

# General Assembly Conditions (Germany)

For use with:

1. Ordering parties, who when concluding the contract are acting in a professional capacity on a commercial or self-employed basis (entrepreneur);
2. Legal persons under public law or special funds governed by public law.

## 1. Scope of application

- 1.1 These General Conditions (hereinafter referred to as "Assembly Conditions") apply to the following services from companies in the Voith Group with its headquarters in Germany (hereinafter referred to as "Voith"): Assembly, commissioning, repairs, assembly supervision and commissioning supervision (hereinafter referred to as "Work" or "Work Performed") within the context of supply contracts or self-employed assembly, commissioning or repair contracts. The General Conditions supplement the individual agreements between the ordering party and Voith.
- 1.2 When the order is placed, the ordering party acknowledges these assembly conditions and their implementation without any reservations.
- 1.3 Unless a special agreement is made to the contrary, a contract is brought about when the ordering party's order is confirmed in writing by Voith. The written form of order confirmation is also considered to be satisfied, if the text form used involves remote transmission (e.g. email or fax).
- 1.4 Arrangements that differ from or supplement the assembly conditions in the individual agreements shall only apply if they have been signed by both parties or are confirmed in the form set out in Article 1.3. With regard to Voith's General Conditions of Delivery, Article 15.3 of these Assembly Conditions shall apply.
- 1.5 General conditions of the ordering party which are different or supplement these General Assembly Conditions are not accepted, even if Voith does not expressly contradict these.

## 2. Remuneration

- 2.1 The work will be invoiced according to the price sheet on the basis of time at the current charge rates in each case, unless a flat-rate price has been expressly agreed.
- 2.2 Where time is used as a basis for remuneration, if the assembly personnel are unable to work as a result of sickness or accident, the per diem payments continue to be invoiced in accordance with the relevant price sheet. Subsistence expenses of the assembly personnel are deducted, in as far as these no longer apply as a result of incapacity to work. If an immediate return to the place where the personnel are based is necessary and possible, no further subsistence/per diem costs are invoiced.
- 2.3 Where Voith makes tools available to carry out the work, remuneration shall be on the basis of Voith's respective assembly rates, which the ordering party can obtain from Voith's quotation or which will be communicated to the ordering party upon request.
- 2.4 The agreed amounts do not include Value Added tax, which must be paid to Voith in addition at the statutory rate in each case.

## 3. Work report and invoicing

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- 3.1 Before Voith's assembly personnel leave the site, the ordering party shall hand them written confirmation of the end of the work.
- 3.2 The work time sheets issued by Voith shall form the basis for the invoice. Invoicing shall be on a monthly basis or by the end of the assembly work.
- 3.3 Invoices must be paid upon receipt without deductions. It is not permissible to deduct voluntary services that have not been agreed with Voith. The ordering party shall only have the right to withhold payments or offset counterclaims against these if its counterclaims are not disputed or if no further legal recourse is possible against these.
- 3.4 If a payment by the ordering party is delayed or if this is deferred, the ordering party shall pay interest at an annual rate of 8% above base rate, unless the ordering party can demonstrate a lower loss by Voith.

## 4. Safety at work

- 4.1 Voith will comply with the legally applicable regulations at the assembly location when carrying out the work. Should the statutory regulations change between the signing of the contract and the execution of the work, Voith has a claim to reimbursement of any additional outlay and adjustment of the contractual deadlines. Voith shall only observe additional non-statutory safety and other regulations at the assembly location, if the ordering party has made these known to Voith as defined by Article 4.2 and these have been expressly acknowledged by Voith in writing.  
The ordering party shall in turn comply with the regulations and orders prescribed by law, authorities and trade associations and, if necessary, take measures to prevent accidents and to protect persons and Voith's property but, as a minimum, to comply with Voith's occupational health and safety measures which are made known to the ordering party (Voith HSE Standards).
- 4.2 It is the duty of the ordering party to instruct Voith in writing on existing safety regulations at the assembly location and to give Voith's assembly personnel a safety briefing on site before starting work. Where these safety regulations require the assembly personnel to use special protective equipment, this must be provided to Voith's assembly personnel.
- 4.3 The ordering party shall notify Voith in cases where the assembly personnel breach the occupational safety rules. In the case of serious breaches, the ordering party can deny the party committing the breach access to the assembly site, in agreement with Voith's assembly manager.
- 4.4 If one or several safety requirements that the ordering party needs to comply with at the assembly location are not met and, in spite of the written notification to the ordering party, have not been rectified within a reasonable additional time allowed, Voith shall be entitled to cease work until the safety defect is rectified. Furthermore, Voith shall be entitled, after giving prior notification, to halt the deployment of employees or withdraw assembly personnel from the assembly location and/or terminate the contract for assembly, if the deployment involves danger to life and limb for the employees involved. In particular, such a case shall exist if an official agency (e.g. Department for Foreign Affairs of the Federal Republic of Germany) issues a warning in respect of traveling to the intended place of deployment or advises against visiting the area. The same shall apply if the ordering party repeatedly

