

# General Contract Conditions for works contracts with Sto SE & Co. KGaA

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## § 1 General provisions, area of application

- Our 'General Contract Conditions for Works Contracts' apply to all works contracted by us. They do not, however, apply to contracts for the supply of movable goods that are to be manufactured or produced (§ 651 BGB – German Civil Code), as this type of supply is exclusively dealt with in our 'General Purchase Conditions'.
- Contractors' conditions that are conflicting with these General Contract Conditions or are not included in them and have a different wording are not recognized by us unless we have expressly consented in writing to the validity of such conditions. Our General Contract Conditions shall also apply if we accept the contractor's deliverables without reservation even though we are aware of different conditions that are in conflict with, or not included in, these General Contract Conditions.
- All agreements made between us and the contractor for the purpose of executing an individual contract are to be included in writing in this contract.
- Our General Contract Conditions for Works Contracts only apply to contractors in the meaning of § 14 BGB (German Civil Code).
- Our General Contract Conditions for Works Contracts also apply to all future business with the contractor even though they may not have been expressly agreed again.

## § 2 Description of the works, eliminating obscurities

- The contractor shall undertake to make and deliver or make available to us the works commissioned by us exclusively in accordance with the description and specification included in the individual contract and in accordance with our written instructions. Prior to starting work and upon our request he shall confirm in writing that he has taken all details of that description and the specification of the works into account.
- Inasmuch as obscurities arise during the review of the description and specification of the works and our written instructions and/or the contractor has concerns regarding the intended method of execution, the quality of materials or components supplied by us or concerning the services/performance of third party companies commissioned by us, it is the contractor's duty to inform us of such concerns in writing and to work together with us to find a mutually acceptable clarification. We will produce minutes of this clarification which shall be signed by both contracting parties. The same applies if such obscurities, concerns and comments do not arise until the contract is being executed or safety measures are required. Until such obscurities and/or concerns have been fully clarified, the contractor shall interrupt the execution of the works.
- It is the contractor's responsibility not to start with the execution of the works until the description and specification of the works as well as our written instructions have been fully clarified in all details. The contractor may request us to give clearance in writing that the execution of the works – or parts thereof – can begin. Costs accruing for the contractor without the necessary clarification of obscurities shall be borne by him.
- We shall be entitled to commission changes to the building design or additional services; such commission will be in writing. The contractor shall be obliged to carry out these services, provided his business is geared up to this type of work or he is in a position to subcontract the work.

## § 3 Remuneration

- The remuneration for constructing the works shall be determined together with the description of the contracted item on conclusion of the respective individual contract.
- One of the following payment options shall be agreed:
  - a lump sum payment, irrespective of the costs for materials and labor incurred by the contractor,
  - remuneration of agreed hourly rates in accordance with verified site reports,
  - remuneration by unit prices; the quantities of units shall be measured together with the local project management or in accordance with drawings submitted to us and approved by us. Unless agreed to the contrary in the individual contract, the agreed prices apply, without change, for the duration of the whole contract (fixed prices).
- The agreed money consideration shall be deemed full compensation for the contractor's efforts required in securing the agreed result and, particularly, any deliverables owed. Any further claims for remuneration, in particular for ancillary services, will only be recognized after express agreement in writing.
- The remuneration will be paid in accordance with the conditions stated in the individual contract. If an early-payment discount has been agreed, this shall apply to each payment made within the contractually agreed period; payments by bank transfer shall also be considered to be within the agreed period when the transfer order is not received by the bank until the last day of said period. For payment by check the payment shall be considered within the agreed period if and when we hand over or send off the check before the end of the discount period. In the latter case, the date of the postmark shall be the determining date. We shall be entitled to deduct such discounts from each invoice.

## § 4 Subsequent amendments to the contracted item

- If and when the contracted item is amended or extended under the provisions of § 2 section 2 and/or § 2 section 4, the contractor shall be entitled – in deviation from § 3 section 2 – to demand an additional remuneration for the additional costs for executing the amendment, provided the conditions described below apply or deviations have been agreed in the individual contract.
- It is the contractor's duty to inform us about the additional costs of executing the subsequent amendment of the contracted item, before the conclusion of the negotiations for clearing up obscurities as referred to in § 2. This notification shall be considered a quotation by the contractor that is supplementary to the individual contract.
- The contractor shall not be entitled to claim additional remuneration unless we have expressly accepted the supplementary quotation in the meaning of § 4 section 2. Our general right of termination in accordance with § 11 remains unaffected by the above.

