

## International Conditions of Installation, Maintenance and Repair for Customers not resident in Germany

### 1. General, Scope of Application

(1) These International Conditions of installation, maintenance and repair - hereinafter referred to as International Conditions of installation, maintenance and repair - of Holter Regelarmaturen GmbH & Co. KG - hereinafter referred to as HORA - shall apply to all contracts entered into with customers not resident in Germany on or after 14 November 2017 that predominantly involve the performance of installation and/or maintenance and/or repair - hereinafter individually and collectively referred to as “work” - by HORA. Additional obligations assumed by HORA do not affect the application of these International Conditions of installation, maintenance and repair.

(2) No terms and conditions other than these International Conditions of installation, maintenance and repair shall apply; HORA does not accept terms and conditions conflicting with or deviating from these International Conditions of installation, maintenance and repair or terms and conditions deviating from statutory provisions, unless HORA has expressly agreed to their validity in writing. These International Conditions of installation, maintenance and repair shall also apply if HORA is aware of customer’s terms and conditions which conflict with or deviate from these International Conditions of installation, maintenance and repair and unconditionally renders performance or unconditionally accepts the customer's performance.

(3) These International Conditions of installation, maintenance and repair shall only apply if the customer is an entrepreneur (*Unternehmer* according to § 14 German Civil Code (BGB)), a legal person under public law (*juristische Person des öffentlichen Rechts*) or a special asset under public law (*öffentlich-rechtliches Sondervermögen*).

(4) Any references made to statutory provisions are for clarification purposes only. Therefore, even without such clarification, the statutory provisions shall apply unless they were expressly amended or excluded in these International Conditions of installation, maintenance and repair.

### 2. Offers, Conclusion and Subject Matter of Contract

(1) Offers to perform work made by HORA shall be non-binding and without engagement, unless they are expressly marked as binding or contain a precise term within which the offer can be accepted. Non-binding in this sense means that HORA shall be entitled to revoke its offers during a period of up to two (2) days after receipt of order from the customer.

(2) An order placed by the customer is a binding offer to conclude a contract. HORA shall be entitled to accept this offer within fourteen (14) days of receipt, unless stated otherwise in the order.

(3) If a previous offer made by HORA was non-binding, the conclusion of contract will require a written order confirmation by HORA.

(4) The customer shall be under obligation prior to the conclusion of contract to inform HORA in writing if (a) work can only be performed under unusual conditions, or if (b) work may pose special risks to health and/or safety.

(5) All agreements made between HORA and the customer at the time of conclusion of contract for the purposes of the performance of this contract are laid down in writing in the contract and these International Conditions of installation, maintenance and repair. Subsequent alterations to the scope of work, especially with respect to extensions can be made verbally. The customer shall be obliged to inform HORA promptly in writing if the contact person named to HORA and/or actual contact person is not authorised to make on behalf of the customer legally effective alterations to the work initially ordered. The customer is aware that alterations to the agreed scope of work may result in additional cost for the customer.

### **3. Remuneration, Disbursements, Surcharges and Lump Sums**

(1) Unless a fixed rate was expressly agreed upon, the agreed remuneration for work is determined by HORA's price list for installation and repair work valid at the point of conclusion of contract. The customer will be informed separately by HORA about the current price list for installation and repair work. Expenses, surcharges and lump sums in accordance with these International Conditions of installation, maintenance and repair are to be paid in addition by the customer.

(2) The agreed remuneration as well as possible disbursements, surcharges, lump sums and other costs based on the price list for installation and repair work are quoted exclusive of value-added tax. This is to be paid in addition by the customer.

(3) The times taken as a basis for the remuneration are governed by section 4 of these International Conditions of installation, maintenance and repair.

### **4. Times and Surcharges taken as a Basis for Remuneration**

(1) Subject to the following provisions, the actual time needed for work will be invoiced.

(2) Travel times shall be deemed working hours and – whilst taking into account possible surcharges – will be charged to the customer according to the charge rates on the price list for installation and repair work by HORA.

(3) If HORA has to make preparations before embarking on an outward and/or return journey, the actual time required will also be charged to the customer as normal working hours, however, capped at a maximum of five (5) hours for the outward journey and five (5) hours for the return journey, respectively.

(4) With the exception of public holidays at HORA's registered office and with the exception of Saturdays and Sundays, regular daily working time shall be 7.5 hours. If additional work is performed in line with labour law, this will be classified as overtime for which additional surcharges will be due on top of the normal working time.

