

## General Terms and Conditions for Installations, Supplies, Secondments, and Contracts IMB INDUSTRIEMONTAGEN BERGER GmbH (in short "GTC")

### 1. Scope of Application, Order Placement

1. These general contract terms are sent automatically. They are agreed upon with the contractee. Possible terms of business of the contractee are inadmissible and shall not be part of the contract.
2. Unless determined otherwise, the general contract terms at hand and ÖNORM B 2110, edition 2013-03-15 shall be deemed agreed. The following contractual provisions shall apply in addition to/by derogation from this ÖNORM. ÖNORM B 2110 and all EN (European norms) covering the standard / state of the art, international norms, and ÖNORMs can be requested at the ON Österreichisches Normungsinstitut (Austrian Standards Institute), 1021 Vienna, Heinestraße 38.
3. The contractee accepts these conditions upon placing the order/ start of contract.

### 2. Provision of Services

By derogation from ÖNORM B 2110 point 6.2 shall apply:

- 2.1. The expenses for materials and equipment necessary for carrying out the works as well as the costs for all transports and vehicles required in the course of the works to be performed shall always be at the expense of the contractee. These will be invoiced at the respective daily rates with a surcharge of 15%.
- 2.2. If the delivery of equipment, tools, materials, and consumable supplies takes place using vehicles of IMB, € 1.00 per driven kilometer (0.62 miles) as well as the driving times accumulated by the driver will be invoiced by IMB.
- 2.3. The delivery of parts necessary for the installation (m pipe, pcs.) is free construction site.
- 2.4. The installation takes place including travel expenses, allowances, and provision of tools, but excluding water, electricity, and working air.
- 2.5. The following deliveries and services are not performed by IMB and are to be done/provided for by the contractee:
  - All electrical and control technology works
  - Disposal of waste materials
  - Commissionings, cleaning works, sandblasting
  - Brickworks
  - Insulation works
  - Approvals by authorities and organizations (TÜV, municipal authorities, builder-owner, etc.)
  - Facility easily accessible and in a safe and clean condition
  - Dressing rooms and sanitary facilities for the installation personnel of IMB
  - Electricity, water, sewage disposal, and working air
  - Scaffolding
  - Engineering
  - Lockable storage room of at least 10m<sup>2</sup> (108 ft<sup>2</sup>)
  - Non-destructive testing (IR, UT)

- 2.6. All measures regarding personnel and objects necessary for an orderly start of the installation works, its trouble-free realization and duly completion as well as for avoiding unnecessary endangerment of personnel and objects in the sense of the Austrian Employee Protection Act are to be taken by the contractee on their own expense and risk both in a timely fashion prior to the agreed-upon begin of the installation works and during its performance.

Unless special instructions on the part of IMB are given, this includes in all cases an appropriate structural preparation of the workplace, provision of necessary equipment, dressing rooms and sanitary facilities and other working aids, as well as the materials, auxiliary materials, and working materials necessary. All of these provisions made necessary to be provided by IMB will be invoiced separately.

- 2.7. Travel Times and Travel Expenses:

At the beginning and conclusion of the construction as well as in case of interruptions of the installation and after every two months (returning home to families), the costs of the official mileage allowance and the travel times accruing in the process are invoiced separately.

Other costs incurred from the secondment will be allocated to the contractee with a surcharge of 15%.

### 3. Work Certificate and Work Interruption

- 3.1. The contractee is to certificate working hours and other services to the workforce seconded by IMB on a weekly basis. A copy thereof remains with the contractee. These certificates form the basis for the invoices. The daily and weekly reports are to be certificated by the day resp. week.
- 3.2. In case of a work interruption not to be blamed on IMB and requiring the withdrawal resp. resending of workforces seconded by it, as well as in case of cancelation of an already commissioned work assignment by the contractee, the contractee will be invoiced for the costs caused thereby, in compliance with the GTC at hand.
- 3.3. If the workforce is prevented from working full shifts through no fault of their own, legal normal working hours will be invoiced still.