## § 5 Hand-over of and billing for the works

- If the remuneration has also been agreed for parts of the works, a (partial) hand-over procedure can be carried out for those parts, for which partial remuneration has been specified, provided the contractor agrees the matter with us.
- Unless agreed to the contrary in the individual contract, the works are formally handed over following completion and final inspection by one of our authorized personnel together with the contractor. We will produce minutes of the final inspection and hand-over, which will include any defects noted. These minutes shall be signed by both parties to the contract. The defects listed shall be made good by the contractor without delay. The final inspection can be omitted if we confer with the contractor on the matter. The waiver declaration shall be made in writing and include the date by which the works have been accepted as completed.
- Following the final inspection and hand-over of the works it is up to the contractor to submit to us verifiable accounts for the contracted works, together with the invoice.

## § 6 Assumption of risk

- Up to hand-over of the works in the meaning of § 5, the contractor shall assume the risk of accidental deterioration and destruction. The contractor shall not be entitled to remuneration for any time or expenses expended fruitlessly in connection with the works prior to the final inspection and hand-over.
- Unless agreed to the contrary in the individual contract, any transport of the works shall be at the risk of the contractor, i.e. he will bear the risk of accidental deterioration and destruction also during such transport.
- The individual contract shall state which insurance policies shall be taken out by whom and at whose expense. There must be adequate insurance cover for the risks.

## § 7 Time limit agreements

- The individual contract shall include provisions about which time limits are contractually binding.
- Should any circumstances arise that prevent the contractor from meeting a binding deadline and, in particular, if circumstances arise during the execution of the works that are likely to require more time to beyond the agreed deadline, the contractor shall notify us in writing of the reason and likely extent of the delay immediately upon these circumstances arising or becoming apparent to him.
- In case of delay or execution/hand-over not within the agreed deadline we shall be entitled to those claims provided for by law.
- Should the execution/hand-over be delayed due to force majeure or industrial action, without fault, we shall have the option, without the contractor being entitled to assert claims against us as a result hereof, either to withdraw from the contract partially or in full, after expiry of an appropriate time, or to request the execution of the contract at a later date.

## § 8 Penalty

- Unless agreed to the contrary in the individual contract, the contractor shall undertake, in the case of a culpable delay of his execution in the meaning of § 7 section 1, to pay a penalty of 0.15 % of the net final account for each full working day by which the deadline is exceeded (including Saturdays), however the maximum not to exceed 5 % of the net final account.
- The right to claim for higher compensation remains unaffected; in this case the claim for compensation will be offset against the amount of penalty paid.
- We shall be entitled to declare reservation of penalty within one week from receipt of final invoice.

## § 9 Claims for defects, statutory period of limitation

- The contractor shall be obliged to execute the works in accordance with the description and specification stated in the individual contract as well as our written instructions. In case of a subsequent amendment of the contracted item, the changes of the description and specification of the works as recorded in the minutes in the meaning of § 2 section 2 shall be taken into account.
- Inasmuch as the works do not meet the requirements stated in section 1 we shall be entitled to full defect claims as provided for by the law. The costs incurred for the supplementary performance shall be borne by the contractor; this is also the case when the costs for supplementary performance are increased because the delivered works were moved to another place than the original destination, unless such moving was not in accordance with the intended purpose of the works. If the defect of the works does not become apparent until after incorporation into an object manufactured by us, the contractor shall also have to bear, as part of the supplementary performance, all necessary costs which are necessary for eliminating the defect from the works, in particular also the cost of labor for dismantling and re-assembling. We expressly reserve the right to demand compensation, in particular compensation in lieu of performance.
- If a defect becomes apparent prior to hand-over of the works, we shall be entitled, without delay, to determine an appropriate period for supplementary performance. The rights to self-remedy, reducing the remuneration (reduction), reversing the contract (withdrawal) and compensation for defects or instead, reimbursement of expenses, remain unaffected and can be asserted after expiry of the extra time granted without requiring the appointment of a further deadline.

