

BSK Installation Conditions

(BSK Installation 2008)

PRÄAMBEL

Die Bundesfachgruppe Schwertransporte und Kranarbeiten (BSK) empfiehlt ihren Mitgliedern die nachstehenden Allgemeinen Montagebedingungen unverbindlich zur Verwendung im Geschäftsverkehr mit ihren Auftraggebern/Auftragnehmern. Den Adressaten steht es frei, der Empfehlung zu folgen oder andere Allgemeine Geschäftsbedingungen zu verwenden.

For use with respect to:

1. A person acting in the exercise of the commercial or independent professional activity of the same (businessman);
2. Corporate bodies under public law or a special fund under public law.

I. Validity

These installation conditions are valid for all installations undertaken by a company in the heavy transport sector (contractor), unless differing agreements have been formed in the individual case and other than in the case of purely rough installations in connection with the transport preparation or handling in accordance with the general terms and conditions of business of Bundesfachgruppe Schwertransporte und Kranarbeiten (AGB-BSK – German federal working group for heavy haulage and crane work).

II. Specifications, installation price

The specifications of the orderer, which form the basis for the bid, cost estimate / offer preparation, are exclusively authoritative for the installation work. The installation is charged by time units unless a flat rate has been explicitly agreed. The agreed amounts are understood to be exclusive of value added tax, which must be paid to the contractor in addition at the statutory level.

III. Technical assistance from the orderer

1. Unless otherwise agreed, the orderer has an obligation to provide technical assistance at own expense and particularly:
 - a) Performance of all preparatory measures, particularly earth, construction, bedding and scaffolding work including acquisition of the necessary construction materials.
 - b) Provision of heating, power and lighting, compressed air and water including the required connections.
 - c) Provision of essential, dry and lockable rooms for keeping the tools and the auxiliary and operating materials of the installation personnel.
 - d) Provision of appropriate, theft-proof recreation rooms (with heating, lighting, washing and sanitary facilities) and first aid for the installation personnel.

- e) Provision of those auxiliary materials and performance of all other measures needed to regulate and adjust the item to be installed and to implement a contractually agreed test.
 - f) Protection and securing of the installation site and materials from harmful effects of any nature, cleaning the installation site.
2. The technical assistance from the orderer must guarantee that the installation can be started immediately on arrival of the installation personnel and performed without delay until acceptance by the orderer. If special plans or instructions from the contractor are required then the orderer will provide these in good time.
 3. If the orderer fails to fulfil the obligations of the same then the contractor is entitled although not obliged, after setting a deadline, to perform the actions incumbent upon the orderer at the expense of the same. Otherwise, the statutory rights and claims of the installation company are not affected.

IV. Installation deadline, installation delay

1. The installation deadline is adhered to if the installation service is ready for acceptance by the orderer by the time when the deadline expires or for performance of testing in the case where this is contractually agreed.
2. If the installation is delayed due to force majeure, decrees of higher authorities or measures in the context of industrial disputes and particularly strikes and lockouts and in the event of circumstances for which the contractor is not responsible then a reasonable extension of the deadline will take effect if such impediments have a verifiable impact on completion of the installation. This also applies if such circumstances occur after the contractor has been delayed.
3. If the orderer incurs a delay as a result of the delay of the installation company then the orderer is entitled to demand a flat rate compensation payment for the delay. This amounts to 0.5 % for each full week of delay up to a maximum total of 5 % of the installation price for the part of the system to be installed by the contractor that cannot be used on time as the result of the delay. The assertion of further damages due to delay is excluded unless the delay has been caused by gross negligence or intent of the contractor.
4. If the orderer sets the contractor a reasonable performance deadline – allowing for the statutory exceptions – after the due date and the deadline is not adhered to then the orderer is entitled to withdraw within the scope of the legal regulations. Other claims for delays are determined exclusively in accordance with fig. VII.2 of these conditions.

V. Acceptance

1. The orderer is obliged to accept the installation performance as soon as notification of completion is given and any contractually agreed testing of the item installed has taken place. If the installation proves not to comply with the contract on acceptance then the contractor is obliged to correct the defect. If no essential defect is present then the orderer cannot refuse acceptance.

2. If the acceptance is delayed through no fault of the contractor then acceptance is considered as completed upon expiry of two weeks after notification of completion of the installation.
3. If the orderer accepts the installation performance unconditionally despite recognising the defect then all product defect rights of the orderer to subsequent fulfilment, to substitute performance against reimbursement of expenses and reduction, and the right to withdraw from the agreement cease to apply.

VI. Claims for defects

1. After acceptance of the installation, the contractor is liable for defects to the exclusion of all other claims of the orderer irrespective of no. 3 and section VII. such that the contractor must correct the defects. The orderer must notify the contractor immediately and in writing of any defect found.
2. If the contractor allows the elapse – allowing for the statutory exceptions – without success of a reasonable deadline set for the same to correct defects then the orderer has a right to reduce the price within the scope of the statutory regulations. The right of the orderer to reduce the price also exists in other cases of failure to correct defects. The contractor may withdraw from the agreement only if the installation is verifiably of no interest for the orderer despite the reduction.
3. Other claims are determined exclusively in accordance with section VII.2 of these conditions.

