



Terms and conditions for Subcontractors of Schindler Fenster + Fassaden GmbH

1. Basis of contract

As long as no deviating regulation is made in prior parts of the contract, the VOB/B applies in the version valid at the time the contract was concluded.

2. Pricing

If prices are to be agreed for changed or additional services, the contractor must, upon request, submit his price determination for these prices including the breakdown of the unit prices (time and all partial cost estimates) and the prices for the contractual service at the latest with the supplementary offer and provide the necessary information. This also applies to subcontractor services. Unless the circumstances indicate otherwise, the supplementary offer must be submitted within 5 working days, but in any case immediately.

3. Execution documents

3.1 The execution may only be based on documents that are marked by the client as being intended for execution.

3.2 The contractor must treat all order documents and construction details of the client with absolute confidentiality and in compliance with copyright law.

4. Safety, environmental protection, advertising

4.1 A site briefing on the subjects of quality management, environmental management and occupational safety for the entire assembly group of the contractor employed on the above-mentioned construction project is mandatory. The instruction of the designated responsible representative of the contractor is carried out by the client on the construction site. The contractor undertakes to coordinate an appointment with the responsible project manager/site manager before the start of installation. Furthermore, the contractor undertakes to carry out the instruction of his employees and to present the corresponding proofs.

4.2 The contractor undertakes to deploy the required number of first aiders on the construction site (at least 10% of the employees on site). These must be notified to the client in writing before the installation begins.

4.3 The contractor must notify the client immediately of any construction accidents in which personal injury or damage to property has occurred. If the client incurs damage as a result of the culpably omitted or delayed notification of damage by the employee, in particular as a result of exceeding notification deadlines with the responsible insurer, the contractor is obliged to pay damages to the client. The contractor must immediately inform the client in writing of any official requirements or claims by third parties in connection with construction accidents and their effects on further works.

4.4 Advertising on the construction site is only permitted with the prior written consent of the client.

5. Rights before acceptance

If the contractor does not comply with his obligation to remedy defects which are already detected during the execution of the work within a reasonable period of time set for him, the client is entitled, even without (partial) termination, to remedy the defect by way of substitute performance himself or by third parties at the contractor's expense. The client's rights under sect. 4 para. 7 VOB/B remain unaffected.

6. Subcontractor

6.1 The contractor may only assign services to subcontractors who are competent, efficient and reliable; this includes the fulfilment of their legal obligations to pay taxes and social security contributions and the fulfilment of the conditions under commercial law.

6.2 Prior to the intended transfer, the employee must disclose in writing the nature and scope of the services as well as the name, address and employer's liability insurance coverage (including membership number) of the subcontractor envisaged for this purpose.



7. Execution of services

- 7.1 The contractor is obliged to keep construction diaries and assembly reports and to submit these to the client or his representative in charge of construction supervision every working day. For the continuation of the work, parts of the services that are no longer accessible must be determined and approved for further construction, to which the contractor must invite the client in good time.
- 7.2 The contractor undertakes to accept the materials, goods and objects handed over to him for processing as part of his performance and to check them for defects and completeness. Missing quantities and recognisable defects must be noted on the delivery note. For this purpose, the issued delivery notes must be signed and submitted to the client immediately, at the latest within 3 working days. This applies in particular to goods supplied by third parties, e.g. glass, insulation, etc. The contractor is responsible for appropriate transport, storage and protection of the material handed over to him. The contractor must also transfer the above obligations to his subcontractors.
- 7.3 Insofar as return transports from the construction site to the client's premises or other transports are necessary, the contractor is responsible for ensuring that he and his employees know, apply and comply with the statutory regulations on load securing. Means of transport must be dismantled where necessary and packed for return transport. Suitable load securing equipment (belts, nets, anti-slip material etc.) must be kept available and used if necessary. Disposable packaging must be disposed of at the construction site.
- 7.4 The contractor undertakes to have the work equipment used by him inspected regularly in accordance with the statutory requirements (e.g. electrical equipment and supply lines, ladders and steps, scaffolding, lifting gear, load handling device, etc.). The contractor undertakes to have the testing and measuring equipment used by him checked regularly at least once a year (e.g. torque spanners, levelling devices, lasers, etc.). Evidence of this must be presented on request.

