

# General Assembly Conditions (international)

## 1. Scope of application

- 1.1 These General Assembly Conditions (hereinafter called "Assembly Conditions") apply to the following services of companies of the Voith Group with their headquarters in Germany (hereinafter called "Voith" both individually and collectively): 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 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 and expressly specify that they are intended to modify the assembly conditions. 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, in each case at the charge rates applicable at the time the contract was signed, unless a flat-rate price is 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. 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 for this 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 applicable in each case.

## 3. Work report and invoicing

- 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 at the end of the assembly work.

- 3.3 Invoices shall be paid within thirty (30) days from the date of the invoice without deductions (hereinafter called the "payment period"). It is not permissible to deduct voluntary services that have not been agreed with Voith. The ordering party shall only have the right to offset payments if its counterclaims are not disputed, are accepted by Voith or if no further legal recourse is possible against these. Furthermore, the ordering party shall be entitled to exercise a right of retention in so far as its counterclaim is based on the same contractual relationship.
- 3.4 After the payment period has elapsed, the ordering party is in arrears without further reminders being issued. 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%, 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 in accordance with 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 all 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 the authorities issue 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 whatsoever 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:

- a) Give Voith access to the premises;
- b) Appoint a responsible contact person;
- c) Make available the infrastructure required for performing the work, and
- d) 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:

- a) 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.
- b) 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.
- c) 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).
- d) Provide heating, lighting, operating power, water, including the required connections.
- e) Provide the necessary dry and lockable rooms to store the assembly personnel's tools.

f) Transport and store the assembly parts at the assembly location, protect the assembly site against harmful influences of all kinds, clean the assembly site.

g) Provide suitable theft-proof common rooms and work areas (with heating, lighting, washing amenities and sanitary facilities) and first aid for the assembly personnel.

h) 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 11 and/or 12 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. Deadlines and delays, force majeure

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 the agreement between the parties makes provision for a fixed deadline 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, 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.

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 arising from the delay shall be excluded within the framework of Art. 100 para. 1 of the Code of Obligations.

## 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 11 and 12 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 Unless there is an intention to deceive on the part of Voith, 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 agreed work pass to the ordering party.

## 10. Warranty

Voith warrants that the work will be performed:

- a) with the necessary care and in agreement with the applicable technical standards; and
- b) taking account of the applicable legal provisions.

## 11. Claims for defects

11.1 Defects relating to assembly, commissioning or repair:

- a) 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.
- b) Subject to Article 11.1 (g) and Article 12, after the work has been accepted Voith shall rectify any hidden defects in the work for which Voith is liable in accordance with Articles 11 and 12, 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 (5) working days of discovering them.
- c) Voith does not have to rectify a defect that is immaterial for the ordering party's interests or if it can be attributed to a situation that can be attributed to the ordering party.
- d) 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.
- e) 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 – for reasons for which Voith is responsible – 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.

- f) 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.
- g) If, taking the statutory exceptions into account, Voith allows for reasons for which Voith is responsible 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.
- h) 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.
- i) 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.

11.2 Deficiencies in supervising assembly and commissioning:

Subject to the arrangement in Article 12, Voith is liable for deficiencies in assembly and commissioning supervision as follows:

- a) If personnel are deployed to supervise assembly or commissioning, Voith shall be liable for correct selection of the supervising personnel.
- b) For defects in assembly or commissioning, that are exclusively as a result of intentional or grossly negligent incorrect instructions or the absence of such instructions of the supervision personnel, Voith shall provide warranty in accordance with Article 11.1 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.
- c) If the supervisors are intentionally and grossly negligently 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 Article 8 shall apply, with the described compensation

being deducted.

- d) Voith shall be liable for supervising the assembly or commissioning overall but not more than 50% of the overall remuneration for the supervision service.
- e) Where assembly and commissioning are supervised, no liability is accepted for meeting the final deadline for assembly or commissioning.

## **12. Liability on the part of Voith, liability exclusion**

- 12.1 If an assembly part delivered by Voith or a part from a third party is deliberately or grossly negligently damaged by Voith in the course of performing 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.
- 12.2 If the assembled object cannot be used by the ordering party in accordance with the contract as a result of deliberate or grossly negligent incorrect advice from Voith or advice that was omitted – in particular the instruction for operation and maintenance of the assembled object – the arrangements in Articles 11, 12.1 and 12.3 shall apply accordingly, with further claims by the ordering party being excluded.
- 12.3 For losses that have not occurred on the actual work performed, Voith shall only be liable, regardless of the legal grounds:
  - a) in the case of a deliberate action,
  - b) in the case of gross negligence on the part of the owner / the bodies or a senior executive,
  - c) in the case of a deliberate or negligent breach resulting in loss of life, limb or health,
  - d) in the case of defects that have been fraudulently concealed or the absence of which have been guaranteed,
  - e) where mandatory statutory liability exists for injury to persons or damage to property on privately used items, in accordance with the law on product liability.
- 12.4 In the event of intentional infringement of important contractual duties, Voith shall be liable for deliberate actions, gross negligence and a slight degree of negligence, including by employees who are not in a senior position, with liability in the event of a slight degree of negligence being limited to the direct losses typical for the contract. 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.
- 12.5 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.

## **13. Statute of limitations**

- 13.1 Subject to the exceptions listed below, all claims by the ordering party shall become time-barred, regardless of the legal grounds, in twelve (12) months from acceptance. This also applies when defects of an item which is integrated in an immovable object in the manner for which it was intended have caused the agreed work to be defective. For items intended for private use, warranty claims become time-barred once twenty-four (24) months have passed. The statutory time limits apply to deliberate or fraudulent actions, in cases of a deliberate or negligent breach resulting in loss of life, limb or health and claims in accordance with the Swiss law on product liability. If Voith's work involves a structure and thereby causes its defectiveness, the statutory time limits shall also apply.
- 13.2 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 (6) 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.

## **14. Applicable law, legal venue**

- 14.1 In addition to these provisions, the substantive law of Switzerland shall apply to all legal relationships between Voith and the ordering party.
- 14.2 Any dispute, controversy or claim arising out of or in relation to the contractual relationship between Voith and the ordering party, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The arbitration tribunal shall consist of three arbitrators; the arbitration proceedings shall be held in Zurich. The language of the arbitration proceedings shall be German.

However, Voith shall also be entitled to choose to bring proceedings at the Commercial Court of the Canton of Zurich or at the ordering party's place of business or competent court.

## **15. Miscellaneous**

- 15.1 Voith retains the ownership rights and copyright of all technical documents, samples, estimates, drawings and similar information, in tangible and intangible form, including in electronic form. This information must not be copied or 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.
- 15.2 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 an authorized signatory of Voith.
- 15.3 Where the assembly conditions above do not make any arrangements, Voith's General Conditions of Delivery, which the ordering party received from Voith as a part of the quotation and/or the order acknowledgement, shall apply accordingly to supplies and other services.