



Goldschmidt Thermit Railservice GmbH
General Terms and Conditions for the Performance of Work
Status: 1.11.2009

1. Subject matter

- 1.1 These General Terms and Conditions for the Performance of Work (hereinafter: General Terms and Conditions) of Goldschmidt Thermit RAILSERVICE GmbH (hereinafter: Goldschmidt) shall apply only to our relations with companies (hereinafter: customers) within the meaning of § 14 of the Civil Code of the Federal Republic of Germany (BGB). Goldschmidt shall perform the work solely on the basis of the contract for work concluded with the customer and these General Terms and Conditions. Details concerning the scope of the work to be performed by Goldschmidt follow from the contract for work concluded with the customer and these General Terms and Conditions.
- 1.2 These General Terms and Conditions apply to all contracts for work concluded with the customer.

2. Project procedure

The parties shall each appoint a responsible project manager for the project and, if applicable, a deputy. The project managers shall agree on the conceptual planning and performance of the work.

3. Sub-contractors

Goldschmidt is authorised to instruct sub-contractors to perform the work.

4. Customer's obligation to cooperate

- 4.1 The customer is obliged to provide Goldschmidt or its sub-contractors with the required support in the performance of the work.
- 4.2 The customer's project manager is responsible for the provision, correctness and completeness of all information, working documents and work equipment required to perform the work offered. The customer's project manager is also responsible for making contact with employees who report to him, and for ensuring that necessary decisions are made by the customer in due time.
- 4.3 The customer shall ensure that all its required cooperation or that of its vicarious agents is provided in due time, to the extent required and free of charge for Goldschmidt.
- 4.4 If the customer fails to fulfil its obligation to cooperate adequately as agreed, the customer shall bear the resulting consequences such as extra cost or delays, and reimburse Goldschmidt for all damages incurred thereby. During such time, Goldschmidt shall be released from the obligations under the contract for work and these terms and conditions for the performance of work.

5. Remuneration, invoice

- 5.1 The amount of remuneration shall be stipulated in the contract for work.
- 5.2 Prices are standard prices excluding VAT at the legally valid rate unless otherwise agreed. Invoicing shall be according to measurements of work done on site, if applicable.
- 5.3 Goldschmidt shall be entitled to issue partial invoices for work performed including any supplementary work. Invoices shall be due for payment within 14 days of the invoice date.



5.4 Goldschmidt shall be entitled to charge interest as of the due date of eight (8) per cent above the respectively valid base rate unless the customer proves that damage incurred by Goldschmidt was actually less. § 288 (4) BGB shall apply.

6. Secrecy, data protection

6.1 The parties shall keep secret any information or documents of the other contracting partner, which are identified as business or company secrets, or are clearly recognisable as such by reason of other circumstances. This shall also apply to personal data that fall within the provisions of the Bundesdatenschutzgesetz [Federal Data Protection Act]. The contracting partners shall process or use personal data of the other contracting partner only for the purposes agreed by contract. They shall ensure that personal data are not disclosed, especially to unauthorised third parties, and further shall not record, save or duplicate nor use or exploit such data in any form nor pass them on to third parties without the consent of the other contracting partner.

6.2 The parties shall instruct their employees and oblige them accordingly to maintain secrecy.

7. Rights of use, disclosure

7.1 After communicating project results to the customer, Goldschmidt shall be entitled to use them for its own purposes, to cite project reports and presentations referring to the customer, and to disclose them subject to § 6.

7.2 Goldschmidt shall be entitled, after agreement with the customer, to disclose the customer as a reference and to disclose the assignment and conclusion of the respective project in press releases.

8. Measurement services

8.1 Unless expressly agreed in writing, our measurement service shall comprise solely the collection and recording of measurement data. The issuance of measurement reports shall in particular not be regarded as providing an advisory service with respect to further measures to be performed or not. Further advisory services must always be ordered in writing and confirmed in writing by Goldschmidt.

