

General assembly regulations of TESIUM GmbH

A Scope

1. These assembly regulations apply to assemblies that TESIUM GmbH (hereafter referred to as "TESIUM") undertakes as well as assembly services that TESIUM provides on the occasion of delivering single items. Any adverse terms and conditions of the Client or ones which differ from these terms and conditions shall not be recognised by TESIUM, unless TESIUM has expressly agreed to these in writing in an individual case.
2. Any side agreements and amendments require written confirmation from TESIUM. In particular agreements that are made with TESIUM assemblers are ineffective against TESIUM unless they have been confirmed in writing by TESIUM.

B Price for assembly and payment terms

1. Assembly shall be invoiced at the relevant applicable hourly rates unless a flat rate has been expressly agreed. The price for assembly is understood to be plus the relevant statutory VAT.
2. Unless otherwise agreed invoicing shall be monthly in arrears with an invoice and the corresponding documentary evidence provided. Unless otherwise agreed time sheets must be countersigned by the Client on a daily basis.
3. Invoices are due for payment in full and without deduction within 15 days following receipt.
4. The Client is only entitled to offset payments where its counter-claims are undisputed or have been determined by law.

C Cooperation by the Client

1. The Client must support the TESIUM assembly staff with carrying out the assembly at its own cost.
2. The Client is under an obligation to take the measures required to protect individuals and property at the assembly location. In particular the Client must inform the TESIUM assembly manager of any existing special and system-specific safety regulations where these are significant for the TESIUM assembly staff.
3. If the assembly staff deployed by TESIUM should breach any safety rules then the Client shall inform TESIUM of this immediately.

D Technical assistance of the Client

4. The Client is under an obligation to provide technical assistance at its own costs, in particular related to:
 - a) Providing the appropriate auxiliary staff required (bricklayers, carpenters, metal workers and other specialist staff) at the number required for the assembly and for the required time. The auxiliary staff must follow the instructions of the TESIUM assembly manager. TESIUM accepts no liability for this auxiliary staff. If a defect or damage is caused by the auxiliary staff on account of instructions received from the TESIUM assembly manager then points I and J of these terms and conditions shall apply.
 - b) Carrying out all groundwork, construction and scaffolding work including procuring the necessary building materials, unless otherwise agreed.
 - c) Providing the appropriate equipment and heavy tools required (e.g. lifting gear, compressors) along with the necessary commodities and materials (e.g. timber, cement, lubricants, fuels).
 - d) Providing heating, lighting, power and water including the required connections.
 - e) Providing dry and lockable rooms which are required for storing the tools of the TESIUM assembly staff.
 - f) Transporting the assembly parts to the assembly locations unless otherwise agreed.
 - g) Protecting the assembly point and materials from damaging influences of any type.
 - h) Providing appropriate break and workrooms which are theft-proof (with heating, lighting, washing and sanitary facilities) and first aid for the TESIUM assembly staff.
 - i) Providing the materials and carrying out all necessary actions that are required for a functional inspection provided under the contract.
5. The technical assistance must be provided in such a way that the assembly can be started immediately upon arrival of the TESIUM assembly staff and can be executed without delay until completion. Where special plans or instructions are required from TESIUM then TESIUM shall provide these
6. to the Client in good time.
7. If the Client does not comply with its obligations then TESIUM shall be entitled following written notification to carry out the actions for which the Client is responsible at this point at the Client's expense or have these carried out by a third party - it shall, however, be under no obligation to do this. In all other respects the statutory rights of TESIUM remain unaffected.

E Appointing sub-contractors

TESIUM is entitled to employ sub-contractors to fulfil its contractual obligations as agents within the meaning of section 278 of the German Civil Code (BGB).

F Assembly deadline, delay

1. The assembly deadline is deemed to have been met if the assembly work is ready for acceptance by the Client by the time that the period expires.
2. If the assembly is delayed for reasons which are not part of TESIUM's responsibility or which TESIUM cannot influence, for example through measures within the framework of industrial disputes, in particular strike and lockout, then the assembly deadline shall be extended by a reasonable time period to the extent that these reasons impact completion of the assembly. This shall also apply where these circumstances arise after TESIUM is delayed in providing its performance.
3. If TESIUM is delayed in providing the assembly services and if the Client suffers damage as a result, then the Client shall be entitled to an all-inclusive compensation claim for delayed performance at an amount of 0.5% of the assembly price for each full week of the delay, up to a maximum of 5% of the assembly price. If following the due date the Client sets a reasonable deadline for TESIUM to provide the performance – taking into account the statutory exceptions – and if TESIUM does not meet this deadline, the Client shall be entitled to withdraw from the contract in accordance with the statutory regulations. Any further claims of the Client for delayed performance shall be determined exclusively in accordance with point J of these terms and conditions.
4. If the assembly services and/or acceptance of these are delayed for reasons which are within the Client's responsibility or which are within its area of risk, and if TESIUM incurs unavoidable additional costs as a result, for example for waiting times or additional journeys of the TESIUM assembly staff to and from the assembly location, TESIUM shall be entitled to demand reimbursement of these from the Client. In all other respects the statutory rights of TESIUM will remain unaffected.

