

**General Installation Conditions of  
J.A. Becker & Söhne GmbH & Co. KG**

**1. Scope of application**

1.1 These General Installation Conditions relate only to contractors in the course of their commercial or independent professional activity and in relation to public-registered corporations. They apply to all installations, commissions, repairs and servicing work ("Installations") which J.A. Becker & Söhne GmbH & Co. KG (Installation contractors) take on for the Client, even if this not mentioned in subsequent contracts.

1.2 Any of the Client's conditions of installation of contrary effect to, supplementary to or deviating from these General Installation Conditions are excluded from the content of contract even if an order is accepted, unless their applicability is approved in writing by the installation contractor. These General Installation Conditions will also apply even if the Installation Contractor unreservedly carries out an installation for the Client in the knowledge of the Client's contrary, supplementary or deviating terms.

1.3 Any provisions contrary or supplementary to these General Installation Conditions, as negotiated between the Installation Contractor and the Client for the execution of a contract, must be placed on written record in the contract. The same will apply to suspending this written-form requirement itself.

1.4 This does not affect any further rights which accrue to the Installation Contractor by provisions of law or under other agreements further to these General Installation Conditions.

**2. Negotiation of contract**

2.1 The Installation Contractor's offers are free of charge and non-binding unless the Installation Contractor indicates otherwise, in writing.

2.2 The Installation Contractor reserves all rights of ownership, copyright and other protected rights in respect of all order documents, models, cost estimates, drawings, drafts, test pieces, models and similar information in physical or in intangible form; such documents must not be made accessible to third parties. The Client will promptly release such documents to the Installation Contractor at the Installation Contractor's request, once they are no longer needed in the normal course of business.

2.3 Documents relating to the Offer, such as photographs, drawings and indications of weights & dimensions are only approximately authoritative, unless expressly designated as being binding. They do not represent any agreement or guarantee for a corresponding characteristic in terms of installation services unless they have been expressly agreed – in writing – to be so. Furthermore, the Client's expectations concerning installation services or the utilisation of the same do not constitute any agreement or guarantee.

2.4 An order takes binding effect only once it has been confirmed by the Installation Contractor in the form of a written order confirmation within two weeks, or if the Installation Contractor carries out the order and – in particular – if the Installation Contractor carries out the installation services. An order confirmation issued using automated media, in the absence of any signature or indication of any name, is deemed issued in writing. The order confirmation will not be binding on the Installation Contractor if it contains any obvious mistakes, typos or errors of calculation.

2.5 The Installation Contractor's absence of comment in response to offers, orders, requests or other statements made by the Client may be interpreted as consent only if this understanding has been previously negotiated in writing.

2.6 If the Client's financial circumstances should suffer serious deterioration, or if a well-founded application for the institution of insolvency proceedings or similar proceedings for the Client's estate should be declined for lack of assets, then the Installation Contractor is entitled to withdraw from the contract in whole or in part.

**3. Scope of installation work**

The Installation Contractor's written confirmation of order is definitive with regard to the type & extent of installation or – in the case of an offer from the Installation Contractor together with a binding timeframe and prompt acceptance – the Installation Contractor's offer will be authoritative if prompt order confirmation is not received. Subsidiary agreements and changes to the scope of installation work will require the Installation Contractor's written confirmation as the prerequisite for their validity. The right to apply changes in design and in form is reserved if the case relates to standard deviations in the field; or if the deviations remain within DIN tolerances or provided that the changes are not substantial and that they are reasonably acceptable for the Client. The same applies with regard to the choice of materials, specification and design.