8.2 No guarantee whatsoever is given that the complete system, to which the inspected parts belong, conforms with regulations and functions. In particular, Goldschmidt shall not be responsible for the design, choice of materials, and construction of the equipment inspected unless such questions are the express subject matter of the order.

9. Modifications of services in contracts for work

9.1 Each party can request the other party in writing to modify the agreed scope of work. The party receiving this request for modification shall review the request within a reasonable time and notify the requesting party in writing whether the modification can be performed and on which conditions. If the request is rejected, the party receiving the request shall state the reasons. If a modification is agreed, the parties shall incorporate this modification in written form as an integral part of the contract.

9.2 Goldschmidt shall invoice the customer for any expenses incurred as a result of an extensive review of a request for modification.

9.3 If the contracting partners fail to reach any agreement, Goldschmidt shall continue the work according to the existing contract without the modification in question.

9.4 Modifications of the scope of work agreed subsequently shall require recalculation of the total fixed price – if such a price was agreed – and the postponement of any completion dates agreed.



10. Acceptance

- 10.1 The customer shall conduct the acceptance test immediately after notification of completion is given and check conformity with the agreements under the contract. If Goldschmidt's work conforms with the specified scope of work and any additional requirements also agreed by the contracting parties, the customer shall immediately declare the work to be accepted. Immaterial defects shall not give the customer the right to refuse acceptance.
- 10.2 If the customer fails to declare the work accepted two weeks after handover and has not notified Goldschmidt of any material defects in the meantime, the work shall be deemed to be accepted after these two weeks have expired.
- 10.3 Use of the work shall also be deemed acceptance.
- 10.4 Immediately after formal acceptance – if such acceptance was agreed – the contracting parties shall make a report confirming conformity with the acceptance criteria. A list of defects discovered during acceptance shall be attached. The acceptance report and list of defects must be signed by both parties.
- 10.5 If the customer discovers any defects during acceptance, the contractor shall remedy them within a reasonable time limit. If the defects are not remedied, even after the customer has set two time limits, the customer can assert the rights specified in 11 (3).

11. Warranty

- 11.1 Goldschmidt shall provide a warranty of one (1) year as of acceptance or in the case of partial acceptance, as of partial acceptance, that there are no defects in the work that set aside or reduce its fitness for the customary use or the use prescribed by the contract.
- 11.2 If defects occur after acceptance of the work, Goldschmidt must be notified immediately in writing. If the obligation to furnish information is violated, the work shall be deemed, in respect of the defect in question, to be free of defects.
- 11.3 During the warranty period in (1), Goldschmidt shall, in the case of a defect, first have the right to supplementary performance, at Goldschmidt's option either remedy or subsequent delivery. If Goldschmidt fails to remedy the defect within a reasonable time limit, and also fails to do so within a further reasonable period of time, which the customer has set Goldschmidt, the customer can require a reduction in the remuneration according to statutory provisions. Rescission of the contract shall be excluded.
- 11.4 Goldschmidt shall start to remedy any defect upon receipt of the written notice of defect and shall remedy the defect within a reasonable time limit.
- 11.5 The customer shall support Goldschmidt in detecting defects. In particular the customer shall describe the time and specific circumstances of the defect's occurrence, explain the characteristics of the defect and specify the impact of the defect. The customer must allow Goldschmidt to inspect the relevant documents.
- 11.6 The customer can no longer assert its warranty claims before the warranty obligation expires if the customer has modified the work itself without the prior written consent of Goldschmidt unless the customer proves that the defect would have occurred even if the work had not been modified.
- 11.7 If defects reported by the customer are not attributable to Goldschmidt, the customer shall pay Goldschmidt for expenditure of time and for all costs incurred at the customary rates.



12. Exclusion and limitation of liability

12.1 Goldschmidt shall not be liable - save as provided in the terms set forth below - for claims by the customer for damages, for whatever legal reason. Goldschmidt shall not be liable in particular for breach of duty from obligation and tort.