G Acceptance

1. The Client is under an obligation to accept the assembly services provided by TESIUM as soon as TESIUM has notified it that these have been completed and, where a functional inspection, i.e. a review of the functionality of the individual pieces of equipment has been agreed without the product, after the functional tests
2. agreed to this extent have been carried out. If the Client does not accept the assembly services within 10 working days following notification of the completion of the assembly or after execution of the functional inspection and if it does not raise any objections in writing against its obligation to accept within the same period, then the acceptance shall be deemed to have been given at the end of these 10 working days. Negligible defects shall not entitle the Client to refuse the acceptance.
3. TESIUM shall rectify any defects ascertained during the acceptance process immediately. This will not apply where a defect is based on circumstances that can be attributed to the Client. In this case the costs of rectification shall be borne by the Client.
4. The liability of TESIUM for noticeable defects shall cease to apply with the acceptance, unless the Client has reserved a right to assert a claim for a certain defect.

H Commissioning

1. Commissioning means starting up the system with product and it occurs after completion of the functional inspection. For this the individual functions tested in the functional inspection are coordinated within an overall function and the material flow is ensured.
2. Commissioning is solely the responsibility of the Client and is implemented by the Client personally. Where the Client wishes to be supported by TESIUM with commissioning activities then the Parties shall come to a separate agreement on this.

I Warranty, claims for defects

1. After the assembly has been accepted the Client's claims for defects are limited to the right to rectification of the defect. If TESIUM does not meet its rectification obligation within a reasonable period or if the repair fails, then taking account of the statutory provisions the Client shall be entitled to reduce the compensation paid or if the assembly is demonstrably of no interest to the Client despite the reduction in the compensation paid, it may withdraw from the contract. Claims for compensation under point J shall remain unaffected by this. The Client must provide TESIUM with notification of defects ascertained immediately.
2. The claims above shall not apply where the defect is based on circumstances that can be attributed to the Client. TESIUM shall not be liable in particular for the consequences of amendment and repair works carried out by the Client or a third party improperly and without TESIUM's agreement.

3. The Client shall only be entitled to rectify a defect personally and to demand compensation for the necessary expenditure from TESIUM in urgent cases, i.e. in the event of a danger to operational safety or in order to prevent disproportionately greater damage (the Client must inform TESIUM of this immediately), and where TESIUM is delayed in rectifying the defect.

J Liability of TESIUM

1. TESIUM is liable to the Client in accordance with the applicable statutory regulations for damage caused by it, its bodies or agents wilfully or with gross negligence. In the event of a breach of essential contractual obligations TESIUM is also liable for damage caused through gross negligence of its employees, however, this is limited to damage which is typical for the contract and which can reasonably be foreseen upon contract conclusion. The Client's claims for damages are excluded in the case of slight negligence on the part of TESIUM, its employees or agents, unless there is a breach of essential contractual obligations. In this event TESIUM shall be liable for damage which is typical for the contract and which can reasonably be foreseen upon contract conclusion.
2. Statutory liability for culpable injury to life, limb or health remains unaffected by this; this applies also to any potential mandatory liability under the German Product Liability Act.
3. Any further liability of TESIUM is excluded, regardless of the legal nature of the claim asserted.

K Limitation

All claims of the Client – regardless of their legal nature – shall expire 12 months following the acceptance. This shall not apply to claims for compensation under point J nor to assembly services that are provided to structures. The statutory limitation periods shall apply in these cases.

L Additional regulations

1. The applicable law is German substantive law.
2. Where the Client is a trader within the meaning of the German Commercial Code, the place of jurisdiction is Holzminden for both parties. TESIUM is also entitled to assert its claims before the courts with jurisdiction over the Client's registered office or subsidiary.
3. In the event that individual provisions in these terms and conditions are or become invalid in whole or in part, this shall not impact the effectiveness of the remaining provisions or the regulatory items linked with these. The Parties undertake to replace any ineffective provision with an effective provision that comes closest to the economic aim of the ineffective provision.

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