

Terms and Conditions for the Supply of Goods and Services of Minimax GmbH & Co. KG

A. General Terms

1. Scope of Application / Exclusion of Customers' General Terms and Conditions

Regardless of whether or not the following terms and conditions have been explicitly agreed upon, they shall apply for all – including future – deliveries, services and offers of the MINIMAX GmbH & Co. KG (hereinafter: "MINIMAX"), unless deviating terms have been explicitly agreed upon. MINIMAX does not accept general terms and conditions of the customer and explicitly objects to their application. The following terms and conditions shall apply even if MINIMAX knows conflicting or deviating terms of the customer and fulfills the contractual obligations without reservation.

2. Conclusion of Contract

- 2.1. Any agreements regarding the contract and its carrying out between MINIMAX and the customer shall only be valid if made in writing.
- 2.2. The offers of MINIMAX, and the drawings, illustrations, measurements, weights and other performance data included in them, are non-binding and without obligation unless they are explicitly specified as being binding or a specific deadline for acceptance is indicated. MINIMAX is bound to binding offers for a period of six weeks from the date of the offer, unless a different deadline for acceptance is specified in the offer.
- 2.3. If the order of the customer constitutes an offer according to sec. 145 of the German Civil Code (*Bürgerliches Gesetzbuch* („BGB")) MINIMAX may accept this offer within two weeks after its receipt unless the customer has specified a different deadline for acceptance.
- 2.4. If the offer from MINIMAX was not specified as being binding or the deadline for acceptance has passed, a contract is concluded only upon written order confirmation by MINIMAX. If there is no order confirmation or the contract is concluded without an order confirmation in particular cases, the offer from MINIMAX is decisive for the contents of the contract. If the customer and MINIMAX have jointly signed a written document regarding the supply which contains all terms of the contract, then this document has the same effect which a written order confirmation would have.
- 2.5. In case the carrying out of the contract requires an export licence, the conclusion of the contract is subject to the condition precedent that the export licence is granted. The same applies with regard to the awarding of an advance permission ruling from the competent export control authority („Nullbescheid"), if MINIMAX has pointed this out in the offer or order confirmation.
- 2.6. Integral Parts of the Contract and Order of Precedence
Unless agreed differently, the contract consists of:
 - the order confirmation from MINIMAX
 - if it exists, the contract signed by MINIMAX and the customer
 - the offer from MINIMAX,
 - if it exists, the declaration of acceptance from the customer,
 - these general terms and conditions
 - Part B General Terms of Contract for Building Works and Part C General Technical Terms of Contract for Building Works of the German Construction Contract Procedures (*Teil B Allgemeine Vertragsbedingungen für die Ausführung von Bauleistungen* ("VOB/B") and *Teil C Allgemeine Technische Vertragsbedingungen für Bauleistungen* ("VOB/C") of the *Vergabe- und Vertragsordnung für Bauleistungen* ("VOB")).

Regarding possible contradictions between these parts of the contract, the order of precedence corresponds to this list; the regulations resulting from an admissible supplementary interpretation (*ergänzende Auslegung*) of the preceding part have precedence over the subordinated part, too.

3. Export Control

The conclusion and implementation of the contract ("transaction") is subject to permissibility with regard to export control regulations according to applicable German and EU law; the same applies with regard to export control regulations according to applicable US and other national law to the extent that this does not result in a violation of or a conflict with German or EU regulations. The parties shall mutually assist each other in particular by providing all necessary information and documents ("duty to cooperate") in order to examine and comply with any legal restrictions regarding export controls (e.g. with regard to obtaining authorizations/information from authorities or fulfilling notification duties).

If MINIMAX has any doubts as to whether such restrictions are relevant, MINIMAX may require that a legally conclusive statement be obtained from the competent export control authority (e.g. a "blank notice"/"Nullbescheid").

If the transaction is barred due to export control restrictions or if doubts in that regard cannot be fully dispelled by such a statement within a period of 3 months after MINIMAX's respective request, or if the contract partner does not meet its duty to cooperate within 3 weeks following MINIMAX's request, MINIMAX is entitled to withdraw from the contract. Any claims against MINIMAX based on delay or non-performance due to export control restrictions or the clarification of respective doubts are excluded except in the event of intent and gross negligence.

4. Rights Regarding Documents

All proprietary rights and copyrights regarding offers, illustrations, drawings, calculations and other documents – including electronic documents – belong to MINIMAX. These documents may not be disclosed to or made accessible to third parties, or duplicated by any person without the explicit consent of MINIMAX.