This exclusion of liability shall not apply if statutory liability is obligatory, in particular Goldschmidt shall be liable

- for its own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- for material breach of contractual obligations and in the event of impossibility for which it is responsible and material breach of duty;
- if, in the event of breach of other obligations within the meaning of § 241 (2) BGB, it is no longer reasonable to expect the customer to accept performance by Goldschmidt;
- if Goldschmidt is in default with respect to a commercial transaction for delivery by a fixed date;
- in the event of injury to life, limb and health, also caused by legal representatives or vicarious agents;
- where Goldschmidt has assumed a warranty for the existence of successful performance;
- for claims under the Produkthaftungsgesetz [German Product Liability Act].

“Material contractual obligations” are obligations that protect the legal positions of the customer which are material to the contract and which have to be granted to the customer under the contract in terms of subject matter and purpose; material contractual obligations are also obligations whose fulfilment makes the due performance of the contract possible in the first place, where the customer regularly relies on and may rely on compliance with such obligations.

12.2 In other cases Goldschmidt shall be liable for culpable breach of duty, for whatever legal reason, but not in the case of minor negligence.

12.3 In the event of liability under 12 (2) above and liability without negligence, especially given initial impossibility and defects of title, Goldschmidt shall be liable only for typical and foreseeable damage.

12.4 Liability for indirect damages and consequential damage caused by a defect shall be excluded unless Goldschmidt has infringed a material contractual obligation or Goldschmidt, its managers or vicarious agents are reproached for intentional or grossly negligent breach of duty. “Material contractual obligations” are obligations that protect the legal positions of the customer which are material to the contract and which have to be granted to the customer under the contract in terms of subject matter and purpose; material contractual obligations are also obligations whose fulfilment makes the due performance of the contract possible in the first place, where the customer regularly relies on and may rely on compliance with such obligations.

12.5 Goldschmidt’s liability, save for intent, malice and injury to life, limb and health and any other differing indemnity limits prescribed by law, is limited in amount altogether to the actual benefits of the employers’ liability insurance.



At the customer's request, Goldschmidt shall provide the customer at any time with an insurance certificate from the insurer free of charge.

Goldschmidt undertakes, in the event of the insurer being released from the obligation to perform (e.g. by Goldschmidt's breach of warranty, yearly limit etc.) to be answerable to the customer with its own services except however in the case of a negligent act, malice and injury to life, limb and health, and differing indemnity limits prescribed by law only up to a maximum amount of € 500,000 (in words: five hundred thousand euros) for each claim. A single connected case of damage exists if the damages, when objectively considered, are due to one and the same breach of duty by Goldschmidt or uniform circumstances exist.

Any further liability shall be excluded.

- 12.6 Exclusion resp. limitation of liability according to the foregoing 12 (2) to (5) shall apply to the same extent for the benefit of executive and non-executive employees and other vicarious agents as well as Goldschmidt's sub-contractors.
- 12.7 Claims by the customer for damage from the contractual relationship may only be asserted within a preclusion period of one year as of commencement of the statutory limitation period. This shall not apply if Goldschmidt is culpable of malice, gross negligence or intent.
- 12.8 There is no connection between the reversal of the burden of proof and the foregoing stipulations.

13. Term of contract

- 13.1 The contract for work shall begin on the date stipulated therein. If no date is stipulated, the contract for work shall begin on the first working day after the date on which the contract was concluded.
- 13.2 The contract for work can be terminated by either party for good cause. Goldschmidt shall be entitled inter alia to terminate the contract without notice if the customer defaults in the payment of a due remuneration by more than one month.

14. Other provisions

- 14.1 The transfer of rights and obligations under these general terms and conditions to a third party shall require the written consent of Goldschmidt.
- 14.2 German law shall apply, to the exclusion the UN Sales Convention.
- 14.3 Place of performance and legal venue is Essen.