breaches the obligations incumbent on it in accordance with Article 4.2.

- 4.5 All costs incurred by Voith directly or indirectly as a result of stopping or interrupting the work for reasons for which the ordering party is responsible, as defined in Article 4.4, shall be invoiced in full to the ordering party separately.

## 5. Tools and aids

- 5.1 Unless agreed to the contrary, Voith shall provide the assembly personnel with the necessary standard tools, including measuring devices and aids.
- 5.2 Should the fixtures or tools provided by Voith be damaged at the assembly location or in the ordering party's company for reasons for which Voith is not to blame or if these are lost and Voith is not to blame for this, the ordering party undertakes to replace these losses. Losses that can be attributed to normal wear shall not be taken into account.

## 6. Involvement of the ordering party

- 6.1 The ordering party shall support the assembly personnel in the performance of the work in accordance with Article 7.
- 6.2 The ordering party undertakes to make Voith aware of special regulations imposed by the law, authorities and other bodies at the assembly location which relate to the performance of the work.  
The ordering party shall ensure that permissions are obtained from the authorities so that work can be carried out without interruption. This shall apply in particular to special approvals, in the case of nature reserves and to special dangerous situations. The ordering party shall bear the risk of a delay or refusal of these approvals.
- 6.3 The ordering party shall not be authorized to involve Voith's personnel in work that is not part of this contract, without Voith's express written approval. Voith shall not accept any liability for work carried out on the instructions on the ordering party without special instruction by Voith

## 7. Technical assistance of the ordering party

- 7.1 Where it is necessary for performing the work, the ordering party shall:
- Give Voith access to the premises;
  - Nominate a responsible contact person;
  - Make available the infrastructure necessary to perform the work and
  - Provide Voith with the necessary information in relation to the company structure and environment.
- 7.2 The ordering party shall undertake to provide technical assistance at the ordering party's expense and taking account of all safety regulations and safety measures for technical assistance, and in particular to:
- Provide an adequate number of the appropriate technical and auxiliary personnel required with the necessary qualifications and equipment and for the necessary time. Notwithstanding Article 7.4, sentence 1, these workers shall remain in the employment of the ordering party and the ordering party shall supervise them and be responsible for them.
  - Undertake all earthworks and work relating to construction, beds and scaffolding, including the procurement of the necessary building materials, as well as the timely provision of the clean and load-bearing foundations, including predraining, in accordance with Voith's drawings.
  - Provide the required fixtures and heavy tools (e.g. lifting gear, compressors, welding equipment) and special tools as well as the necessary vehicles and items and materials required (e.g. scaffolding boards, wedges, supports, cement, mortar and sealing materials, lubricants, fuels, driving cables and belts).

- Provide heating, lighting, operating power, water, including the required connections.
- Provide the necessary dry and lockable rooms to store the assembly personnel's tools.
- Transport and store the assembly parts at the assembly location, protect the assembly site against harmful influences of all kinds, clean the assembly site.
- Provide suitable theft-proof common rooms and work areas (with heating, lighting, washing amenities and sanitary facilities) and first aid for the assembly personnel.
- Provide materials and undertake all other technical assistance required to adjust the item to be assembled and to carry out the testing provided for under the contract.

- 7.3 The technical assistance of the ordering party must ensure that assembly can start promptly when the assembly personnel arrive and without delay until the acceptance by the ordering party. Where plans and instructions are required from Voith, Voith shall make these available to the ordering party in good time.
- 7.4 The personnel made available by the ordering party shall follow the instructions of the assembly manager. Voith does not accept any liability for these workers. Should the workers made available by the ordering party cause a defect or damage as a result of the assembly manager's instructions, the arrangements set out in Articles 10 and/or 11 shall apply accordingly.
- 7.5 Should the ordering party fail to fulfill its obligations, after a reasonable period has been set, Voith shall be entitled but not obligated to carry out the actions that should have been performed by the ordering party in the ordering party's place and at its expense. In other respects, Voith's rights and claims shall remain unaffected.