The information and documents made known to MINIMAX by the customer are considered to be non-confidential, unless they are explicitly marked as confidential.

5. Definition of the Scope of Supply/Exclusions from the Scope of Supply

a) Provision of scaffolds, energy and other installation material

MINIMAX shall supply only the goods and services that are explicitly designated as being the scope of work to be performed by MINIMAX. The customer shall carry out all further work, support duties and supply activities required for carrying out the performance at its own cost and in due time. This applies in particular to the articles required for construction such as scaffolds, lifting equipment and other equipment, energy and water at the construction site including the respective connections, heating and lighting, protective clothing and the safety devices that are required due to special conditions at the construction site.

b) Information Regarding Statics and Pipes

Prior to the beginning of the work, the customer has to make available any required information regarding the location of concealed power, gas and water lines or similar installations as well as the required information regarding statics.

c) Preparation of the Construction Site

Prior to the beginning of the work, the site and the access ways must be cleared and all the required preliminary work must be completed so that the work can be started as agreed in the contract and can be carried out without any interruptions.

d) Additional Costs in Case of Delays

If the performance of the work is delayed due to circumstances for which MINIMAX is not responsible, then the customer shall bear the costs for the waiting time and for additional trips required by the employees of MINIMAX or by the staff deployed for the assembly.

e) Acknowledgement of Work

The customer shall provide a written acknowledgement of the work carried out to MINIMAX.

f) Work Involving Fire Hazards

When cutting, welding, defrosting, soldering or similar work announced by MINIMAX is carried out, the customer itself shall carry out all safety measures required for protecting the property and health of the customer and third parties.

g) Frost Protection Facilities

Areas in which there is a risk of frost shall be protected by the customer so that water-carrying appliances and pipes installed, or to be installed, by MINIMAX are not endangered.

6. VdS Construction Site Visits

The customer shall permit required construction site visits of the VdS (including within the framework of the approval of MINIMAX as installer).

7. Prohibition of Assignment

The customer shall not assign any rights under the contractual relationship to third parties without prior written approval from MINIMAX.

B. Prices and Terms of Payment

I. General Terms Regarding Prices and Payment Conditions

1. Period for Maintaining the Fixed Price

The calculation of the prices is based on the execution of all tasks within the period agreed for execution. If the time period for execution is exceeded substantially, MINIMAX is entitled to an adequate price increase for the increases in wage costs and non-wage labour costs, as well as for price increases in material costs, increased transport costs and for the increase in third-party costs that occurred in the meantime.

2. Effects of Changes in the Laws/Regulations

Additional costs that are incurred after placement of the order due to changes in statutes, acts and decisions and regulations by the government and/or associations will be entirely borne by the customer.

3. The Prices Submitted by MINIMAX include:

- Transport and delivery of the listed material and tools to the construction site and return transport of the tools and the rest of the material; if the construction site is located outside of Germany, only the transport, delivery and return transport to/from a German sea-/airport respectively to/from the German border (in case of land transport) is included in the price
- one set of documentation. The scope depends on the provisions made in the contract.

4. The Following Items Are Not Included in the Prices Submitted:

- Foundations and extra structural work such as, for example, earthworks, masonry works, mortise, carpentry, plumbing and painting work;
- Panelling/sheathing and insulation;
- Provision of any required fire spotters;
- Delivery and installation of water supply lines up to the water connection or up to the feed connection of the system;
- Costs for the provision of site huts, site containers, site cleaning and construction signs, constructors' all risks insurance and glass breakage insurance;
- Costs for power and water – including filling of containers at the construction site;
- Delivery and installation of cables and electrical connections;
- Connections to drain pipes and to electrical light and power networks;
- Potential equalisation measures;
- Any required soil analysis or corrosion protection devices for the pipe lines laid underground;
- Certificates, taxes and approval fees for the system by the technical testing centre of "VdS Schadenverhütung GmbH", the "Technischer Überwachungsverein (TÜV)" or other institutions;
- Costs that arise from exceeding the normal working hours (e.g. overtime and night shift bonuses, travelling costs etc. These costs will be charged for according to the current terms and conditions of MINIMAX for carrying out wage-based and maintenance work.

5. Provision of Rooms

For the period of execution agreed, the customer shall provide a lockable room for storing materials and tools and as a common room for use by the workers. The room must be heated in winter. The customer shall also make toilets and washing facilities available to the workers. If the customer does not fulfill these obligations despite MINIMAX having set an adequate deadline for doing so, MINIMAX is entitled to provide these facilities at the customer's expense.