(5) The surcharges for (a) overtime hours, (b) night work (that is between 7 p.m. and 6 a.m.), (c) work on Saturdays, (d) work on Sundays and normal public holidays at HORA's registered office as well as (e) work on special public holidays, that is New Year's Day, Easter Sunday, May 1st, Christmas Eve and Christmas Day and Boxing Day shall be charged in addition to the actual time needed according to the surcharges on the price list for installation and repair work and are to be paid for by the customer. If employees of HORA – hereinafter referred to as "HORA assembly personnel" – are not able to work at the job site [e.g. due to holidays, plant shutdown on Sundays or for other reasons for which HORA is not responsible (*nicht von HORA zu vertreten*)] but still have to remain on site for further work, the customer will be charged a full working day for each day, plus any applicable surcharges and lump sums.

(6) If there is a delay in the work due to non-performance of customer's obligations, any waiting periods shall be deemed working hours and shall be invoiced to the customer according to the provisions stated in these International Conditions of installation, maintenance and repair.

(7) In the event of work interruptions for which HORA is not responsible, the customer will be charged for times caused by this in accordance with these International Conditions of installation, maintenance and repair. This shall also apply in so far it is necessary to withdraw the HORA assembly personnel and to reassign the HORA assembly personnel due to interruptions of work for which HORA is not responsible.

(8) In addition to the remuneration, – based on the time needed – the customer will be charged an absence lump sum. The absence lump sum for job sites outside of Germany is available to the customer upon request.

(9) The usual lead time for work is at least two (2) weeks. If the customer demands an earlier start of work, additional lump-sum surcharges will be charged in accordance with the price list for installation and repair work, depending on the job site and the desired start of the work.

## **5. Disbursements**

(1) If an overnight stay of the HORA assembly personnel is required, the customer has to pay to HORA (a) EUR 90.00 per night if no receipt for the cost of the overnight stay is available, otherwise (b) the actual accommodation costs incurred. HORA shall be entitled to choose overnight accommodation with three (3) stars (EU stars). HORA shall also be entitled to choose an overnight accommodation of a higher standard than that of three (3) stars (EU stars), provided the costs incurred for this do not exceed the costs of other available overnight accommodation options with three (3) stars (EU stars) and/or if HORA bears any additional cost. If the customer provides accommodation, HORA shall be entitled to refuse such accommodation if it does not meet at least the standard of the aforementioned three (3) stars (EU stars). In such a case, HORA may choose a different accommodation and the customer has to pay the costs of accommodation in accordance with section 5, para. 1 sentence 1 and sentence 2.

(2) The customer shall also pay to HORA for the actual travel costs incurred from flights, rental cars, public transport, passport procurement, visa procurement, required luggage surcharges and the like. If HORA personnel assembly use their own motor vehicles and/or motor vehicles provided by HORA, a lump sum per kilometre will be charged for cost (inclusive cost of fuel) in accordance with the price list for installation and repair work which is to be paid by the customer. In the case of flight times exceeding six (6) hours, HORA shall be entitled to allow HORA assembly personnel to travel Business Class, in the case of less than six (6) hours, however, Economy Class.

## **6. Exchange of HORA Installation Engineers**

HORA reserves the right to replace HORA assembly personnel at any time at its own expense. If the customer wishes to replace HORA assembly personnel without this being caused by a culpable breach of contract of the HORA assembly personnel, the customer will be obliged to reimburse HORA in accordance with the provisions in these International Conditions of installation, maintenance and repair for any resulting remuneration, disbursements, surcharges and lump sums.

## **7. Obligations of the Customer to cooperate**

(1) The customer is obliged to inform HORA in writing of any special legal, governmental/official or other regulations on the job site if they have an impact on the work and/or its preparations.

(2) The customer is obliged at his own expense and risk to take all the preparations and measures required with regard to HORA assembly personnel and materials in good time, so that orderly start of work, trouble-free execution as well as proper completion of work are possible. Unless special instructions are given by HORA for this purpose, these include in all cases:

- a. The appropriate structural preparation of the workplace (removal of insulation, etc.), its safe accessibility and the creation of acceptable ambient conditions (lighting, air quality, cleanliness etc.);
- b. Unlocking the plant areas in the course of the customer's log out – tag out procedure as well as the warranty (*Gewährleistung*) that the plant components are disconnected from the power supply at the start of work;
- c. The provision of all the required devices (such as tie-bars, chain hoists, cranes, scaffolding etc.), tools, appliances, materials, raw materials and supplies, changing and sanitary facilities, auxiliaries and other work aid, provided they can be made available by the customer without unreasonable effort and/or if it cannot reasonably be expected of HORA that they are procured by HORA;
- d. An organised provision of tools and/or spare parts which have been sent in advance by HORA to the customer; all costs arising from this, in particular freight and shipping charges, shall be born by the customer.

