter-claim has been determined final and binding, is undisputed or has been recognised by us. The Orderer is only entitled to exercise a right of retention or right to refuse service if the afore-mentioned pre-requisites have been satisfied with counter-claims or in case of defects to our service these defects have been determined, recognised by us or are at least made credible by the Orderer (e.g. by confirmation of an independent, competent person) and in addition its counter-claim is based on the same contractual relationship. Voluntary monetary payments, benefits in kind or other benefits of the Orderer to the assembly personnel, which have not been agreed with us, cannot be taken into consideration with the settlement.
8. Our respective applicable prices shall be charged for the raw materials and materials consumed during the assembly – insofar as they have been delivered by us.

## III. PREPARATION AND EXECUTION OF THE ASSEMBLY

1. We ensure the careful selection and proper instructions of our assembly personnel. We reserve the right to determine the number and composition of our personnel and if applicable to also change these during the assembly work.
2. The Orderer undertakes to support us with the preparation and execution of the assembly without costs being incurred for us hereby. The Orderer in particular takes over at its costs,
  - a) to ensure the connection of the assembly device and to make an electricity supply, which complies with the VDE regulations, available up to the assembly location in a qualified manner;
  - b) to ensure all other commodities which are required for the assembly, operating power, heating, lighting, electricity and water together with the necessary connections;
  - c) the storage of materials, tools, vulcanisation devices, etc., to make sufficiently dry and lockable rooms available in the direct vicinity of the assembly location; as well as
  - d) to provide assistants, which are necessary in line with our request, for the assembly work, the putting into operation as well as possible subsequent work. The assistants shall remain personnel of the Orderer, however have to comply with the orders of our assembly manager. Our assembly manager can request the replacement of unsuitable persons.
3. Irrespective of the circumstance that our assembly personnel is insured against illness and accident, the Orderer shall take all necessary protective measures at the assembly location in order to prevent the occurrence of accidents and illnesses. This above all includes the free provision of
  - a) Scaffolding and coverages in line with the accident prevention regulations;
  - b) Protective clothing, protective masks, goggles etc. – insofar as necessary
  - c) Reasonable lockable rooms which can be heated for recreation and washing.
4. The Orderer shall make all preparations in plenty of time so that upon arrival of the assembly personnel the assembly can begin and be carried out quickly. We will also support the Orderer hereby and have him sent all necessary plans or instructions in time.
5. The transport of the assembly parts up to the place of assembly, the unloading as well as the storage of the material take place at the expenses and risk of the Orderer, even if our assembly personnel are involved for the monitoring of the transport. Also during the assembly the Orderer shall bear the risk for the accidental loss and the accidental deterioration of the assembly parts.

## IV. DURATION OF THE ASSEMBLY

1. The duration of the assembly is essentially caused by the circumstances at the place of assembly and the support granted by the Orderer.
2. The fitters must be given the opportunity to work beyond the normal working hours if this is considered necessary by them. The Orderer is obliged to take all measures which become necessary due to the extension of the working hours. These also include among others the obtaining of official permits and the issue of certificates.
3. All details concerning the duration of the assembly work are to be understood as approximate, customary deviations for the trade are permitted. We carry out the work as quickly as possible; overruns of the stated deadlines however shall only entitle the Orderer to request damages, cancel the contract or to deviate from the agreed terms of payment if the pre-requisites which are legally necessary for this (cf. for example Subclauses VI. and VII.) have been satisfied.
4. If the assembly is delayed owing to interruptions to assembly, thus resulting waiting times, extended working hours and/or owing to other circumstances, for which we are not responsible, the Orderer has to reimburse us the thus incurred costs to a reasonable extent. This shall also apply to the costs of fruitless travel.
5. If the assembly lasts for longer than one month then the fitters are to be granted one trip home per month at the costs of the orderer.
6. If the assembly is interrupted on days which are national bank holidays at the location of the assembly (e.g. Easter, Christmas) the return and outward travel costs of the assembly personnel shall be for the burden of the Orderer.

## V. ACCEPTANCE

1. We will inform the Orderer about the completion of the assembly work immediately. The Orderer undertakes to confirm the completion of the assembly immediately after receipt of the completion report and to carry out an acceptance. If the assembly items are put into operation by the Orderer (with the exception of a trial operation) then the assembly of the objects shall be deemed as accepted with the actual putting into operation.
2. In addition we are entitled to request a partial acceptance with regard to individual assembly work which can be benefited.
3. With the executed acceptance the risk for the configuration of the plant in line with the operation shall pass to the Orderer.
4. The Orderer cannot refuse the acceptance if it concerns an insignificant defect.
5. If the Orderer does not carry out the acceptance within the reasonable deadline determined by us (as a rule one week) following the assembly work and the receipt of our completion report, then the object of delivery and the assembly shall be deemed as accepted with the expiry of the deadline. If the assembly personnel has already departed and if the Orderer wishes their presence once again the costs incurred hereby shall be for the expenses of the Orderer.