8. Acceptance

- 8.1 The contracting parties agree on a formal acceptance of the performance. Partial acceptances are excluded. The contractor must notify the client in writing of the completion of its performance and of the request to carry out the formal acceptance.
- 8.2 The contractor must cooperate on the agreed date for acceptance and must provide the necessary labour, measuring equipment and aids (cherry picker or similar). Sect. 12 para. 4 No. 2 VOB/B remain unaffected.
- 8.3 The acceptance fictions of sect. 12 para. 5 nos. 1 and 2 VOB/B and sect. 640 para. 2 BGB are excluded.

9. Claims for defects

The client's claims for defects comply with sect. 13 VOB/B subject to the provision that the limitation period shall be consistently 5 years and 6 months for the entire performance, unless different limitation periods, where applicable also for individual parts of the performance have been agreed in overriding contractual components. The time limits of sect. 13 para. 4 nos. 1 and 2 VOB/B do not apply.

10. Discounts

Unless otherwise expressly agreed, a discount offered as a percentage will be deducted from the unit and lump-sum prices, including those of supplementary services and direct services, when settling accounts and making payments.

11. Hourly wage work

The contractor must submit hourly wage slips in duplicate for hourly wage work on each working day. In addition to the information pursuant to sect. 15 para. 3 VOB/B, these must include

- the date
- the designation of the construction site
- the exact designation of the place of execution within the construction site
- the type of service
- the names of the workers and their occupational, wage and salary grade
- the hours worked per worker, broken down, if necessary, into overtime, night work, work on Sundays and public holidays, as well as into hardships not included in the charge rate
- the equipment parameters.

Hourly wage bills must be broken down according to the hourly wage slips.



12. Security deposit

- 12.1 The security for performance of the contract covers the performance of all obligations under the contract, in particular for the performance of the service in accordance with the contract, including invoicing, claims for defects prior to acceptance and damages as well as contractual penalties, and the reimbursement of overpayments including interest.
- 12.2 The contract performance security will be returned to the employee after acceptance of all services and provision of the security for defect claims, unless claims of the client that are not covered by the provided security for defect claims have not yet been fulfilled. Then the client may withhold a corresponding part of the performance security.
- 12.3 The security for defect claims extends to the fulfilment of defect claims after acceptance, including compensation for damages, as well as to the reimbursement of overpayments, including interest.
- 12.4 The client must return any unused security for defect claims after expiry of the contractually agreed limitation period for defect claims. To the extent that at that time his asserted claims have not yet been satisfied, he may retain a corresponding part of the security.
- 12.5 Insofar as the contractor provides the client with a guarantee for defect claims instead of the security deposit, this must comply with the following specifications. Until the handover of the guarantee in conformity with the contract, the client is entitled to make a corresponding security deposit from the contractor's invoices until the security amount has been reached.
- 12.6 If the contractor provides security by a guarantee, this must comply with the specimen provided by the client and furthermore with the requirements of sect. 17 VOB/B. The contractor's rights under sect. 17 para. 3 VOB/B and sect. 17 para. 6 VOB/B remain unaffected, indeed payment into a blocked account is excluded. The guarantee must provide in any case that the claim under the guarantee does not become time-barred before the secured principal claim.
- 12.7 The guarantee must be given for the total amount of the security in one document only.
- 12.8 The certificate of any advance payment guarantee will be returned when the advance payment has been set off against payments due.

13. Illegal Employment Law – Employee Assignment Law – Minimum Wage Law

- 13.1 The contractor assures that he and, if applicable, a subcontractor commissioned by him will only use employees from countries of the European Union or only such employees from third countries who are in possession of a valid work and residence permit, for the construction project covered by the contract. All employees must be provided with the required social security cards or social security substitute cards. The list of names of the foreign workers deployed on the construction site as well as the valid work papers, work permits and social security cards must be submitted to the client's local site management before the start of work.