## **8. Insurance and other Obligations of the Customer**

(1) The customer shall be obliged to keep all tools and accessories brought by HORA assembly personnel in safe custody, not to damage them and to provide to HORA assembly personnel with safe, lockable storage facilities.

(2) Furthermore, the customer is obliged to take all precautionary measures for the health and safety of the HORA assembly personnel at the place of work, in particular the clearance of all plant components to be worked on as well as to ensure that they are not subject to any energy (such as electricity, pressure, mechanical energy) and shall prove this prior to the start of work to the HORA assembly personnel. The HORA assembly personnel have the final decision to start working or not.

(3) If and to the extent that safety instructions or the like are required prior to the start of work, the customer shall be obliged to inform and train the HORA assembly personnel accordingly in advance. Times incurred for this are regarded as working hours and will be charged to the customer, even if these safety instructions, training sessions etc. are not held at the job site, but via remote communication (e.g. online). If the HORA assembly personnel were not able to carry out a remote communication training course in advance, the customer is obliged to provide training at the job site or to ensure that it can be carried out at the job site.

(4) In the event of local hazard situations and unrest, the customer shall ensure that HORA assembly personnel are fully integrated into his safety concept (private security organisations, SOS International, Control Risks and on the like). For the period of installation the HORA assembly personnel explicitly enjoy the same rights as the customer's employees. This includes, in particular, the personal protection for life and limb, evacuation and repatriation to their home country, medical care, food and access to communication means.

## **9. Consumables, Spare Parts**

If consumables and/or spare parts are required to carry out the work, these will be charged in addition to the customer.

## **10. Additional Work due to imminent danger**

For work that was necessary for the fulfilment of the contract and where approval by the customer could not be obtained due to imminent danger (*Gefahr im Verzug*), HORA shall be entitled to perform such work on the basis of these International Conditions of installation, maintenance and repair and to charge the customer accordingly. However, the customer must be informed about this additional work as soon as possible.

## 11. Documentation

Unless otherwise agreed, the HORA assembly personnel shall draw up a daily report for each day that work was performed and shall compile an end of project report (hereinafter referred to as “final report”) on work completion. This shall contain all important facts relating to the contractual performance, such as weather conditions, workers and device status, material deliveries, performance progress, quality and functional tests, managerial performance as well as any other circumstances, insofar as they are relevant.

## 12. Deadlines and Delays

(1) If the HORA assembly personnel can foresee that they will not be in a position to complete the work on schedule, they shall inform the customer thereof without undue delay (*unverzüglich*) and, wherever possible, shall inform the customer of the expected completion date.

(2) HORA shall also be entitled to an appropriate extension of the completion period if a delay is attributable to:

- a. Any circumstances for which HORA is not responsible, such as labour disputes, natural disasters, armed conflicts, general mobilisation, riots, seizure, embargo, restrictions to energy consumption;
- b. If unforeseeable alterations are required by law;
- c. If changes to the scope of work were necessary and/or if special or additional requests of the customer had to be taken into account;
- d. An act or omission on the part of the customer or other circumstances within the customer's control (such as arrears with payment) or where the customer does not meet the obligations necessary for the performance of the work.

(3) Without prejudice to other provisions in these International Conditions of installation, maintenance and repair, the timely performance of the work is subject to the fact that all technical issues have been clarified with the customer and that the customer has fulfilled all his obligations in a timely and orderly manner. HORA reserves the right to raise the defence of an unperformed contract (*Einrede des nicht erfüllten Vertrages*).

## 13. Acceptance (*Abnahme*) of Work

(1) The drawing up of the daily report/s and the final report takes place at the job site and constitutes a part of the working time to be remunerated.

(2) The customer shall be obliged to verify and sign the final report. Subject to any objections and/or additions noted by the customer on the final report, the customer certifies the correctness of the final report with his signature. If the customer has raised objections concerning the final report and/or any additions, he is obliged to make a written note of them on the final report. The signature of HORA assembly personnel on the final report does not constitute an acknowledgement of any objections raised by the customer.

(3) A copy of the final report will be made available to the customer at the customer's request.

(4) The hourly statements contained in the final report shall be used as a basis for invoicing to the customer.

(5) Unless the final report contains material defects in the work that prevent acceptance, the work shall be deemed accepted upon the customer's signature on the final report. The customer will not be entitled to refuse acceptance due to minor defects that do not prevent acceptance. The work shall also be deemed to have been accepted by the customer taking into operation the goods which were the subject of the work without giving notice in writing of any material defects which would exclude an acceptance.

