

I. Scope of Application

These General Terms and Conditions of Assembly shall apply to any assembly work performed by SCHMETZ GmbH, unless agreed upon otherwise in any specific case. Any collateral agreements hereto or modifications hereof must be confirmed in writing by SCHMETZ GmbH.

II. Assembly Price/Working Hours

1. Unless a lump-sum price be expressly agreed upon, the assembly work shall be billed in terms of the hours worked.

2. The agreed-upon amounts shall not include value-added tax, which must be additionally paid to SCHMETZ GmbH in the legally applicable amount.

3. Invoicing and Payment

The full amount of the assembly costs must be paid without any deductions or charges immediately after receipt of invoice. The Customer may only set off claims with undisputed counter-claims or counter-claims which have been recognized by declaratory decision; the Customer may not retain payment due to any counter-claims which exist outside the contractual relation. Assembly costs shall be settled on a weekly or monthly basis or after the conclusion of the assembly work, as SCHMETZ GmbH deems fit. The Customer must confirm the work and the work performance of the personnel on the form provided to the Customer.

The Parties hereby agree that any payment duties stipulated in EUR in the contract, particularly the monetary value determined therein, shall be considered as agreed upon in euros.

Only for customers of EU:

The tax liability is shifted to the recipient of the supply (reverse charge).

4. Working Hours

The regular working hours shall be determined in accordance with the applicable collective provisions for the iron, metals and electrical industries (currently 8 hours/day). The regular working hours shall also be billed in the event a shorter working period must be observed due to reasons for which we are not responsible. Work on Saturdays shall be considered as additional work subject to a surcharge.

The surcharges for additional, night-time, Sunday and holiday work as well as for work under difficult conditions shall be as follows:

25%	for the first two daily additional working hours on weekdays (Mondays through Fridays);
50%	for each additional working hour;
50%	for work on Saturdays and Sundays;
150%	for work on legal holidays, which fall on a weekday or Sunday normally free of work for the company, e.g. 1. January, 1. May, Easter or Whit Sunday; 25. December (Christmas)
100%	for work on legal holidays which fall on a normal working day for the company;
15%	for work under difficult circumstances, such as water and sludge, particularly dirty work, etc.;
30%	for work at night (7:00 p.m. to 6:00 a.m.).

Travel time shall be billed as working hours.

Waiting periods shall be billed as working hours, in the event assembly personnel cannot work or is prevented from leaving for grounds for which we are not responsible.

6. Commissioning

At the Customer's request or in the event we deem such necessary, we shall dispatch an engineer or other specialist to review and commission the assembly work in return for costs.

III. Customer's General Duties of Cooperation

1. The Customer shall assume the timely structural preparation and technical and personnel-related assistance associated with the assembly work under Section IV hereof at its own cost.

2. The Customer must support the assembly personnel in the performance of the assembly work at its own cost.

3. The Customer must take any special measures necessary at the assembly site to protect persons and things. The Customer must notify the assembly director of any special safety provisions, provided such be significant for the assembly personnel. The Customer shall notify SCHMETZ GmbH of any breaches of such safety provisions committed by the assembly personnel. In the event of any grievous breach, the Customer may deny the violator access to the assembly site in consultation with the assembly director.

4. The Customer shall procure any necessary official permits.

IV. Technical Assistance of Customer

1. Any structural work must be completed prior to the start of the assembly work so that work may be commenced immediately after arrival and be performed without interruption.

2. In accordance with the availability of personnel and the expediency in terms of the Customer's interest, we hereby reserve the right to dispatch specialized mechanics, technicians, commissioning or materials processing engineers.

3. The Customer shall be obligated to render at its own cost any personnel-related or technical preparation, assistance and assessments, in particular:

a) to provide the number of suitable auxiliary personnel (masons, carpenters, locksmiths and other specialists and laborers) required for the assembly work for the necessary period of time; such auxiliary personnel must follow the instructions of the assembly director. SCHMETZ GmbH shall not assume any liability for the auxiliary personnel. Sections VII or VIII hereof shall apply in the event auxiliary personnel cause any defect or damage based on the instructions of the assembly director.

b) to undertake any ground, construction, bedding, caulking, scaffolding or final paint work and to procure the necessary construction materials.

c) to provide the necessary equipment and heavy tools (e.g. hoists, compressors, portable forges) as well as the required objects and materials (e.g. scaffolding wood, wedges, bases, cement, plaster or sealing material, lubricants, fuels, driving cables and belts, hoists and other necessary equipment).

d) to provide the heating, lighting, operating power and water as well as the connections necessary for such.

e) to provide dry and securable spaces in order to store the tools of the assembly personnel.

f) to transport the assembly components to the assembly site; to protect the assembly site and materials from detrimental influences of any type; to clean the assembly site.

g) to provide suitable, theft-proof places for the assembly personnel to stay and work (with heating, lighting, shower facilities, sanitary installations) as well as first aid for such personnel.

h) to provide the materials and to undertake any acts necessary to adjust the object of delivery and to perform any contractually agreed-upon testing.

