

# BEKA assembly and repair conditions

As of: 22 October 2018

## 1. General

1.1 The following terms apply to assembly and repair services from Baier + Köppel GmbH & Co. (hereinafter: "BEKA"), provided that the orderer is an entrepreneur (§ 14 German Civil Code), a legal entity under public law or a public-law special fund.

1.2 Deviating terms of the orderer shall not become part of the contract due to lack of express objection by BEKA, nor by acceptance of the order. This shall also apply if the corresponding terms of the orderer are received repeatedly.

1.3 In the absence of a special agreement, a contract between BEKA and the orderer is concluded upon written order confirmation by BEKA. Deviating agreements are only rendered valid if and as far as they are confirmed in writing by BEKA. Any individual agreements reached between BEKA and the orderer from case to case (including any side agreements, supplements and amendments) shall take precedence over these terms. A written contract or the written consent of BEKA shall be essential for the content of such agreements. In such a case, these terms are to be used for supplementation and interpretation, if and as far as they do not contradict the individual agreements.

1.4 BEKA retains all title and copyrights in templates, cost estimates, drawings and similar information of a material or immaterial type, either in print or electronic form. They must not be made accessible to any third parties without the consent of BEKA. In return, BEKA will make the information and documents designated as confidential by the orderer only accessible to any third parties with its consent as well.

1.5 The invalidity of individual provisions and the legally binding effectiveness of the remaining parts of the contract and terms shall not be affected.

1.6 If and as far as the object to be repaired by BEKA was not delivered by BEKA, the orderer must inform about any existing industrial property rights with regard to the object. The orderer shall indemnify BEKA against any claims of third parties due to the infringement of industrial property rights to the objects to be repaired if and as far as BEKA has not acted culpably.

## 2. Assembly and repair price, other costs

2.1 Assembly shall be charged by time, except if a flat-rate price has been explicitly agreed.

2.2 BEKA shall inform the orderer of the expected repair price on request upon conclusion of the contract as far as possible in case of repair services; otherwise, the orderer may stipulate cost limits. If the repair cannot be carried out at these costs or if BEKA determines that additional services are necessary during the execution of the repair, BEKA must obtain the orderer's consent before carrying out this additional service if and as far as the costs stated by BEKA or the cost limit is exceeded by more than 15%.

2.3 BEKA shall also submit a cost estimate with binding prices to the orderer on request before carrying out the assembly or repair. However, this shall only be binding if it is concluded in writing. Preparation of the cost estimate shall be remunerated by the orderer. If and as far as the orderer charges BEKA with carrying out the services after receiving the cost estimate, the costs for the preparation of the cost estimate will be offset against the repair or assembly services.

2.4 The services rendered for providing a cost estimate, as well as further verifiable expenses incurred (troubleshooting time = working time) will also be invoiced to the orderer if the repair cannot be carried out for reasons for which BEKA is not at fault, in particular because

- the contract was terminated during its execution
- spare parts cannot be procured
- the orderer has culpably missed the agreed deadline
- the defect reported did not occur during the inspection.

2.5 The object to be repaired shall only be returned to its original condition against reimbursement of the costs upon the orderer's explicit request, unless the work carried out was not necessary.

2.6 BEKA shall not be liable for damage to the object to be repaired, violation of contractual secondary obligations and any damage that did not occur to the object to be repaired itself, no matter the legal reason, if the repair was not carried out.

2.7 Liability of BEKA shall be determined according to the following clause 9 in any other respect.

2.8 BEKA is entitled to demand an appropriate advance payment from the orderer upon conclusion of the contract.

2.9 BEKA shall indicate the prices for used parts, materials, special services as well as the services to be performed and the travel and transport costs separately when calculating the repair. If the orderer has previously obtained a cost estimate from BEKA, a reference to the cost estimate shall be sufficient. In this case, only deviations from the scope of services stated in the cost estimate are to be listed separately.

2.10 The remuneration to be paid for the assembly and/or repair services is stated excluding statutory VAT, which BEKA shall indicate separately in the invoices if and as far as that the orderer opts for VAT. Payment shall be due immediately after the invoice date without deduction.

2.11 Any objections to the invoice by the orderer or correction by BEKA must be made in writing within 4 weeks of receipt of the invoice by the orderer. In any other respect, the orderer shall only be entitled to retention and set-off with undisputed or legally established claims.

### **3. Cooperation of the orderer**

3.1 The orderer must support BEKA's personnel in the execution of the assembly and/or repair services at its own expense.

3.2 The orderer must take the special measures necessary to protect people and objects at the assembly or repair site. It must also inform the installation or repair manager about any existing special safety regulations as far as these are of importance for BEKA personnel. It shall notify BEKA if the staff violate such safety regulations. In case of serious violations, it may deny the offender access to the installation or repair site upon consultation with the BEKA installation or repair manager.