### 4. Remunerations

In addition to ÖNORM B 2110 point 6.3 shall apply:

- 4.1. The price was calculated on the basis of normal working hours. If for any reasons within the contractee's responsibility working is required on weekends or outside of normal working hours, additional costs will incur.
- 4.2. Normal working hours are regulated by the collective agreement "in the iron and metal processing industry" ("im eisen- und etalverarbeitenden Gewerbe").
- 4.3. Overtime hours at 50% apply from Monday to Friday between 4 p.m. and 7 p.m. after having exceeded the daily normal working hours and on Saturdays from 6 a.m. to 6 p.m.
- 4.4. Overtime hours at 100% apply from Monday to Friday from 7 p.m. to 6 a.m. as well as on Saturdays starting from 6 p.m., and also to traveling hours on Sundays and holidays if required explicitly by the contractee.
- 4.5. For works during the weekend rest according to § 3 ARG ("Arbeitsruhegesetz", Law for Rest from Work), the respective agreed-upon normal working hour hourly rates will be invoiced on top.
- 4.6. When seconding personnel for performing assignments, the following "all-in" hourly rates will be invoiced for every working hour. Included in these hourly rates, within normal working hours in single shifts, are all wage costs and incidental wage costs such as hazard allowances, personal protective equipment, per diem, etc.

	N	50%	100%
Welding engineer, technician	€ 75.45	101.86	120.72
Materials tester (EN 473)	€ 74.15	100.10	118.64
Chief erector, fittings specialist	€ 67.90	91.67	108.64
Senior fitter	€ 53.50	72.23	85.60
Boiler welder	€ 50.90	68.72	81.44
Specialized skilled technician	€ 47.00	63.45	75.20
Skilled technician, cert. welder	€ 45.20	61.56	72.96

- 4.7. Normal working hour rates apply for work times of 38.5 hours per week (Monday to Friday) in single shifts. These hourly rates also apply to waiting hours, travel hours, and preparation hours.
- 4.8. Unless separately stipulated otherwise, the following allowances will be invoiced on top of the respective agreed-upon hourly rates:

Heat allowance indoor temperature		12%
Allowance for 2nd shift	€	1.25
Allowance for 3rd shift	€	4.00
MAG welding allowance	€	1.25

- 4.9. Accommodation Costs

All expenses for necessary overnight stays resulting from the secondment are contained in the above-listed hourly rates up to a limit of € 16.28. If no appropriate accommodation can be found for this sum, the contractee will be invoiced for the difference in costs with a surcharge of 15%.

### 5. Penalty Fees

By derogation from ÖNORM B 2110 point 6.5.3 shall apply:

- 5.1. The contractee is obliged to review the verification of the rendered service within 30 days and accept the service.
- 5.2. The contractee accepting belated services rules out any assertion of damage claims caused by default of performance and/or penalty fees against IMB.
- 5.3. Point 6.5.3 of ÖNORM B 2110 shall be deemed not agreed upon.

**6. Service Deviation:**

In addition to ÖNORM B 2110 point 7 shall apply:

A default/ obstruction in the contractee's responsibility as well as unforeseen complications and events, being such that would come as a surprise to a company comparable to IMB, shall allow IMB to introduce according postponements and price adjustments. IMB is not obliged to take measures beyond the agreed-upon scope of work in order to prevent or diminish force majeure or its consequences.

**7. Invoicing, Terms of Payment, Prices**

By derogation from ÖNORM B 2110 point 8.3 and 8.4 shall apply:

- 7.1. IMB is to provide performance listings for the contractee's approval if and when the services were performed as ordered. The invoice of such services has to contain the approved performance listings.
- 7.2. Invoices are to be sent providing the order number. Electronic invoices in PDF format are also accepted and need to be sent to [eingangsrechnungen@imb-berger.at](mailto:eingangsrechnungen@imb-berger.at). If several items appear in one invoice, the order of offer positions needs to be maintained.
- 7.3. Invoices are paid for within 30 days net after acceptance and invoicing.
- 7.4. IMB's location shall be considered place of fulfillment for payments.