## 8. Time limits and delays

- 8.1 The duration of the work essentially depends on the conditions at the assembly location, the support provided by the ordering party and – in the case of repairs – the scope of the repair established after dismantling. Unless a fixed deadline is agreed as defined by Article 8.2, all information about the provisional duration of the work shall be non-binding dates for the performance of services.
- 8.2 Where a fixed deadline has been agreed for performing the work, the following shall apply:  
A prerequisite for the fixed period to start is that all commercial and technical queries have been clarified and the ordering party has fulfilled all the obligations incumbent on it before the start of the work (e.g. provision of the necessary certificates and approvals from the authorities, making an advance payment). If this is not the case, the deadline shall be extended by a reasonable period. The deadline is deemed to be complied with, if the work is ready for acceptance by the ordering party or, if trials are specified in the contract, these are ready to be carried out. The work is also deemed to be complete if only insignificant parts are missing or insignificant reworking is required, providing that the operational readiness is not impaired.
- 8.3 Should the work be delayed due to the fact that the ordering party has not provided services or these services have not been correctly provided, e.g. breach of the obligations in accordance with Articles 4, 6 and 7, the deadline shall be extended by a reasonable period. This shall also apply if such events occur when Voith is already in arrears. The ordering party shall bear the costs that arise as a result of the delay.
- 8.4 If the failure to meet the deadline is due to force majeure, e.g. natural disasters, epidemics, pandemics, war, armed conflicts, civil war, revolution, terrorism, sabotage, atomic/reactor accidents, industrial disputes or other events that Voith cannot influence, Voith is relieved from fulfilling its obligations for the duration of the event and the deadline is

extended by a reasonable period.

Voith shall advise the ordering party of the start and end of such circumstances at the earliest opportunity. Where the event lasts for a period of more than six (6) months, Voith shall also be entitled to end the contract.

Restrictions arising from or in connection with an event of force majeure such as e.g. the COVID 19 pandemic (e.g. travel restrictions, border closures, transport restrictions or delays, plant closures, etc.) which make it impossible or unreasonably difficult to comply with the delivery or performance time, shall be deemed to be an event of force majeure within the meaning of 8.4, if the specific restriction (e.g. travel restriction, border closures, transport restrictions or delays, plant closures, etc.) did not exist at the time the offer was submitted by Voith or at the time the conclusion of the contract or was not yet known to Voith at this time.

- 8.5 If the ordering party incurs losses as a result of the delay caused by Voith, the ordering party shall be entitled to demand flat-rate compensation for late delivery. It shall amount to 0.5% for each full week of the delay but in total not exceed 5% of the remuneration for that part of the work to be performed by Voith, which cannot be used at the right time as a result of the delay.
- 8.6 Should the ordering party set Voith an appropriate period of time to provide the service after the due date, taking the statutory exceptions into account, and if this deadline is not met for reasons for which Voith is responsible, the ordering party shall be entitled to withdraw from the contract within the framework of the statutory regulations. The ordering party undertakes to declare, within an appropriate period, whether it is going to exercise its right to withdraw from the contract, should the circumstances exist to justify this. Further claims on account of the delay shall be determined exclusively in accordance with Article 11.3 of these conditions.

## 9. Acceptance; transfer of benefits and risk

- 9.1 The ordering party is obligated to carry out the acceptance procedure for the agreed work as soon as notification is given that the work has been completed and any contractually agreed trial of the work has taken place. The presence of an immaterial deficiency shall not entitle the ordering party to refuse acceptance. Should it be demonstrated that the work does not comply with the contract (recognizable defects), Articles 10 and 11 shall apply in respect of the claims for defects and liability.
- 9.2 If the acceptance is delayed for reasons that cannot be attributed to Voith or if the ordering party uses the work performed in the manner for which it was intended and without any reservations or the ordering party does not advise Voith of its complaints, the acceptance shall be deemed to have taken place once two (2) weeks have elapsed after notice was given that the work was complete.
- 9.3 Once the acceptance has taken place, Voith's liability for recognizable defects shall cease, unless the ordering party has reserved the right to assert a certain defect.
- 9.4 Once notification has been given that the work is complete or after the work has been trialed, the benefits and risks pertaining to the work pass to the ordering party.