#### **4. Technical support from Client**

4.1 The Client must provide the Installation Contractor with technical support at its own expense, in the course of execution of the installation work, especially as follows:

- a) Definition of the position of components to be installed; application of levelling benchmarks (metre level) and the indication of the centrelines of the building;
- b) Completion of all earthworks, building works, shuttering and foundation works, including the provision of the necessary building materials;
- c) Provision of the required ancillaries and heavy tools (e.g. hoists, forklifts with 1.6 m fork length, etc.). Standard tools required for installation work (e.g. hand drills) will be provided by the Installation Contractor;
- d) Provision of heating, lighting, operating power (230/400 V electricity connection) and water, including the required connections;
- e) Provision of suitable, theft-proof restrooms and working rooms (together with heating, lighting, washing facilities, sanitation and first-aid) together with lockable rooms for storage of the installation personnel's tools;
- f) Offloading and transportation of installation components to the installation site, protection of installation components and materials from all manner of harmful effects, provision of suitable storage facilities for the installation components;
- g) Stripping, drying and cleaning of completed foundations, including fitted foundation frames, together with disposal of any building waste and stripping materials;
- h) Creation of a load-bearing floor and the assurance of unimpeded access to the installation site;
- i) Provision of materials and required vehicles, and the taking of all necessary actions as required in order to set the item to be installed and in order to conduct trialling and acceptance as envisaged in the contract.

4.2 The Client's technical support activity must ensure that the work of installation is commenced without delay following the arrival of the installation personnel, and that it can be carried out without any delay through to the stage of acceptance on the part of the Client.

4.3 If the Client fails to fulfil its obligations, then the Installation Contractor is entitled but not obliged to carry out the actions incumbent upon the Client, in lieu of the Client and at its expense. Furthermore, the Installation Contractor's legal rights and entitlements will remain unaffected.

#### **5. Installation deadline; Delay in installation**

5.1 The arrangement of installation times (installation dates & deadlines) must be in written form. Installation dates & deadlines are non-binding if they have not been previously designated by the Installation Contractor, in writing, as being binding.

5.2 The installation deadline commences at the stage of negotiation of contract, but not before the Client's full presentation of the documents, approvals and releases, the clarification of all technical issues and the receipt of an agreed down-payment or – in the event of a foreign transaction – following receipt of payment in full. The Installation Contractor's adherence to the installation deadline presupposes that all commercial and technical issues arising between the Parties to the contract have been clarified and that the Client has fulfilled all of the obligations incumbent upon it, such as the provision of the required official forms of certification or approval, or the deposit of a down payment or – in the case of a foreign transaction – payment in full. If this is not the case, then the installation deadline will be extended to a reasonable degree. This will not apply if the delay is attributable to the Installation Contractor. Adherence to the installation deadline presupposes the Client's prompt and correct fulfilment of its further obligations.

5.3 The installation deadline is deemed fulfilled if the installation work is ready to be accepted by the Client by the time of expiry of the deadline.

5.4 If the installation work is delayed due to the occurrence of circumstances which are not attributable to the Installation Contractor, then the installation deadline will be reasonably extended.

#### **6. Acceptance**

The Client is under obligation to conduct formal acceptance of the installation work as soon as it has been notified of its completion. Formal acceptance is conducted by the Client's signing the acceptance report. It is, in particular, equated with formal acceptance if the Client does not accept the works within a reasonable timeframe extended to it by the Installation Contractor, although the Client is correspondingly obliged; or if the Client commissions, or in any other manner uses, the corresponding installation items.

The Client is not entitled to decline acceptance if a merely minor defect is present. The Installation Contractor is also entitled to require part-acceptances.

## **7. Remuneration**

7.1 The installation work is charged for on a time basis and at the installation rates applicable at the time, unless a flat rate price has been expressly negotiated.

7.2 The agreed amounts are understood not to include VAT; this is to be paid in addition, at the statutory rate.

7.3 The date of payment is to be the date on which the Installation Contractor is able to access the funds. In the event of delay in payment, the Client must pay interest in lieu of delay to the extent of nine percentage points above the basic annual rate of interest. This does not affect the Installation Contractor's further claims.

