

General terms and conditions for employment and work contracts of companies in the SIMPEX HYDRAULIK GROUP as a contractor – 05 / 2021

§ 1 Scope of validity and coming into force of contracts

(1) The below general terms and conditions of the contractor (hereinafter “T&Cs”) apply to requests, contracts and orders for services and goods to be rendered by the contractor. The T&Cs are a component of all contracts regarding the rendering of services and goods entered into by the contractor with contractual parties (hereinafter “clients”), even if no special reference is made to them in the respective contractual documents.

(2) If not otherwise agreed, the T&Cs of the contractor apply as amended at the point from when the client makes the order, or in any case in the latest version promulgated in textual form, also forming the framework conditions for similar future contracts without its having to be referred to each time individually.

(3) The T&Cs only apply to clients who, on conclusion of the contract, are exercising their commercial or independent professional activity (entrepreneurs) or to legal persons or special funds under public law.

(4) Offers made by the contractor are always non-binding if not otherwise agreed. This also applies if the contractor has previously sent the client documents, product descriptions or other written or electronic files.

(5) The order of the goods or services made by the client is considered a binding offer. The contractor can either accept this offer by sending an order confirmation (in written or textual format) or by delivering the goods within two weeks of receipt of the offer.

(6) Individual agreements drawn up on a case-by-case basis with the client (including collateral agreements, supplements and amendments) have priority over these T&Cs in all cases. For the existence and content of such agreements, subject to proof to the contrary, a written contract or written approval from the contractor is decisive.

(7) Legally relevant declarations and statements to be issued after conclusion of the contract by the client to the contractor (e.g. deadlines, defect reports, declarations of withdrawal or price reduction) require written form to be effective.

(8) References made to the validity of legal provisions only have elucidative force. Even without such reference being made, the legal provisions apply if not directly altered or expressly excluded in these T&Cs.

(9) The client’s T&Cs apply exclusively. Any contradictory or deviating conditions on the part of the client are only binding if and to the extent that the contractor has expressly approved their validity. The contractor’s T&Cs also apply if the contractor carries out the delivery without reservation in knowledge of the existence of the client’s contradictory or deviating conditions.

§ 2 Scope of orders

(1) The extent of the obligation to perform on the part of the contractor is determined by their own order confirmation and, if the contractual task is not described there, according to the non-binding offer made by the contractor.

(2) The contractor renders services on their own responsibility; here, the client remains responsible on their own part for the desired and intended results. In case of work carried out, the contractor is only responsible for the intended results.

§ 3 Execution of orders

(1) The execution of orders takes place taking account of the state of science and technology at the moment of execution.

(2) The contractor is within their rights to employ third parties in the execution of contracts. The contractor's obligations towards the client are unaffected by this. They cannot refer the client to claims made against third parties employed by them.

(3) The contractor is exclusively authorized to issue instructions to their employees.

§ 4 Delivery periods and deadlines

(1) Delivery periods and dates are only binding if this is expressly determined in writing in the contract.

(2) In the case of services performed, delivery periods start on the date of order confirmation by the contractor. This does not apply if individual provisions can be determined to require further approval or explanation; in this case, the period does not begin before the clarification has been given. The same applies to delivery dates; these must be postponed as appropriate. (2) Delivery periods and dates are subject to the ability to deliver and timely receipt from own suppliers. The start of a binding delivery period requires the prior elucidation of all organizational and technical questions and the punctual and proper fulfilment of all the client's obligations, in particular the receipt of any agreed down payment.

(3) If binding delivery periods and dates for services rendered are not complied with, the client only has the right to damages in lieu of services because of the non-provision of services or services not rendered as owed (§ 281 BGB) and the right to object to the non-fulfilled contract (§ 323 BGB) from the point that the contractor has been offered a suitable delivery deadline connected with a declaration that the client will decline to accept the services once this deadline has been reached; after this deadline has passed without success, the claim for fulfilment is void.

§ 5 Client's obligation to cooperate

(1) The client is obliged to provide the contractor in good time before the execution of the contract with all the information, materials, devices, documents etc. vital for the fulfilment of the contract; they may also be obliged to provide transport at own cost.

(2) In the case of activities within the client's operation or worksite, the client is also to provide free access to all rooms to all employees and subcontractors of the contractor within ordinary working hours as permitted by operational access regulations, if this is necessary for the proper rendering of the services.

(3) If the client does not fulfil this obligation to cooperate or fails to do so in good time, and this leads to delays and/or additional expenditure, the agreed timeframe will be extended and the remuneration increased as appropriate.

(4) If the client delays acceptance, neglects to cooperate or delays the provision of services for other reasons that are their own responsibility, the contractor is within their rights to demand reimbursement of any damages, including extra expenses, they incur. In this case, the risk of accidental loss or deterioration of the services rendered is transferred to the client at the point they incur this delay. We reserve the right to make further claims.

