



KARL MAYER

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KARL MAYER Textilmaschinen AG

GENERAL CONDITIONS OF ERECTION

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1. Scope

These general conditions of erection shall be valid for the erection, commissioning and trial running of machines and equipment, hereinafter called services.

These conditions shall also be applicable for the supervision of erection insofar as no other special agreements are made or exist.

2. General

2.1 The contract shall be deemed to have been concluded on receipt of written confirmation (Confirmation of Order) from the company that the order has been accepted.

Offers/tenders which do not stipulate a term of acceptance are not binding.

2.2 These conditions shall be binding if declared applicable in the offer/tender or the Confirmation of Order. Any terms stipulated by the buyer shall only be valid insofar as they are expressly acknowledged by the company in writing.

2.3 To be valid all agreements and legally relevant declarations of the parties with regard to the contract shall be in writing.

3. Drawings and technical documents

3.1 Data provided in technical documents are only binding insofar as having been expressly stipulated as such.

3.2 Each party to the contract shall retain all rights to technical documents provided to the other. The party receiving such documents recognizes the rights and shall not – without previous written consent of the other party – make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

4. Obligations of the company

The company obligates itself to carry out all works expertly by skilled personnel or to have it carried out by third parties whereby, in these general conditions such third parties will also fall under the designation of "company."

5. Obligations of the buyer

5.1 The buyer shall, at latest when placing the order, draw the attention of the company to standards and regulations applicable to the execution of the erection work and other services, the operation of the machines and equipment as well as to the health and safety of the personnel.

5.2 The buyer shall do everything necessary to ensure that work can begin punctually and be carried out without hindrance or interruption.

The company's personnel shall only be requested when all preparation work has been completed.

5.3 The buyer shall ensure that any entry, exit, residence and work permits, or any other permits which the company's personnel may need, are obtained in good time.

5.4 The buyer shall carry out on-site and other preparation work expertly and at his cost and responsibility; if so required according to the documents provided by the company.

5.5 The buyer shall take all necessary accident prevention measures at his own cost. He shall explicitly inform the company if care has to be taken with regard to himself and/or other companies or pertinent regulations have to be observed.

The company is entitled to refuse or stop works in case the security of the personnel is not guaranteed. The eventually resulting waiting and/or additional travelling time and daily allowances will be invoiced separately to the buyer.

Should the company personnel suffer an accident or sickness, then the buyer shall provide any assistance necessary.

- 5.6 The material to be erected is to be stored at the cost of the buyer, protected against all damaging influences. It is to be checked in the presence of the company personnel for completeness before commencement of work. The buyer shall be liable for any loss or damage to the material during storage and the company shall replace or rectify such lost or damaged material at the cost of the buyer.
- 5.7 The buyer shall ensure that the transport routes to the erection site are in a useable condition; in a fit state to commence erection at the site itself and that there is unhindered access to the site and any necessary rights of way are guaranteed.
- 5.8 The buyer shall provide a heatable or air conditioned, lockable room for the company's erection supervisor, a crew room and a changing room for the erection personnel. Further he shall provide a dry, lockable room for the storage of material and equipment. All these rooms are to be in the vicinity of the erection site.
- 5.9 At his own cost the buyer shall provide the under mentioned in accordance with the requirements of the company or the erection programme:
- 5.9.1 Qualified tradesmen such as fitters, welders, electricians, bricklayers, painters, plumbers and labourers, furnished with the appropriate tools and equipment, as requested by the erection supervisor.
These persons shall follow the instructions given by the company's personnel, but shall be, however, under contract to the buyer.
- 5.9.2 A working crane and lifting tackle with operators, a suitable scaffolding and transportation for persons and materials plus workshop facilities and measuring instruments.
- 5.9.3 Provision of all consumer and installation materials, cleaning agents, lubricants and other sundry items.
- 5.9.4 Provision of the required electrical power and illumination, including the necessary connections to the erection site; heating; compressed air; water; steam and operating materials, etc.
- 5.9.5 Provision of means of communications such as a telephone, fax, telex connection, PC modem.
- 5.10 The buyer shall obtain in good time any permits needed for the import and possible re-export of tools, equipment and materials at his own cost.
- 5.11 The buyer shall return to the place designated by the company and without delay any tools and equipment provided by the company. The buyer shall bear the cost insofar as it is not included in the price. The ownership of tools which the buyer has purchased from the company and which the company's personnel uses during the erection shall be transferred to the buyer at the termination of the erection work. In the absence of other instructions, they shall be available on the erection site at the risk of the buyer.
- 5.12 The buyer shall employ the future operating staff in the erection work so that they become conversant with the methods and techniques of the company. The company shall be prepared to undertake technical training of these persons insofar as this has been explicitly agreed.
- 5.13 If the buyer does not, or only partially, fulfil his obligations then the company shall have the right to fulfil these itself, or to have them fulfilled through a third party. The costs thus incurred shall be borne by the buyer. He shall release the company from claims from third parties.
- 5.14 If the company's personnel should, for reasons beyond its control, be endangered in the execution of its work, or be considerably hindered therein, then the company shall have the right to order the return of its personnel. In such cases or should the personnel be detained after the termination of its work, then the relative hourly or daily rates shall be charged to the buyer as waiting time, plus the travelling time and daily allowance.