### **4. Technical assistance by the orderer**

4.1 The orderer shall be obligated to provide technical assistance at its own expense, in particular in the form of

4.1.1 Provision of the necessary suitable assistants (bricklayers, carpenters, locksmiths and other skilled workers, assistants) in the number and for the time required for assembly or repair; the assistants must follow the instructions of the assembly or repair manager. BEKA assumes no liability for the assistants. If a defect or damage has been caused by the assistants on the basis of instructions from the assembly or repair manager, clauses 8 and 9 shall apply.

4.1.2 Carrying out all earthwork, construction, embedding and scaffolding work, including the procurement of the necessary building materials.

4.1.3 Provision of the necessary equipment and heavy tools (e.g. lifting tools, compressors) as well as the necessary objects of use and materials (e.g. scaffolding timber, wedges, supports, cement, plaster and sealing materials, lubricants, fuels, drive ropes and belts).

4.1.4 Provision of heating, lighting, operating power, water, including the necessary connections.

4.1.5 Provision of necessary, dry and lockable rooms for the storage of the personnel's tools.

4.1.6 Transport of the assembly ropes at the assembly and repair site, protection of the assembly and repair site and materials from harmful influences of any kind, cleaning of the assembly or repair site.

4.1.7 Provision of suitable, theft-protected common rooms and work rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for staff.

4.1.8 Provision of materials and performance of all other actions necessary for the adjustment of the object to be assembled or repaired and for carrying out a contractually agreed test.

4.2 The orderer's technical assistance must ensure that assembly or repair can commence immediately after the arrival of the personnel and can be carried out without delay until acceptance by the orderer. As far as special plans or instructions of BEKA are necessary, these will be made available to the orderer in time.

4.3 If the orderer does not meet its obligations, BEKA shall be entitled, but not obligated, to carry out the actions to be performed by the orderer in its place and at its expense after setting a reasonable grace period. The legal rights and claims of BEKA remain unaffected otherwise.

### **5. Assembly period and assembly delay**

5.1 The assembly period shall be deemed observed if the assembly is ready for acceptance, or, in the case of a contractually agreed trial run, for its performance.

5.2 A repair period shall only be binding if it is designated as binding and recorded in writing between the parties. However, the orderer may only demand the agreement of a binding repair period once the exact scope of the work has been determined. This repair period shall be deemed to have been complied with if the object to be repaired is ready for acceptance by the orderer by the end of the repair period or, in the case of a contractually agreed trial run, for its performance.

5.3 If additional or extended orders are placed later, in particular after conclusion of the contract, or if additional repair services are required, the agreed repair period shall be extended accordingly.

5.4 If the assembly or repair time cannot be observed due to force majeure, such as war, fire, lawful strike, lockout, official measures, natural disasters, in particular storm, earthquake, etc. or other events outside BEKA's sphere of influence, the assembly and repair times shall be extended appropriately as far as these obstacles demonstrably have a considerable influence on the completion of the assembly or repair.

5.5 If the orderer suffers damage as a result of BEKA's default, it shall be entitled to a flat-rate compensation for default. This shall amount to 0.5 percent for each full week of the delay, up to 5 percent of the installation price for the part of the system to be installed by BEKA that cannot be used on time due to the delay in total.

5.6 If the orderer sets a reasonable grace period for BEKA - taking into account the legal exceptions - for performance after the due date, and if this deadline is not met, the orderer shall be entitled to withdraw from the contract within the framework of the legal regulations. It undertakes to declare within a reasonable period of time after BEKA's request whether it will make use of its withdrawal right.

5.7 Further claims due to default shall be determined exclusively in accordance with item 9 of these terms.

## **6. Acceptance**

6.1 The orderer is obligated to perform acceptance of the assembly or repair services as soon as BEKA has notified it of completion of the assembly or repair and/or readiness for acceptance and after any contractually provided testing of the assembled or repaired object has taken place. If the assembly or repair proves not to be in accordance with the contract, BEKA is obliged to remedy the defect within a reasonable period of time. This shall not apply if the defect is insignificant or based on a circumstance attributable to the orderer. In case of a non-essential defect, the orderer may not refuse acceptance.

6.2 If acceptance is delayed through no fault of BEKA's, acceptance is deemed to have taken place after a reasonable grace period set by BEKA for the orderer to declare acceptance has expired.

6.3 BEKA's liability for recognisable defects shall cease with the acceptance, as far as the orderer has not reserved the right to assert a specific defect during the acceptance.

## **7. Transport and insurance for repairs in the BEKA factory**

7.1 In the absence of a written agreement to the contrary, delivery and removal of the item to be repaired - including packaging and loading - at the orderer's request shall be carried out at its expense; otherwise the item to be repaired shall be delivered to BEKA by the orderer at its expense and collected again by the orderer after completion of the repair services.

7.2 The orderer shall bear the transport risk.

7.3 BEKA will insure the outward and, if necessary, return transport against insurable risks such as theft, breakage, fire and similar risks, at the orderer's request and expense.

7.4 There shall not be any insurance cover during the execution of the repair services in the BEKA factory. The orderer must ensure that the existing insurance cover for the object to be repaired, such as fire, tap water, storm and machine breakage insurance, is maintained. BEKA will only obtain insurance cover for these risks at the express request and expense of the orderer.

