

**1. Scope of Terms and Conditions**

These conditions shall apply to assemblies acquired by the Voith Turbo BHS Getriebe GmbH (VTBS). Especially included are

- assemblies,
- commissioning,
- assembly monitoring and
- inserts in the conduct of research

in the context of supplies, repairs, installation and commissioning contracts.

**2. Conclusion of the contract**

- 2.1. With accepting the offer of VTBS the assembly contract is concluded.
- 2.2. If the acceptance differs from the range of the VTBS offer, a contract is only concluded if the VTBS has agreed to this deviation.
- 2.3. Contrary conditions of the customer to the terms and conditions of VTBS, even from otherwise documents, will not be recognized by VTBS, unless the VTBS has expressly agreed in writing. The execution of the assembly, its planning as well as receiving the payment does not constitute consent.

**3. Assembly rates**

- 3.1. The assembly is priced on a time basis according to the applicable installation rates of the VTBS, unless a fixed price is expressly agreed in writing.
- 3.2. Tooling costs depend on the applicable rates for assembly of VTBS.
- 3.3. Upon receipt, invoices are without deduction (net) to pay.
- 3.4. Voluntary benefits which have not been agreed with the VTBS, must not be deducted.

**4. Working reports and billing**

- 4.1. The VTBS Assembly personnel presents the customer the timesheets for confirmation. The timesheets are decisive for the calculation. The information will be given monthly, or after finished assembly.
- 4.2. The customer returns a confirmation of the completion of the work to assembly personnel prior to departure.

**5. Safety at work**

- 5.1. The customer ensures adequate working conditions, the security of the assembly area, the compliance with the relevant provisions of work safety and the briefing of staff of the VTBS of special safety regulations.
- 5.2. The VTBS is entitled to suspend the deployment of employees or cancel the contract, if a danger to life or limb for those persons in the assembly exists. Such a situation arises in particular , if an official body (such as the Federal Foreign Office of the Federal Republic of Germany) pronounces for the intended site a travel warning or dissuades a stay.

**6. Technical support**

The customer has to support the assembly staff of VTBS in the execution of assembly at its own expense and provide the following assistance:

- 6.1. Providing necessary and qualified assistants (crane operators, forklift truck driver, bricklayers, fitters, electricians, etc.). Inappropriate staff may be rejected. The workers have to follow the orders of the staff of the VTBS.
- 6.2. Supply the necessary equipment and lifting equipment (forklifts trucks, cranes), heavy tools and the necessary materials, articles and substances (e.g. lubricants, cleaning and small material, cutting gas, compressed air, electricity).
- 6.3. Providing the supply and discharge of water, steam, electricity, ventilation, heating, lighting etc.
- 6.4. Provision of building services, in particular the preparation of the necessary foundations before start of assembly.
- 6.5. Transport and storage of the assembly parts at the assembly site, protection of the assembly site and the materials from harmful influences of any kind, cleaning the assembly site.
- 6.6. Provision of appropriate, dry and lockable rooms for the storage of luggage, tools and equipment of the assembly staff.
- 6.7. Provision of appropriate, theft-proof residence and work rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for the assembly personnel.
- 6.8. Obtaining all official (special) permits and notices (hazard status) prior to assembly.
- 6.9. Provision of materials and performance of all other acts, which are necessary for the adjustment of the assembled item and to carry out a contractual testing.
- 6.10. If the customer fails to the previous obligations, VTBS has the right, but not the obligation, to use own workers or work equipment or employ third parties at the expense of the customer.

**7. Period of Assembly**

- 7.1. For compliance with the assembly period, the acceptability, in the case of a contractual testing the performance of the testing on the agreed date, is significantly.
- 7.2. The assembly period extends appropriately in delay caused by industrial action. This also applies if the VTBS has previously been in delay.

**8. Damages caused by delay**

- 8.1. As far as the customer suffers a damages caused by delay, customer shall be entitled to charge a lump-sum damages for delay. It shall be 0,5% but not more than 5% of the assembly price for each full week of the delay.
- 8.2. Further claims for delay are determined solely by the section "Liability".
- 8.3. The customer is responsible for ensuring that the assembly can be started and carried out immediately after arrival of the assembly staff without delay until final acceptance by the purchaser (readiness for assembly). Every day without readiness for assembly, will be invoiced according to the assembly rates.

**9. Acceptance**

- 9.1. The customer shall declare acceptance after receiving notification of acceptability or the contractually provided testing.
- 9.2. In case of a non-essential deficiency, customer may not refuse the acceptance.
- 9.3. If the acceptance of the assembly is delayed through no fault of VTBS, the acceptance shall be deemed to be delayed after two weeks of notification of completion of assembly.
- 9.4. With acceptance liability for known defects VTBS is deleted.

**10. Limitation of claims**

The period of limitation of defects ends 12 months after acceptance. Defects shall be indicated in writing 10 days after occurrence.

**11. Warranty**

- 11.1. In the case of any defects, VTBS is committed to eliminate the defect. The provisions of the section "liability" are not affected.
- 11.2. In the case of self-execution of the remedy without prior approval by the VTBS, no costs will be taken over and liability shall be excluded. Notwithstanding the above the VTBS takes over necessary proven costs
- in urgent cases of risk to operational safety,
  - to prevent excessive damage and when
  - a reasonable period to remedy set by the customer has been passed.
- 11.3. The warranty obligations of Voith Turbo BHS are limited to 100% of contract amount.

**12. Liability**

- 12.1. If VTBS assembly personnel damages culpable a supplied mounting device, VTBS will either at its own discretion repair the damaged device or provide a new one.
- 12.2. In case of causing damages by auxiliary staff of the customer, VTBS is only liable if the assembly personnel of VTBS have been given proven incorrect instructions to the workers.
- 12.3. The liability of the VTBS, its auxiliary persons and its vicarious agent is regardless of the legal reasons including unlawful acts excluded. This applies in particular to production downtime, loss of profits, loss of use, loss of contract, loss of interest, penalty payment claims of third parties or other consequential or indirect damages.
- 12.4. The preceding disclaimer shall not apply in case of
- intent
  - gross negligence of the officers or senior executives of VTBS,
  - culpable violation of life, body, health,
  - defects that were fraudulently concealed or the absence has been guaranteed by the VTBS,
  - culpable violation of essential contractual obligations not only by Senior Executives but also by officers of the VTBS.

**13. Set-Off and assignment**

- 13.1. A set-off is only permitted with legally determined or approved counterclaims.
- 13.2. In addition, the right of retention of the customer shall only be possible to the extent, as its counter-claim is based on the same contractual relationship.
- 13.3. Claims arising from this contract may be transferred only after prior written consent of the other contracting party.

**14. Jurisdiction and Arbitration**

- 14.1. The Assembly contract is subject to German law. In addition to this contract the statutory provisions shall apply.
- 14.2. All disputes arising in connection with this assembly contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law. The arbitration award shall be final and binding on both parties.
- The place of arbitration is Munich, Germany.
- The arbitral tribunal consists of three arbitrators. Each party shall appoint one arbitrator, and those two shall appoint the third within 30 days, who shall be the chairman.
- The language of the arbitral proceedings is English.
- 14.3. The Arbitration court shall also settle the costs of arbitration. The arbitration fee shall be borne by each party proportional to its succumbing in arbitration.

**15. Miscellaneous**

Changes or amendments to this contract must be in writing to be legally applicable. This applies also to amendments of the requirement of written form.