6. Working on the buyer's instructions

The buyer shall not be permitted to call upon the company personnel to carry out work not agreed in the contract without the written permission of the company. Should the company consent it will accept no liability in connection with this work.

7. Working times

- 7.1 The normal working hours and regulations concerning overtime, night work and work on Sundays and public holidays shall be governed by the agreement between the employers' and employees' associations at the company's domicile.
- 7.2 The standard weekly working hours shall normally be divided into five days. If, for reasons over which the company has no control, a shorter working time has to be agreed, then the normal working hours will be charged.
With regard to the apportionment of the working time, the company's personnel will arrange itself according to local practice. The normal working time is between 06.00 and 22.00 hours.
- 7.3 Working hours in excess of the standard weekly or daily hours of work shall be valid as overtime. Overtime work is allowed only after agreement between the company and the buyer. As a rule overtime should not exceed the daily working hours by more than 2 hours and the weekly working hours by 10 hours. Public holiday working hours are those hours worked on the public holidays valid in the country where the erection work is made.
8. Travelling time and other time congruent with working time
- 8.1 Travelling time and an appropriate preparation and settlement time after travelling shall be valid as working time per Para. 7.1. Valid as travelling time is:
- The time needed for travelling to and from the erection site.
 - The time needed for the occupation of accommodation and fulfilment of arrival and departure formalities with local authorities.
- 8.2 If suitable accommodation and dining facilities cannot be found near to the erection site, then for the time taken daily between the accommodation and/or restaurant and the erection site in excess of a half an hour for a single journey (road time) shall be chargeable as working time.

All expenses in this connection plus the cost of the use of an appropriate vehicle or hire car shall be borne by the buyer.

- 8.3 If for any reason beyond the company's control, the company's personnel is hindered in its work, or detained for any reason after its completion, then the company shall have the right to invoice the waiting time at the same rate as working time. The buyer shall also bear all other costs incurred in this respect.

9. Type of costs

9.1 Principle

The services of the company will be calculated on the basis of the settlement rates valid at the time of the erection work according to time and expenditure (effective cost/expenses) insofar as a flat rate has not been agreed.

9.2 Effective price

The company's services will be invoiced as follows:

9.2.1 Personnel costs:

The buyer shall confirm the time worked by the company's personnel via the work report. Should the buyer not provide this confirmation in time or only through unauthorized persons then the time sheets of the company's personnel shall serve as the basis for calculation.

For working, overtime, night, Sunday, public holiday, travelling and other times congruent with working time the settlement rates quoted in the Confirmation of Order shall be valid.

A maximum of 12 hours per diem will be charged as travelling time. Work carried out under particularly duty or difficult conditions e.g. at very high or low altitude, or when safety clothing or respirators have to be worn, a handicap surcharge will be levied per hour in addition to the company's valid settlement rate and the accommodation costs.

9.2.2 Travelling costs

The costs of travelling to and from the erection country, plus the cost of travel in the country itself in a means of transport selected by the company, plus any incidental expenses incurred such as e.g. insurance; freight; customs duties; baggage; passport and visa charges; issue of entry, residence and working permits; medical examination on the outward and homeward journeys and inoculation of the company personnel will be invoiced to the buyer according to the time and costs involved. Insofar as special conditions do not require the use of other classes the following will be invoiced:

- Air travel business class
- Rail and ship travel 1st class
- For the use of automobiles the kilometre allowance per Confirmation of Order or effective hire car costs.

9.2.3 Board and lodging (Daily allowance)

The buyer shall provide the company's personnel with an adequate amount of wholesome food plus good, clean, heatable or air conditioned single accommodation at the place of erection or in the neighbourhood.

To cover the cost of board and lodging not directly borne by the buyer plus incidental costs such as beverages, laundry etc., the daily allowance rates shown in the Confirmation of Order shall apply.

The company shall have the right to amend these rates should the cost of living increase before the start of, or during the work, or the daily allowance agreed should not suffice.

With the written consent of the company, the buyer may pay the daily allowance directly to the company's personnel. In the absence of other agreements the daily allowance is to be paid every 14 days in advance.

9.2.4 Home visits

During a longer stay at an erection site the company's personnel is entitled to home visits in accordance with the contractual agreement in the company's domicile or according to a special agreement between the company and the buyer. The cost of the journey from the erection site to the company's headquarters and back again is to be borne by the buyer.

