



# **A+F Assembly Terms 2010**

for

**A+F Automation & Fördertechnik GmbH**

**Industriestr. 11-13, 32278 Kirchlingern**

## **1. Scope**

The following terms and conditions apply for assembly, commissioning and modification works. Unless otherwise agreed in writing, they complement the other general and particular terms and conditions. The individual assembly services are set out in a separate specification. Amendments and secondary agreements must be made in writing.

## **2. Assembly price**

2.1 Unless otherwise expressly agreed, assembly will be charged according to time and cost. The agreed amounts are net prices exclusive of value-added tax at the prevailing rate.

2.2 If assembly is interrupted due to illness or as a result of an accident to the mechanic, only subsistence expenses will be payable. If the mechanic is hospitalised, these expenses will be reduced to 30 %.

If hospitalisation is required, the customer shall ensure accommodation and care to the standard applicable in the country of the supplier. Any return transport that may be required will be at the expense of the supplier.

2.3 The customer shall certify on a weekly basis the working hours of and work performed by the mechanic. At the end of assembly the customer shall issue the mechanic with an acceptance certificate on a preprinted form. The supplier will invoice assembly on completion of the work. Interim invoices may be issued if assembly is of extended duration. Invoice sums shall be payable immediately. Set-off is precluded.

Fringe benefits given by the customer to the assembly staff, either in cash or in kind, are not permitted and will not be considered in the invoice.



2.4 In the case of assembly at fixed prices, the cost estimate comprises all work to be performed in accordance with the specification. If the duration of assembly is prolonged for whatever reason or if additional expenses are required for reasons within the control of the customer or of one of his suppliers, however, and if the work of the assembly personnel is interrupted or prolonged thereby, the waiting time, the additional working hours, all the subsistence expenses and the additional travel expenses of the assembly personnel will be invoiced separately.

### **3. Cooperation of the customer and technical assistance**

3.1 The customer shall take the special measures required for the protection of persons and property at the assembly site. The customer and the supplier shall each appoint in writing a responsible representative (assembly manager) whose duties will be to liaise with each other while the work is being performed and to coordinate the work.

The customer shall also inform the assembly manager of the supplier of any special safety regulations if these are important for the assembly personnel. He shall inform the supplier of any breaches of such safety regulations by the supplier's assembly personnel. In the event of serious breaches he may, in agreement with the assembly manager, refuse the offender access to the assembly site. The supplier must draw the attention of the customer to particular hazards that could arise from the execution of the assembly work.

3.2 The customer shall be bound to provide technical assistance at his own expense, and in particular:

3.2.1 Provide the necessary qualified personnel in the number required for assembly and for the time required; the personnel shall follow the instructions of the assembly manager. In the case of work outside factory hours, an employee of the customer must be present for safety reasons. The supplier accepts no liability for the personnel. If auxiliary workers cause a defect or loss on the basis of instructions issued by the assembly manager, paras. 6 - 8 shall apply.

3.2.2 Carry out all earth, construction, recovery and scaffolding work, including procurement of the necessary building materials. The customer must inspect and approve foundations before the start of work; these foundations must be load bearing.



- 3.2.3 Provide the necessary lifting tackle and transport devices, tooling and any other items and materials that may be required (e.g. scaffold boards, wedges, bedding, cement, plastering and sealing agents, lubricants, fuels etc.).
- 3.2.4 Provide heating, lighting, operating power and water, including the necessary connections.
- 3.2.5 Provide the necessary dry and lockable rooms for storing the tools of the assembly personnel and high-value machine parts.
- 3.2.6 Transport the assembly parts to the assembly site, protect the assembly site and materials against harmful influences of all kinds, clean the assembly site and establish suitable accesses.
- 3.2.7 Provide suitable, theft-proof day and working rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for the assembly personnel.
- 3.2.8 Provide the materials and create suitable conditions and perform all acts required for adjustment of the delivery item and the performance of contractual testing.
- 3.3 The technical assistance provided by the customer must guarantee that assembly can begin as soon as the assembly personnel arrive and can be carried out without delay.
- 3.4 If the customer fails to meet his obligations, the supplier will, after notification, be entitled, but not bound, to carry out the acts incumbent upon the customer in the place and at the expense of the customer. Otherwise the statutory rights and claims of the supplier shall not be affected; in particular, the costs incurred thereby (e.g. waiting times, return travel) shall be borne by the customer.

#### **4. Assembly period, passage of risk, delay**

- 4.1 The assembly period will be observed if by the time it expires the assembly is ready for acceptance by the customer, or in the case of contractual testing for the performance of such testing.
- 4.2 If assembly is delayed due to measures associated with labour disputes, in particular strikes and lockouts, or the occurrence of circumstances for which the supplier was not responsible, the assembly period shall be extended by a reasonable amount if such obstacles demonstrably have a material influence on the completion of assembly;



this shall also apply if such circumstances occur after the supplier is already late in performance. The costs incurred thereby shall be borne by the customer.

- 4.3 If the assembly performance is lost or has deteriorated before acceptance through no fault of the supplier, the supplier will be entitled to demand the assembly price less the expenses saved. The same shall apply if assembly is impossible through no fault of the supplier.

