

# ASSEMBLY AND DELIVERY TERMS OF VOLLERT ANLAGENBAU GMBH

## 1. Application

- a. The following delivery and assembly terms shall apply exclusively in the business operations of Vollert Anlagenbau GmbH (hereinafter the "Contractor") with entrepreneurs and legal entities under public law (both hereinafter the "Client"). We do not accept Client's terms and conditions except if Contractor has explicitly agreed to their application in writing.
- b. Our delivery and assembly terms of Contractor shall also apply if it performs the contractor shall any deliveries to Client without reservation in spite of knowing that Client's terms and conditions are in conflict with or deviating from the delivery and assembly terms.

## 2. Offer Documents

Contractor reserves the property rights and copyrights in all illustrations, drawings, calculations, and other documents – also in electronic form. The transfer, provision, or disclosure to any third parties shall require Contractor's explicit written consent the contractor shall.

## 3. Conclusion of Contract

- a. All offers are subject to change and non-binding, unless explicitly marked as binding.
- b. A contract with Client shall only be entered into by their written acceptance of the order, which is referred to as order confirmation.
- c. If the order confirmation deviates from Client's order, the scope of the contractually owed services shall be determined by the written order confirmation together with its written annexes, unless Client objects to the content of the order confirmation at once after its receipt.
- d. Documents and/or information provided by Contractor, such as illustrations, drawings, weights, and dimensions, shall only be binding if explicitly listed as part of the contract or if explicitly referenced.

## 4. Prices

- a. The prices agreed for the delivery shall be fixed prices EXW Weinsberg works (Incoterms 2020), plus VAT at the respective statutory rate, packaging, and loading.
- b. Furthermore, Contractor reserves price adjustments if the material costs or the costs for services increase by more than 5% by the time of order execution as compared to the prices at binding placement of the order. The cost increase will be passed on to Client at cost without surcharge if the allowance of 5% is exceeded.
- c. Installations, repairs, and other services shall be invoiced at the applicable rates in accordance with the time expenditure.
- d. Travel and waiting times shall be considered working time.

## 5. Payment

- a. Except if otherwise agreed, Client shall make payments as follows:  
30% following receipt of the order confirmation,  
70% following notification of readiness for delivery.
- b. Payments shall be due upon receipt of the corresponding invoice. Client shall enter default 14 days after the invoice date without any need for a reminder from Contractor.
- c. Payments shall be made to one of the business accounts of Contractor without any deductions.

## 6. Dispatch, Packaging, Transfer of Risk

- a. Except if otherwise agreed deliveries shall be made EXW Weinsberg (Incoterms 2020).
- b. The goods shall be packed at Client's expense. If Contractor agreed to bear the packaging costs in an exception, it shall bear these only to the amount of the cost price of the material.
- c. Packaging materials shall be disposed of by Client; it does not take them back.

- d. The risk concerning work performance shall pass to Client upon acceptance of the work.
- e. If Client assumes any responsibility for transporting the item from the place of manufacture to the place of use in the case of work performance and if acceptance is to take place only after commissioning at the place of use, Client shall bear the risk for the duration of the transport.

#### **7. Delivery Time, Delivery Default, and Default in Acceptance**

- a. Commencement of or compliance with the stated delivery period shall require previous clarification of all commercial and technical issues.
- b. Compliance with Contractor's delivery obligations shall further require that Client has met all obligations due to it – in particular all preparatory measures and customer's services. If Client has not met its obligations, Contractor's performance period shall extend accordingly. We reserve the right to plead non-performance of the contract.
- c. Compliance with the delivery deadline shall be subject to correct and timely delivery to us. Contractor shall inform Client of any delays that become evident immediately.
- d. The performance period shall be extended accordingly if non-compliance with the delivery period is due to force majeure, industrial disputes, pandemics, epidemics, or other events outside of Contractor's control. This shall also apply if Contractor has already entered default with performance of the service.
- e. Furthermore, Contractor shall be liable for paying an amount of 0.5% of the delivery value per completed calendar week of default in the scope of flat-rate compensation for default, up to a total of 5% of the delivery value, in case of delivery default, as far as it is at fault for it. Any further liability due to delay in delivery shall be excluded.
- f. Contractor reserves the right to otherwise dispose of the delivery object after fruitless expiration of a previously set reasonable grace period if Client has entered default of acceptance. Client shall receive an object of the same type and quality within a reasonable extended period.