**8. Retention of Title**

By derogation from ÖNORM B 2110 point 8.5 shall apply:

Delivered goods remain the sole property of IMB Industriemontagen Berger GmbH until the delivery was fully paid for.

**9. Warranty**

By derogation from ÖNORM B 2110 point 12.2 shall apply:

- 9.1. IMB obliges to remedy faults in its responsibility, that occur within the warranty period and are rebuked immediately in a written form (§ 377 UGB (Unternehmensgesetzbuch, Austrian Commercial Code)), at IMB's own expense and option by means of repair or new delivery. The way of remedy is determined by IMB, having to produce the contractually agreed-upon condition. In any event, IMB holds the overriding right of correcting defects.
- 9.2. Excluded from this is in particular damage caused by faulty maintenance and/ or faulty operation of installations or components by the contractee, normal wear and tear, force majeure, or because of third party interferences.
- 9.3. Should over the course of IMB's works material be provided as well, IMB warrants the usage of impeccable material. Any warranty for material provided by the contractee is ruled out.
- 9.4. The warranty period is 24 months and begins upon acceptance. Wear parts are exempt from warranty. A joint investigation of cause shall be carried out for every case of warranty resp. damage. The costs for an investigation of cause are to be agreed upon amicably between IMB and the contractee in advance and are borne by IMB only to that extent.

**10. Liability Provisions**

By derogation from ÖNORM B 2110 point 12.3 and unless laws compellingly demand otherwise shall apply:

- 10.1. IMB bears liability only for property damage on objects directly worked on resp. used by IMB. The liability amount shall be limited to 100% of the agreed-upon wage.
- 10.2. Liability for property damage is ruled out for objects other than those directly worked on resp. used, the same goes for liability for financial losses (such as system downtime, idle time of personnel and mechanical facilities, loss of profits, loss of revenue, loss of interest, alternative energy supply or waste disposal, additional costs for keeping services running, consequential losses, etc.) as well as compensations for contractual claims of third parties towards the contractee.
- 10.3. In case of temporary employment of workforce and secondments:  
  
For the duration of their assignment, the installment personnel works under the sole accountability of the contractee. IMB holds liability for choosing the requested installment personnel correctly and properly as well as seconding them on time, not for works performed by this personnel though.

**11. Insurance**

The contractee is obliged to include IMB, should construction site insurances have been taken out or be taken out in future, in them free of charge and with a waiver of recourse. The installation and liability insurance of IMB amounts to € 10.000.000,-

**12. Other**

- 12.1. For all legal disputes possibly arising from this contract, the sole jurisdiction of the Commercial Court of Vienna (Handelsgericht Wien) is deemed agreed.

Handelsgericht Wien  
Marxergasse 1A  
1030 Wien

- 12.2. Only Austrian substantive law shall be applied. Referrals to foreign law (conflict of laws) shall not apply. UN sales law shall not apply.
- 12.3. Should one of the provisions of this civil contractual provision or other provisions of the service contract be or become void, invalid or non-enforceable, the validity, legal

force, and enforceability of all other provisions shall remain unaffected thereby. In case of nullity, invalidity, or unenforceability of a provision, the contractual parties will replace this provision by a provision coming closest to the economic purpose of the provision void, invalid, or unenforceable.

- 12.4. Alterations to this agreement must be drawn up in writing. That also applies to deviating from the written form requirement. There are no verbal sub-agreements. Verbal sub-agreements shall be invalid.
- 12.5. Should by means of future laws and/or collective contractual agreements provisions of the conditions at hand be altered, or should factors for calculating the respective applicable rates be raised or lowered, this change automatically enters into force along with the provision coming into effect. In these cases, IMB is obliged to immediately announce the changes to the contractee.