

# General Terms and Conditions – Contract for work and services in the commercial sector (B2B)

Mitglied im  
**BHE**

## § 1 Scope of Application

1. These terms and conditions shall apply from the time the order is placed by the Customer (hereafter referred to as Client) as an accepted part of the contract. All deliveries, services and offers shall be made exclusively on the basis of these general terms and conditions.
2. Terms and conditions that conflict with or deviate from the General Terms and Conditions will be accepted by the Contractor (hereafter referred to as the Contractor) only if he expressly agrees to their validity in text form.
3. These contractual terms and conditions shall also apply to all future transactions with the Client in the sector of contracts for work and services. They shall be deemed accepted at the latest upon acceptance of performance.

## § 2 Content of the Contract and Contract Conclusion

1. The scope of the owed services results from the written contract concluded with the Client. Within two weeks, the Contractor may accept an order from the Client, which is to be considered as an offer pursuant to § 145 of the German Civil Code (BGB).
2. The Client shall indemnify the Contractor against all claims which are asserted on the basis of descriptions and advertising statements of the Contractor, the manufacturer within the meaning of § 4 para. 1 or 2 ProdHaftG or a vicarious agent or representative of one of the aforementioned and which would not exist or would not exist in this amount without the advertising statement. This provision shall apply irrespective of whether the description or advertising statement is made before or after the conclusion of this agreement.
3. The services shall be provided in compliance with the rules of technology and the relevant, current technical standards, in particular VDE 0833. The definitions of maintenance, servicing, inspection and repair contained therein shall apply.
4. The Contractor reserves himself the right to make technical changes during the execution of the contract if they result from the progress of technical development or prove to be appropriate in individual cases in the interest of the system efficiency, the changes are reasonable for the contractual partner taking into account his interests and the overall efficiency is at least equivalent.
5. In the case of transmission via the public telephone network or other transmission media, the Contractor shall offer the same availability and security for the establishment and availability of the connection as well as transmission of messages as is inherent in this transmission service.

## § 3 Documents provided, Copyright

1. All documents provided to the Client in connection with the offer, such as calculations, drawings, planning documents, etc., shall remain the Contractor's property until contract conclusion; for the rest the copyright shall remain with the Contractor. These documents may not be made accessible to third parties unless the Contractor gives the Client his express consent in text form. If the contract is not concluded, the documents shall be returned to the Contractor without delay.
2. The software made available for use by the Contractor is protected by copyright. The Client is not entitled to install the software himself. This is the sole responsibility of the Contractor. By accepting the software, he undertakes neither to duplicate it nor to have it duplicated without the Contractor's consent and not to make the software or copies available to any unauthorised third party. The Client is not entitled to make changes or interventions in the software himself or through third parties, not even in order to eliminate possible program errors. In the event of infringement, the Client shall be obliged to pay damages.

## § 4 Prices, Terms of Payment

1. The prices quoted by the Contractor do not include the statutory value-added tax if the value-added tax has not been expressly stated. If the statutory value added tax should increase after conclusion of the contract, the Contractor is entitled to increase it to the same extent.
2. If a price agreement binding the Contractor has been reached, the Contractor may, if the Contractor's services are to be rendered more than four months after contract conclusion, nevertheless adjust the

prices if the delivery or service is subsequently affected by new public charges, ancillary charges, freight charges or their increase or other statutory measures or a change in the cost factors such as wage and material costs on which the Contractor's prices are based directly or are indirectly affected and made more expensive and the price adjustment corresponds to these cost increases.

3. Insofar as the price increase due to the aforementioned circumstances exceeds more than 10% of the agreed price, the Client may withdraw from or terminate the contract without being entitled to any claims for damages in this case. Unless otherwise stipulated in the contract, the Contractor's invoices are due within 8 calendar days of the invoice date. Payments may only be made to the Contractor, but not to any representatives. The date of payment shall be the date on which the money is received by the Contractor or credited to the Contractor's account. In deviation from §§ 366, 367 BGB, payments by the Client shall first be offset against the oldest claim.
4. The Client shall bear the charges levied by the network operator, police, fire brigade or third parties on the basis of the agreed delivery and service. In the event of claims due to defects, these fees shall not be borne by the Contractor if the fees have arisen due to a manner for which the Contractor is not responsible.