6. Restriction for Set-off

The customer may only set off claims that are undisputed or have legally binding been found to exist or derive from the same legal relationship.

7. Prices/Value Added Tax

Prices are net/do not include value added tax and are to be paid together with the applicable value added tax under the law then current.

8. Cost of Materials / Disposal

If the prices submitted by MINIMAX do not include materials, the materials used and the test mediums used (leakage detection spray, test gases a.s.o.) shall be charged separately at the prices indicated in the price list of MINIMAX then valid. Parts that have been exchanged remain property of the customer and have to be disposed of by the customer unless MINIMAX is obligated to do so under mandatory law. In case MINIMAX undertakes the disposal of exchanged parts without being statutorily obligated, MINIMAX is entitled to charge a disposal lump sum of € 10.00 in addition to the actual disposal costs per invoice, unless the disposal is to be done free of charge under mandatory law. In addition, MINIMAX is entitled to charge a lump sum of 10% of the material costs, and at least € 9.90 per invoice, for packaging materials and their disposal.

9. Payment Terms

All claims are due for payment immediately and have to be settled no later than 14 days after invoicing.

II. Special Terms of Payment for Certain Supplies and Services

a) Wageworks

1. Invoicing Based on Time Spent / Proof of Work Done

Wageworks will be charged based on the time spent. An acknowledgment form regarding the time spent is prepared and submitted for signature to the authorized person indicated by the customer. If the customer does not indicate an authorized person or if this person is not present for verification and signing of the acknowledgment, the customer, in case of doubts, shall have to prove that the recording of the time spent is incorrect.

2. Reference to the Current Price List

The wageworks will be charged in accordance with the price list for wageworks that is current at the time of the conclusion of the contract.

3. Travel Times

Travel Times (both ways) and waiting times for which MINIMAX is not responsible shall be charged at the wage rates indicated above.

4. Regular Working Hours

The regular working hours at MINIMAX are:
Monday through Friday: 7 a.m. until 5 p.m.

5. Additional Fees

Percentage surcharges shall be charged in case of overtime work, night work, work on Sundays and public holidays and difficulties: The basis for invoicing shall be the hourly rates indicated in the current price list.

Overtime work (beginning with the ninth hour of work and / or out of Minimax core working hours)	25 %
Night work (between 7 p.m. and 7 a.m.)	20 %
Work on Sundays (including public holidays on Sundays)	75 %
Work on Easter Sunday and Whit Sunday; on 1 May and on Christmas Day (including 1 May and Christmas Days on Sundays)	200 %
Work on all other public holidays on other days than Sundays	200 %
Work on ladders and scaffolding with a floor width of less than 90 cm, at a working height of 10m or more	20 %
Work in closed containers, in crawl spaces up to a height of 1.20m or in rooms with a temperature above 35°Celsius	25 %

If several additional fees apply, they are to be paid in addition to each other.

6. Other Wage Costs

Engineering services agreed in connection with assembly tasks, such as assembly supervision, inspection and approval procedures, function tests, certification and drawing modification, etc. will be calculated in accordance with the current wage work price list for engineering services. If no express agreement is made otherwise, one specialist engineer's hour will be charged in addition to every 10 assembly hours.

7. Costs for Mobile Workshops

The use of a mobile workshop will be charged in accordance with the conditions stipulated in the current price list for wageworks.

8. Costs for Emergency Services

In case of emergency services, i.e. services agreed on short notice in case of a breakdown, we will charge an additional amount for each case of requested support as specified in the current price list for wage works.

b) Maintenance Works

1. Effects of Modifications of the Operation of the Facility

The compensation for inspection and maintenance works depends on the scope agreed and the operating conditions of the systems, provided that, in case the scope of the system or the operating conditions change, MINIMAX is entitled to adjust the compensation accordingly with effect from the beginning of the next calendar month. MINIMAX shall inform the customer in advance of the additional costs to be expected by means of an offer.

2. Additional Compensation For Services Not Agreed Upon

The compensation for the contractual performance specified in the maintenance agreement is a lump sum price. Reconditioning and other tasks, repairs and waiting times not caused culpably by MINIMAX, which are not specified in the appendix to the maintenance agreement, must be ordered separately and will be carried out as wageworks in accordance with these conditions and will be invoiced in accordance with the price list.