#### **8. Acceptance**

- a. Client shall be obligated to accept the work produced in accordance with the contract.
- b. Refusal of acceptance or reservations due to a defect must be asserted in writing without undue delay, including a statement and description of the claimed defect.
- c. Any work produced in accordance with the contract shall be deemed accepted by Client 14 days after notification of completion and request for acceptance by Contractor, except if Client reports any essential defects in writing during this period. There shall be no requirement for setting any further deadline.
- d. Use or commissioning of the delivery object by Client shall be deemed acceptance.

#### **9. Retention of Title**

- a. Contractor retains title in the delivered goods (goods subject to retention of title) until all claims it is due against Client now or in future have been met, including any balance claims from the current account. If Client acts in breach of contract – in particular if it enters default of payment of a claim for payment – Contractor shall have the right to take back the goods subject to retention of title following the setting of a reasonable grace period for performance. Client shall bear the transport costs incurred for the return. Taking back of the goods subject to retention of title by Contractor shall constitute withdrawal from the contract. It shall also constitute withdrawal from the contract if Contractor seizes the goods subject to retention of title. Contractor may dispose of goods subject to retention of title that it has recovered. The proceeds of the utilization shall be set off against the amounts owed to Contractor by Client after deducting a reasonable amount for the costs of the utilization.
- b. Client shall treat the goods subject to retention of title with care. It shall insure them against damage by fire, water, and theft at their replacement value at its own expense. If any maintenance and inspection work become necessary, Client shall perform them in time at its own expense.
- c. Client may use the goods subject to retention of title and resell them in its ordinary course of business while it has not entered default of payment. However, it must not pledge the goods subject to retention of title or assign them by way of collateral. The compensation claims of Client against its purchasers from further sale of the goods subject to retention of title and any claims of Client regarding the goods subject to retention of title that arise against its purchasers or any third parties from any other legal reasons (in particular any claims from tort and claims to insurance payments), specifically including any balance claims from current accounts, are hereby assigned in full by Client to Contractor by way of collateral. Contractor accepts this assignment.
- d. Client may collect the claims assigned to Contractor for its account in its own name as long as Contractor does not revoke this authorization. Contractor's right to collect these claims ourselves shall not be affected by this; however, Contractor shall not assert the claims directly and shall not revoke the collection authorization while Client duly

meets its payment obligations.

- e. However, if Client violates the contract – in particular if it defaults on payment of a claim to compensation – Contractor may demand that Client inform it of the assigned claims and the respective debtors, notify the respective debtors of the assignment, and hand all documents over to it as well as provide Contractor with all information it requires to assert the claims.
- f. Client also must not assign these claims in order to have them collected by way of factoring, except if it irrevocably obligates the factor to pay the compensation to it directly while Contractor retains any claims against Client.
- g. Any processing or transformation of the goods subject to retention of title by Client shall always be performed on Contractor's behalf. If the goods subject to retention of title are processed with any other items that do not belong to it, Contractor shall acquire joint title in the new item at the ratio of the value of the goods subject to retention of title (final invoiced amount, including VAT) to the other processed items at the time of processing. Any new item created by processing shall be subject to the same provisions as the goods subject to retention of title.
- h. If the goods subject to retention of title are inseparably combined or mixed with any other items that do not belong to Contractor, it shall acquire joint title of the new item in the ratio of the value of the goods subject to retention of title (final invoiced amount, including VAT) to the other combined or mixed items at the time of combination or mixing. If the goods subject to retention of title are combined or mixed in such a way that Client's item is to be regarded as the main item, Client and Contractor hereby agree that Client shall transfer prorated joint title in that item to Contractor. Contractor accepts this transfer.
- i. Client shall hold the resulting sole title or joint title in an item in custody for Contractor.
- j. In case of seizure of the goods subject to retention of title by any third parties or in case of any other interventions by third parties, Client must disclose Contractor's title and must inform Contractor in writing without undue delay so that it can enforce its title. Client shall be liable for the judicial or extrajudicial costs incurred by Contractor in this connection if the third party is unable to reimburse.
- k. Upon Client's request, Contractor shall be obligated to release its collateral to the extent that its realizable value exceeds the value of its outstanding claims against Client by more than 10%. However, Contractor shall have the right to choose the collateral to be released.

