



K+S Consulting GmbH

The following text is a translation of the “Bedingungen für Bau- und Montageleistungen” of the company given above. This translation is issued only for the convenience of the Contractor and shall neither have any legal effect on the contractual relationship nor form the basis for interpretation or construction of the contractual regulations. Legally binding and – if necessary – basis for interpretation or construction shall be only the German version.

Conditions for construction and assembly services

(Valid from 25th April 2000)

1. **General.** These conditions are part of our orders and supplement our “General Procurement Conditions“. In addition, our construction and materials regulations also apply. European standards with EN symbol, otherwise German standards with DIN symbol apply for the technical execution, measure and invoicing. Part C of the “German Construction Contract Procedures“ in the version valid at the time the contract is concluded apply to construction works.
2. **Execution of the order.**
 - 2.1. We can reject the complete or partial execution of the order by third parties.
 - 2.2. We are to be notified immediately of any necessary deviations in the type and extent of the agreed performance and they require – apart from the case of hazard in delaying – our prior written approval.
 - 2.3. The contractor must inform us in writing of any doubts they have about the instructions given by us, before carrying out the works.
 - 2.4. If unavoidable stoppages or disruptions in our operating premises/on our sites require a suspension of the execution of the order, this does not entitle the contractor to any kind of claims against us.
3. **Behaviour during the execution of the order.**
 - 3.1. In the case of orders executed in our operating premises, the employees and agents of the contractor shall subject themselves to the access controls installed there for security reasons, work according to the usual operating times and operating processes at the respective operating premises and observe the safety regulations that apply there as well as follow any instructions given by us concerning this matter.
 - 3.2. The contractor must comply with all relevant statutory, official and professional association regulations, the generally recognised rules for safety and occupational health protection as well as the data protection regulations, inform themselves accordingly and instruct their employees and agents at their own cost. The contractor releases us from any claims, which are raised against us as the result of breaches of duty of their employees and agents. The contractor shall inform us immediately of any accidents and damage, which their employees and agents cause or suffer in our operating premises.
 - 3.3. The contractor is responsible for making provisions for the storage and monitoring of materials and equipment.
4. **Materials, Equipment.**
 - 4.1. Subject to Clause 4.4., all the materials required for the execution of the order (e.g. construction and other materials, spare parts) as well as equipment (i.e. tools, appliances, machines, vehicles, scaffolding, site accommodation, energy, water, etc.) are to be provided by the contractor without claims for additional payment. Appropriate delivery notes are to be submitted for their delivery to our operating premises.
 - 4.2. Materials and equipment that are no longer needed must be removed by the contractor immediately following completion of the order. On leaving our operating premises, their prior delivery must be proven by the contractor.
 - 4.3. The contractor will permit us, or third parties named by us, to use the equipment provided by him.
 - 4.4. If it is agreed that the materials and/or equipment are to be wholly or partially provided by us, these are to be collected by the contractor from the appropriate parts of our operating premises, giving the order number and the purpose for which it is intended to be used and to carry out an immediate check of the materials and/or equipment. We are to be informed in writing of any complaints immediately.

5. Insurance

5.1. The contractor is responsible for insuring the materials and equipment against the risk of fire and explosions. We shall only provide the fire insurance for the structures in the execution.

5.2. If the employees or agents of the contractor carry out mining works in the meaning of the German ordinance dated 11.2.1933 (RBGI. I¹ p. 66) during execution of the order, the contractor must ensure that health, pension and nursing care insurance contributions are made to the Federal Social Miners’ and Mine-Employees’ Insurance and to provide us with evidence of the fact. Until the contractor provides this proof, we are entitled to retain up to 20% of the invoiced amount as security for the case that the Federal Social Miners’ and Mine-Employees’ Insurance claim the contributions from us.

6. **Billing by measurement.** Where billing and payment by measurement has been agreed, the following applies:

6.1. The unit rates agreed per performance unit contain the payment for all the performances required for the execution of the order (especially personnel, materials, and equipment); this also applies to part performances not explicitly mentioned in the order, in as far as they belong accordingly to the execution of the individual performances concerned.

6.2. If the unit rates have been agreed under the mutually agreed assumption of a specific total extent of works for the order, the right to claim adjustment of the agreed unit rates exists if the extent of the actual works carried out exceed or are less than the assumed total extent by more than 25%; §649 BGB² is thus precluded. The contractor shall inform us immediately, as soon as surpluses or under measures of more than 25% are indicated.

6.3. We shall make payments on the basis of a measurement to be produced jointly on site, in which all measurements are to be entered in ink or watercolour and which is to be signed by the persons taking the measurement.

6.4. The invoices must be accompanied by calculations of quantities, measurement lists, measurement drawings and proof of material consumption. All measurements are to be determined using mathematical formulae (not using approximation methods).

6.5. We will only make interim payments for 80% of the amounts shown in checkable interim invoices however, not for less than 10% of the expected overall payment as well as not less than 10,000 EUROS.

6.6. Final payments shall be made following acceptance and submission of checkable final invoices using the documents submitted.

7. **Billing by time.** Where billing and payment by time has been agreed, the following applies:

7.1. If no other agreement is reached, we will only make the following payments:

a) We will reimburse a reasonable hourly rate per employee of the contractor or his agents, deployed for the actual proven working time (without breaks) up to a maximum equivalent to the collective bargaining agreement wage to be paid by the contractor/agent, plus

b) a reasonable employer surcharge;

c) furthermore, we will reimburse the proven costs of the contractor/agents for site allowance, mileage and fares, etc. if such payments are generally common and the level is reasonable.

7.2. Any working hours spent by supervisory personnel of the contractor on written work, etc. in the interests of the contractor, which also includes writing out the daily time sheets, as well as the time and material costs of fulfilling the obligations in accordance with Clause 3 will not be paid by us.

7.3. Deviating from Clause 4.1., in the case of settlement of accounts by time, the materials required for carrying out the order will usually be provided by us. Clause 4.4. applies accordingly.

7.4. If provision of materials by the contractor is agreed in exceptional cases, we will reimburse the value of the necessary and proven materials plus a reasonable contractor surcharge of max. 10%.

¹ RBGI. = Official Journal for the publication of laws until 1945

² BGB = German Civil Code