

General Terms and Conditions

of SK H₂O protec GmbH (hereinafter: SK GmbH)

As of: 31/07/2014

Part I – Provisions applicable to all contracts

I. General information

1. The General Terms and Conditions of SK GmbH are divided into provisions that are applicable to all contracts (Part I), supplementary provisions for purchase contracts (Part II) and supplementary provisions for assembly contracts (Part III). The provisions of Part I and Part II shall apply jointly to purchase contracts, and those of Part I and Part III shall apply jointly to assembly contracts.
2. These General Terms and Conditions shall apply to all present and future business relationships.
3. Deliveries and services of SK GmbH shall be provided exclusively in accordance with these Terms and Conditions. Any deviating or supplementary general terms and conditions shall not become part of the contract even if SK GmbH is aware of these terms and conditions. They shall not bind SK GmbH even if it does not expressly object to these terms and conditions when concluding the contract. They shall only apply if SK GmbH expressly agrees in writing to the validity of these other terms and conditions.
4. The client shall bear the risk for orders placed by telegram or telephone; in particular, any misunderstandings, errors arising in the transmission of messages and the disadvantages associated with late or incorrect execution shall be borne by the client.

II. Offers

1. Offers made by SK GmbH are subject to confirmation and non-binding for further orders.
2. SK GmbH reserves sole ownership and copyright to the documents – photographs, drawings, descriptions etc. – associated with the offer. Distribution of these documents to third parties, even as extracts, is only permitted with the prior written consent of SK GmbH. The representations in the documents are non-binding and shall not establish any liability on the part of SK GmbH in any case.
3. Without the presentation of an express power of attorney, any assurances, acknowledgements, collateral agreements, recommendations etc. made by employees, in particular, by travelling salesmen or representatives, shall not be effective or binding until these have been confirmed in writing by the head office of SK GmbH.

III. Conclusion of contract

1. A contract shall come into existence only by means of a written or pre-printed order confirmation by SK GmbH.
2. Delivery dates and agreements on deadlines are only binding if they are confirmed in writing.
3. Orders accepted by representatives – regardless of the resulting obligation for the customer – shall only have full binding effect in law when these orders are accepted by SK GmbH. Representatives are not authorised to accept payments or means of payment (cheques, bills of exchange, etc.) without a written power of attorney to receive money.

IV. Prices and terms of payment

1. The prices agreed upon at the conclusion of the respective contract, in particular, the prices stated in the order confirmation, or the prices specified in the respectively valid price list, shall apply. All prices are subject to value added tax at the applicable statutory rate.
2. Deduction of a discount requires a special written agreement.
3. Advance payments / down payments by the customer, as well as instalment payments, must be agreed separately.
4. Upon expiry of the due date stated on the invoice, the customer shall be in default without any additional reminder.
5. If the customer does not pay due invoices, exceeds a term of payment or if the financial circumstances of the customer deteriorate, SK GmbH is entitled to make the entire residual debt of the customer – including deferred invoiced amounts – due for immediate payment, and notwithstanding the agreements entered into, demand advance payment or provision of security or, after delivery, demand immediate payment of all claims based on the same legal relationship.
6. The customer waives his right to assert a right of retention based on earlier or other transactions of the current business relationship. The customer may offset counterclaims only to the extent that these have been acknowledged in writing by SK GmbH and are due for payment or have been recognised by declaratory judgement.

V. Delays in performance of service

1. Fire, war and effects of war, riots, civil war, robbery, theft and looting, official measures such as a decree regarding control or management, prohibitions on delivery, purchase or use, seizures,

operational disruptions or stoppages, crop failure, strike, lockout, obstructed transportation from the place of origin, lack of loading facilities and all cases of force majeure shall release SK GmbH, at its discretion, from the obligation to deliver or provide other services either permanently or for the duration of the hindrance. Notwithstanding deadlines and dates that are agreed as binding, SK GmbH shall not be responsible for delays caused by such events, even if they occur at the locations of their suppliers; such events entitle SK GmbH to postpone the delivery or service for the duration of the hindrance plus a reasonable start-up period or to withdraw from the contract in whole or in part concerning the part that has not yet been fulfilled.

2. If the delivery or service is delayed by more than one month as a result of the events mentioned in No. 1, the customer shall also be entitled, to the exclusion of any claims for damages, to withdraw from the contract with regard to the part that has not yet been fulfilled.

VI. Prohibition of assignment

Rights or claims against SK GmbH, in particular, on account of defects in the goods delivered by SK GmbH or on account of breaches of duty committed by SK GmbH, may not be transferred either in whole or in part to third parties, or pledged to third parties, without the express consent of SK GmbH; Section 364a of the German Commercial Code (Handelsgesetzbuch – HGB) shall remain unaffected.