4. Our right to exercise defect claims for supplementary performance without appointing a deadline, in accordance with the statutory provisions, remains unaffected. If and when it is apparent that the conditions for a claim for compensation will come about, we shall be able to demand compensation already before the payment becomes due.
5. The statutory period of limitation for our defect claims shall be 36 months, and for buildings as well as items such as design and supervision for such buildings, 72 months. The statutory period of limitation starts with the hand-over of the works or the joint declaration of the parties to the contract that a formal hand-over procedure will be waived. Likewise, the statutory period of limitation for fraudulently concealed defects or organizational culpability does not finish before the periods mentioned in sentence 1 above. Apart from that, the regular statutory period of limitation of three years remains unaffected for fraudulently concealed defects. The statutory period of limitation shall be extended by any periods during which the works cannot be used due to a warranty claim being dealt with. The suspension of the period of limitation shall start on the day on which the said defect has been brought to the contractor's attention and end when the works can once again be used. In the case of supplementary performance a new statutory period of limitation of 36 months shall start for works from completion of the supplementary work and, for buildings and items such as design and supervision for such buildings, of 72 months. However, this new statutory period of limitation only applies to the remedied or replaced part of the respective works if only this part was replaced – even if it is not independent.

#### § 10 Duties of cooperation

1. If we have to perform actions that are a prerequisite for the execution of the works, we will perform this action in accordance with the description and specification of the works, and the stated deadlines, in the individual contract.
2. If we do not furnish these actions as agreed, the contractor may, after a new deadline has been set and not been met, demand appropriate compensation which shall be calculated in accordance with statutory provisions.
3. In such cases, the contractor shall have no right of termination unless he cannot be expected to be further bound by the individual contract in spite of this provision for compensation.

#### § 11 Notice of termination and withdrawal

1. Our right of ordinary termination remains unaffected.
2. In addition, we shall be entitled to give extraordinary notice of termination for good cause. Good causes for termination shall be, in particular,
  - if and when a party ceases to make payment or files for bankruptcy or insolvency proceedings are instituted or rejected for insufficiency of assets;
  - if and when a party to the contract infringes contractual duties and such infringement is not terminated within an appropriate period after written request by the other party to the contract. Setting a deadline and/or giving warning is not required if, owing to the severity of the infringement of duties, the continuation of the contractual relationship cannot be reasonably expected, success cannot be expected or immediate termination appears justified, taking into account the interests of both parties. On principle, termination without notice is excluded if the infringement of the contractual duty is negligible so that, taking all circumstances into consideration, termination without notice does not seem appropriate.
3. Notice of termination shall be given in writing.
4. All work up to that point shall be brought to account in accordance with the contract prices. In addition, a final inspection and hand-over procedure shall be carried out for work done to that point, provided the required prerequisites are met.
5. In case of extraordinary termination for good cause, we shall be entitled, in consideration of adequate remuneration, to use tools, scaffolding, other equipment and delivered materials and components present on site for the continuation of the work.
6. The right to withdraw from the contract remains unaffected for both partners insofar as the legal prerequisites have been fulfilled. Insofar as, at the same time, the legal prerequisites are met for extraordinary termination, there is a choice of actions.

#### § 12 Safety measures

1. The contractor shall comply with the duty to secure traffic safety for the respective place of work. The contractor shall, under his own responsibility, put in place all safety precautions required in connection with his work and set these up, maintain and, if necessary, supplement them in accordance with the regulations for health and safety at work.
2. If existing safety devices, such as protective covers, railings, steps and similar, are temporarily removed for the purpose of executing the works, the contractor shall be obliged to reinstall such removed devices properly and securely after the said work has been completed. For the duration of the removal of such items, the contractor shall, at his own expense, secure all points representing a safety hazard with appropriate means.
3. The contractor shall be liable for all damage to objects belonging to us that is caused by infringing the abovementioned duties to provide safety measures. In case a third party makes a claim against us for injury or damage to property caused by an infringement of the abovementioned duty to provide safety measures, the contractor shall be obliged to indemnify us from the respective liability.
4. Insofar as the contractor carries out work within our business premises, the regulations by the Employers' Liability Insurance Association for health and safety at work as well as our 'Safety instructions for outside companies' staff working at Sto shall apply; these can be viewed at ... and a copy can be requested.

#### § 13 Prohibition of assignment

Notwithstanding mandatory provisions by the law, the contractor shall not be permitted to assign claims against us.

#### § 14 Retention of title, provision, tools, indemnity

1. Insofar as we provide parts to the contractor, we retain the respective title of ownership. Processing or reformation by the contractor is done by us.

If our goods under reservation are worked up with other goods which do not belong to us, we shall acquire co-ownership of the new item in proportion of the value of our item to the other worked up objects at the time of working up.