The time for the homeward and outward journeys plus the daily allowance will be invoiced as per Paras 8.1 and 9.2.3.

Insofar as conditions at the erection site permit the company's personnel can, instead of a home visit, opt to take his/her their partner(s). The buyer will then be invoiced with the relative travelling costs.

- 9.2.5 The company will provide its personnel with the customary handtools needed to carry out the work. Additional tools, equipment, measuring and testing instruments will be charged to the buyer as used. The period of use will be calculated from the day of leaving the company's works until the day of return.

Tools and equipment retained will be invoiced at the cost of re-procurement. Transportation and insurance costs plus other expenses, dues and fees with regard to the import and reexport of tools and equipment shall be borne by the buyer.

- 9.2.6 Cost of consumable and small erection parts Consumable, installation and small erection parts will be charged as used.

9.2.7 Sickness and accidents

In cases of sickness or an accident the buyer shall provide the company's personnel with competent medical treatment and nursing whereby the right of the company to recall its personnel at any time shall not be prejudiced.

The company shall bear all costs incurred.

The buyer shall pay the daily allowance for a period of 10 days from the start of the medical treatment.

If the recovery of the sick or injured person will presumably take longer than 10 days, the company shall provide a comparable replacement at the company's cost.

9.3 Work at flat rates

- 9.3.1 The flat rate sum covers the services to be provided by the company as per the written agreement.

It presumes an unhindered sequence of operations and timely termination of the preparation work carried out by the buyer, plus any ancillary services.

9.3.2 Additional costs occasioned by circumstances beyond the control of the company, such as subsequent amendment of the content or scope of the agreed work, waiting time, reworking and additional travelling shall be borne by the buyer. Invoicing shall be analogous Para. 9.2.

9.4 Taxes, dues, fees, social insurance contributions

Taxes, dues, fees, social insurance contributions etc., which the company or its personnel has to pay in connection with the contract, or work beyond the borders of the company's country shall, with the exception of personal income tax, be borne by the buyer.

10. Terms of payment

10.1 Insofar as nothing to the contrary has been agreed, the price and the costs will be invoiced monthly; they are to be paid by the buyer within thirty days of the date of invoice. The company shall have the right to request partial or full payment of the estimated cost of erection.

Payments made by the buyer shall be without any deductions (discount, expenses, taxes, fees, etc.) to the company's headquarters. The buyer's obligation shall be deemed fulfilled when the full amount invoiced has been irrevocably credited to the company's account.

10.2 The buyer shall not withhold payment nor make any deductions whatsoever because of any complaints, demands or counter-claims not recognized by the company. Payment must also be made when, for reasons beyond the control of the company, work has been delayed or prevented.

10.3 Should payment not have been made by the agreed dates the buyer shall, without any particular reminder on the part of the company be liable to interest on the amount due, according to the standard interest rates at the company's domicile, the right of enforcement of other rights, however, being reserved. The payment of interest on arrears shall not exempt the buyer from his obligation to payment as agreed in the contract.

11. Time limits

11.1 A time limit to carry out the work shall be binding for the company when it has been confirmed by the company in writing. The time limit shall begin when all requisites for the start of erection have been fulfilled. The limit shall be deemed to have been observed when, at its expiry, the machine/equipment erected is ready for handing over. A time limit shall also be deemed as observed should parts be missing or need reworking, but the prescribed operation is possible, that is to say, not impaired.

11.2 A contractually agreed time limit shall be adequately extended:

- When the information which the company needs to carry out the work was not forthcoming in good time, or should the buyer subsequently amend it or
- If the buyer does not fulfil his contractual obligations, in particular the terms of payment as per Para. 10, or insufficiently meets his obligations as per Para. 5, or should his subcontractors be in arrears with their work, or
- For circumstance beyond the company's control, for example in cases when mobilization, war, civil war, insurrection or sabotage are threatened or occur and also in cases of industrial disputes, accidents, sickness, delayed or incorrect deliveries of vital materials, official actions or omissions by authorities or state organs, unforeseeable transport difficulties, fire, explosion, force major, acts of God.

11.3 If the agreed time limit is not observed for reasons which the company alone is responsible the buyer shall have the right insofar as he has suffered damage, to request damage compensation for the delay at the rate of 0.5% per complete week, up to a maximum of 5%. The percentage of compensation to be calculated from the price of the work by the company for that part of the machinery which, because of the delay, cannot be put-into-operation on time. Additional claims and rights on the grounds of the delay, particular for compensation, are excluded. With time limits of over three months there shall be no compensation due for the first two weeks of the delay.

12. Handing-over erected machinery/equipment

12.1 The erection work is ready for handing-over when the machine and/or equipment has been erected. This shall also be valid when, for reasons beyond the company's control, it cannot be put-into operation.