VII. Place of jurisdiction, applicable law, commercial terms

1. The law of the Federal Republic of Germany shall apply. Application of the provisions on the international sale of goods and German private international law is expressly excluded. The language of the contract is German.
2. If the customer is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from this contract shall be the court that has jurisdiction for the registered office of SK GmbH. The same applies if the customer does not have a general place of jurisdiction in Germany or if his place of residence or habitual abode is not known when the complaint is filed.
3. As far as commercial terms are agreed in accordance with the International Commercial Terms (INCOTERMS), the latest version of these terms shall apply.

VIII. Final provisions

1. Should individual provisions of these General Terms and Conditions be invalid, partially invalid or excluded by special agreement, this shall not affect the validity of the remaining provisions. The provision that is invalid in whole or in part shall be replaced by a provision which comes as close as possible to achieving the economic purpose of the invalid provision.

2. SK GmbH stores customer data within the framework of mutual business relationships in accordance with the Federal Data Protection Act.

3. The delivery address of SK GmbH is:

...

Registered office of

the company:

Managing Director: ...

Registration

Court: ...

VAT Id. No.: ...

Part II – Supplementary provisions for purchase contracts

I. Validity

The following supplementary provisions shall apply together with the general provisions (Part I of these General Terms and Conditions) for purchase contracts between SK GmbH and its customers (hereinafter: Purchasers).

II. Offer and conclusion of contract

1. SK GmbH reserves the right to make technical changes as well as changes in form, colour and/or weight vis-à-vis the offer within reasonable limits.
2. The descriptions and data in the respective product information or advertising materials do not constitute a guarantee of the quality or durability of the goods to be delivered by SK GmbH; however, these descriptions and data must be taken into account during processing.
3. For sales in accordance with specimens or samples, these merely describe professional conformity to the sample and do not constitute a guarantee for the goods to be delivered by SK GmbH.
4. Recommendations for use and advisory services are non-binding and do not release the purchaser from testing the use to an adequate extent.
5. In the case of products which are specially manufactured to order, the contract shall be regarded as concluded after it is confirmed in writing, even if the execution still requires clarifications, which may influence the delivery time and price.

III. Prices and terms of payment

If charges such as taxes, customs duties, freight, insurance premiums, etc. on the products are increased or newly created before the date of delivery, the purchase price to be paid by the purchaser shall increase accordingly. Country-specific levies may be added for foreign shipments.

IV. Delivery

1. Delivery dates are only binding if they are confirmed in writing.
2. If the agreed delivery periods are exceeded, the purchaser may only withdraw from the contract if he proves that he is no longer interested in a later delivery in view of the timely fulfilment of his own obligations and he has expressly referred to this in the order.

3. SK GmbH shall only be in default after expiry of a reasonable grace period set by the purchaser which shall generally amount to at least 2 weeks.
4. All goods manufactured by SK GmbH shall be shipped ex works or ex warehouse exclusively at the purchaser's expense. The freight charges shall be calculated in accordance with the freight charges table of the currently valid price list; the purchaser shall bear express shipping costs in full in all cases.
5. Acceptance of the goods without any complaint by the carrier or freight forwarder shall constitute proof of fault-free packaging.
6. Insurance policies against damage during transportation shall only be taken out at the written request and expense of the purchaser.
7. SK GmbH is entitled to provide partial deliveries and partial services within the agreed delivery times.
8. After the goods have been made available for collection, the risk of accidental destruction and accidental deterioration of the goods shall pass to the purchaser when he receives the notification that the goods have been made available; in the case of sale by dispatch, this risk shall pass to the purchaser upon delivery of the goods to the carrier, forwarding agent or any other person or institution designated to carry out the shipment.
9. Handover is also deemed to be effected if the purchaser is in default of acceptance.
10. SK GmbH reserves the right to plead non-performance of the contract.
11. Returnable containers and returnable packaging must be emptied fully and returned carriage paid by the purchaser within 60 days; the purchaser shall bear any loss and damage of the returnable containers and returnable packaging. Returnable packaging (containers) must not be used for other purposes or to hold other products. They are exclusively intended for the transport of goods delivered by SK GmbH. Labels must not be removed. Non-returnable packaging shall not be taken back by SK GmbH; instead, SK GmbH shall notify the purchaser of a third party who will accept the packaging in accordance with the packaging regulations.

V. Obligations of the purchaser; retention of title

1. SK GmbH shall retain title to the goods until all claims arising from an ongoing business relationship have been paid in full. Inclusion of the purchase price claim against the purchaser in a current account and the acknowledgement of a balance shall not affect the retention of title.
2. The purchaser shall neither pledge the goods owned by SK GmbH nor transfer them by way of security; however, he is entitled to resell and process the delivered goods in the ordinary course of business; this right shall not exist if the ordering party has assigned or pledged the claim arising from the resale/processing of the goods in advance to a third party or has entered into an agreement with the third party prohibiting assignment.