## **8. Client's claims for defects**

8.1 The Client must promptly notify the Installation Contractor, in writing, of any detected defects.

8.2 In the event of defects in the accepted works, the Installation Contractor will be entitled, at its own discretion, to provide satisfaction in the form of rectification of the defect, or otherwise fresh supply. If the defect has still not been rectified after the setting of a reasonable period of grace, the Client may rectify the defect itself, may require reimbursement of the entailed expenditures, may withdraw from the contract, may reduce the amount of payment subject to declaration made to the Installation Contractor, or may require compensation. Replaced parts become the Installation Contractor's property and must be released to the Installation Contractor.

8.3 No claims for defects arise on the basis of defects arising due to normal wear & tear, with particular reference to wearing parts, inexpert operation, assembly, utilisation or storage, or due to inexpertly applied modifications or repairs to the works by the Client or by third parties. The same will apply concerning defects which are attributable to the Client or to a technical cause other than the original defect.

8.4 The Client's claims for reimbursement of expenditures in place of compensation in lieu of performance will be excluded unless the expenditures were also incurred by a reasonable third party.

8.5 The Installation Contractor does not take on any guarantees, and especially no guarantees of condition or of durability, unless otherwise agreed in writing in an individual instance.

8.6 The period of expiry for the Client's claims for defects is one year. If the defective works relate to a building project or a project whose result consists of the provision of planning or supervisory services, then the expiry period is five years. Claims on the basis of malpractice, attributable to a defect in the works, are also subject to a period of expiry of one year. The expiry period starts to run upon acceptance. The expiry period of one year does not apply in respect of the Installation Contractor's unrestricted liability for claims arising from the infringement of a guarantee, or from loss of life, physical injury or damage to health, and does not apply in respect of wilful intent and gross negligence; nor does it apply in respect of product faults or in any instance where the Installation Contractor took on a procurement risk. A response given by the Installation Contractor to a claim for defects filed by the Client should not be regarded as entering into negotiations concerning the claim or concerning the circumstances on which the claim was based, if the Client's claim for defects is rejected in its entirety.

## **9. Client's replacement obligation**

If – without any fault on the part of the Installation Contractor – the jigs or tools which it has placed in the installation site should come to be damaged or if they are lost through no fault of the Installation Contractor's, then the Client will be obliged to compensate these instances of damage/loss. Defects which are attributable to normal wear & tear are not given consideration.

## **10. Installation Contractor's liability**

### **10.1 Losses/damage**

- a) arising from the infringement of a guarantee or
- b) from instances of fatality, physical injury or damage to health and
- c) for wilful intent and gross negligence or
- d) to the extent that the Installation Contractor took on a procurement risk -

- will engage the Installation Contractor's unrestricted liability. The Installation Contractor can be held liable for moderate negligence only in the event of the infringement of substantial obligations which are inherent in the nature of the contract and which are particularly important with regard to achieving the purpose of contract. In the event of the infringement of such obligations, in the event of delay and in the event of incapacitation, the Installation Contractor's liability is restricted to the types of loss whose occurrence should typically be anticipated in the context of this type of contract. This does not affect mandatory statutory liability for product defects.

10.2 To the extent that the Installation Contractor's liability is excluded or is restricted, the same will apply in respect of

the direct liability of the Installation Contractor's representatives, workers, employees, and providers.

## **11. Force majeure**

11.1 Should the Installation Contractor, due to force majeure, be impeded from fulfilling its contractual obligations – especially provision of the installation services – then the Installation Contractor will be exempt, for the duration of the problem situation and for a reasonable initial period, from fulfilling its payment obligations, without any obligation to pay compensation to the Client. The same will apply if it would be an unreasonable burden upon the Installation Contractor – or if it is temporarily impeded from fulfilling its obligations – due to circumstances which were not attributable to the Installation Contractor, with particular reference to industrial disputes, official measures, energy shortages, pandemics or substantial industrial disruptions. The same will also apply if such circumstances arise at a time when the Installation Contractor is already in arrears. If the Installation Contractor is exempt from the installation obligation, then the Installation Contractor will refund the Client for any initial services already provided.