## § 5 Execution, Duration of Performance, Transfer of Risk

1. If no binding time limit for the execution period has been agreed, the execution shall commence within 3 months. If a down payment has been agreed, the period shall be suspended until the down payment has been received by the Contractor. If details of execution to be clarified by the Client have not yet been finally determined at the time of conclusion of the contract, the period shall be suspended until they have been clarified. In the event of subsequent requests for changes/additions made by the Client, the execution time shall be extended accordingly. If the delivery of the originally ordered material becomes impossible, the Contractor shall be entitled to deliver other material of the same quality. If the execution is impossible or if the Contractor has a right to refuse performance due to personal or practical unreasonableness, the Contractor shall be released from the obligation to execute the work or shall be released from the obligation to perform.
2. If the time for execution or performance is extended or if the Contractor is released from the obligation to execute or perform, the Client cannot derive any claims for damages from this. The Contractor may only invoke the aforementioned circumstances if he notifies the Client immediately. The Client's right to withdraw from the contract after fruitless expiry of a reasonable period of grace set by him remains unaffected.
3. The Contractor shall be entitled to execute orders by means of partial executions insofar as they are reasonable for the Client. These can be invoiced separately.
4. The risk shall pass to the Client upon system commissioning by the Client, at the latest, however, upon system acceptance. If the Client does not request acceptance, the system shall be deemed to have been accepted when the system is commissioned. The aforementioned provisions shall also apply to partial acceptances. Acceptance cannot be refused or delayed due to minor defects.
5. If acceptance of the performance is delayed for reasons for which the Client is responsible (creditor default), the risk of loss shall pass to the Client for the duration of the delay.
6. The Contractor is entitled to use at any time sub-contractors for the execution of the service, but remains responsible for the contractual execution of the services to be rendered. The Contractor shall ensure that these are qualified contractors and that due to this, the Client will not suffer any disadvantage.
7. If non-compliance with agreed deadlines is due to force majeure (e.g. natural disasters, acts of violence, attacks, strikes) or to circumstances beyond the control of the Contractor, the Contractor may interrupt or suspend his performance for the period of the disruption without being in default. In any case, the performance obligations shall be extended by the time caused by the disruption or interruption plus a reasonable start-up time for the Contractor.

## § 6 Installation and Maintenance of Systems, Details regarding Remuneration

1. The provisions of the law on contracts for work and services and construction contracts of the German Civil Code (BGB) shall apply for providing work and installation services, unless deviating provisions are agreed in the contract or in these general terms and conditions.
2. Five working days prior to the start of the installation work, the Client shall provide the necessary information on the location of concealed electricity, gas and water lines or similar installations, as well as the necessary static information, without being asked to do so. Should damage occur due to incomplete or incorrect information provided by the Client, the Client shall indemnify the Contractor against any liability.
3. The Client undertakes to certify the work performed to the Contractor and his installation personnel on a daily or weekly basis, at the Contractor's discretion. He shall also confirm completion of the erection or installation on media provided by the Contractor.
4. For performing maintenance work and all related activities, unhindered access to the system without waiting time shall be provided. Operations that have to be repeated for this reason or whose performance are prolonged shall be invoiced separately to the Client.
5. The Client has to take over and provide in time at his own expense:
  - 5.1 Auxiliary personnel such as labourers and, if necessary, also bricklayers, carpenters, locksmiths, crane operators, other skilled workers with tools required by them in the required number, all earthwork, bedding, caulking, scaffolding, plastering, painting and other ancillary work outside the trade, including building materials, operating power and water required for this, including the necessary connections up to the point of use, heating and general lighting, for the storage of machine parts, apparatus, materials, tools, etc., at the installation site sufficiently large, suitable, dry and lockable rooms and adequate working and recreation rooms for the installation personnel, including appropriate sanitary facilities. In all other respects, the Client shall take the same measures to protect the Contractor and the property of the Contractor's installation personnel at the installation site as he would take to protect his own property.
  - 5.2 Protective clothing and protective devices which are necessary as a result of special circumstances at the installation site and which are not customary for the Contractor.
  - 5.3 The costs of proper, environmentally safe disposal of installed parts and components that have to be removed or replaced.
6. If the Contractor has taken over the installation or repair against individual invoicing, the following conditions shall also be deemed to be agreed upon in addition to the provisions under 5:
  - 6.1 When the order has been placed, the Client shall remunerate to the Contractor the rates agreed upon for working time and collectively agreed surcharges for overtime, night work, work on Sundays and public holidays, for work under difficult circumstances, as well as for planning, supervision and documentation. This shall apply accordingly to the consumption of materials, including waste, as well as for the erection and connection of the system.
  - 6.2 Preparation-, travel- and running times as well as feedback shall be deemed to be working time, whereby the actual expenses shall be charged for travel to and from the site, including in particular wage and vehicle costs.
7. Furthermore, the following costs shall be reimbursed separately:
  - 7.1 Travel expenses, costs for the transport of tools and personal luggage, for freight and packaging, for the delivery of all materials and equipment as well as ordered technical documents; trip costs and bonuses customary at the Contractor for working hours as well as for days of rest and holidays.
  - 7.2 Repeated checks and work services may become necessary to diagnose and remedy temporarily arising (intermittent) faults. In this respect, the Client shall also bear the costs of the Contractor's repeated deployments.