## VI. CLAIMS FOR DEFECTS

1. The warranty (*Gewährleistung*) rights (claims for defects) of the Orderer presume that it inspects the object delivered according to § 377 HGB [German Commercial Code] and properly reports defects. Reports of defects have to be carried out by giving more specified details of the defect.
2. All of those assembly parts or services are at our choice to be subsequently improved by us free of charge, delivered new or provided new, which feature a defect within the statute-of-limitations, insofar as this already existed at the time of the passing of the risk. No warranty is assumed for defects and damages insofar as these were caused by unsuitable or improper use, faulty putting into operation or damages by the Orderer or third party, natural wear and tear, faulty or negligent handling, unsuitable operating equipment, replaceable materials, faulty building work, unsuitable building foundation, chemical, electro-chemical or electrical influences, insofar as the damages are not due to our fault.
3. If the Orderer unjustifiably complains about the existence of a defect, for which we are responsible, for reasons, for which we are not responsible, we are entitled to charge the Orderer the reasonable expenses incurred to us for the remedy or determination of the defect.
4. Claims of the Orderer owing to the expenses which are necessary for the purpose of the supplementary performance (*Nacherfüllung*), in particular transport, route, labour and material costs are excluded insofar as the expenses are increased by the subsequent transport of the delivered object to another location than the original place of delivery (place of performance). We are entitled to charge the Orderer such additional costs.
5. Claims for defects of the Orderer shall become statute-barred in 12 months from the passing of risk. However the legal statute-of-limitations shall apply for claims for defects, insofar as these by law are longer than 24 months and nothing to the contrary is derived from these terms of delivery, thus e.g. for objects, which have been usually used for buildings or buildings and defects to buildings (§ 438 Par. 1 No. 2 b BGB), for the claim for recourse (§§ 478, 479 BGB) and for buildings and defects to buildings (§§ 634 a, 438 Par. 1 No. 2 a BGB) as well as in the event of wilful or grossly negligent cause of defects and with malicious non-disclosure of a defect.
6. Before the Orderer can assert further claims or rights (cancellation, reduction, damages, reimbursement of expenses) we are initially to be given the opportunity for supplementary performance (*Nacherfüllung*) within a reasonable period of time insofar as we have not submitted any guarantee to the contrary. If the supplementary performance fails despite at least two attempts at supplementary performance, if the supplementary performance is impossible, is refused by us or deemed unreasonable for the Orderer then the Orderer can cancel the contract or reduce the remuneration (*mindern*). Subclause VII. of these Assembly Terms and Conditions shall apply to the assertion of claims for damages by the Orderer.
7. We reserve the right, in the event of the assertion of claims for defects, to assert rights to retention to which we are entitled by law, if the Orderer has not paid the respectively due remuneration at the time of the assertion of these claims. This shall not apply if merely an insignificant part of the due remuneration was not paid.
8. The following shall apply additionally to defects of title:  
Insofar as not otherwise agreed we are merely obliged to provide our services in the country of the place of delivery or service free of rights of third parties. In the event of a breach of property rights of third parties for which we are responsible we can, at our choice, either at our costs obtain a right of use which is sufficient for the agreed or presumed use and grant these to the Orderer or modify the object of delivery to the extent that the property right is not breached or replace the object of delivery insofar as hereby the agreed or presumed use of our service is not impaired. If this is not possible for us or not deemed reasonable for us the Orderer shall be entitled to the statutory claims and rights. Subclause VII of these Assembly Terms and Conditions shall apply to claims for damages.

## VII. DAMAGES

1. Subject to the regulations in Subclause VII. 2. below claims for damages, in particular with regard to consequential damages due to defects (including missed profit), against us are excluded, unless, (i) we are responsible for gross negligence or wilful intent or (ii) it concerns the breach of an essential contractual obligation (cardinal obligation), in which case we shall also be liable in case of simple negligence. Insofar as we owe damages according to the afore-mentioned sentence, our liability is limited with respect to the amount however to the foreseeable damages which are typical for the contract unless we are responsible for wilful intent.
2. Notwithstanding the regulations in Subclause II. 1. above we shall be liable for damages according to the statutory regulations with claims for damages (i) pursuant to the Product Liability Act, (ii) owing to the injury to life, the body or the health and (iii) after assumption of a guarantee for the existence of a property (guarantee of condition).
3. A change to the statutory regulations governing the burden of proof is not associated with the regulations in this Subclause VII.
4. Insofar as our liability is excluded or limited this shall also apply to the personal liability of our employees, workers, representatives and vicarious agents.
5. Possible claims for damages shall become statute-barred according to the statutory provisions.

## VIII. FINAL PROVISIONS

1. The place of performance and place of jurisdiction for all disputes, which arise from the contractual relationship, is DE-37574 Einbeck. We are however entitled to also file an action against the Orderer at the court of its registered seat.
2. The Orderer is not entitled to assign its rights or duties resulting from this contract to a third party without our prior explicit consent.
3. The legal relations between the parties are exclusively oriented to German law under the exclusion of the UN Convention on the International Sale of Goods (UNCITRAL/CISG).
4. Should individual provisions of the contract or these Assembly Terms and Conditions be or become invalid this shall have no effect on the validity of the remaining provisions.