3. Price Adjustments

MINIMAX may adjust the agreed maintenance fees if the federal basic rate of pay ("Bundesecklohn") pursuant to Clause 5 of the federal framework collective labor agreement of the construction industry ("*Bundesrahmentarifvertrag für das Baugewerbe*") in connection with the respective collective wage agreement ("*TV Lohn/West, TV Lohn/Ost, TV Lohn/Berlin*") changes. Unless otherwise expressly agreed, such adjustment will be made at the same time and will be applied at the same percentage rate as the federal basic rate of pay ("Bundesecklohn") changes for the relevant business unit of MINIMAX.

4. Automatic Assignment Regarding Minor Additional Works

In the event that it becomes clear during maintenance that repair measures are required in order to restore the system's optimal condition and failure to do this would jeopardise the system's safety and operation, MINIMAX, by virtue of the conclusion of the maintenance agreement, is assigned with carrying out such repairs up to a value of €500.00 and in accordance with these general terms and conditions for the supply of goods and services and the price list, even in the absence of a separate assignment.

5. Right of Retention

In the event that pre-payment is arranged in the form of an annual invoice, MINIMAX may, in the event of delayed payment by the customer, exercise its right to retain its services. MINIMAX will not resume services unless the agreed pre-payment has been effected in full. Retention does not give rise to delay in the legal sense by MINIMAX.

c) Supplies

1. Retention of Title / Release of Securities

The goods delivered (goods subject to retention of title) remain property of MINIMAX until fulfilment of all the claims of MINIMAX. As far as the value of the security interest that MINIMAX is entitled to exceeds the value of all secured claims by more than 20%, MINIMAX will release a corresponding part of the security interest at the request of the customer.

2. Prohibition on Pledging/Prohibition of Security Transfer Agreements in Relation to the Goods Subject to Retention of Title

As long as the retention of title remains in force, the customer is prohibited from pledging the goods subject to retention of title or from transferring title to them as security to any third party.

3. Notification Duty in Case of Third Party Measures regarding the Goods Subject to Retention of Title

In case of attachments, confiscations or other seizures or measures by third parties the customer shall notify MINIMAX immediately.

4. Right of withdrawal

Violations of obligations by the customer, in particular default of payment, authorise MINIMAX to withdraw from the contract and to take back the goods after the expiration of a reasonable deadline for the customer's performance; any statutory provisions stipulating that the setting of a deadline is not necessary shall remain unaffected. The customer is obliged to return the goods.

III. Material Defects

1. Basic Principle

MINIMAX is liable for material defects only in cases of deliveries of goods (including the installation works agreed) and repair works. In case of inspection or maintenance works no warranty regarding material defects is granted and no other liability for the state of the items inspected or maintained is assumed.

2. Right to Choose

In case of a material defect the customer may request that the defect is repaired (*Nachbesserung*) or that a replacement item free of defects is supplied (*Nachlieferung*). An entitlement to the supply of a replacement item free of defects is subject to the condition that MINIMAX has unsuccessfully attempted to repair the defect at least twice, repairing the defect is impossible or that repairing the defect has been refused by MINIMAX.

3. Warranty Periods

Claims on the grounds of material defects lapse after 12 months unless mandatory law prescribes a longer period of limitation. The period of limitation begins with delivery in cases of deliveries without installation, after completion of installation in cases of deliveries with installation and upon acceptance in cases of repair works.

4. Obligation to Notify

The customer is obligated to notify MINIMAX of any material defects immediately in writing.

5. Right to Withhold Payment

In cases of justified complaints regarding material defects the customer may withhold payments only in an amount that is appropriate with regard to the material defects.

6. Insignificant Deviations

In cases of minor deviations from the agreed condition in which the usability of the goods for the purpose agreed or intended is not affected, claims on the basis of material defects are excluded.

7. Non-compliance Regarding Dates for Maintenance

If MINIMAX fails to perform maintenance works on the date agreed and the customer has set a deadline of one month for the performance and MINIMAX has failed to perform the maintenance within the deadline, the customer may withdraw from the contract.

IV. Liability

MINIMAX is liable in accordance with the statutory regulations if the customer claims damages based on intent or gross negligence, including intent and gross negligence of the representatives or servants of MINIMAX. Unless there has been an intentional violation of contractual duties, the liability for damages is limited by the foreseeable, typically arising damage.

MINIMAX is liable in accordance with the statutory regulations if MINIMAX or its representatives or servants culpably violate a substantial contractual obligation. In this case, too, the liability for damages is limited by the foreseeable, typically arising damage.