## § 7 Remote Service, IT Security, Changes

- 1.1 Unless otherwise agreed in the contract, the Contractor shall be entitled to access the contractual systems by remote access via a suitable connection and to carry out all service measures possible by remote access.
- 1.2 Insofar as the Contractor carries out measures in the above sense, these shall be carried out by taking into account the system-relevant standards (e.g. DIN VDE 0833).
- 1.3 The Contractor shall document his activities in a suitable manner (e.g. evidence of working hours) and shall provide his activity report to the Client in text form without delay after completion of the respective remote access. If the Client does not object within five working days

after delivery, the work shall be deemed accepted. The objection must equally be made in text form.

- 2.1 Any remote access shall take place using a qualified transmission procedure appropriate to the type of system. In the event of changes to the hazard detection system, access shall only be made after separate release by the Client. Further details of the access authorization, the type of access and the transmission procedure shall be specified in the contract by the Client and the Contractor, taking into account the current state of the art.
- 2.2 Access shall be protected in such a way that it meets current security criteria. Transmission shall be made via a suitable connection (see 2.1). The Client is responsible for the accessibility of the system via a suitable connection.
- 2.3 Test and auxiliary programs shall be stored at the client's exclusively to the extent necessary and shall be deleted after completion of this work, unless they are necessary for the operability of the system being serviced or for the fulfilment of this service contract. In this case, the Client shall be informed of the additionally installed programs. This also applies if changes are made to other applications or to the operating system.
  - 3.1 If faulty equipment has to be switched off and/or if the remote service results in an interim interruption of the function of a hazard detection system or individual parts of the system, the same conditions shall apply as for an "at-the-site" service. In particular, the Contractor shall inform the Client's contact person about the measure and its consequences before the switching off/interruption of function.
  - 3.2 It is then the Client's responsibility to ensure the detection and reporting of hazards during the switching off or interruption of function by alternative, equally effective means (compensatory measures).
- 4.1 The Client and the Contractor shall each observe the IT security regulations applicable to them. They undertake to inform the other contracting party without delay of any identified security gaps and/or discovered malware and attacks on the contractual equipment and the associated software and will take joint countermeasures.
- 4.2 The Contractor shall not assume any liability for the IT security on the Client's premises or for damage and disadvantages caused by a breach of the IT security due to the Client's negligence. This includes, in particular, a failure on the Client's part to operate and maintain its data processing systems and networks, especially those connected to the internet, to a security standard corresponding to the current state of the art.
  - 5.1 Modifications and extensions as well as relocations of hazard detection systems require that functional tests are carried out in accordance with the relevant technical standards (e.g. clause 4.1.6 of DIN VDE 0833-1) or requirements under building law. As the operator, the Client is responsible for arranging these tests and will bear their costs. The Contractor shall point out to the Client the necessity of the tests and shall carry out these tests against separate remuneration after the order was placed accordingly.
  - 5.2 If the changes are substantial, it may become necessary to have the effectiveness and operational safety of the system, including the intended interaction of systems (active principle test), tested by external testing experts in accordance with the relevant testing regulations of the federal states prior to recommissioning. The Client is responsible for commissioning the expert and will bear his costs. This also applies to expert inspections at the intervals prescribed by the building regulations. The Contractor's participation in such inspections shall be remunerated separately.