11.2 The Installation Contractor is entitled to withdraw from the contract upon the elapse of a reasonable period of notice if any such impediment should persist for more than four months and if there is no longer any incentive for the Installation Contractor to continue to be bound to fulfil the contract due to the corresponding impediment. At the Client's request, the Installation Contractor will declare – following the expiry of the deadline – whether it wishes to make use of its right of withdrawal or whether it will provide the installation services within a reasonable period of time.

## **12. Confidentiality**

12.1 The Parties are under obligation to observe confidentiality concerning any information coming to their notice which has been designated as confidential or which – in the context of other circumstances – clearly relates to commercial or business secrets, for a period of five years as from delivery, and not to place it on record, pass it on or exploit it except where appropriate in the context of the business connection.

12.2 The confidentiality obligation will lapse to the extent that the information was provably already known to the recipient before the business connection was established, or was generally known before the business connection was established, or was generally accessible – or was generally known or accessible – without any culpability on the part of the recipient. The burden of proof rests with the recipient.

12.3 The Parties will ensure, by way of suitable contractual agreements with the workers and agents acting for them – and particularly with the freelance providers and contractors and service providers working for them – that such parties, too, will refrain (for a period of five years as from delivery) from engaging in any exploitation, forwarding or unauthorised logging of such commercial and industrial secrets.

## **13. Data protection**

13.1 The Parties reciprocally undertake to adhere to the statutory provisions governing data protection, with particular reference to GDPR, the European General Data Protection Regulations, in their execution of the contract, and to place their employees under obligation to adhere to these provisions.

13.2 The Parties process the personal data which they receive (names and contact details of respective contact persons) exclusively for purposes of fulfilling the contract (Art. 6, paragraph 1, clause b) GDPR) and will protect such data by means of technical security precautions fulfilling the latest technical standard (Art. 32, GDPR). The Parties undertake to erase personal data as soon as its processing is no longer required. This does not affect any statutory storage obligations.

13.3 If the Installation Contractor processes any personal data on a contract basis within the context of execution of the contract for the Client, then the Artist will make this the subject of an agreement concerning contract processing as defined in Art. 28, GDPR.

## **14. Concluding provisions**

14.1 Only by the Installation Contractor's prior consent is it permissible for the Client's rights & obligations to be transferred to third parties.

14.2 The Client is entitled on the basis of counterclaims to apply offset only if such counterclaims have been confirmed with legal effect or are undisputed. The Client may claim a right of retention only if its counterclaim is based on one and the same contractual relationship.

14.3 The Installation Contractor's legal relationship to the Client is governed exclusively by German law to the exclusion of the United Nations Treaty governing CISG: Contracts for the International Sale of Goods.

14.4 The Installation Contractor's place of business is the exclusive jurisdiction for all disputes arising from the business relationship between the Installation Contractor and the Client. The Installation Contractor is also entitled

to bring action at the Client's place of business and in any other permissible jurisdiction. Arbitration clauses are rejected.

14.5 The place of fulfilment for all of the Client's obligations and those of the Installation Contractor will be the Installation Contractor's place of business unless otherwise agreed.

14.6 The language of contract is German.

14.7 Should any provision of these General Conditions of Sale be or become wholly or partially invalid or impracticable, or should these General Conditions of Sale be found to suffer from a loophole, then this will not affect the validity of the other provisions. Rather, in place of the provision that was found to be invalid or impracticable, there will be adopted such a valid or practicable provision as fulfils as closely as possible the purpose of the provision which had been found to be invalid or impracticable. In the event of a loophole, there will be deemed agreed the provision corresponding to that which would have been negotiated given the purpose of these General Conditions of Sale had the Parties detected the issue in the first place.