

Conditions for the delegation of specialised personnel (04/2020)



1. General

The Supplier undertakes to delegate to the place of assembly, personnel – hereinafter called specialised personnel – for the technical supervision of assembly, commissioning and/or trial runs of the machines and equipment delivered by him, for any work undertaken on the same or consulting activities. The agreed scope, number and designation of the specialised personnel and other details are specified in the quotation, contract or order confirmation.

The specialised personnel will supervise, technically coordinate and check all work undertaken as part of trial runs. Technological specialised personnel – so far as agreed – will support the customer in a consulting capacity during the commissioning phase.

2. Preparations and execution of work

The customer will take all measures to ensure prompt commencement and unhindered execution of assembly and commissioning/trial runs, particularly the following work at his expense and on his responsibility:

- 2.1 Transport of the machines and equipment from an agreed delivery location up to the place of assembly, inspection for any transport damage directly upon the arrival of the machines and equipment.
- 2.2 Storage of the machines, equipment, materials and tools before and during assembly and commissioning, so that they are fully protected against weather, loss, improper treatment as well as other damaging effects. So far as necessary, the customer shall provide dry, heated and locked storage rooms and surveillance of the place of assembly.
- 2.3 Setting up and maintenance of scaffolding as well as its environment, particularly proper execution of all building, foundation and scaffolding work, clearance and stabilisation of access ways and assembly scaffolding as well as their protection against accident hazards, lighting and ventilation as well as the provision of adequately dimensioned building openings for the delivery of parts and equipment. Cleaning of the place of assembly before, during and completion of all work. Proper disposal of all produced residual materials and packaging.
- 2.4 Provision of suitable, burglarproof social and workrooms (with heating, lighting, washing facilities, sanitary facilities and first-aid) for the specialised personnel as well as telephone and fax equipment for use free of charge. A fully equipped workshop must also be available at the place of assembly to enable normal locksmith's work as well as turning, welding and drilling.
- 2.5 Use of necessary devices, tools and auxiliary materials (except for special tools, so far as provided by the supplier), particularly cranes, adequately dimensioned lifting gear, scaffolding, welding equipment, welding electrodes, oxygen and welding gases, cleaning agents and lubricants, timber, blocks, bolsters, measuring equipment, energy, e.g. electricity, steam and water, including the necessary connections at the scaffolding for this purpose.

For commissioning and trial runs, the customer shall also provide the necessary raw and auxiliary materials and in this connection shall also make provision for the necessary organisational, personnel and technical safety precautions, emission measurements, the provision of personal protective equipment for the specialised personnel and workers.
- 2.6 Employment of experienced workers – hereinafter called workers – such as foremen, locksmiths, electricians and welders and, if necessary, also interpreters in the required number for the necessary duration and with suitable qualification. Knowledge of the general industry and applicable technology and pertinent local safety regulations is a condition.
- 2.7 So far as necessary, prompt provision of residence and work permits for the specialised personnel, licences for the duty free import and export of provided equipment, tools and materials, as well as other permits required for work at the place of assembly, particularly in respect of occupational safety and environmental protection.
- 2.8 Provision of adequate board and lodging facilities at the place of assembly or in the vicinity, as well as daily transport of specialised personnel between their place of accommodation and the place of assembly and the place of assembly and place of subsistence and back. The costs for board and lodging shall be borne by the specialised personnel, who shall accordingly receive the agreed allowance.
- 2.9 A request for the delegation of specialised personnel must take place with six weeks advance notice prior to commencement of the work and its continuation in the event of unforeseen interruptions.

3. Remuneration

- 3.1 The services of the specialised personnel including any necessary preliminary discussions will be charged according to the rates of remuneration as mentioned in the quotation/order confirmation and according to the following regulations:

The hourly rate applies to 35 hours per week and 7 hours per working day (Monday to Friday).

Any services rendered over and above the aforementioned framework shall be subject to the following surcharges:

1. The first 2 daily overtime over and above normal working hours	25 %
2. each further overtime hour, Saturday work and/or night work	50 %
3. Work on Sundays and local holidays	100 %
4. Work on 1 January, first day of Easter, 1 May, first day of Whitsun, first day of Christmas	150 %
5. All other public holidays in Germany	100 %

Night work takes place in the time between 8pm and 6am.

Sunday work and work on public holidays is work undertaken on Sundays and local public holidays in the time between 6am and 6am of the following working day.