## 10. Claims for defects

- 10.1 Defects relating to assembly, commissioning or repair:
- 10.1.1 Voith must rectify recognizable defects, providing that they are reported in the proper way as part of the acceptance in accordance with Article 9.1.
- 10.1.2 Subject to Articles 10.1.7 und 11, Voith shall rectify any defects in the work that occur after the work has been accepted and for which Voith is liable in accordance with

Articles 10 and 11, excluding all other claims of the ordering party, providing that the ordering party has notified Voith in writing of such defects without delay but at the latest within five days of discovering them.

- 10.1.3 Voith does not have to rectify a defect if the defect if the deficiency is immaterial for the ordering party's interests or if it is due to a situation that can be attributed to the ordering party.
- 10.1.4. Should a defect appear which cannot be rectified immediately for reasons that Voith is not responsible for, Voith shall only be charged for the expenditure that would arise if the defect had been rectified immediately. If the ordering party delays Voith in respect of rectifying the defects identified, the ordering party shall be liable for any additional outlay caused to Voith as a result of this.
- 10.1.5 It is only in urgent cases where operational safety is at risk and in order to prevent disproportionately more serious damage (in which case Voith is to be notified immediately) or if Voith has allowed an appropriate period set by the ordering party to rectify the defect to elapse that the ordering party has the right to rectify the defect itself or to have it rectified by a third party and to demand reimbursement of the necessary costs by Voith. If it is not the case, Voith shall not reimburse the costs for changes and/or repair work undertaken without its prior approval. Voith is not liable under any circumstances for the consequences or losses that result from changes and/or repair work undertaken by the ordering party or by third parties instructed by the ordering party.
- 10.1.6 With regard to the direct costs that arise as a result of rectifying the defect (assuming that the complaint turns out to be justified), Voith shall pay the cost of the replacement part including shipping costs. Voith shall also pay the cost of removal and installation as well as the costs that may be required to deploy the fitters and auxiliary personnel required, including travel costs, providing no disproportionate burden is placed on Voith as a result of this.
- 10.1.7 If, taking the statutory exceptions into account, Voith allows an appropriate additional period granted to it to rectify the defect to pass without a successful outcome, the ordering party shall have a right to reduce the purchase price within the framework of the statutory regulations. The right of the ordering party to reduce the purchase price shall also apply in other cases where attempts to rectify the defect have failed. The ordering party is only allowed to withdraw from the contract rather than reduce the purchase price, if it can be demonstrated that the work performed is of no interest to the ordering party in spite of the reduction.
- 10.1.8 The assembly personnel are only allowed to install and fit parts originating from a third-party supplier with Voith's express approval. Voith does not accept any responsibility whatsoever regarding the correct functioning of these parts. Assembly work is carried out in good faith by the assembly personnel.
- 10.1.9 No warranty shall apply if the ordering party or a third party makes changes to the object of the work performed without Voith's written approval, if the ordering party itself does not observe Voith's specifications when carrying out preparatory or other work itself or if the ordering party does not immediately take suitable measures to reduce the damage in spite of the fact that it is aware of a defect, although it would be possible and reasonable for it to do this.
- 10.2. Deficiencies in supervising assembly and commissioning: Subject to the arrangement in Article 11, Voith is liable for deficiencies in assembly and commissioning supervision as follows:

- 10.2.1 If personnel are deployed to supervise assembly or commissioning, Voith shall be liable for correct selection of the supervising personnel.
- 10.2.2 For defects in assembly or commissioning, that are exclusively as a result of culpably incorrect instructions or the absence of such instructions of the supervision personnel, Voith shall provide warranty in accordance with Article 10 Item 1 to the extent that Voith will rectify the defects free of charge. Voith shall not be liable for defects in assembly or commissioning as a result of a lack of instruction, if the reason why the instruction was not provided is because the ordering party requested an inadequate number of supervisors.
- 10.2.3 If the supervisors are culpably not deployed in good time and as a result it can be demonstrated that the ordering party has suffered losses, the ordering party shall receive flat-rate compensation of 0.25% of the total remuneration to be invoiced for deploying the assembly personnel for each day of the delay but not more than 5% of the total remuneration. Where the delayed deployment causes a delay in the overall assembly or commissioning, the arrangement in Art. 8 shall apply, with the described compensation being deducted.
- 10.2.4 Voith shall be liable for supervising the assembly or commissioning overall but not more than 50% of the overall remuneration for the supervision service.
- 10.2.5 Where assembly and commissioning are supervised, no liability is accepted for meeting the final deadline for assembly or commissioning.
- 11. Liability on the part of Voith, liability exclusion**
- 11.1 If Voith is responsible for damaging an assembly part delivered by Voith or a part from a third party in the course of the work, Voith can choose either to carry out a repair at Voith's expense or to supply a new part. Should items on which work is being carried out be damaged or destroyed for reasons that are not Voith's responsibility, Voith shall retain the right to the agreed remuneration.
- 11.2 If the assembled object cannot be used by the ordering party in accordance with the contract as a result of proposals from Voith that were wrong or negligently omitted or advice provided before or after the contract was signed or as a result of negligent infringement of other contractual subsidiary obligations – in particular the instruction for operation and maintenance of the assembled object – the arrangements in Articles 10, 11.1 and 11.3 shall apply accordingly, with further claims by the ordering party being excluded.
- 11.3 For losses that have not occurred on the actual work performed, Voith shall only be liable, regardless of the legal grounds:
- in the case of a deliberate action,
  - in the case of gross negligence on the part of the owner / the bodies or a senior executive,
  - in the case of a culpable infringement resulting in loss of life, limb or health,
  - in the case of defects that have been fraudulently concealed or the absence of which have been guaranteed,
  - where liability exists for injury to persons or damage to property on privately used items, in accordance with the law on product liability.
- 11.4. In the event of intentional infringement of important contractual duties, Voith shall also be liable for gross negligence of employees who are not in a senior position as well as for a slight degree of negligence but in the latter case losses shall be limited to the losses typical for the contract and which can reasonably be foreseen. Important contractual duties are those contractual obligations which must be complied with for the contract to be performed properly and where the ordering party can routinely rely on these being complied with.
- 11.5 Further claims for compensation against Voith shall be excluded, irrespective of the legal grounds. Where liability to claim damages against Voith is excluded or limited, this shall also apply in respect of personal liability regarding damages against Voith's employees.
- 12. Statute of limitations**
- 12.1 All claims by the ordering party shall become time-barred, regardless of the legal grounds, in 12 months. The statutory time limits shall apply to claims for compensation in accordance with Article 11.3 a) – e). If Voith's work involves a structure and thereby causes its defectiveness, the statutory time limits shall also apply.
- 12.2 Where the ordering party acquires new rights on account of defects that occur in the course of rectification of defects by Voith, all claims arising from these rights shall become statute-barred at the latest after six months from the time the defect was rectified; in this context, all claims shall be limited exclusively to defects that arise in direct relationship to the defect rectification.
- 13. Applicable law, legal venue**
- 13.1 For all legal relationships between Voith and the ordering party, the law governing the Federal Republic of Germany shall apply exclusively to the legal relationships between German parties.
- 13.2 The competent court for Voith's headquarters shall decide on all disputes arising in respect of this contract relating to work in the Federal Republic of Germany. Voith shall, however, be entitled to issue proceedings at the ordering party's main office.
- 13.3 A final decision on all disputes arising from this contract concerning work abroad shall be made by an arbitration tribunal in accordance with the Rules of the International Chamber of Commerce (ICC), Paris, by three arbitrators appointed in accordance with these Rules to the exclusion of recourse to the ordinary courts. The place of arbitration is Munich. The negotiating language is English.
- 14. Miscellaneous**
- 14.1 Voith retains the ownership rights and copyright of all technical documents, samples, drawings, estimates and similar information, in tangible and intangible form, including in electronic form. This information must not be copied, reproduced or made known to third parties in any way whatsoever without the written agreement of Voith. They may only be used for Voith's work.
- 14.2 Declarations of all kinds made by Voith's assembly personnel shall only be binding for Voith, if they are confirmed in writing or text form by a person authorized by Voith.
- 14.3 Where the Assembly Conditions above do not make any arrangements, Voith's General Conditions of Delivery, which can be consulted on Voith's home page at [www.Voith.com](http://www.Voith.com), shall apply accordingly to supplies and other services of Voith.