3. The purchaser is obliged to treat the reserved goods with care and, if necessary, insure them sufficiently at their replacement value at his own expense. The purchaser hereby already assigns his claims from the insurance contract to SK GmbH and this assignment is hereby accepted by SK GmbH.
4. The purchaser is also obliged to immediately inform SK GmbH and notify it in writing if there is any impairment to its rights, attachment of the goods by third parties, e.g. seizures made by third parties, as well as any damage or destruction of the goods. In the event of seizures, the purchaser must immediately send SK GmbH a copy of the bailiff's report on the seizure as well as an affidavit stating that the seized goods are subject to SK GmbH's retention of title; the latter shall apply to any form of appropriation of the goods for the purpose of security by third parties. In the event of any third-party attachment of the reserved goods, the purchaser is obliged to inform the third party immediately of the rights of SK GmbH arising from the retention of title and to additionally notify the third party of this in writing. The purchaser must immediately send a copy thereof to SK GmbH. Furthermore, the purchaser is obliged to do everything possible to safeguard the rights of SK GmbH.
5. In order to secure the fulfilment of all claims of SK GmbH arising from the legal relationship with the purchaser, the purchaser hereby assigns all claims – including future claims and conditional claims – arising from the resale / further processing of the goods supplied by SK GmbH, along with all ancillary rights, to SK GmbH with priority over residual claims against him. SK GmbH hereby accepts this assignment and is entitled to disclose it in the event of (even partial) default in payment by the purchaser. As long as the ordering party fulfils his payment obligations towards SK GmbH, he is authorised to collect the claims against his customers assigned to SK GmbH until this right is revoked, which is permissible at any time. In these cases he is obliged to pass on the amounts collected from the assignments directly to SK GmbH or, if this is not possible, to keep these amounts in trust for SK GmbH separately. The purchaser is not entitled to assign the claim in any case. The authorisation to collect shall expire if the purchaser is in default with more than 25 percent of all his payment obligations towards SK GmbH for more than 14 days.
6. At the request of SK GmbH, the purchaser must inform his debtors of the assignment and request them to pay SK GmbH's claims against the purchaser to SK GmbH up to the amount of the claim. SK GmbH is entitled to inform the purchaser's debtor of the assignment at any time and to collect the claim. SK GmbH will not avail of this right as long as the purchaser meets his payment obligations without delay. In the event of default of payment on the part of the purchaser, he must inform SK GmbH of the assigned claims and their debtors upon request, provide all information required for collection of the claim and hand over the necessary documents.
7. If the purchaser combines goods owned by SK GmbH with other movable items in such a way that they become essential components of a uniform item,

then, in the case of Section 947 para. 1 of the German Civil Code (Bürgerliches Gesetzbuch – BGB), the co-ownership of SK GmbH in the new uniform item shall serve as security for its claim instead of the previous sole ownership in the non-combined items belonging to SK GmbH.

8. If the goods owned by SK GmbH are mixed or combined with movable items not belonging to SK GmbH and one of the combined items that does not belong to SK GmbH is to be regarded as the main item, the following shall apply:
 - a. If the purchaser is the owner of the item which is to be regarded as the main item after combination, it is hereby agreed that the purchaser will transfer co-ownership of the new uniform item to SK GmbH to the extent of the full value of the goods delivered by SK GmbH; this shall at least amount to a fraction which corresponds to the ratio of the value of the goods of SK GmbH or other services to the value of the other objects or expenses. Instead of transferring direct joint possession, the purchaser hereby undertakes to keep the item in safe custody for the owners.
 - b. If, in accordance with Section 947 para. 2 BGB, a third party becomes the sole owner of the new uniform item produced after combination, the purchaser hereby assigns his claims against the third party to SK GmbH, regardless of whether these claims are based on contract or law, up to the amount specified in Item IV. 10. SK GmbH hereby accepts this assignment.
9. Furthermore, the purchaser hereby assigns to SK GmbH his claim against third parties which accrue to him due to a contract or by law if he combines items owned by SK GmbH with a plot of land or a building in such a way that they become essential components of the plot of land (Section 946 BGB). SK GmbH hereby accepts this assignment as well.
10. The advance assignments specified in Nos. 5., 7., 8. b.) and 9. are made in the amount of the value of the reserved goods and the value of any work performed. The value of the reserved goods is the amount of the invoice plus a security surcharge of 10 per cent. This surcharge shall not be included if it conflicts with third-party rights.
11. SK GmbH undertakes to release the securities to which it is entitled, at its discretion and at the request of the purchaser, as far as the realisable value of its securities exceeds the value of its secured claims by more than 20 per cent.
12. If the purchaser acts in breach of contract, in particular, in the event of default in payment of more than 10% of the invoice amount for more than 14 days, and if a petition is filed for insolvency proceedings, SK GmbH shall be entitled – without prejudice to further (damage) claims to which it is entitled – to withdraw from the contract and demand the return of the goods delivered by it. In this case, the purchaser is obliged to return all reserved goods that are in his possession to SK GmbH immediately at his own expense. SK GmbH itself can also take back the purchased item at its discretion. The purchaser hereby permits unhindered entrance to the property where the reserved goods are stored. Taking back the goods always constitutes withdrawal from the contract. SK GmbH is entitled to exploit the purchased item.