4. We shall not assume any liability whatsoever for work which is performed without our special instructions, unless employees or vicarious agents of SCHMETZ GmbH have acted intentionally or with gross negligence in the performance of the assembly contract. Any statements whatsoever which are made by the assembly personnel shall only be binding upon SCHMETZ GmbH if confirmed by us.

5. The Customer's technical assistance must warrant that the assembly work can be started immediately after the arrival of the assembly personnel and performed without delay until acceptance by the Customer. In the event any special plans or instructions of the assembly company be required, the assembly company shall provide the Customer such plans or instructions in a timely fashion.

6. In the event the Customer not fulfill its duties, SCHMETZ GmbH shall be entitled though not obligated after provision of notice to undertake the acts for which the Customer is responsible in the latter's stead at the cost thereof. The legal rights and claims of SCHMETZ GmbH shall otherwise not be prejudiced hereby.

V. Assembly Period; Risk

1. Any information regarding assembly periods or deadlines shall only be approximate, unless expressly warranted as "guaranteed" or "fixed" or in any other similar fashion. The actual period of the assembly work shall be conditioned on the circumstances at the assembly site and the support granted by the Customer.

2. The assembly deadline shall be considered as observed, provided the assembly work be ready both for acceptance by the Customer and for the performance of any contractually agreed-upon testing prior to the expiration of such deadline.

3. In the event the assembly work be delayed due to measures related to labor disputes (particularly, strikes or lockouts) or the occurrence of circumstances for which SCHMETZ GmbH is not responsible, the assembly period shall be reasonably extended, provided such impediments be proven to have a significant influence on the completion of the assembly work; this shall also apply in the event such circumstances occur after SCHMETZ GmbH has fallen into arrears.

4. In the event the Customer incur any damage which can be proven to result from the default of SCHMETZ GmbH, the Customer shall be entitled to request default compensation to the exclusion of any further claims; such compensation shall amount for each full week to 0.5% (up to a maximum total of 5%) of the assembly price for those components of the plant to be assembled by SCHMETZ GmbH which cannot be used as a consequence of the delay.

5. In the event the SCHMETZ GmbH be in default and the Customer grant SCHMETZ a reasonable subsequent deadline, expressly stating that the Customer shall refuse to accept the assembly work after the expiration of such deadline, and such subsequent deadline not be observed, the Customer shall be entitled to rescind the contract. In the event the Customer instead request damage compensation due to non-performance, the provision under No. 4 above shall apply accordingly.

6. Unless agreed upon otherwise, the Customer shall bear the risk associated with the transport of the delivery components brought to the assembly site.

7. In the event the assembly performance be lost or deteriorate prior to acceptance without any negligence on the part of SCHMETZ GmbH, SCHMETZ GmbH shall be entitled to request the assembly price less the expenses saved. This shall also apply to any impossibility to perform the assembly work for which SCHMETZ GmbH is not responsible.

8. The Customer may request that the assembly performance be repeated if and insofar as such be attributable to SCHMETZ GmbH, particularly with consideration to the other contractual obligations thereof. SCHMETZ GmbH must be compensated again for the repeated performance on the basis of the contractual prices.

VI. Acceptance

1. The Customer shall be obligated to accept the assembly work as soon as the Customer is notified of the completion thereof and any contractually agreed-upon testing of the assembled object of delivery has taken place. In the event the assembly work not prove to be in accordance with the contract, SCHMETZ GmbH shall be obligated to remedy the defect at its own cost. This shall not apply in the event the defect be insignificant to the Customer's interests or be due to any circumstance which is attributable to the Customer. In the event of any material defect, the Customer may not refuse acceptance, provided SCHMETZ GmbH expressly acknowledge its duty to remedy the defect.

2. Upon acceptance, SCHMETZ GmbH shall no longer be liable for recognizable defects, unless the Customer has reserved the right to claim certain defects.

3. We shall not assume any liability whatsoever for work which is performed without our special instructions. Any statements whatsoever which are made by the assembly personnel shall only be binding upon SCHMETZ GmbH if confirmed by us.

VII. Warranty

1. Upon the acceptance of the assembly, SCHMETZ GmbH shall be liable for any defects in assembly under the exclusion of all other claims of the customer notwithstanding No. 5 and Section VIII hereof to the extent that SCHMETZ GmbH must remedy any such defects. The Customer must immediately notify the assembly company of any detected defects.

2. No liability shall exist on the part of SCHMETZ GmbH in the event any defect be insignificant to the Customer's interests or be due to any circumstance which is attributable to the Customer.