2. If the item provided by us is inseparably combined with other objects which do not belong to us, we shall acquire co-ownership of the new item in proportion of the value of the items under reservation to the other combined objects at the time of combining. If the combining occurs in such a way that the contractor's item must be considered as the main item, it shall be agreed that the contractor shall transfer co-ownership to us on a pro-rata basis and that the contractor shall hold sole ownership or co-ownership in safe custody for us.
3. We retain title of ownership of tools; the contractor shall be obliged to use such tools exclusively for the production of the goods ordered by us. The contractor shall be obliged to insure, at his own expense, tools belonging to us at replacement value against damage or loss due to fire, water and theft. At the same time, the contractor shall hereby assign to us all claims for compensation arising from this insurance; we hereby accept this assignment. He shall be obliged to carry out, at his own expense and in good time, any servicing and inspections that may be required. He shall notify us immediately of any and all malfunctions; if and when he culpably fails to do so, damage compensation claims shall not be affected.

#### § 15 Return of packaging, product liability, industrial property rights, confidentiality

Sections 1 to 4 below do not apply to deliverables that relate to the design, supervision or execution of construction works.

1. The return of packaging materials is subject to a separate agreement unless the contractor has a statutory obligation, in accordance with the provisions of the Packaging Directive, to take back packaging materials. Where packaging material is returned, the contractor shall collect such material from us at his own expense. Should the contractor wish that such returnable packaging material be sent back to him, he shall be liable for the resulting shipping costs.
2. Insofar as the contractor is responsible for any product damage, he shall be obliged to indemnify us against third party compensation claims upon first demand inasmuch as the cause lies within his sphere of control and organization and he himself is liable in relation to third parties.

In this context the contractor shall also be obliged to reimburse any necessary expenses incurred by us in connection with a recall campaign carried out by us. We shall notify the supplier of the content and scope of the recall measures to be implemented - if possible and feasible - and give him an opportunity to express an opinion on the matter.

3. The contractor shall be obliged to maintain product liability insurance with a level of cover that is adequate for the risk, for the duration of this contract, i.e. up to the expiry of the respective period of limitation. Should we be entitled to any further claims for damages, such entitlement shall be unaffected.
4. The contractor guarantees that by making this delivery no third-party rights within the Federal Republic of Germany will be infringed. The contractor shall be obliged to inform us if the goods to be supplied are subject to his own or a third party's industrial property rights (e.g. patents, utility patents, trademarks). Should a third party make a claim against us for purported violation of its industrial property rights, the contractor shall be obliged to indemnify us against these claims upon first written request. We are not authorized - without the contractor's consent - to make any agreements with the third party, in particular to make a settlement agreement. The contractor's indemnity obligation applies to all unavoidable expenditure incurred by us or in conjunction with the claim asserted by the third party. The statutory period of limitation for these claims is ten years, starting from the conclusion of the respective contract.
4. We retain copyrights and ownership of title of any production documents (e.g. illustrations, drawings, calculations, models, patterns, recipes) we have handed over to the contractor. These production documents may only be used for processing the quotation and for executing the ordered items; they may not be made available to third parties without our consent. At the same time, the contractor shall be obliged to return any copies he may have made of said documents; the same applies to any documents the contractor may have developed on the basis of said documents. Semi-finished and finished products which are manufactured on the basis of our documents may only be supplied to us. Generally, the contractor shall be obliged to keep secret our business and trade secrets, even after the term of the contract has expired. The duty to observe secrecy does not extend to generally known facts and, in any case, ends when the facts become public knowledge without this having been caused by an infringement of the contract by the contractor.

#### § 16 Place of jurisdiction and applicable law

1. If the contractor is a business as defined within the German Commercial Code, a body corporate under public law or represents special assets under public law, the place of jurisdiction concerning all rights and duties of the parties to the contract arising from any type of business transaction – and also for disputes over bill and check payments – is 79761 Waldshut-Tiengen. The same applies if the contractor has no general domestic place of jurisdiction in Germany, or moves his place of residence or his normal whereabouts outside Germany after conclusion of the contract, or if his place of residence or his normal whereabouts are unknown at the time the suit is filed. However, we shall also be entitled to sue the contractor at his general place of jurisdiction.
2. These General Contract Conditions and all legal relationships between the parties to the contract shall be subject to the law of the Federal Republic of Germany.

#### § 17 Severability clause

Should one or several provisions of our General Purchase Conditions not be effective, the other provisions shall remain effective. The parties to the contract shall undertake to agree an effective provision which most closely approximates and corresponds to the original provision.