The proceeds of the exploitation shall be set off against the purchaser's liability after the costs of exploitation are deducted.

VI. Warranty

1.

- a. In general, only the manufacturer's product description shall be deemed to be agreed as regards the quality of the goods; public statements, promotions or advertising by the manufacturer shall not constitute an indication of contractually agreed qualities of the goods.
- b. SK GmbH shall assume warranty for defects in the goods, firstly by rectification of the defect, or replacement delivery, at its discretion.
- c. The purchaser must notify SK GmbH in writing of any obvious material defects, incorrect deliveries and deviations in quantity immediately, but no later than five days after the purchaser receives the goods. Otherwise the goods shall be deemed approved and assertion of the warranty claim shall be excluded. Timely dispatch is sufficient to comply with the deadline.
- d. Hidden defects must be reported to SK GmbH in writing within a period of eight days after such defects are discovered. The purchaser is obliged to check, if necessary during trial processing, whether the delivered goods are free of defects and suitable for the intended use. This shall also apply if components that were not purchased from SK GmbH are added.
- e. If defects are only discovered during processing, the work must be stopped immediately and the unopened original containers that have not yet been processed must be secured; these must be made available to SK GmbH for inspection upon request.
- f. Notifications of hidden defects shall be excluded after three months from the passing of risk to the purchaser pursuant to Item IV. 8. and deemed to be delayed, resulting in the loss of the rights arising from these defects, provided that they could have been detected with reasonable effort.
- g. The purchaser shall bear the full burden of proof for all prerequisites of the claim, in particular, for the existence of a defect, the determination of the defect and the timeliness of the notice of defect.
- h. Notwithstanding the expiry of a period specified in Nos. 1 c., d., f. and 2. b., the rights arising from the defects shall not be excluded if SK GmbH has fraudulently concealed the defect.
- i. If SK GmbH is not prepared or is not in a position to provide supplementary performance, or if this is delayed for reasons for which it is responsible, or if it fails in any other way, the purchaser shall be entitled, at his discretion, to demand a decrease in the purchase price (reduction) or to withdraw from the contract (rescission). Subsequent improvement shall be deemed to have failed after the third attempt. The purchaser shall not be entitled to withdraw from the contract if there is only a minor breach of contract, in particular, in the case of minor defects.

- j. If the customer chooses to withdraw from the contract due to a defect of law or material defect after failure of supplementary performance, he shall not be entitled to any additional claim for compensation. If he chooses compensation after failure of supplementary performance, the goods shall remain with the customer if he finds this reasonable. The amount of compensation shall be limited to the difference between the purchase price and the value of the defective item. This shall not apply if SK GmbH has maliciously caused the breach of contract.
 - k. If the customer receives faulty assembly instructions, SK GmbH is only obliged to provide fault-free assembly instructions and only if the fault in the assembly instructions prevents proper assembly.
 - l. Goods sold as lower quality goods are not subject to notice of defects.
 - m. Negotiations about complaints shall not constitute a waiver of the objection that the notice of defects was not timely / sufficient.
2. The above provisions shall also apply to deliveries of goods other than those in accordance with the contract ("aliud" delivery).

VII. Limitation of claims

1. Claims of the purchaser due to defects or due to services rendered in breach of duty – including claims for damages and claims for reimbursement of futile expenses – shall become time-barred within one year from the statutory commencement of the limitation period if the purchaser is a contractor and within two years if the purchaser is a consumer, unless otherwise stated in the following clauses.
2. The statute of limitations shall apply to the claims of the purchaser against SK GmbH pursuant to Sections 437, 478 para. 2 BGB not earlier than two months after the point in time at which the consumer's claims were fulfilled by the purchaser, or by the other purchaser as a contractor in the supply chain, unless the purchaser could have successfully pleaded the statute of limitations against his customer or contractual partner. The statute of limitations shall in any case apply to the purchaser's claims against SK GmbH on account of defective goods delivered by SK GmbH as far as the claims of the purchaser's customer or contractual partner against the purchaser based on defects in the goods delivered to the purchaser by SK GmbH have become time-barred; however, in the case of building materials, this shall occur no later than five years after the date on which SK GmbH delivered the respective goods to the purchaser and one year after the delivery date in the case of other materials.
3. In the case of newly manufactured items delivered by SK GmbH which have been used for a building in accordance with their usual manner of use and which have caused its defectiveness, the purchaser's claims shall become time-barred within five years of the statutory commencement of the limitation period. Contrary to sentence 1, a limitation period of two years shall apply if the relevant materials are used solely for building repairs or if they are used outside the building, and a limitation period of four years shall apply if the purchaser has used the item delivered by SK GmbH for the performance of contracts in

which the General Contract Terms for the Performance of Construction Works (VOB/B) have been included in their entirety.