7.5 If and as far as the orderer has entered default of acceptance and return of the object to be repaired after completion of the repair services, BEKA is entitled to demand appropriate remuneration for storage in its works. The object to be repaired may also be stored elsewhere at the discretion of BEKA.

## **8. Claims for defects**

8.1 After acceptance of the assembly or repair services, BEKA shall be liable for defects according to the following provisions:

8.1.1 The orderer must notify BEKA in writing of a detected defect immediately after its detection.

8.1.2 BEKA may, at its discretion, either remedy the defect or repeat the service for the purpose of supplementary performance. If the supplementary performance is only possible with disproportionate costs, BEKA

is entitled to refuse the supplementary performance. The orderer's statutory claims in this respect shall remain unaffected.

8.2 BEKA's warranty shall not apply if the defect is demonstrably based on a circumstance attributable to the orderer.

8.3 Liability of BEKA for the resulting damage shall be excluded in case of improper modifications or repair work carried out by the orderer or by any third parties without the prior approval of BEKA. Only in urgent cases with a danger to operational safety and to prevent disproportionately large damage, of which BEKA must be informed immediately, or if BEKA has allowed a reasonable grace period set for BEKA to remedy the defect to expire fruitlessly - under consideration of the legal exceptions, the orderer shall have the right to remedy the defect on its own or have it remedied by third parties within the scope of the legal regulations, and to demand reimbursement of the necessary costs from BEKA.

8.4 In the event of a justified complaint, BEKA shall bear the direct costs arising from the elimination of the defect, provided that this does not result in a disproportionate burden.

8.5 If BEKA - taking into account the legal exceptions - allows a reasonable grace period set for BEKA to eliminate of defects to expire fruitlessly, the orderer shall have the right to reduce the purchasing price within the framework of the statutory provisions. Only if the assembly or repair is verifiably of no interest to the orderer despite the reduction may the orderer withdraw from the contract.

8.6 Further claims shall be determined exclusively in accordance with Section 9 of these terms. Further claims are excluded.

## **9. Liability of BEKA and exclusion of liability**

BEKA shall be liable for reimbursement for damage or expenses from self-performance, reversal or termination according to the proviso of the following provisions:

9.1 For damage caused wilfully or grossly negligently by BEKA or its statutory representatives or vicarious agents, BEKA shall be liable without limitation in amount.

9.2 For damage from violation of life, body or health, BEKA shall be liable without limitation even for its own slightly negligent violation of obligations or that of their statutory representatives or vicarious agents.

9.3 In case of slightly negligent violation of obligations, BEKA shall be liable for damage from violation of essential contractual obligations without which the purpose of the contract cannot be achieved, and in the compliance with which the orderer regularly trusts, limited in amount to the damage typically foreseeable for the contract. This shall apply accordingly to negligent violation of essential contractual obligations of the statutory representatives, committees, or vicarious agents of BEKA.

9.4 Apart from the case of wilful intent and gross negligence, BEKA shall not be liable for indirect damage, such as additional effort, lost profit or lost savings.

9.5 Liability from the Product Liability Act shall be unaffected, as well as liability in case of maliciously concealed defects or from taking over any guarantee.

## **10. Limitation**

All claims of the orderer arising from defects shall become statute-barred one year after acceptance. In the case of repair and/or assembly work on a building or delivery of an object that has been used for a building as part of the repair and/or assembly work and that has caused its defectiveness (building material), the period of limitation shall be five years from delivery or acceptance in accordance with the statutory provisions. This shall not affect the provisions on the statute of limitations in the event of malicious intent and other claims for damages arising from tortious liability and under the Product Liability Act, which shall in each case be statute-barred in accordance with the statutory periods.

## **11. Indemnification of the orderer**

If, through no fault of BEKA's, the devices or tools provided by BEKA are damaged at the assembly or repair site or if they are lost through no fault of BEKA, the orderer is obliged to compensate such damage. Damage caused by regular wear and tear shall not be taken into consideration.

## **12. Reservation of title, extended lien**

12.1 BEKA retains ownership of all accessories, spare parts and exchange units used until receipt of all payments from the repair contract. The parties may enter into further security agreements upon agreement.

12.2 BEKA is entitled to a lien in the orderer's repair object that has come into its possession due to the contract based on its claim from the repair contract. This right of lien may also be asserted in respect of claims arising from work carried out earlier, deliveries of spare parts or other services as far as they are connected with the object to be repaired. For other claims arising from the business relationship, however, the lien shall only apply as far as this is undisputed or has been legally established.

**13. Applicable law and place of jurisdiction**

13.1 The headquarters of BEKA shall be the place of jurisdiction for any disputes from and in connection with this contractual relationship, provided that the orderer is a merchant. BEKA shall, however, independently of this remain entitled to raise a claim against the orderer at its general place of jurisdiction.

13.2 The parties may raise a claim before the district court (Amtsgericht) without consideration of the value of the object in suit.

13.3 Any claims from or in connection with this contract shall be subject to the law of the Federal Republic of Germany, subject to exclusion of UN purchasing law.