- 3.2 The calculation of prices is based on the tariff valid in the metal industry in Germany, North-Rhine Westphalia, with changes concerning charges for Sundays and holidays.
- 3.3 Travelling time shall be charged on the basis of the standard hourly rates. Applicable as travelling time for the outward journey is the time of the journey up to the place of accommodation at the place of assembly and for the return journey the time from starting the journey up to arrival at the final destination. The specialised personnel are obliged to take the shortest possible route and link.

Work travelling time, i.e. the travelling time between the place of accommodation and place of assembly as well as the place of assembly and place of subsistence and back, shall be charged as working time, in so far as it exceeds more than a total of 60 minutes daily.

- 3.4 Waiting time is considered as working time. Working time is the time in which the execution of work, particularly the commissioning programme of the Supplier, is hindered or interrupted, unless the Supplier or his specialised personnel are responsible. If such circumstances should continue for some time, the Customer can request that the specialised personnel initially depart to then return within a time to be agreed upon elimination of the hindrance or interruption. The travelling costs including expenses according to 3.3 and allowance shall be borne by the Customer. This arrangement 3.4 also applies when work is undertaken for the Customer free of charge.
- 3.5 The allowance shall be paid for each started travelling and attendance day in the agreed currency. It shall serve to pay for personal costs for board and lodging and other living costs of the specialised personnel. If the allowance should be insufficient, e.g. due to an increase in the cost of living at the place of assembly, the right of adjustment in line with the increase is reserved.
- 3.6 The allowance shall also be paid for the duration of incapacity to work due to illness or accident. For the period of hospitalisation, this amount is only 30%.
- 3.7 The specialised personnel are entitled to homeward journeys at Christmas. This applies similarly to extended assembly durations and other cases according to the "Federal tariff agreement for special conditions for assembly workers in the metal industry"; applicable to assemblies abroad is a period of three months in any event. For homeward journeys, the Customer is responsible for outward and return travelling costs including allowance and hourly rates for the travelling days, not however, for other days of absence from the place of assembly.

The exact time and duration of homeward journeys shall be determined in detail mutually between the Customer and Supplier, whereby the operational requirements of the Customer and personal requirements of the specialised personnel shall be taken into consideration.

- 3.8 The costs for the outward and return journey for homeward journeys, for daily journeys from the place of accommodation to the place of assembly as well as from the place of assembly to the place of subsistence and back and for other journeys necessary for execution of the work, including incidental costs, e.g. freight and packing of baggage and tools, shall be borne by the Customer or reimbursed to the Supplier upon the presentation of proof. Train journeys shall take place based on the first class tariff and flights according to the business tariff. For journeys by car, a mileage allowance in the amount of € 0.70/km will be charged; for journeys by hired car, the incurred rental and running costs will be charged.

4. Calculation of prices and terms of payment

- 4.1 Payment shall take place against invoice (14-day) based on working time statements of the Supplier initialled by the Customer or his authorised representative as well as receipts for other costs, e.g. travelling expenses in the effectively incurred amount. Invoices for rental cars will be charged at actuals plus a fee of 10% for handling and administration.

Invoices for hotel, in case accommodation at actual cost was agreed, will be charged plus a fee of 10% for handling and administration.

- 4.2 The invoice amounts shall be paid to the Supplier immediately upon receipt of the invoice without any deductions and expenses in Krefeld/Federal Republic of Germany.
- 4.3 The allowance shall be paid in the agreed amount and effectively in the agreed currency as an advance for one week respectively, depending on agreement, either to the Supplier or directly to his specialised personnel.
- 4.4 Any applicable VAT will be charged accordingly.

5. Taxes, duties, fees and levies

The Customer is liable for all taxes, duties, fees and levies as well as any incurring advance payments (hereinafter called taxes, so far as they are charged in connection with the provision of deliveries and services outside the Federal Republic of Germany by the Supplier or his personnel as well as by subcontractors or their personnel.

The Customer shall fulfil all formal obligations in connection with the taxes including payment. The Supplier or his authorised representative shall be reimbursed by the Customer for any taxes paid against invoice and proof within 14 days.

6. Illness and accident

In the event of illness and accidents of the specialised personnel of the Supplier, the Customer shall provide for medical treatment, drugs, hospitalisation, transports or transfers. The Supplier is liable for the incurring costs if the work accident is not the responsibility of the Customer.