The statute of limitations in accordance with sentence 2 above shall commence not earlier than two months after the point in time at which the purchaser has fulfilled the claims of his contractual partner based on the defectiveness of the building caused by the item delivered by SK GmbH, unless the purchaser could have successfully pleaded the statute of limitations against his customer/contractual partner. The statute of limitations shall apply in any case for the purchaser's claims against SK GmbH on account of the defective goods delivered by SK GmbH as soon as the claims of the purchaser's customer/contractual partner against the purchaser on account of defects in the goods delivered to the purchaser by SK GmbH have become time-barred, but no later than five years after the date on which the respective goods were delivered to the purchaser.

4. If SK GmbH has provided advice and/or information in breach of duty and has charged separately for it, without having delivered goods in connection with the information or advice, or if the advice or information in breach of duty does not constitute a material defect of the goods delivered by SK GmbH pursuant to Section 434 BGB, any claims based thereon shall become time-barred within one year of the statutory commencement of the limitation period. The provisions contained in Nos. 1 to 3 and 5 shall apply to the limitation of claims of the purchaser against SK GmbH arising from the breach of contractual, pre-contractual or statutory obligations which do not constitute a material defect pursuant to Section 434 BGB in the goods delivered by SK GmbH in connection with the advice or information.
5. The provisions contained in Nos. 1 to 4 shall not apply to the limitation of claims on account of injury to life, limb or health, nor to the limitation of claims under the Product Liability Act and due to defects in the title of the goods delivered by SK GmbH, nor to the limitation of the ordering party's claims which are based on malicious concealment of defects in the delivered goods by SK GmbH or if SK GmbH has breached an obligation intentionally or due to gross negligence. The statutory limitation periods shall apply to the limitation of these claims for the cases specified in this clause.

VIII. Right to refuse performance

If the purchaser is in arrears with the fulfilment of obligations of any kind, regardless of the legal grounds on which they are based, SK GmbH shall be entitled to refuse performance of all services incumbent upon it until the purchaser has fulfilled its claims. SK GmbH shall be entitled to withdraw from the contract and demand the return of the goods if the purchaser acts in breach of contract, in particular, in the event of default in payment or breach of an obligation pursuant to Item V. 4.

IX. Rights and obligations of SK GmbH

1. Regardless of the legal grounds, liability on the part of SK GmbH for damage or futile expenses shall only arise if the damage or futile expenses
 - a. is caused by SK GmbH or one of its vicarious agents through culpable violation of an essential contractual obligation or
 - b. can be attributed to a grossly negligent or intentional breach of duty by SK GmbH or one of its vicarious agents.

In accordance with this provision, SK GmbH shall be liable for damage or futile expenses caused by advice or information which is not separately remunerated only in the event of intentional or grossly negligent breach of duty, as far as this breach of duty does not constitute a material defect of the delivered goods pursuant to Section 434 BGB.

If SK GmbH is liable pursuant to No. 1 lit. a. for the breach of an essential contractual obligation, liability shall be limited to the foreseeable, typically occurring damage. In particular, SK GmbH shall not be liable for the purchaser's lost profits and for unforeseeable consequential losses. These limitations of liability shall apply in the same way to losses caused by gross negligence or wilful intent on the part of its employees or authorised representatives. It shall not be liable for indirect losses incurred by the purchaser on account of contractual penalties asserted by third parties.

2. As far as SK GmbH is liable for a breach of duty pursuant to No. 1 lit. b., its liability shall, in the absence of gross negligence or wilful intent, be limited to the amount covered by a corresponding insurance policy.
3. The above limitations of liability shall not apply if liability is mandatory on the basis of the provisions of the Product Liability Act or if claims are asserted against SK GmbH on account of injury to life, limb or health. If the goods delivered by SK GmbH lack a guaranteed property, it shall only be liable for losses ensuing from the lack of this property which was covered by the guarantee.
4. Any further liability for compensation is excluded. This shall also apply, in particular, to claims for damages arising from culpa in contrahendo in accordance with Section 311 para. 3 BGB, positive violation of contractual duty pursuant to Section 280 para. 1 BGB or claims in accordance with Section 823 BGB. The exclusion of these claims shall also apply to employees, workers, staff members, representatives, vicarious agents and assistants.

X. Taking back

Goods delivered by SK GmbH shall not be taken back.

Part III – Supplementary provisions for assembly contracts

I. Validity

For assembly contracts in which SK GmbH acts as a subcontractor of a general contractor (hereinafter: "Client"), who in turn performs services for a third party (hereinafter: "Ordering party"), the following supplementary provisions shall apply together with the general provisions (Part I of these General Terms and Conditions)