VII. Liability of the contractor, exclusion of liability

1. If, through fault of the contractor, the item installed cannot be used by the orderer in accordance with the agreement due to neglected or incorrect performance of recommendations and advice as well as other secondary contractual obligations then the claims for defects in accordance with section VI and the following provisions apply – to the exclusion of further claims of the orderer.
2. Unless otherwise specified by the agreement or by law, the contractor is liable for damages that have occurred not on the item itself and for whatever legal reason only
 - a) In the case of intent,
 - b) In the case of gross negligence of the owner / institutions or executive employees,
 - c) In the case of culpable injury to life, body or health,
 - d) In the case of defects that the contractor has fraudulently concealed,
 - e) As part of a guarantee promise.

In the case of gross fault of simple vicarious agents, the liability of the contractor is limited to the damages typically foreseeable unless the contractor is able to secure exemption by virtue of commercial custom. In the case of culpable breach of major contractual duties, the contractor is also liable in the case of gross negligence of non-executive employees and in the case of slight negligence although limited to the damages typically foreseeable.

3. Other claims are excluded. In the event that the contractor is sued under the German environmental damage act (USchadG) or other similar regulations under public, national or international law, the orderer must fully exempt the contractor in the internal relationship unless the latter has caused the environmental damage deliberately or through gross negligence.

VIII. Duties of the orderer

1. At own expense and risk, the orderer must put in place all the technical conditions necessary for the proper and hazard-free performance of the installation order and maintain them during the operation. The orderer particularly has a duty to keep the items to be installed in a condition that is ready and appropriate for performance of the installation order. The orderer has a duty to specify correctly and in time the dimensions, weights and specific properties of the item to be installed (e.g. centre of gravity, type of material etc.) as well as appropriate lashing and suspension points. Specific hazards that could arise during performance of the installation work with respect to the item to be installed and the surroundings (e.g. hazardous substances, contamination etc.) must be indicated by the orderer without solicitation and in time.
2. The orderer must obtain the required approvals from the owners for driving on third-party sites, private roads, lanes and squares and exempt the contractor from claims by third parties that may arise due to unauthorised use of a third-party site.

Moreover, the orderer is responsible for ensuring that the ground, space and other conditions on the installation site as well as the access routes – with the exception of public roads, lanes and squares – allow proper and hazard-free performance of the installation order. The orderer is particularly responsible for ensuring that the ground conditions on the installation site, any storage and pre-assembly areas as well as the access routes are able to cope with the ground pressures and other loads from the installation vehicles and equipment (e.g. cranes, heavy transport, lifting frames etc.). Ultimately, the orderer is responsible for providing all details of underground cable ducts, supply lines, other earth lines and cavities that could impair the load capacity of the ground at the installation location or on the access routes. The location and presence of underground cables, shafts and other cavities must be indicated by the orderer without solicitation. If the orderer culpably neglects this duty of notification then the orderer will be liable for all damages that occur as a result, including property and consequential property damage to vehicles, equipment and work installations of the contractor as well as financial losses.

4. The orderer must furthermore advise the installation manager of any existing safety regulations if these are relevant for the installation personnel. The orderer will notify the contractor of breaches of such safety regulations by the installation personnel (e.g. notification of external companies, special safety and protective clothing etc.).

IX. Expiry

All claims of the orderer – for whatever legal reason – expire in 12 months. The statutory periods apply for claims for damages in accordance with sec-

tion VII. 2. a) – d). If the contractor performs the installation service on a building and causes deficiency of the same as a result then the statutory periods likewise apply.

X. Compensation payment from the orderer

If the equipment or tools provided by the contractor are damaged on the installation site or lost through no fault of the contractor then the orderer has a duty to provide compensation for all resulting damages.

XI. Final provisions

1. The law on contracts for work and labour of the Federal Republic of Germany, which is authoritative for the legal relations of domestic parties, applies exclusively for all legal relations between the contractor and the orderer even if the installation site is abroad.
2. The services of the contractor constitute preliminary work and are not discountable. The invoices of the contractor must be paid immediately after acceptance and invoice receipt unless another term of payment is agreed on placement of the order. Offsetting or retention is permitted only with counterclaims that are undisputed or have been determined without further legal recourse.
3. The place of jurisdiction is the competent court for the head office of the contractor. However, the contractor is entitled to file legal proceedings in the location of the head office of the orderer.
4. If one provision of these terms and conditions of business or a provision in the context of other agreements is or becomes void or inapplicable in the individual case then this shall not affect the validity of all the remaining provisions or agreements. § 139 BGB (German civil code) is waived in this respect. In this case, the contractor together with the orderer will replace the void provision with one that is valid and of which the economic objective is as close as possible to that of the void provision.