

## **BSK Installation Conditions**

(BSK Installation 2008)

### **PREAMBLE**

The Bundesfachgruppe Schwertransporte und Kranarbeiten (BSK) (German federal specialist group for heavy goods transports and crane work) recommends the use of the following general business conditions on a non-binding basis to its members in business transactions with their clients/contractors. The addressees remain free to follow the recommendation or to use other general business conditions.

For use towards:

1. a person who, upon conclusion of the contract, is acting in the execution of his/her commercial or self-employed occupational activities (entrepreneur);
2. juristic persons of public law, or special property under public law.

### **I. Scope**

These installation conditions apply to all installation work undertaken by a company of the heavy goods transport sector (contractor), provided that deviating agreements have not been reached in individual cases and provided that this installation work does not refer to straightforward, rough installation work related to transport preparations or procedures in accordance with the general business conditions of the German federal specialist group for heavy goods transports and crane work (AGB-BSK).

### **II. Bill of quantities, installation price**

The bill of quantities of the orderer upon which the invitation to tender, the cost estimate, or the preparation of an offer was based applies exclusively to the installation service. The installation work is invoiced according to units of time if a lump-sum price has not been explicitly agreed. The agreed sums are understood without value-added tax, which must be paid to the client in addition in the statutory amount.

### **III. Technical assistance by the orderer**

1. The orderer is obliged – unless otherwise agreed – to provide technical assistance at his/her costs, in particular:
  - a) execution of preparatory activities, in particular, excavation, construction, bedding and scaffolding work, including the procurement of the necessary building materials;
  - b) provision of heating, power and lighting current, compressed air, water, including the required connections;
  - c) provision of necessary, dry and lockable rooms for the storage of the tools and of the auxiliary and operating materials of the installation staff;

- d) provision of suitable, theft-proof recreation rooms, (with heating, lighting, washing facilities, sanitary facility) and first aid for the installation staff;
  - e) provision of the auxiliary materials and execution of all other activities which are necessary for the precise regulation and adjustment of the object to be installed and which are also necessary for the performance of a contractually provided trial test; and
  - f) protection and safeguarding of the installation site and materials against detrimental influences of any kind, and cleaning of the installation site.
2. The technical assistance provided by the orderer must guarantee that the installation work can started immediately following the arrival of the installation staff and be carried out without delay up to the time of acceptance by the orderer. If special plans or instructions of the contractor are required, the contractor places them at the disposal of the orderer in due time.
  3. If the orderer does not fulfil his/her obligations, the contractor, after fixing a time limit, is entitled to carry out the activities for which the orderer is responsible in the orderer's place and at the orderer's costs. Apart from that, the statutory rights and claims of the installation company remain unaffected.

#### **IV. Installation time limit, installation delay**

1. The installation time limit is met if, up to the time of its expiration, the installation service is ready for acceptance by the orderer in the case of a contractually provided trial test regarding the execution of the installation service.
2. If the installation work is delayed by force majeure, acts of authorities or by measures within the framework of labour disputes including, in particular, strikes and lockouts, as well as by the occurrence of circumstances for which the contractor is not responsible, an appropriate extension of the installation time limit occurs if it can be proved that such obstacles have a considerable influence on the completion of the installation work. This also applies if such circumstances occur after the contractor has defaulted.
3. If a damage arises for the orderer as a result of the default of the installation company, the orderer is entitled to demand a lump-sum compensation for damage resulting from default. The lump-sum compensation amounts to 0.5 % for every week of the delay, in all, however, to no more than 5 % of the installation price for that part of the system to be installed by the contractor that cannot be used on time as a result of the delay. The assertion of a further damage caused by default is excluded unless, however, the contractor caused the damage with gross negligence or premeditation.
4. If the orderer fixes – while taking the statutory exceptional cases into account – an appropriate time limit according to a due date for the contractor to provide the service and if that time limit is not met, the orderer is entitled to withdrawal within the framework of statutory regulations. Further claims resulting from default are exclusively defined according to subsection VII.2 of these conditions.

## **V. Acceptance**

1. The orderer is obliged to accept the installation service as soon as its completion has been reported to him and any contractually provided trial test of the installed object has taken place. If the installation work proves to be not in accordance with the contract at the time of acceptance, the contractor is obliged to rectify the defect. If a non-essential defect exists, the orderer cannot refuse the acceptance.
2. If the acceptance is delayed through no fault of the contractor, the acceptance is considered as having been carried out after a period of two weeks since the notification of completion of the installation work.
3. If the orderer accepts the installation service without reservation although the orderer knows about the defect, all the orderer's deficiency rights to subsequent fulfilment, to substitute performance against reimbursement of expenses and price reduction, including the right to withdraw from the contract are inapplicable.

## **VI. Claims arising from a defect**

1. Following acceptance of the installation work, the contractor is liable for defects excluding all other claims of the orderer regardless of No. 3 and section VII. in such a way that the orderer must rectify the defects. The orderer must notify the contractor of a detected defect immediately in writing.
2. If the contractor allows – while taking the statutory exceptional cases into account – an appropriate time limit fixed for him/her to rectify the defect to elapse fruitlessly, the orderer then has a right to a price reduction within the framework of the statutory regulations. The orderer's right to a price reduction also exists in other cases involving a failure to rectify the defect. The client may withdraw from the contract only if it can be proved that the installation work is not of any interest to the orderer despite the price reduction.
3. Further claims are exclusively defined according to section VII.2 of these conditions.