II. Price for assembly and payment

1. The agreed price presupposes that all preparations have been made on site for the smooth execution of the work.
2. The assembly costs shall especially include travel expenses and man-hours of the assembly personnel according to the respectively valid rates charged by SK GmbH, including surcharges for overtime (plus 25 percent), night work (plus 50 percent) and work on Sundays and public holidays (plus 100 percent). Normal working time is from 6 am to 3.30 pm from Monday to Friday.
3. Time spent in preparation, travel, waiting and transit times are considered and charged as working time. If the installation or commissioning is delayed through no fault of SK GmbH, the client shall bear all costs for the waiting time and any further travel required. Agreed flat rates for assembly work do not include surcharges for any overtime, night work, work on Sundays and public holidays that may be required. These can be calculated additionally.
4. The client or the ordering party may neither demand remuneration nor make deductions from the agreed price for their own employees in the assembly work, unless there is an express written agreement.
5. If SK GmbH has made an error in the price or calculation when submitting an offer or concluding the contract, this error shall be regarded as a substantial error in declaration, in particular, if the client has recognised the error or if both parties have made an error regarding the factors underlying the price calculation. SK GmbH is entitled to structure the customary local price as it would have been calculated in the absence of the error.
6. Changes in remuneration during the construction period due to increases in wages or price of materials shall be specified in the individual contract. The client shall not be permitted to exclude such a possibility of increase. Any clauses of the client which refuse to allow SK GmbH to rely on the change or frustration of the inherent basis of the transaction are prohibited. In particular, SK GmbH cannot be denied a change in remuneration in the event of an increase in quantities (Section 2 No. 3 VOB/B).

7. The client shall not be permitted to exclude changes in price in general.
8. SK GmbH can basically rely on the correctness of the service description or the service specifications and on the propositions stated therein and any deviations will therefore result in price adjustments.
9. Restrictions of SK GmbH's claim to remuneration for modified or additional services by stipulating that a written offer must first be submitted before execution, and that a written order must also be placed, is prohibited. The client is obliged to accept or reject a written offer within a clear period of time to be specified by him.
10. Modified or additional services shall be taken into account in the time schedule of the construction project, in particular, in the agreed contractual periods and also in the event of any contractual penalty. The construction period will be extended according to the extent of the changes. If the documents handed over to SK GmbH for the execution of the contract are incomplete or do not comply with the local conditions, SK GmbH shall be entitled to additional remuneration claims in the event of additional expenses if there are previous discoveries of other circumstances.
11. If the client demands supervisory services from SK GmbH for hourly-wage work, or if these supervisory services are required for another reason, SK GmbH shall be entitled to appropriate remuneration for these services. If the client signs hourly-wage slips or daily-wage reports, this signing shall constitute direct acknowledgement and any further verification is excluded.
12. For billable partial services rendered in accordance with the contract, the ordering party shall make instalment payments in accordance with the progress of construction in the amount of 100 percent of the respective value of the work performed. Partial acceptance is not required. The services are to be proved by SK GmbH by means of a list which enables a quick and reliable assessment of the services. Further details are regulated in the assembly contract.
13. Any services not listed in the final invoice may also be claimed after the final invoice has been issued. The client shall not be permitted to exclude such additional claims.

III. Assembly period

1. The production periods specified in the assembly contract shall apply. SK GmbH shall not be liable for failures to meet deadlines as a result of the behaviour of third parties.
2. The assembly period shall be deemed to have been observed if the assembly is ready for acceptance by the client before the expiry of the assembly period or if it is ready for the performance of any contractually specified test.

3. If additional expenses become necessary due to time-related interruptions for which SK GmbH is not responsible, the rights of SK GmbH under Section 6 No. 6 VOB/B or Section 642 para. 2 BGB cannot be excluded or limited.

IV. Risk of provision

1. The client shall bear the risk arising from the fact that at the time when the offer is submitted or the contract is concluded, the entire range of services and all basic principles of the price list cannot be established beyond doubt by means of a site inspection and evaluation of the offer documents.
2. SK GmbH shall receive appropriate remuneration which is customary at the location for work which is not recognisable but which is objectively necessary and which goes beyond the order placed. The execution of such additional work must be notified to the client in writing.

V. Obligations of the client

1. If a separate planning contract has not been awarded to SK GmbH for its own trades, the client or ordering party must ensure the entire planning provision of the project – e.g., architect, structural engineer – and apply for and obtain any necessary official approvals themselves. SK GmbH is not obliged to check the planning / structural analysis or the necessity or existence of a building permit. The client is obliged to point out these circumstances to the ordering party. SK GmbH can also inform the client verbally of any reservations regarding the specified designs.
2. The client must take the special measures necessary to protect persons and objects at the assembly site. He must also inform the assembly supervisor of any existing special safety regulations as far as these are relevant for the assembly personnel. He shall notify SK GmbH of any violations of such safety regulations by the assembly personnel. In consultation with the assembly supervisor, he may deny the offender access to the assembly site in the event of serious infringements. The client is obliged to oblige the ordering party to cooperate in accordance with these requirements and, if necessary, to ensure the compliance and cooperation of the ordering party. In the event of infringements by the ordering party, he shall be liable to SK GmbH as he would be for his own fault.
3. As far as these services are not expressly included in the scope of services of SK GmbH, the client is obliged to ensure that the ordering party provides the following technical assistance for SK GmbH free of charge:
 - a. Provision of the required number of suitable assistants, skilled workers and labourers during the time required for the assembly. The assistants must follow the instructions of the assembly supervisor; SK GmbH assumes no liability for the assistants;