The customer may demand a repeat of assembly if and insofar as this can reasonably be expected of the supplier, having particular regard to his other contractual obligations. Further compensation based on the contractual prices and any price supplements based on general price increases shall be paid to the supplier for the repeat assembly.

## **5. Acceptance**

- 5.1 The customer shall be bound to carry out acceptance testing on the assembly as soon as its completion has been notified and any contractual trial operation of the delivery item has taken place. The acceptance tests shall be carried out in the presence of both parties under any technical conditions that may be provided in the supply contract; in the absence of such provisions, the acceptance tests shall be carried out under the usual conditions for the supplier. If assembly proves not to be in accordance with the contract, the supplier will be bound to rectify the defect at his own expense. This shall not apply if the defect is immaterial to the interests of the customer or results from a circumstance attributable to the customer. If a minor defect exists, the customer cannot refuse acceptance if the supply expressly recognizes his duty to rectify the defect.
- 5.2 If acceptance is delayed through no fault of the supplier, acceptance will be deemed to have taken place after two weeks from notification of the end of assembly have expired.
- 5.3 The liability of the supplier for identifiable defects shall lapse upon acceptance unless the customer has reserved the right to assert a particular defect. Unless other relevant agreements have been reached, the warranty period will commence on the same date.



The customer shall provide personnel, energy, lubricants, water, fuel and all other materials, in particular original test/trial material, for the performance of the acceptance tests if these are necessary for the conduct of the acceptance tests and for the turnkey setup of the system.

- 5.4 If formal acceptance is not expressly agreed, the time of the notification of completeness from the supplier shall apply in place of acceptance.
- 5.5 Formal acceptance shall take place through the signing of an acceptance protocol by both parties.
- 5.6 The supplier shall have the right at his expense to carry out checks at the assembly site within normal working hours at any time until acceptance and during the warranty period. The persons charged with doing so must comply with the rules for visitors in force on the customer's premises.

## **6. Warranty**

- 6.1 Following acceptance of the assembly the supplier will be liable for defects in the assembly that occur within 6 months of acceptance, to the exclusion of all other claims of the customer, such that he must rectify the defects. The customer shall give immediate notification of any defects found. His right to assert the defect shall expire in 6 months from the date of notification.

The period of liability for defects will be extended by the duration of the business interruptions caused by the improvement work.

- 6.2 The supplier will not be liable if the defect is immaterial to the interests of the customer or results from a circumstance attributable to the customer.
- 6.3 The supplier will not be liable for the consequences arising from any modifications or repairs inexpertly carried out by the customer or a third party without the prior approval of the supplier. Only in urgent cases of a danger to plant safety and in order to avert disproportionately greater damage, in which case the supplier must be informed immediately, shall the customer have the right to have the defect rectified himself or through a third party and to demand reimbursement from the supplier for the costs necessarily incurred.



- 6.4 If the supplier culpably allows a reasonable period of grace agreed for the rectification of defects to lapse without result or if defects are not rectified because the supplier lacks the means or ability to do so, the customer will have the right to a reduction in the price. Only if the assembly is demonstrably of no interest to the customer despite a reduction in the price may the customer withdraw from the contract after giving notification.
- 6.5 Any warranty claims in respect of the delivery item itself will not be affected.

## **7. Other liability**

If an assembly part supplied by the supplier is damaged through the fault of the supplier, the supplier shall at his option either repair it or supply a new part at his expense.

## **8. Limitation of liability**

The customer may not - except in the case of intent or gross negligence on the part of the supplier - assert against the supplier any claims for damages beyond the claims warranted in these provisions, in particular claims to compensation, including claims based on tortious act, or other rights on account of any prejudice associated with the assembly, irrespective of the legal grounds on which he may appeal.

## **9. Substitute performance of the customer**

If the fixtures or tools brought onto the assembly site by the supplier are damaged on the assembly site through no fault of the supplier, or if they are lost through no fault of his, the customer shall be bound to recompense this loss. Damage attributable to normal wear and tear will not be considered.

## **10. General provisions**

- 10.1 The customer may not ask the personnel of the supplier to carry out any work not falling within the scope of the contract without the express written permission of the supplier.



The customer shall in the deployment of the supplier's mechanics comply with the work restrictions under the applicable statutory provisions. The customer must have written permission from the competent authorities for any deviation from these provisions.

The mechanics are not permitted to carry out work on third-party plant or machinery. The supplier does not accept any liability whatsoever for such work, even if it is carried out in connection with the assembly of a machine supplied by the supplier. The mechanics are not authorised to reach agreements with the customer on behalf of the supplier.

- 10.2 Indications of the duration of assembly given by the supplier in advance are based on the knowledge at the time and are therefore non-binding.
- 10.3 The customer undertakes not to offer employment to or conclude any employment agreement with the personnel sent to him without the consent of the supplier.

## **11. Jurisdiction**

The due courts at the registered office of the supplier shall have competence for all disputes arising from the contractual relationship if the customer is a full merchant, a legal person under public law or a federal special asset. The supplier may also appeal to the court having jurisdiction for the customer.