§ 6 Remuneration and payment conditions

(1) The services and work provided by the contractor will be rendered under the financial conditions (fixed price or remuneration of time/materials) described in the order confirmation or in the non-binding offer made by the contractor. In the case of work and services rendered on a time and materials basis, the working hours and travel periods will be billed at the hourly rates valid at the time the services were rendered and materials at the price valid at that time. If services and work to be rendered on an hourly basis are cancelled by the client 14 days before start, the previously estimated fee will be payable in its full amount.

(2) Estimated prices for services and work to be rendered on a time and materials basis given in the offer and labelled as such are non-binding.

(3) The VAT will be indicated specially in the invoice at the valid rate.

(4) Invoices are payable on receipt without deduction. Under this obligation to pay invoices, the client enters into arrears at the latest 14 days after receipt of the affected invoice.

(5) Interest on arrears is calculated at 9% p.a. above the basic interest rate. The ability to claim further damages, given proof, is unaffected by this.

(6) The client may only offset counterclaims if these counterclaims are legally binding, uncontested or accepted by the contractor. The same applies, *mutatis mutandis*, to the right to refuse service and the right of lien, if they do not rest on the same contractual relationship.

(7) Regardless of any deviating stipulations made by the client, the parties agree with regard to the crediting of payments, that §§ 366 para. 2, 367 BGB apply.

§ 7 Acceptance

(1) Work performed must be accepted by the client if the contractor has demonstrated accordance with the agreed specification of services. Acceptance processes take place directly after a suitable declaration has been made. Insignificant deviations do not entitle the client to refuse acceptance. The obligation to eliminate defects as part of liability for material defects and defects in title is unaffected by this.

(2) In acceptance, a form to be signed by both contractual parties must be completed confirming compliance with the agreed specification of services.

(3) The productive use or commissioning of the services or work rendered, in whole or in part, is to be considered acceptance.

§ 8 Material defects and defects in title to work performed

(1) The contractor will render the services to the client free from material defects or defects of title.

(2) If the work is defective, the contractor is liable as follows:

a) By choice of the contractor, the defect can be eliminated or new work can be carried out.

b) If rectification fails to be carried out within a suitable period, the client may, without prejudice to any claims for damages, either reduce the compensation or, if the value or suitability of the work is not insignificantly reduced, withdraw from the contract.

c) The client must report material defects and defects of title to the contractor without delay.

(3) Material defects and defects in title expire within 12 months of the rendering of services or acceptance of the work. This does not apply if the law as per § 438 para. 1 No. 2, § 479 para. 1 or § 634 a para. 1 No. 2 BGB prescribes longer terms.

(4) Information given in documentation, prospectuses, project descriptions etc. is not a guarantee. Promises of guarantee require in all cases express written confirmation from the contractor.

(5) In the case of services rendered, the contractor is liable for damages caused by delay to the client if a fixed final deadline, agreed in the offer, is overstepped for reasons solely of their own responsibility. The damages caused by delay will be limited by reason to the damages proven by the client and in extent to 0.5% for each complete week of delay and in total to no more than 5% of the total remuneration of the portion of services not rendered in good time. Further liability based on mandatory legal provisions remains unaffected. The client is obliged to declare on request of the contractor by a suitable deadline whether they are to withdraw from the contract because of the delay in services rendered and/or whether they will demand damages in lieu or the rendering of the services; after the deadline has passed, no further claim for fulfilment can be made.

§ 9 Liability

(1) The contractor is only liable for claims made against the contractor, for whatever reason, in particular because of impossibility, delays, defective delivery, prohibited action and as far as blame is to be assigned in any such cases, to the following extent:

a) In case of malice or gross negligence, the contractor is liable without restriction.

b) In the case of the infringement of essential contractual obligations (cardinal obligations – obligations whose fulfilment is what in the first place makes the proper execution of the contract possible and on the fulfilment of which the contractual partners regularly rely and are able to rely) caused by simple negligence, and in the case of prohibited action, the contractor's liability, excepting the liability for damage to life, limb and health, is limited to the extent of the expected typical contractual risk.

c) In the case of the infringement of non-essential contractual obligations because of simple negligence, and in the case of prohibited action, the contractor accepts no liability; this does not apply to damages resulting from injury to life, limb and health.

(2) The above liability limitations or exclusions also do not apply to claims for damages because of any guarantees accepted or claims resulting from the Product Liability Act. The right of the client to withdraw from the contract in the case of a violation of obligations that is the fault of the contractor remains unaffected.

(3) If the contractor's liability has been excluded or limited in the above para. (1), this also applies to the personal liability of employees, members of staff, representatives and agents.

(4) The client is obliged to make written report without delay of damages that are the responsibility of the contractor and give the contractor the opportunity to investigate the damages and their cause.