- b.** Carrying out all earthwork, construction work, foundation work and scaffolding work;
- c.** Provision of the necessary equipment and heavy tools (e.g., lifting gear, compressors) as well as the necessary commodities and materials (e.g., scaffolding timber, wedges, bases, cement, plaster and sealing materials, lubricants, fuels, transmission ropes and belts);
- d.** Provision of heating, lighting, operating power, water, including the necessary connections;
- e.** Provision of necessary dry and lockable rooms for the storage of tools and materials of the assembly personnel;
- f.** Transport of the assembly parts at the assembly site, protection of the assembly site and materials from harmful influences of any kind, cleaning of the assembly site;
- g.** Provision of suitable, theft-proof lounges and work rooms (with heating, lighting, washing and sanitary facilities) and first aid for the assembly personnel;
- h.** Provision of materials and performance of all other actions necessary for the adjustment of the object to be assembled and to perform a contractually provided test.

The technical assistance must ensure that the assembly can be started immediately after the arrival of the assembly personnel and can be carried out without delay until acceptance by the client. If these prerequisites are not met at the scheduled start of service, the service time will be extended by the period of delay. If special plans or instructions of SK GmbH are required, SK GmbH shall make them available to the client or ordering party in good time.

- 4. The client shall be liable for breaches of duty of the ordering party as for his own fault and is obliged to undertake the necessary measures himself and to render the services in the event of default by the ordering party. If the client does not comply with his obligations, SK GmbH is entitled, but not obliged, to carry out the above-mentioned actions at the client's expense after setting a deadline. Furthermore, the statutory rights and claims of SK GmbH shall remain unaffected.
- 5. Drafting of regulations for driving on properties and the restoration of and compensation for damage to the plot or roads caused during the execution of the work – for example, due to entries and exits – are services to be performed by the client or his ordering party and shall be performed at his expense. All additional costs incurred due to obstruction of the transport vehicles to and from the construction site or due to unsuitable parking spaces shall be borne by the client.
- 6. If the devices or tools provided by SK GmbH are damaged on the assembly site or lost through no fault of SK GmbH, the client is obliged to compensate for these losses.

Losses caused by normal wear and tear shall not be taken into consideration.

7. The client must ensure that the main contract does not contain any conditions that are unreasonable for SK GmbH as a subcontractor. He must also, as far as SK GmbH is affected, exercise the rights of SK GmbH vis-à-vis the ordering party properly and in due time. The client must ensure that SK GmbH is not exposed to risk in areas where he alone is capable of enforcing a successful outcome vis-à-vis the ordering party.
8. Payments owed by the client cannot be made dependent on the client receiving payments from the ordering party corresponding to SK GmbH's share in the order. The agreements in the assembly contract regarding due dates shall apply without restriction. The client shall bear the sole risk of remuneration in relation to SK GmbH. Payment for work that is objectively necessary or for additional work initiated by the client shall also be made regardless of the acknowledgement of the main client.

VI. Acceptance

1. The client is obliged to accept the assembly as soon as he has been notified of its completion and after any contractually agreed testing of the assembled object has taken place. Acceptance shall also be carried out if the client on his part can only demand acceptance of the entire work from the ordering party at a later time, e.g. after completion of the entire work.
2. SK GmbH's liability for recognisable defects shall cease upon acceptance, unless the client has reserved the right to assert a specific defect.
3. Postponement of acceptance of the services of SK GmbH until complete acceptance of the object or until an official acceptance is ineffective. Acceptance of the services of SK GmbH cannot be made dependent on further subcontractor services or events which SK GmbH cannot influence and which are dependent on the acts or omissions of a third party.
4. If acceptance is delayed through no fault of SK GmbH, it shall be deemed to have taken place two weeks after completion of assembly is notified. Upon notification of completion to the client, SK GmbH's obligation to protect the works performed (Section 4 para. 5 VOB/B) shall cease after a period of 12 working days after receipt of the notification by the client.
5. The acceptance of the service provided by SK GmbH has no legal effect on the acceptance of materials, components or preliminary services provided by other contractors at the expense of SK GmbH.