#### **14. Customer's Rights in the Event of Defects**

(1) The statutory provision for customer rights shall apply in the case of material defects (*Sachmängel*) and defects of title (*Rechtsmängel*), unless otherwise stipulated below (material defects and defects of title are individually and collectively also referred to as "defect").

(2) Claims for defects require that the customer has duly met the obligation to examination (*untersuchen*) the work and give notice of such defect (*rügen*) in accordance with these International Conditions of installation, maintenance and repair.

(3) The customer is obliged to examine the work without undue delay after its completion. If the examination reveals that there are defects in the work, or where the customer should have discovered these during the course of a proper examination, the customer must immediately notify HORA of any complaints in detail in writing, however within seven (7) calendar days of completion of work at the latest. Latent defects must be notified without undue delay after being discovered, however at the latest within five (5) days after discovery.

(4) The notification must be made in writing and directly to HORA. It must be formulated in such a way that HORA will be able to initiate corrective actions without further enquiries from the customer. The HORA assembly personnel are not entitled to accept notifications of defects outside of HORA's business premises or to give explanations about warranty.

(5) In the event of a defect of the Work having been notified in time, HORA shall be entitled, at its own choice, to either provide supplementary performance in the form of rectification of deficiencies or the manufacture of new work.

(6) If supplementary performance fails, the customer is – subject to the statutory provisions and subject to having threatened HORA to rescind the contract and having fixed an additional period of time for supplementary performance which has expired to no avail – entitled to rescind (*zurücktreten*) from the contract or reduce (*mindern*) the remuneration. A rectification of defects – each related to a precise individual defect – shall be deemed to have failed after the third unsuccessful attempt, unless something else is determined by the nature of defect or other circumstances.

(8) To the extent the customer has sustained a damage (*Schaden*) or incurred futile expense (*vergebliche Aufwendungen*) due to the defective work provided by HORA, the liability assumed by HORA will be governed by section 15 of these International Conditions of installation, maintenance and repair.

(9) Provided that the work does not consist of the construction of a building (*Bauwerk*) and provided that the work's result does not consist in the rendering of planning or monitoring services for this purpose (*Werk, dessen Erfolg in der Erbringung von Planungs- oder Überwachungsleistungen hierfür besteht*), any claims of the customer based on the performance of defective work shall become statute-barred one (1) year after the statutory commencement of the limitation period. However, claims arising from fraudulent (*arglistiger*), intentional (*vorsätzlicher*) and grossly negligent (*grob fahrlässiger*) breach of contract as well as claims arising from injury to life, limb and health shall remain unaffected. Subsequent performance does not lead in a recommencement of the limitation period.

## **15. Liability for Damages and Expenses**

(1) HORA's liability for damages and futile expenses – regardless for whatever legal reason – shall only arise if the damage or futile expense was caused

a) by culpable breach of a duty (*schuldhafte Verletzung einer Pflicht*) the fulfilment of which was necessary for due performance of contract (*deren Erfüllung die ordnungsgemäße Durchführung des Vertrages überhaupt erst ermöglicht*) and on whose fulfilment the customer can normally trust (*und auf deren Einhaltung der Kunde regelmäßig vertrauen darf*) (essential contractual obligation; *wesentliche Vertragspflicht*) or

b) is due to to grossly negligent or intentional breach of duty.

(2) If HORA is liable for the breach of an essential contractual obligation in accordance with section 15 subsection 1 a) of these International Conditions of installation, maintenance and repair, HORA's liability for damages shall be limited to the foreseeable, typically occurring damage (*vorhersehbaren, typischerweise eintretenden Schaden*) or – if the breach of the essential contractual obligation occurs in connection with the performance of work - shall be limited to twice the remuneration for work, whichever amount is lower. However, even in this case HORA shall not be liable for loss of profit. For damages caused by delay (*Verzug*), section 15, subsection 3 of these International Conditions of installation, maintenance and repair shall apply.

(3) Without waiving the statutory requirements, in the event of delay, HORA's liability shall be limited to 0.5% of the net price of the remuneration affected by the delay for each completed week, in total however, up to a maximum of 5% of the net price of the remuneration for the work affected by the delay. However, claims based on fraudulent, intentional and grossly negligent breach of contract as well as claims arising from injury to life, limb and health as well as liability in accordance with the Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.