## **VII. Liability of the contractor, exclusion from liability**

1. If, through the fault of the contractor, the installed object cannot be used in accordance with the contract by the orderer as a result of omitted or incorrect implementation of suggestions and consultations provided before or after the conclusion of the contract as well as of other contractual accessory obligations, the claims arising from a defect pursuant to section VI. and the following regulations apply – excluding further claims of the orderer.
2. The contractor is liable – unless nothing to the contrary arises from the contract or the law – for damage not incurred on the installation object itself and for whatever legal reasons, only
  - a) in case of premeditation;
  - b) in case of gross negligence of the owner/organs or of the executive staff;
  - c) in case of culpable injury of life, body, health;
  - d) in case of defects the contractor has maliciously concealed;

e) within the framework of a guarantee.

In case of gross negligence of vicarious agents, the contractor is liable for the foreseeable damage unless, however, the contractor can exempt himself/herself from that liability by virtue of customary commercial practice. In case of culpable violation of essential contractual obligations, the contractor is liable even in the case of gross negligence of non-executive staff and in the case of slight negligence – limited, however, to the typical, foreseeable damage.

3. Further claims are excluded. In the event of taking recourse to the contractor, in accordance with the USchadG (German environmental damage law), or other comparable public-law, national or international regulations, the orderer must completely exempt the contractor in the internal relationship if the contractor did not cause the environmental damage with premeditation or gross negligence.

### **VIII. Obligations of the orderer**

1. The orderer must create all the basic technical requirements required for the proper and safe implementation of the installation order on his/her own account and at his/her own risk and must sustain those basic technical requirements for the duration of the operation. In particular, the orderer is obliged to keep the product to be installed available in a condition ready and suitable for the implementation of the installation order. The orderer is obliged to specify the dimensions, weights, and special properties of the product to be installed (e.g. centre of gravity, type of material, etc.) including suitable tie-down and fastening points correctly and on time. The orderer must point out, without being requested and on time, special hazardous situations which could arise in the course of executing the installation work with regard to the product to be installed and the surrounding area (e.g. hazardous goods, contamination damage, etc.).
2. The orderer must obtain the necessary consents from owners for the purpose of driving on third-party properties, non-public roads, paths and yards, and the orderer must also exempt the contractor from third-party claims which could arise from unauthorised use of a third-party property.

Beyond that, the orderer is responsible for making sure that the ground conditions, yard conditions, and other conditions at the installation site and at the access roads – with the exception of public roads, paths and yards – permit proper and safe implementation of the installation order. In particular, the orderer is responsible for making sure that the ground conditions at the installation locations, at any storage or pre-installation yards and at the access roads are capable of withstanding the occurring ground pressures and other stresses caused by the installation vehicles and equipment (e.g. cranes, heavy goods vehicles, lift frames, etc.). Finally, the orderer is responsible for all information regarding underground cable shafts, supply lines, other underground lines, and cavities which could affect the load-bearing capacity of the ground at the installation site or at the access roads. Without being requested, the orderer must point out the position and presence of underground lines, shafts, and other cavities. If the orderer culpably fails to perform this obligation to point out such details, the orderer is liable for all arising damage, even for property damage and consequential property damage on the vehicles, equipment and working implements of the entrepreneur and also for pecuniary damage.

4. The orderer must also inform the installation manager about any existing safety regulations if these are important for the installation staff. The orderer notifies the contractor about violations of the installation staff against such safety regulations (e.g. instructions for outside companies, special safety and protective clothing, etc.).

#### **IX. Statutory limitation**

All claims of the orderer – for whatever legal reasons – fall under the statutes of limitation in 12 months. The statutory time limits apply to damage claims pursuant to section VII. 2. a) – d). If the contractor provides the installation service on a building and if the contractor causes its defectiveness as a result, the statutory time limits also apply.

#### **X. Compensation by the orderer**

If the implements or tools supplied by the contractor are damaged at the installation location through no fault of the contractor or if they are lost through no fault of the contractor, the orderer is obliged to provide compensation for all resulting damages.

#### **XI. Final provisions**

1. The legislation of the Federal Republic of Germany on contracts for work and services which is relevant for the legal relations of domestic parties among each other applies exclusively to all legal relations between the contractor and the orderer, even if the installation site is located abroad.
2. The services of the contractor are advance services from which a cash discount is not allowed to be deducted. The invoices of the contractor must be settled immediately after the acceptance and after invoice receipt, provided that no other period of payment was agreed to when the order was placed. A setting-off or retaining of payments is only permissible with undisputed or legally established counterclaims.
3. The place of jurisdiction is the competent court for the registered office of the contractor. However, the contractor has the right to take legal action at the principal place of business of the orderer.
4. Should a provision in these business conditions or a provision within the framework of other agreements be or become ineffective or non-applicable in individual cases, the effectiveness of all other provisions or agreements remains unaffected. In this respect, § 139 BGB (German Civil Code) is eliminated by agreement. In that case, the contractor, together with the orderer, replaces the ineffective provision with an effective one which comes closest to the economic purpose of the ineffective provision.