## 10. Liability for Defects

- a. Client's claims for defects shall require that Client has properly met its legal obligations to inspect the goods and to give notice of defects. The delivered objects shall be carefully inspected without undue delay after delivery to Client or to the third party designated by it. They shall be deemed approved by Client concerning any obvious defects or other defects that would have been recognizable within the scope of careful examination without undue delay if Contractor does not receive a written notification of defects within seven working days of delivery. Concerning any other defects, the delivery objects shall be deemed approved by Client if Contractor does not receive any notice of defects within seven working days after the time at which the defect became apparent; however, if the defect was apparent at an earlier point already during regular use, that earlier point shall be decisive for commencement of the period for giving notice of defect. A rejected delivery object shall be returned to Contractor carriage paid at its request. If the notice of defect is justified, Contractor shall reimburse the costs of the most favorable shipping route; this shall not apply to any increase of costs because the delivery object is located at a place other than the place of intended use.
- b. As far as there is a defect of material in the delivered objects, Contractor shall have the right to subsequent performance within a reasonable period of time, at its discretion in the form of rectification of the defect or delivery of a new item free of defects. In case of rectification of the defect, Contractor shall be obligated to bear any expenses necessary for the purpose of removing the defect, in particular transport, travel, labor, and material costs, as far as these are not increased because the purchased item has been moved to any location other than the place of performance.
- c. Client shall grant Contractor the reasonable time and opportunity required for subsequent performance. Contractor shall not be liable for any resulting damage if Client does not comply with this obligation.
- d. Client may claim damages under the terms set out in item 11 if a defect is due to Contractor's fault.
- e. Client shall have the right to withdraw from the contract within the scope of the statutory provisions if Contractor lets a reasonable grace period set for it to remedy the defect expire fruitlessly – under consideration of the statutory exceptions. However, if there is only an insignificant defect that only insignificantly impairs usability of the delivery object, Client shall only be due a reasonable reduction of the contractual price.
- f. The warranty shall not apply if Customer modifies the delivery object, or has it modified by a third party without our consent, and this makes it impossible or unreasonably difficult to remedy the defect. Customer shall bear any

additional costs of remedying the defect resulting from the change in any case.

## 11. Liability

As far as we have not entered into any deviating agreement with Client in an individual contract, Contractor shall be liable in accordance with the following provisions:

- a. Client's claims for damages shall be excluded. Client's claims for damages due to injury to life, limb, or health or from breach of essential contractual obligations (cardinal obligations) as well as liability for any other damage based on an intentional or grossly negligent breach of obligations by Contractor, its legal representatives, or vicarious agents shall be excluded from this. Essential contractual obligations shall be such obligations that must be met to achieve the objective of the contract.
- b. If any essential contractual obligation is breached, Contractor shall only be liable for the foreseeable damage typical for the contract if such damage was caused by simple negligence, except if Client's claims for damages are based on injury to life, limb, or health.
- c. The limitations of paragraphs **a.** and **b.** shall also apply in favor of Contractor's legal representatives and vicarious agents if any claims are asserted directly against them.
- d. The limitations of liability from paragraphs **a.** and **b.** shall not apply as far as Contractor has fraudulently concealed the defect or assumed a guarantee for the quality of the item. This shall apply accordingly as far as Contractor has entered into an agreement with Client on the quality of the item. The provisions of the Product Liability Act (Produkthaftungsgesetz) shall not be affected.

## 12. Limitation

- a. Client's claims for defects are subject to a period of limitation of 12 months from delivery or – as far as acceptance is required – from acceptance, but no more than 15 months after notification of readiness for dispatch. This shall also apply to the limitation of claims under a right of recourse in the supply chain in accordance with § 445b (1) of the German Civil Code (Bürgerliches Gesetzbuch; BGB), as long as the last contract in this supply chain is not a purchase of consumer goods. Suspension of expiration from § 445b (2) BGB shall not be affected.
- b. Client's claims for defects due to defects in a building or a work with the objective of provision of planning or supervision services for buildings, shall be subject to a limitation period of 5 years after acceptance.
- c. The statutory limitation provisions shall apply if there is any injury to life, limb, or health, grossly negligent conduct on the part of bodies or senior employees, intentional or fraudulent conduct, culpable breach of essential contractual obligations, or guarantees.
- d. Any other claims of Client – no matter the legal basis – shall be subject to a period of limitation of 12 months after the transfer of risk.