If no valid work permits or social security cards are available or if an existing residence permit/work permit or social security card expires, e.g. due to a time limit, the workers concerned must be removed from the construction site immediately and replaced by other workers. The client may furthermore demand that the contractor's workers who are professionally or personally unsuitable will be removed from the construction site and replaced by others.

- 13.2 The contractor assures that he fully complies with all obligations to observe the regulations of the Act on Mandatory Working Conditions for Cross-Border Services (employee assignment law) and all obligations under the Minimum Wage Law. In particular, the contractor insures the payment of the minimum wage to its employees and the payment of contributions to the social security funds in accordance with the relevant collective agreements.
- 13.3 With regard to the risks for the client arising from sect. 14 employee assignment law and sect. 13 minimum wage law, the contractor must obtain the prior written consent of the client for each transfer of parts of the performance to a subcontractor and must release the client from all obligations arising from sect. 14 employee assignment law and sect. 13 minimum wage law, in particular from liability towards employees and social security funds - also with regard to employees of further subcontractors. In order to secure these liability risks, the contractor provides additional security amounting to 2% of the net order sum (excluding VAT) at the request of the client.



Until the presentation of the security, the client is entitled to withhold from payments due up to the amount of the security; the withholding can be replaced by the contractor by means of a guarantee that covers the liability risk of the client arising from sect.14 employee assignment law and sect. 13 minimum wage law. A contractually agreed right of the client to deduct a cash discount remains unaffected by the right of retention.

The return of the security takes place 3 years after the end of the year in which the acceptance of the contractor's performance took place. At the contractor's request, the security will be reduced if the contractor proves that he has fulfilled its payment obligations for which the client is liable under the employee assignment law and minimum wage law and that the payments limit the client's secured risk to such an extent that a security in the full amount is no longer required.

The contractor must also impose the above obligations under clause 13 on any subcontractors and rental companies and must likewise oblige them to impose these obligations in turn on their respective subcontractors and rental companies.

- 13.4 The client may at any time demand that the contractor submits appropriate evidence and, in the event of failure to submit such evidence after expiry of a deadline set for this purpose, withhold an appropriate part of the contractor's remuneration until such evidence has been submitted.
- 13.5 If the contractor fails to comply with any of the obligations under clauses 13.1 to 13.4 within the time limit, despite a reminder and written notice of termination, the client is also entitled to terminate the contract.

14. Supplementary termination provisions / discontinuation of benefits

- 14.1 In the event of termination, the employer shall be entitled to limit such termination to a delimitable part of the performance owed; this shall also apply in the cases of § 8 Para. 3 No. 1 VOB/B.
- 14.2 In the event that the Contractor culpably exceeds a significant interim deadline and a reasonable grace period with a threat of termination has expired, the employer shall be entitled to withdraw the order from the Contractor in whole or in part.
- 14.3 If the scope of services is reduced by order of the employer or if parts of the services are no longer performed by the employer for any other reason, the Contractor shall only be entitled to remuneration for the part of its services performed.

15. Final provisions

- 15.1 When interpreting the contract, only the wording of the contract in German is binding. Declarations and negotiations will be made in German. The law of the Federal Republic of Germany applies exclusively to the regulation of contractual and non-contractual relations between the contracting parties. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- 15.2 The place of performance for the contractor's services is the construction site specified in the contract, insofar as these services are to be provided there, otherwise the client's registered office in Roding. Cham is agreed as the exclusive place of jurisdiction for any legal disputes arising from or in connection with the underlying contract, even if cross-border contractual relationships are involved.
- 15.3 Should one or more provisions of these contractual terms and conditions be or become legally invalid, the remaining provisions remain unaffected. The invalid provisions will then be replaced by the agreed general terms and conditions for the execution of construction work (VOB/B) or the statutory provisions. However, the contracting parties reserve the right to agree amicably on a new provision for this case.