VII. Warranty

1. After acceptance of the assembly, SK GmbH shall be liable for defects in the assembly to the exclusion of all other claims of the client notwithstanding No. 5. and Section VIII. below, in such a way that it shall, at its own discretion and free of charge, repair or replace all defective services within the warranty period. The client must immediately notify SK GmbH in writing of any defect found and set SK GmbH a reasonable deadline for supplementary performance. Any provision stipulated by the client according to which the client is to be entitled, either without setting a deadline or after setting an excessively short deadline, to immediately commission another contractor at SK GmbH's expense in the event of the services being defective, shall be ineffective.
2. SK GmbH is not obliged to remedy the defect if the defect is irrelevant to the interests of the client or is based on a circumstance for which the client is responsible.
3. SK GmbH shall not be liable for consequences ensuing from any modifications or repair work carried out improperly by the client or by third parties without the prior consent of SK GmbH. Only in urgent cases of danger to operational safety and to prevent disproportionately large damage, in which case SK GmbH must be notified immediately, or if SK GmbH – taking into account the statutory exceptions – has allowed a reasonable period of time set for it to rectify the defect to elapse fruitlessly, shall the client have the right, within the framework of the statutory provisions, to rectify the defect itself or have it rectified by third parties and to demand reimbursement of the necessary costs from SK GmbH.
4. With regard to the direct costs incurred as a result of rectifying the defect, SK GmbH shall – as far as the complaint proves to be justified – bear the costs of the replacement part including cost of dispatch. It shall also bear the costs of installation and dismantling as well as the costs of any necessary provision of the necessary fitters and assistants, including travel costs, as far as this does not place a disproportionate burden on SK GmbH.
5. If SK GmbH – taking into account the statutory exceptions – allows a reasonable period set for it for the rectification of defects to elapse fruitlessly, the client shall have a right to a reduction within the framework of the statutory provisions. The client may only withdraw from the contract if, despite the reduction, it can be demonstrated that the assembly is of no interest to the client. Further claims shall be determined exclusively in accordance with Item VIII. 3. of these terms and conditions.
6. Special warranty periods for special trades must be expressly agreed in the assembly contract and the trade covered by the extended warranty must be specified precisely.
7. In case of extended warranty, the burden of proof for the existence of a defect caused by SK GmbH lies solely with the client with regard to possible planning defects, possible signs of wear and tear and any material defects for which SK GmbH is not responsible.

Any provision specifying that prima facie evidence after acceptance could apply to the detriment of SK GmbH shall be ineffective.

8. SK GmbH is not responsible for the preliminary services provided by other contractors or for the quality of materials or components provided by the client. Commencement of work by SK GmbH shall in no case constitute acknowledgement of the correctness of arrangements made earlier, the materials or components provided or the preliminary service provided by other contractors.

VIII. Liability

1. If, owing to the fault of SK GmbH, the assembled item cannot be used by the client in accordance with the contract as a result of the omission or faulty execution of proposals and consultations made before or after conclusion of the contract as well as other ancillary contractual obligations, in particular, instructions for operation and maintenance of the assembled item, the provisions of Sections VI. and VII. shall apply to the exclusion of further claims by the client.
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2. SK GmbH shall – regardless of grounds – be liable for damage which has not occurred on the object of assembly itself only
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 - a. in case of wilful intent;
 - b. in case of gross negligence on the part of the owner / the organs or executive employees;
 - c. in case of culpable injury to life, limb and/or health;
 - d. for defects that it has maliciously concealed;
 - e. within the framework of a promise of guarantee;
 - f. provided that liability exists under the Product Liability Act for personal injury or material damage in connection with privately used objects.
3. In the event of culpable violation of essential contractual obligations, SK GmbH shall also be liable in case of gross negligence on the part of non-executive employees and for slight negligence, in the latter case limited to reasonably foreseeable damage typical for the contract. Further claims are excluded.
4. SK GmbH shall not be liable for defects in its assembly or damage to the property or to objects of the client or his ordering party if these are based on the fact that the client did not fulfil the necessary preliminary services and obligations or did not fulfil these to a sufficient extent. Furthermore, it shall not be liable if defects or damage have arisen as a result of the preliminary work not being carried out properly or the property or objects of the client already showing damage or defects, provided that these were not recognisable to SK GmbH and SK GmbH would not have been obliged to give notice of concern.

IX. Statute of limitations

All claims of the client – regardless of legal grounds – shall become time-barred after 12 months. The statutory periods shall be applicable to claims for damages according to Section VIII. No. 2. lit. a. to d. and f. The statutory periods shall also be applicable if SK GmbH performs the assembly work on a building and thereby causes its defectiveness.

X. Termination

Restrictions of the rights of SK GmbH in the event of termination by the client to the effect that it is restricted only to the remuneration earned up to the time of termination with regard to the part of the service which has been provided free of defects up to that point, shall be invalid.

XI. Contractual penalty

In general, any provision on contractual penalties is objected to unless execution deadlines (Section 5 para. 1 VOB/B) are affected. Furthermore, Sections 339 ff. BGB shall apply. If the client demands an inadmissibly high contractual penalty, SK GmbH shall not be obliged to pay the penalty at all, even if the other requirements are met.

XII. Securities

1. If SK GmbH provides security by bank guarantee or if a security sum is paid into a blocked account, the security amount plus the usual interest shall be paid to SK GmbH after expiry of the warranty period, regardless of whether the client retains security vis-à-vis the main contractor or general contractor from the main contract.
2. The right of SK GmbH to claim a builder's mortgage remains unaffected. Other provisions shall only apply if SK GmbH is provided with other equivalent securities, such as a deposit with debt-discharging effect or an absolute bank guarantee.