(4) The limitations of liability stated above in section 15, subsection 1 to subsection 3 of these International Conditions of installation, maintenance and repair will not apply to liability (a) in accordance with the Product Liability Act, (b) due to the taking over of a guarantee for the quality of the work (*Übernahme einer Garantie für die Beschaffenheit der Arbeiten*), (c) arising from fraudulent concealment of a defect, (d) for damages arising from culpable (*schuldhaft*) injury to life, limb or health as well as (e) for damages arising from grossly negligent or intentional breach of. It is clarified that HORA does not take over a guarantee for the quality of the work.

(5) The customer's duty to mitigate damages in accordance with § 254 German Civil Code remains unaffected.

(6) HORA is obliged to pay damages for breach of contractual and/or pre-contractual obligations it owes to the customer solely in accordance with the provisions in these International Conditions of installation, maintenance and repair. Any recourse to a concurrent basis of claim, such as culpa in contrahendo as per § 311, subsection 3 German Civil Code, positive breach of contract (*positive Vertragsverletzung*) as per § 280 German Civil Code or due to tort liability as per § 823 German Civil Code shall be excluded. Equally excluded is any recourse against HORA's company organs (*Organe*), employees, representatives and/or persons employed in the performance of an obligation (*Erfüllungsgehilfe*) that arise from a violation of contractual obligations by HORA.

(7) If the customer provides his own staff or temporary workers, such action will fall exclusively within the customer's scope of risk. If the customer insists that work is carried on despite adverse weather conditions, such action, too, will fall exclusively within the customer's scope of risk.

(8) The provisions above shall also apply to claims by the customer for compensation of expenses (*Aufwendungen*), but shall not constitute a limitation to bear the expenses required for the purpose of subsequent performance (*Nacherfüllung*).

## **16. Payment conditions**

(1) The customer is obliged to pay immediately, but at the latest within fourteen (14) calendar days from the invoice date, in full to the bank account specified in the invoice, the remuneration, disbursements, surcharges and lump sums invoiced by HORA in accordance with these International Conditions of installation, maintenance and repair, without deduction of a discount. The receipt of payment to HORA's bank account is decisive for the timeliness of payment.

(2) In the event of default of payment, the statutory regulations shall apply. The invoice amount shall be subject to interest during the period of delay at the applicable statutory default interest rate. HORA reserves the right to assert further damages for delay.

(3) The customer shall only be entitled to rights of set-off and retention if his counterclaims have been legally ascertained (*rechtskräftig festgestellt*), are undisputed by HORA or based on the same contractual relationship (*beruhen auf demselben Vertragsverhältnis*).

## **17. Place of Fulfilment, Choice of Law and Arbitration**

(1) The place of performance (*Erfüllungsort*) for the work shall be the job site. The place of payment and performance for all other obligations arising from the contract with the customer shall be 33758 Schloß Holte-Stukenbrock/Germany.

(2) These International Conditions of installation, maintenance and repair as well as the contractual relationship between us and the customer shall be governed by the laws of the Federal Republic of Germany.

(3) If the customer (i) has his place of business within the European Economic Area and/or within Switzerland and (ii) the customer is a merchant in the sense of the German Commercial Code (*Handelsgesetzbuch*), a legal person under public law or a special asset under public law, the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship with the customer shall be HORA's registered office at 33758 Schloß Holte-Stukenbrock/Germany. In all cases, however HORA shall also be entitled to institute legal proceedings at the customer's general place of jurisdiction. Pre-vailing statutory regulations, in particular with regard to exclusive responsibilities (*ausschließliche Zuständigkeiten*), shall remain unaffected.

(4) If the customer (i) has his place of business outside of both the European Economic Area and outside of Switzerland and (ii) the customer is a merchant in the sense of the German Commercial Code (*Handelsgesetzbuch*), a legal person under public law or a special asset under public law, all disputes arising directly or indirectly from the contractual relationship with the customer shall be finally settled, without recourse to the ordinary courts of law, under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Bielefeld/Germany. The language used in the arbitral proceedings shall be English.

## **18. Miscellaneous**

(1) If individual provisions of these International Conditions of installation, maintenance and repair should be or become void, in whole or in part, the remaining provisions shall remain in full force and effect.

(2) Neither a handwritten signature nor an electronic signature shall be required to meet the written form requirement. Communications by means of fax or e-mail shall satisfy the written form (*Schriftform*).

(3) These International Conditions of installation, maintenance and repair are drafted in the English language, but shall be subject to and interpreted in accordance with the laws of the Federal Republic of Germany. As a reason of this, if an English word is followed by a German term, the meaning this German term as it has according to the German law (without recourse to the CISG) shall be decisive to interpret the respective English word throughout these International Conditions of installation, maintenance and repair.

(4) Personal data required for the business transaction will be stored and treated confidentially in compliance with applicable data protection regulations.