

Assembly conditions of Felbermayr Transport- und Hebetchnik GmbH & Co KG

For the use with:

1. a person who, at conclusion of the contract, acts in the exercise of their commercial or self-employed business (business-person);
2. public-law legal persons or such under public-law special funds.

I. Area of application

These assembly conditions apply to all assembly carried out by Felbermayr Transport- und Hebetchnik GmbH & Co KG (contractor), unless different arrangements were made and unless it concerns purely basic assembly work in the context of transport preparation or handling within the frame work of the general terms and conditions of Felbermayr Transport- und Hebettechnik GmbH & Co KG (see www.felbermayr.cc).

II. Directory of services, assembly prices

The assembly service shall be subject exclusively to the service specifications of the orderer, upon which the call fortenders, the cost estimate and/or the quotation from the contractor have been based. Unless otherwise agreed, the contractor shall be obligated to ensure that the assembly is successful. The billing for the assembly work shall be based on units of time except where a flat-rate fee has been expressly agreed. The agreed amounts shall be understood to be exclusive of VAT, which shall be paid to the contractor at the applicable statutory rate.

III. The technical assistance of the customer

1. Unless otherwise agreed upon, the orderer is obliged to provide technical assistance at own costs, especially
 - a) for all preparation work, especially earth, construction, ballast and scaffolding work, including the sourcing of the required building materials.
 - b) provision of heating, power and lighting, compressed air, water, including the necessary connections.
 - c) provision of necessary, dry and lockable rooms for the storage of tools and the assembly personnel's operating supplies and auxiliary materials.
 - d) appropriate, theft-proof common rooms (with heating and lighting), washing facilities, sanitary facilities) and first aid for the assembly personnel.
 - e) provision of all auxiliary materials and execution of all other actions necessary for the adjustment and alignment of the object to be assembled and for the conduction of contractually agreed testing.
 - f) protection and securing of the assembly site and materials against adverse influences of all kinds, cleaning of the assembly site.
2. The orderer's technical assistance must assure that assembly work can start immediately after the arrival of the assembly personal and can be carried out without delay until final inspection can be conducted by the orderer. In case special plans or instructions by the orderer are required the latter must provide them in due time.
3. In the event that the orderer fails to fulfil his obligations, the contractor shall be entitled but not obligated, after stipulating a time limit, to carry out the activities for which the orderer is responsible at the orderer's site and at the orderer's expense. The statutory rights and claims of Felbermayr Transport- und Hebettechnik GmbH & Co KG shall otherwise remain unaffected.

IV. Assembly deadlines, assembly delays

1. The assembly deadline shall be deemed to have been met if by the time of its expiry the assembly work is ready for acceptance by the orderer or, in the event of a contractually agreed pre-commissioning inspection, ready for its execution.
2. If the assembly is delayed as a result of force majeure, instructions from higher authorities or measures connected with industrial action, including but not limited to strikes and lock-outs, or the occurrence of circumstances for which the contractor is not responsible, a reasonable extension of the assembly deadline shall, if such hindrances demonstrably effect assembly to a large degree. The same shall apply if such circumstances occur after the contractor has defaulted.

3. If the orderer suffers damages as a result of the default of the contractor, he shall be entitled to demand lump-sum compensation for default. For each full week of the delay, this amount shall be of 0.5%, in total however a maximum of 5% of the value of that part of the total assembly price that cannot be used on time. The assertion of any further damages caused by default shall be excluded unless the contractor caused the damages with intent or through gross negligence.
4. If the orderer sets the contractor a reasonable deadline for performance after the due date- taking account of the statutory exemptions- and this deadline is not met, the orderer shall be entitled to rescind the agreement in the framework of the statutory provisions. Further claims arising from delay are determined exclusively according to paragraph VII.2 of these terms and conditions.

V. Acceptance

1. The orderer shall be obligated to accept the assembly work as soon as he is notified of its completion and as soon as any contractually agreed pre-commissioning inspection of the assembled item has taken place. If the installation work is not in accordance with the contract, the contractor is obligated to remedy the defect at their own cost. If an immaterial defect exists, the customer shall not be entitled to refuse acceptance
2. If acceptance is delayed due to no fault of the contractor's, acceptance is considered completed after a period of two weeks following announcement that the installation is finished.
3. If the orderer accepts the assembly work without reservation despite being aware of the defect, the orderer shall forfeit all rights to supplementary performance, substitute performance against reimbursement of expenses, and price reduction, as well as the right to withdraw from the contract.

VI. Claims for defects

1. After acceptance of the service work, the contractor shall be liable for defects in the service work excluding all other claims of the customer without prejudice to No. 3 and article VII. in such a way that it must remedy the defect. The orderer shall notify the contractor immediately of a detected defect.
2. If the contractor- taking account of the statutory exceptions- allows a reasonable deadline it has been set to fruitlessly expire the orderer shall have a right within the framework of the statutory provisions to reduce the remuneration. The orderer's right to reduce the purchase price is also applicable to other incidents of an unsuccessful remedy of defects. Only if the assembly is demonstrably without interest for the orderer, despite the reduction in remuneration, is the client entitled to withdraw from the contract.
3. Further claims arising from delay are determined exclusively according to paragraph VII.2 of these terms and conditions.