## § 8 Termination, Withdrawal by the Client

1. If the Client terminates or withdraws from the contract (cancellation) without the Contractor having given him a reason to do so, or if this occurs for reasons for which the Client is responsible, the Contractor may invoice the services rendered up to the termination or withdrawal in accordance with the agreed contract prices and, in addition, demand a lump sum of 15% of the agreed remuneration for the part of the work not yet performed as compensation for the loss of profit.
2. The right remains reserved to the Client to prove that costs and profit have not incurred or have not been lost in this amount. Thereafter, the invoicing shall only be made in the proven amount.

## § 9 Retention of Title

1. Delivered goods shall remain the property of the Contractor until full payment has been made under this contract. This applies in particular if the items incorporated do not become an essential part of the building or the plot of land when they are incorporated.
2. Insofar as the items incorporated have become an essential part of the building or the property of the Client, the Client undertakes, in the event of non-compliance with the agreed payment dates and without the existence of his own rights to refuse performance, to allow the Contractor to dismantle the items which can be removed without

significant impairment of the building structure and to transfer ownership of these items back to him.

3. The dismantling and other costs shall be borne by the Client.
4. If the objects incorporated by the Contractor are combined or processed as essential components with a piece of real estate or with another object, the Client hereby assigns to the Contractor his claims or his right of co-ownership to the new object in the amount of the Contractor's claim, in the event that claims or co-ownership arise as a result of the combination or processing. The Contractor accepts this assignment already now.
5. If the value of the securities exceeds the Contractor's claim by more than 10%, the Contractor shall, at the Client's request, release securities of its choice to this extent.

## § 10 Claims and Rights due to Defects

1. The Client's warranty rights in respect of obvious defects shall be excluded unless the client gives notice of such defects in text form within a period of 14 days from acceptance of the work which is the subject matter of the contract.
2. In the event of a breach of the duty to inspect and give notice of defects, the delivery or service shall be deemed to have been approved in view of the defect in question.
3. Claims regarding defects brought forward by the Client regarding construction work shall become statute-barred after 5 years. Further claims for defects for work services, electrical/electronic or mechanical equipment shall become statute-barred 12 months after acceptance of the work covered by the contract. The warranty obligation is excluded for used items. However, the Client retains the right to claim damages in the event of intent and gross negligence as well as in the event of injury to life, body and health which are based on an intentional or negligent breach of duty on the part of the Contractor. The statutory limitation periods shall apply in this respect.
4. If the work, despite the greatest care, does not have the agreed quality, the Contractor may have the choice to either remedy the defect or to deliver an item free of defect. However, the client shall be entitled to a new delivery/service if the remedy of the defect is unreasonable for him. After unsuccessful expiry of a reasonable deadline set by the Client to the Contractor to remedy the defect, within which the Contractor is entitled to a number of attempts to remedy the defect that is reasonable in view of the nature of the defect, its complexity and the other circumstances, the Client shall be entitled, at his discretion, to declare a reduction of the remuneration (abatement) or rescission of the contract (withdrawal) or to remedy the defect himself and demand reimbursement of his expenses required for this. The Client's right to claim damages or reimbursement of futile expenses in the statutory manner in addition to withdrawal shall remain unaffected. The remuneration attributable to the planning phase shall remain unaffected unless the defect is based on a breach of duty committed by the Contractor already in this phase.
5. If, after a notice of defect, it turns out that the defect complained is not one covered by the contractual or statutory warranty, the Client shall bear the Contractor's costs for the examination of the notice of defect (in particular travel to and from the site, hourly wages, material, etc.).
6. The Client shall grant time and opportunity reasonably required to remedy the defect.
7. The liability for defects shall not apply to natural wear and tear, nor to damage resulting from lack of or negligent handling, lack of maintenance, excessive stress, weathering, force majeure, unsuitable operating materials, defective construction work, unsuitable foundation soil and such chemical, physical, electromechanical or electrical influences (e.g. overvoltage) which are not assumed under the contract.
8. The Contractor must be notified of any changes in use intended by the Client and these must be agreed upon with the Contractor. If the Client fails to provide such notification or coordination, he shall lose any claim for defects in this respect.
9. If maintenance work, attempted repairs or technical modifications were carried out on the subject matter of the contract by the Client or third parties, the Client shall bear the burden of proof that the material defect is to be found in the sphere of the Contractor. The same shall apply if the subject matter of the contract has been improperly operated by the Client, has not been maintained or has been insufficiently maintained or has been used contrary to the contractual agreements.
10. The Contractor shall not assume any liability for defects for products/services provided by the client (e.g. existing cabling, telecommunication and power connections as well as company-owned or public communication networks).