Furthermore, the liability for loss of data for which MINIMAX is responsible is limited by the costs of duplicating the data from the backup copies to be made by the customer and of restoring the data that would have been lost in case of regular risk-adequate backups. If the customer does not carry out proper and risk-adequate data backup, MINIMAX is not liable for the resulting damages.

As far as MINIMAX gives technical information or advice and this information and advice is not part of the contractually agreed scope of performance owed by MINIMAX, it does so free of charge and any liability is excluded.

Furthermore, the liability for slight negligence is limited to € 5 million per case of damage.

The liability for culpable violations of life, body and health and the mandatory liability according to the Product Liability Act (*Produkthaftungsgesetz*) remain unaffected by the provisions above.

The liability of MINIMAX under a guaranty granted by MINIMAX is not governed by the provisions above; instead, it is governed by the conditions of the guaranty and the statutory regulations.

The above provisions apply regardless of the legal basis for liability, in particular also for extra-contractual claims and claims under tort law.

The liability of MINIMAX is excluded unless something else is agreed in this section IV.

V. Data Protection

The customer is hereby informed that we may collect, store, process and forward to credit agencies personal data of the customer (name, address and invoice details). In connection with this, credit agencies will also be informed of data concerning a compliant or non-compliant, as the case may be, carrying-out of the contractual relationship entered into with the customers. The Federal Data Protection Act allows the above only as far as it would be essential to protect MINIMAX' legitimate interests and provided that there is no reason to assume that the customer's interest in not using or processing these data prevails. Credit agencies store the data in order to allow credit ratings and to give respective information to affiliated companies. Credit agencies supply relevant data to their affiliated companies only, if they plausibly prove a legitimate interest in data transmission and if there is no circumstance giving rise to the assumption that the customer has an interest in the data's not being transmitted which is worthy of protection.

VI. Compliance / Code of Conduct

MINIMAX is subject to the group-wide applicable Code of Conduct of Minimax Viking GmbH. This Code of Conduct that is applicable to MINIMAX and that has been implemented for all the employees of the company can be made available in text form on demand. Further explanations hereto can be provided by our Compliance Officer.

It is for this reason that the observance of the compliance rules and standards of third parties e.g. Code of Conduct, code of behaviour or ethical guidelines for sub-contractors or suppliers will not be accepted.

By concluding the contract the customer acknowledges that it views the Code of Conduct and the compliance program of the MINIMAX Viking GmbH as equal to its own compliance regulations.

Mandatory statutory regulations remain unaffected.

VII. Permission for Inclusion in a Reference List

The customer allows MINIMAX to use his company's name and company logo free of charge in reference lists, on advertising material such as brochures etc., on MINIMAX's homepage on the internet or in other electronic media.

This permission can be revoked at any time by giving written notice to MINIMAX' corporate communication department without indicating reasons; the company name respectively the company logo may still be used in media printed or published already.

This permission does not obligate MINIMAX to include the permitting company into an existing reference list or into a reference list to be newly created. In no way does the non-inclusion lead to MINIMAX' being liable to pay damages to the company that has not been included.

The permitting company will receive a hard copy of the reference list prior to publication for the purpose of checking and as evidence of the proposed use.

In the case that the use of the name and/or logo is not permitted to be used in the reference lists of MINIMAX, then this clause VII of the General Terms and Conditions must be fully deleted by the customer and the deletion must be initialled.

VIII. Intellectual Property Rights and Copyrights

The customer shall notify MINIMAX immediately in case third parties raise any claims on the basis of violations of intellectual property rights or copyrights against the customer because of the use of the delivery/performance by the customer. With regard to such cases MINIMAX reserves the right to all defense and out of court measures for the protection of its rights. The customer shall support MINIMAX in this regard.

MINIMAX is only liable for the violation of intellectual property rights or copyrights of third parties if these rights belong to the respective third party also in respect of the territory of the Federal Republic of Germany, the country to which delivery is to be made or those countries in which the goods are to be used in accordance with the purpose of the agreement. The latter applies only if the countries covered by the purpose of the agreement are explicitly indicated in the order confirmation.

IX. Jurisdiction and Applicable Law

Provided that the customer is a registered business entity, any disputes arising directly or indirectly from this contract will be dealt with by the courts having jurisdiction at the registered headquarters of MINIMAX in Bad Oldesloe. Nevertheless, MINIMAX is also entitled to bring a claim at the courts having jurisdiction at the location of the customer's registered headquarters.

German material law applies to the legal relationship in connection with this contract, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).