VII. Client's liabilities, liability exclusion

1. If through the fault of the contractor, the assembled item cannot be used by the orderer in accordance with the contract as a result of omitted or defective execution of proposals and guidance specified prior to or after conclusion of the contract, and other contractual auxiliary obligations, the warranty claims under section VI. and the following provisions shall apply, to the exclusion of further claims on the part of the orderer.
2. Unless otherwise stated in this contract or in legislation, the contractor shall be liable for damage not sustained to the assembly item itself, irrespective of the legal grounds, only in the event of
 - a) wilful intent
 - b) gross negligence on the part of the owner/agencies or executive employees
 - c) culpable injury to life, limb or health
 - d) defects which the contractor has maliciously concealed
 - e) or within the scope of a guarantee promise.

In the event of gross negligence on the part of simple vicarious agents, the liability of the contractor shall be limited to damage which is foreseeable and typical for this kind of contract, unless the contractor can contract out of such liability by virtue of commercial custom. With the culpable breach of essential contractual duties the contractor shall also be liable with gross negligence of non-executive employees and with slight negligence, in the latter case limited to the typical, reasonably foreseeable damages.

3. Further claims are excluded. In the event that the contractor seeks recourse the orderer shall indemnify the contractor fully within the internal relationship, insofar as the latter did not cause the damage with intent or through gross negligence.

VIII. Orderer's duties

1. The orderer is obliged to provide all the technical requirements that are necessary for the proper and safe realisation of the assignment at his/her own account and risk and maintain these for the duration of the project. In particular, the orderer is obliged to put and maintain the object to be assembled in a condition that allows for the execution of the assembly work. The orderer is obliged to indicate the correct dimensions, weights and special attributes of the commodity (e.g. centre of gravity, type of material, etc.) as well as the load fastening point in due time. The orderer must provide unrequested and timely information on any particular hazards that could occur during performance of the assembly work because of the nature of the goods being assembled and the local conditions (e.g., hazardous materials, contamination, etc.).
2. The orderer is to take care of the necessary approvals from the owners for driving to foreign premises, private streets, roads and squares and to indemnify the contractor from any claims of third parties which could result out of unauthorised use of foreign premises.
3. Furthermore, the orderer is responsible for ensuring that the ground, place and other conditions at the unloading location as well as the access roads - except for public streets, roads and squares - allow a proper and safe execution of the assembly order. In particular, the orderer is responsible for making sure the ground at the assembly site, possible storage and pre-assembly locations as well as on the access roads can withstand the accruing earth pressures and other stress caused by assembly vehicles and machines (e.g. cranes, heavy loads, lifting gear etc.) The orderer is also responsible to provide all relevant details regarding subterranean cable ducts, service pipes, other underground pipelines and cavities that could impair the load-carrying capacity of the ground on-site or the access road ways. The orderer is obliged to inform the supplier without request of the location and existence of underground ducts, shafts and other cavities without having to be asked to do so. If the orderer should ignore the duty to provide the required information, he will be held liable for all damages resulting from the omission, including material damages and secondary damages to vehicles, equipment and devices of the supplier as well as financial damages.
4. The orderer is also to inform the assembly supervisor about specific security regulations that exist as far as these are of importance for the installation personnel. The orderer is to notify the contractor about violations caused by the installation personnel against such security regulations (e.g. instructions by outside companies, special safety and protective clothing, etc.).

IX. Limitation period

All claims of the orderer - irrespective of the legal grounds - come under the statute of limitations in 12 months. Compensation claims according to section VII. 2. a) - d) are subject to the statutory periods. If the contractor effects assembly work at a building and thereby causes its imperfection, the statutory time periods similarly apply.

X. Replacements provided by the orderer

If the appliances or tools supplied by the contractor are damaged at the working place without his default, or if they get lost without his default, the orderer shall indemnify him for such damage or loss.

XI. Final provisions

1. The „Werkvertrag“ (Contract Law for Work and Labor) law for legal relations between domestic parties of the Republic of Austria exclusively applies to all legal relations between the orderer and the contractor under exclusion, even if the assembly site is located abroad.
2. The performances of the contractor are preliminary performances and not eligible for discount deductions. Received accounts have to be settled immediately by the client after acceptance and receipt of invoice, unless other payment targets have been agreed upon at placement of order. Netting or withholding is only permissible with counterclaims that are uncontested or established with lawful finality.
3. Place of jurisdiction shall be the place of the contractor's domicile. However, the contractor is also entitled to file suit at the orderer's court of jurisdiction.
4. In the event of a provision in these business conditions or a provision in the context of other agreements proving to be or becoming ineffective, the effectiveness of all other provision or agreements remains unaffected. In such a case, the contractor and the orderer shall together replace the invalid provision with a valid provision which corresponds as closely as possible to the economic purpose of the invalid provision.