## 13. Claims under Insurance Contracts

As far as Contractor has any direct claims against Client's insurer concerning the delivery object as a co-insured party, Client hereby consents to the assertion of such claims.

## 14. Software

- a. Software products of other suppliers included in the scope of delivery shall be subject to their terms and conditions. If they are not available to it, we shall send it to Client upon request.
- b. The following items 14.c. to 14.e. of these delivery and assembly terms shall apply in addition to the software provider's terms and conditions.
- c. Client receives a simple, non-exclusive right of use to Contractor's software products and the associated documentation without limitation in time. Client shall not have the right to grant any sublicenses.
- d. Contractor shall not be obligated to provide the source code on which the software product is based.
- e. Client must only process Contractor's software products as far as this is permitted by law; it must neither remove manufacturer's details – in particular any copyright notices – nor alter or remove them without Contractor's prior written consent.

## 15. Assembly, Repairs, and Other Services

The following shall apply to assembly, repairs, and other services additionally:

- a. Client shall inform Contractor's personnel about any existing safety provisions and dangers at its own expense; it shall take all measures required for protection of persons and property at the workplace.
- b. Client shall support Contractor's personnel in execution of the work as far as this is necessary; it shall render any required assistance, such as preparation of the construction site, provision of tools and lifting equipment, provision of water and electricity, etc., at its own expense.
- c. Client shall be obligated to take all preparatory measures to ensure that Contractor's work can commence at once after its personnel arrive and that it can be performed without delay until acceptance.
- d. If Client does not comply with its obligations, Contractor shall have the right – upon prior notification – but not the obligation to perform the measures due to Client in its place and at its expense.
- e. If any service cannot be rendered for reasons that are not due to Contractor's fault, any services already rendered by Contractor as well as any expenses incurred shall be compensated by Client.
- f. Client shall be responsible for disposal of wastes that may arise during delivery (e.g., including old/disassembled parts or raw, auxiliary, and operating materials).
- g. Only repair deadlines confirmed by Contractor in writing shall be binding.
- h. Spare parts are painted in RAL7031 blue-gray. Other colors or special designs are available against a surcharge.

#### 16. Miscellaneous

- a. We store personal data in compliance with the statutory provisions.
- b. Deviations from and amendments to these delivery and assembly terms shall require written form. This shall also apply to the requirement of written form itself. Written form may be replaced by fax, but not by email.
- c. The assertion of a right of retention against Contractor's claim and offsetting against any counterclaims shall only be permitted if the counterclaims underlying the right of retention or the counterclaims to be offset are undisputed or have been established as final.
- d. Sanctions
  - i. Client does not sell, export, or re-export any goods that are delivered within the scope or in connection with this contract and that are subject to the application of Article 12g of regulation (EU) no. 833/2014 of the council directly or indirectly into the Russian Federation or for use in the Russian Federation.
  - ii. Client strives to the best of their effort to ensure that the purpose of paragraph i. is not rendered useless by third parties in the further supply chain, including any resellers.
  - iii. Client shall establish and maintain an adequate monitoring mechanism to recognize behaviors of third parties in the downstream supply chain, including any resellers, that would render the purpose of paragraph a. useless.
  - iv. Any violation of paragraphs i., ii. or iii. shall constitute an essential violation of an essential element of this contract and Contractor shall have the right to demand adequate remedies, including, among other things, termination of this contract.
  - v. Client shall inform Contractor of any issues in application of paragraphs i., ii., or iii., including any relevant activities of third parties that may render the purpose of paragraph i. useless, without undue delay. Client shall provide Contractor with information on compliance with the obligations in accordance with paragraphs i., ii., and iii. within two weeks of simple request.

#### 17. Place of Performance, Place of Jurisdiction, Applicable Law

- a. The place of performance shall be Weinsberg.
- b. Heilbronn is agreed as the place of jurisdiction if Client is a merchant. However, Contractor shall also have the right to raise a claim at Client's place of jurisdiction.
- c. The law of the Federal Republic of Germany shall apply. Any conflict of laws rules and the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.