3. Any liability for damage on the part of SCHMETZ GmbH shall be eliminated in the event the Customer or any third party improperly undertake any modifications or commissioning which is not approved by SCHMETZ GmbH in advance. The Customer shall have the right to remedy a defect itself or have a third party remedy such and to request indemnification of the necessary costs from SCHMETZ GmbH only in the event of imminent danger to operational security or in order to avert disproportionately large damage - whereby, SCHMETZ GmbH must be immediately notified - or in the event the assembly company be in default in the remedy of the defect.

4. Of the direct costs which arise due to any repair, SCHMETZ GmbH shall bear the costs of the replacement and the freight costs, provided the complaint prove to be justified. SCHMETZ GmbH shall furthermore bear the costs of any dismantling and installation as well as for the involvement of any necessary installers and auxiliary personnel (including travel costs), provided SCHMETZ GmbH not be disproportionately burdened as a result thereof.

5. In the event SCHMETZ GmbH negligently allow any reasonable subsequent deadline for the remedy of defects to expire unsuccessfully or in the event the subsequent improvement fail or be impossible, the Customer may request a reasonable reduction of the assembly price or rescind the assembly contract, as the Customer deems fit.

VIII. Miscellaneous Liability of Assembly Company; Exclusion of Liability

1. In the event any assembly component delivered by SCHMETZ GmbH be damaged during assembly due to the negligence of SCHMETZ GmbH, SCHMETZ GmbH shall repair such component or deliver a replacement, as it deems fit.

2. The provisions of Sections VII and VIII hereof shall apply accordingly in the event the Customer cannot use the assembled object in accordance with the contract as a result of any proposals or advice rendered prior to or after the execution of the contract or any ancillary contractual obligations (particularly instructions regarding the use and maintenance of the assembled object) which

have been omitted or performed defectively through the negligence of SCHMETZ GmbH.

3. The supplier shall only be liable for damage not arising to the object of assembly itself for whatever legal ground in the event of

- a) intentional action;
- b) the gross negligence of the owner/bodies or executive employees;
- c) the negligent injury to life, body or health;
- d) defects of the object of delivery insofar as liable for personal injury or material damage to privately used objects in accordance with the Product Liability Act.

In the event of the negligent breach of material contractual duties, the supplier shall also be liable in the event of the gross negligence of non-executive employees and slight negligence, though in the event of the latter, for that foreseeable damage normally contained in contracts.

Any other claims shall be excluded hereby.

IX. Limitation of Claims

All claims of the customer on any legal ground shall lapse in 12 months. The legal periods shall apply to damage compensation claims in accordance with Section VIII. 3a-d above. Such legal periods shall also apply in the event SCHMETZ GmbH renders assembly work to a structure and causes a defect thereby.

X. Compensation of the Customer

In the event the devices or tools provided by SCHMETZ GmbH for use at the place of assembly are damaged or lost through no fault of SCHMETZ GmbH, the customer shall be entitled to compensate SCHMETZ GmbH for such damage. Damage attributed to normal wear and tear shall not be considered thereby.

XI. Data Protection

In the event the scope of delivery includes software, the customer shall be granted a non-exclusive right to use the software and its documentation. Such software shall be provided for use on the delivery component for which such software is intended. The use of the software on more than one system as well as the passing on of such software to third parties shall be prohibited.

The customer may only duplicate, revise, or translate the software or transform the object code of the software into source code in the scope permissible by law (§§ 69 a ff. of the Copyright Act). The customer hereby agrees not to remove or modify any manufacturer specifications, in particular copyright notices, without the prior express approval of the supplier.

The supplier or software distributor shall retain all other rights to the software and its documentation including any copies thereof. The granting of sublicenses shall not be permissible.

We shall be entitled to store and process all data received from the customer in connection with the settlement of this Agreement for the purpose of the performance of this Agreement and customer accounting.

In order to safeguard the copyright and protect our trademarks we hereby point out that we shall retain the exclusive title to drawings, models, patterns, software, etc. Such items shall only be entrusted in others for the agreed-upon purpose. Copies or other duplicates including the storage, processing, and distribution thereof using electronic systems shall only be permissible for the agreed-upon purpose. Neither originals nor duplicates may be given or otherwise made accessible to third parties. We hereby reserve all rights to corresponding supervision and measures in the event of infringements of these provisions.

XI. Place of Performance and Jurisdiction; Final Provisions

1. Exclusively the law of the Federal Republic of Germany decisive for legal relations between parties in Germany shall apply to all legal relations between the supplier and the customer.

2. The place of jurisdiction shall be the court competent for the registered office of the supplier. The supplier shall, however, be entitled to instigate legal proceedings at the registered office of the customer.

3. Any modifications of the provisions in these General Terms and Conditions of Assembly and/or the contract must be made in writing.

4. The invalidity of any individual provisions hereof shall not affect the validity of the remaining provisions.

In case there are any differences between our General Terms and Conditions of Sales and Delivery and the General Conditions of Assembly the General Terms and Conditions of Sales and Delivery revision 1st January 2008 shall prevail.

The German version hereof shall prevail.
Terms and Conditions of Assembly are available separately.

May 2011