## § 11 Liability for Software Defects

1. The Contractor draws attention to the fact that an absolutely error-free creation of software, in particular of complex software systems, is not

possible according to the current state of the art or is not possible with reasonable expenditure. The object of this liability for defects is a program which is suitable for the usual use or use assumed under the contract in accordance with the program description. The obligation of the Contractor to bear the expenses necessary for the purpose of subsequent performance shall remain unaffected.

2. The Contractor guarantees that the program carrier has no material or manufacturing defects when it is handed over to the client.
3. It has to be noted that software is subject to constant improvement efforts during use and therefore an update may have to be carried out at certain intervals. This does not constitute a defect, but is an inherent characteristic of the software system.
4. For the above reasons, no warranty can be assumed for the faultlessness of the programs outside the owed work performance. In particular, the Contractor assumes no liability that the program functions will meet the Client's requirements or will interact in the selection made by the Client. The Client shall also bear the responsibility for the use as well as the thus intended results.
5. If programs are used for the Client's own hardware, the liability for defects shall only be extended to the software supplied and not to its interaction with the hardware and software provided by the client.

## § 12 Liability

1. In accordance with the statutory provisions, the Contractor shall be liable without limitation for damage resulting from injury to life, limb or health caused by an intentional or grossly negligent breach of duty on its part or an intentional or grossly negligent breach of duty on the part of its vicarious agents.
2. The Contractor shall also be liable for damage caused by slight negligence insofar as this negligence relates to the breach of such contractual obligations, compliance with which is of particular importance for achieving the purpose of the contract (cardinal obligations). Of particular importance is the obligation to perform the subject matter of the contract free of material defects in a timely manner, as well as advisory, protective and obligation duties intended to enable the Client to use the subject matter of the contract in accordance with the contract or which are intended to protect the life or limb of the Client's personnel or to protect the Client's property from significant damage. However, the Contractor shall only be liable insofar as the damage is typically associated with the contract and is foreseeable. Moreover, the Contractor shall not be liable in the event of slightly negligent breaches of ancillary obligations that are not essential to the contract. The limitations of liability contained in sentences 1 to 3 shall also apply insofar as the liability for the legal representatives, executive employees and other vicarious agents is concerned.
3. Any further claims for damages and reimbursement of expenses of the Client are excluded, in particular claims for compensation for consequential harm caused by a defect, insofar as these were not caused intentionally or by gross negligence on the part of the Contractor or his employees or vicarious agents. The liability of the Contractor in tort is limited to intent and gross negligence.

## § 13 Data Protection

1. The Client and the Contractor shall observe the regulations regarding the protection of personal data applicable to them.
2. The Client undertakes to create all legally necessary conditions so that the Contractor can provide the agreed services without violating data protection regulations. This also includes obtaining declarations of consent from employees and other persons involved in the processing on the part of the client.

## § 14 Final Provisions

1. This contract and the entire legal relationship between the parties concerned shall be governed by German law excluding UN Convention on Contracts for the International Sale of Goods and the conflict of law provisions of German private international law.
2. The place of performance for payments by the Client shall be the Contractor's registered office.
3. In the event of any disputes arising from the contractual relationship, insofar as the Client is a merchant, a legal entity under public law or a special fund under public law, the action shall be brought before the court which has subject-matter jurisdiction for the Contractor's place of business.
4. In order to be effective, oral agreements before and at the time of conclusion of the contract as well as subsequent amendments, collateral agreements, assurances and deviating agreements require the written confirmation of the parties. This shall also apply to any amendment of this clause.