12.2 As soon as the buyer has been informed that the erection work has been completed, he must carry out an immediate inspection in the presence of the erection supervisor and inform the company of any shortcomings in writing without delay. Should he not do so the erection work shall be deemed to be approved.

13. Non-fulfilment, poor fulfilment and their consequences

13.1 All cases of poor fulfilment or non-fulfilment not expressly covered in these conditions and in particular, if, without good reason, the company starts accomplishment of the work so late that punctual completion is unlikely or if, due to a fault on the part of the company execution contrary to the terms of the contract can clearly be foreseen, or because the company does not carry out the work in accordance with the terms of the contract, the buyer shall have the right to grant a reasonable extension for the completion of the work while, at the same time, issuing a warning of termination of the contract.

Should such an additional period lapse inefficaciously due to negligence on the part of the company, the buyer shall be entitled to terminate the contract with respect to the work carried out contrary to the terms of the contract, or which it can be clearly seen that it cannot be completed within the terms of the contract and to claim a refund of the payment made for this part of the work.

13.2 In such a case Paras 15 and 16 shall apply by analogy with regard to any claim for damages on the part of the buyer to the exclusion of any further liability. Any claim for damages shall be limited to 10% of the contracted payment for the services affected by the termination.

14. Danger liability

The buyer shall take full responsibility for the material to be erected during the course of the work as well as for the tools, equipment and materials supplied by him. The company retains the right of remuneration as agreed in the contract even then when erection cannot be, or be only partially, effected due to the destruction or partial destruction of the material to be erected.

15. Guarantee

15.1 The company guarantees the skilled and careful execution of the work carried out for a period of 12 months after its completion and in accordance with the following conditions:

If work is interrupted for reasons as per Para. 11.2 the warranty period for work completed before the interruption shall begin at latest 3 months after the start of the interruption.

The warranty period shall expire in all cases 18 months after supplier's notification that the supplies are ready for shipment.

15.2 Faulty workmanship detected in the erection work during the warranty period will be rectified free of charge, insofar as the company is informed in writing of such defect immediately after it has been detected.

The company shall accept responsibility for defects attributed to the buyer's personnel or third parties acting under the supervision of the company personnel only when such defects are based on gross negligence on the part of the company personnel in giving instructions or in supervision.

15.3 The warranty shall not be valid when the buyer or a third party carries out modifications or repairs without the written consent of the company or when the buyer does not take immediate measures to limit the damage.

15.4 For rectification work under warranty the company shall provide the same guarantees as for the original delivery, but for a period not longer than the guarantee period of the original delivery.

15.5 Other claims or rights with regard to faulty workmanship other than those mentioned under Paras 15.1 to 15.4 are excluded.

16. Liability

16.1 The company shall be liable to the buyer only for such damage for which his personnel are responsible during the preparation-for-erection, erection or rectification work. Liability shall be limited to 15% of the contract price. For personal injury the legal liability shall be valid.

Unlawful intention or gross negligence excepted the company shall not be liable to the buyer in respect of production stoppages, ceasing again, loss of usage, pecuniary loss and losses as a result of delay or interruption in the erection or for loss of contract or consequential losses.

Additional claims on the part of the buyer in particular for the replacement of damage or loss of any kind are excluded, irrespective of the jurisdictional basis on which they are claimed.

16.2 The buyer shall be liable for damage caused by his personnel, even when it is under instruction from, or the supervision of, the company personnel unless it can be proved that the cause was gross negligence in the instruction, or neglect in the supervision, on the part of the company's personnel.

The buyer shall be liable for damage caused by defects in tools, equipment or materials supplied by him This shall also be true when the company's personnel has used it/them without complaint unless, with reasonable attentiveness, the damage should have been recognized.

17. Annulment of the contract by the company

The contract shall be amended appropriately if unforeseeable events considerably change the economic effect or the content of the services, or have a considerable effect on the activities of the company, or if fulfilment subsequently becomes impossible. Insofar as such an amendment is not economically justifiable the company shall have the right to amend the contract or the parts thereof affected.

The buyer shall not be entitled to claim damages as a result of such annulment. Should the company wish to annul the contract he shall – after having recognized the consequences of the act – immediately inform the buyer. This shall apply even if an extension of the erection time has been previously agreed.

18. Jurisdiction and applicable law

The place of jurisdiction for both the company and the buyer shall be at the domicile of the registered office of the company.

The company shall, however, have the right to invoke the aid of a court at the buyer's registered address.

The contract shall be governed by law at the domicile of the company.

19. Concluding provisions

To be valid, amendments to the contract must be in writing. Should individual provisions of the contract prove not to be operative, they shall not affect the validity of the remaining provisions. The parties shall obligate themselves to replace the inoperative provisions with new ones, which are as close as possible to the commercial purpose of the contract.