7. General organisation/working conditions/occupational safety

The Supplier and Customer shall each appoint one or several representatives who are authorised to organise working procedures and to take relevant decisions, which do not allow for any delay. The Customer shall ensure that instructions issued by the specialised personnel are followed by the workers and organise and coordinate the personal input of the workers. Workers employed by the Customer or his appointed representative shall not become employees or employees on temporary loan of the Supplier.

The overriding responsibility for safety at the place of assembly, assembly equipment, workplaces as well as commissioning and the production establishment lies with the Customer. The Customer shall inform the Supplier about the safety regulations and measures to be observed, particularly from technical aspects and coordinate these with the special safety instructions issued by the Supplier with respect to his scope of supply. The chief superintendent engineer of the Supplier shall support the Customer in the fulfilment of the safety measures.

Work without direct supervision of the specialised personnel may only be undertaken by workers, exclusively with the prior permission of the chief superintendent, who are instructed in all safety regulations to be observed, are suitably qualified to undertake such work, and are under the instruction of the safety representative of the Customer.

All safety devices, measuring equipment and other apparatus for the operation of the plant necessary for occupational safety and environmental protection purposes, must be installed as early as possible, however, on assumption of production at the latest.

8. Liability of the Supplier and Customer

- 8.1 The Supplier is responsible for the selection and delegation of suitable specialised personnel and provision of the agreed supervisory services in accordance with the obligations stipulated in these conditions with the exclusion of further warranties. The Supplier is also responsible for ensuring that the advice he gives is to the best of his knowledge and belief.
- 8.2 As part of the aforementioned responsibilities, the Supplier has a liability towards the Customer for the following:
 - 8.2.1 The Supplier is liable for all defects and damages caused by his specialised personnel to the machines and equipment delivered by him in a manner that he either repairs the damaged parts or delivers new parts at his discretion free of charge and makes available his specialised personnel for the assembly of the newly delivered parts without charge. The Supplier shall also carry any necessary relevant costs for labour and materials of the Customer, so far as these have been commissioned or approved by the authorised representative of the Supplier.
 - 8.2.2 As part of the product liability, the Supplier is liable for direct damages caused by him or his specialised personnel to property that is not part of the scope of supply of the Supplier and for personal damages up to the maximum amount and within the scope of his concluded employers' liability insurance (property and personal damages up to € 10 million per damage case and insurance year). The Supplier shall discharge the Customer from the claims of third parties in this amount. Should the Supplier suffer damages and be held responsible by a third party and should the damages caused be the fault of the Customer and/or his authorised representative, the Customer shall discharge the Supplier in the same amount.
 - 8.2.3 Claims for compensation for further damages, e.g. loss of production, lost profit, incurring costs, on whatever legal grounds, are excluded.

8.2.4 The warranty and liability provisions contained in the delivery contract have priority over these agreements and are not restricted by these. Unless otherwise stipulated in the delivery contract, claims will be subject to a period of limitation of 6 months from the completion of the work, in accordance with Item 9.

9. Duration of assembly/commissioning

Unless otherwise agreed, the following applies to the beginning and end of the work to be undertaken:

- a) Assembly begins with measurement of the foundation axes for the machines and ends with the notification of readiness for commissioning by the Supplier.
- b) Commissioning begins with the functional tests of the machines with material and ends with readiness for production.

Commissioning shall preferably take place according to the working and test programme of the Supplier. So far as the machines are to be used additionally during commissioning for production purposes, this shall be subject to the written permission of the Supplier and the Customer shall be responsible for sole supervision, liability and risk.

Production is subject to fulfilment of the necessary legal and official requirements; this must be confirmed to the Supplier as necessary.

10. Act of God

If the commencement or performance of the work is made difficult or impossible due to act of god (e.g. strike, mobilisation, war, unrest, epidemics, natural catastrophes or other work hindering circumstances and events beyond the control of the Supplier) the Supplier reserves the right to amend the contractual conditions appropriate to the changed circumstances.

11. Written form, venue and applicable law

11.1 Amendments and additions require the written confirmation of the Supplier.

11.2 The venue for all disputes arising from or in connection with the contractual relationship is exclusively Krefeld. The Supplier is also entitled to institute an action at the head office of the Customer.

The law of Swiss applies.