§ 10 Force majeure

(1) Force majeure events are external circumstances with no relationship to the operational context that could not be averted even through the most sensible expected precautions.

(2) These include, in particular:

a) Natural disasters of all kinds, such as earthquakes, volcanoes, tsunamis, extraordinary flooding, storms, lightning strikes, wildfires and other catastrophic events not influenced by humankind;

b) Epidemics;

c) Riots, blockades, arson, civil war, embargoes, hostage-taking, war, revolution, sabotage;

d) Unexpected state intervention, regulations or other decisions and measures that can be qualified as unforeseeable and independent of the parties;

e) Strikes or work stoppages by employees, if these take place at third-party locations;

f) Terrorist attacks, explosions, transport collapse;

g) Any kind of large-scale event involving pollution, poisoning or radiation with catastrophic effects of direct negative impact on business operations or indirect negative impact on subcontractors.

h) In cases of force majeure, the party affected by the event is entitled to a suitable extension of delivery deadlines and dates in accordance with the extent and duration of the force majeure circumstances and their consequences. The affected party is obliged to inform the other party without delay of the event. If necessary, the parties will enter into discussion of the measures to be taken.

i) Cases of force majeure do not entitle the other party to damages. Adjustment of the contract up to and including its complete cancellation is permissible if one party can no longer be expected to uphold their side of the contract given the totality of the situation.

§ 11 Data protection

The contractual partners will process or use personal data of the other contractual partner only for contractually agreed purposes and while respecting legal provisions.

§ 12 Inventions / Intellectual Property

(1) Inventions made by employees of the contractor while executing a contract and any property rights over them belong to the contractor. Inventions made by employees of the client while executing a contract and any property rights over them belong to the client.

(2) The awarding of licenses to inventions in the sense of paras 1 and 2 and the property rights assigned to them requires special written agreement.

(3) The contractor reserves all copyright and property rights to images, drawings, calculation and other documents; they may not be made accessible to third parties without the prior written approval of the contractor. This applies especially to those written documents marked as "confidential". Drawings and other documents that are part of offers are to be returned without delay on request of the contractor if the contract has not been awarded to them.

(4) If the obligations of the above paragraph (3) are infringed, the client is obliged to pay a suitable contractual penalty of up to 5% of the net value of the contract, to be determined by the contractor at reasonable discretion and if necessary, in compliance with a statutory inspection of appropriateness and adjustment.

§ 13 Return of documents and objects, right of lien

(1) On the completion of a contract, the client can demand the return of the documents and objects handed over to them. The contractor may refuse return until they are satisfied with regard to any claims resulting from the contract, as long as the reservation of individual documents and objects would not be contrary to good faith.

(2) The contractor can make and retain transcripts or copies of documents that they return to the client.

§ 14 Client's solvency

(1) The contractor will regularly, when concluding contracts and in specific cases where there is a justified interest, and even with existing customers, investigate their creditworthiness. To do so, they will work together with Creditreform Boniversum GmbH (Hellersbergstraße 11, 41460 Neuss), the Verband der Vereine Creditreform e.V. (Hellersbergstraße 12, 41460 Neuss) and the CRIF Bürgel GmbH (Radlkofersstraße 2, 81373 Munich), from which they will receive the necessary data. For this purpose, they will transfer the names and contact data of clients to the above credit agencies. The information as per art. 14 of the EU General Data Protection Regulation regarding the data processing taking place at Creditreform can be found at: www.boniversum.de/EU-DSGVO or at www.creditreform.de/EU-DSGVO or www.crifbuergel.de/de/datenschutz.

(2) If it becomes apparent after conclusion of the contract that the contractor's claim for payment and remuneration is endangered because of the client's insufficient solvency, the contractor is entitled as per the legal provisions to refuse service and – as applicable, after setting suitable deadlines – to withdraw from the contract (§ 321 BGB). The client can avert cancellation of the contract by providing collateral. In contracts regarding the manufacture of specific goods (individual production), the contractor can declare withdrawal immediately; the legal provisions regarding the lack of obligation to provide deadlines are unaffected by this.

§ 15 Allocation of costs in special cases

If in a repair contract the repair turns out to be technically or economically impossible, or if the client refrains from implementing it on the basis of the estimated costs, the client must pay remuneration for the assessment of the damages and creation of the estimated cost. The obligation to remunerate also arises if the client commissions the contractor to dispose of or return unrepaired objects transferred to them for repair.

§ 16 General provisions

(1) Contracts are concluded in written form. Ancillary agreements are only effective if confirmed by the contractor in writing.

(2) The transfer of contractual rights and obligations by the client to third parties requires the prior written approval of the contractor.

(3) The exclusive place of jurisdiction for disputes between the client and contractor is the court with jurisdiction at the contractor's headquarters.

(4) The contractual relationships are subject to German law with the exclusion of the provisions of the CISG.