

# Boll & Kirch Filterbau GmbH - terms of installation

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## 1 Scope

**1.1** These terms of installation apply to installations, repairs, commissioning and to the relevant monitoring work (together “works”), which Boll & Kirch Filterbau GmbH (“BOLL & KIRCH”) carries out for the contractual partner (“customer”) in the context of service or supply contracts or independent assembly, commissioning or repair contracts.

**1.2** A service contract is concluded with the written confirmation of the customer’s order by BOLL & KIRCH. At BOLL & KIRCH works refer to the scope of services specified in the order confirmation of BOLL & KIRCH.

**1.3** Boll & Kirch does not recognise any conflicting, deviating or supplementary conditions of the customer, unless BOLL & KIRCH has expressly recognised them in writing in individual cases. These terms of installation also apply in the event that BOLL & KIRCH provides services without reservation while being aware of conflicting or deviating contractual conditions of the customer.

## 2 Remuneration

**2.1** Prices and costs for the execution of installation work shall be invoiced in accordance with the currently

valid price lists of Boll & Kirch, unless and insofar as an all-inclusive price has not been expressly agreed in writing. All-inclusive prices only apply to an uninterrupted installation; if BOLL & KIRCH incurs additional costs due to delays or interruptions to the installation process for which it is not responsible, the customer shall reimburse these (based on the above price list as applicable).

**2.2** BOLL & KIRCH shall invoice the installation services and costs after completion of the installation.

## 3 Support provided by the customer

**3.1** The customer shall support the installation staff in carrying out the work at his own expense. The customer shall provide, at his own expense and risk, the support staff, tools, devices, heating, lighting and operating power normally required for the works as well as lockable and theft-proof storage rooms for the installation staff’s spare parts and tools.

**3.2** The customer's support ensures that Boll & Kirch can start the work immediately after arrival of the installation staff and carry it out without delay.

## 4 Deadlines and delays

**4.1** The duration of the work is critically dependent on the conditions at the installation site, the support provided by the customer and – in the case of repairs – on the necessary repair work as determined following dismantling. If no fixed deadline has been agreed, any information regarding the expected duration of the works is non-binding.

**4.2** If no fixed deadline was agreed, the following applies:

a) The period starts when the customer has fulfilled the obligations incumbent on him prior to the start of the works. If this is not the case, the period shall be extended accordingly. The deadline is deemed to have been met if the works are ready for acceptance by the customer on time. This also applies if only insignificant parts or additional work is missing, provided that operations are not impaired.

b) If the works are delayed because the customer has not or not properly provided support, such as violation of the obligations under Sections 3.1. and 3.2, the deadline shall be extended accordingly.

c) If non-compliance with the deadline is due to force majeure, such as natural disasters, epidemics, war, civil war, revolution, terrorism, sabotage, nuclear/reactor

accidents, entry or import obstacles, industrial disputes or other events beyond the reasonable control of BOLL & KIRCH, BOLL & KIRCH shall be released from its performance obligations for the duration of the event and the deadline shall be extended accordingly. Boll & Kirch shall inform the customer of the beginning and end of such circumstances as soon as possible. If the duration of the event exceeds a period of six (6) months, BOLL & KIRCH is entitled to terminate the contract.

**4.3** If the customer suffers damage due to a delay on the part of BOLL & KIRCH, he shall be entitled to request a flat-rate compensation for the delay amounting to 0.5% for each full week of delay, and in any case no more than 5% of the installation price for the part of the plant to be installed by BOLL & KIRCH which cannot be used in time due to the delay.

**4.4** If the customer sets BOLL & KIRCH a reasonable deadline after the due date and if BOLL & KIRCH does not comply with it, the customer shall be entitled to withdraw from the contract in accordance with the statutory provisions.

## **5 Acceptance and transfer of risk, confirmation of work**

**5.1** Upon completion of the works, the customer must accept the work and confirm the services rendered as soon as he has been notified of their completion. Insignificant defects do not entitle the customer to refuse acceptance. Upon acceptance, BOLL & KIRCH shall not be liable for recognisable defects if the customer has not reserved rights relating to a specific defect during acceptance.

If acceptance is delayed for reasons for which Boll & Kirch is not responsible or if the customer uses the work as intended and without reservation or if the customer does not notify BOLL & KIRCH of his complaints, acceptance shall be deemed to have taken place two (2) weeks after notification of the completion of the work. Similarly, the services provided by BOLL & KIRCH shall be deemed confirmed unless the customer proves that the services were not provided or not provided to the extent claimed.

**5.2** When notification of the completion of the works has been provided or after the works were tested, the benefits and risks of the works shall be transferred to the customer.

**5.3** If the works carried out by BOLL & KIRCH are not in accordance with the contract, the customer's claims regarding defects and liability shall be determined in accordance with Sections 6 and 7.

## **6 Claims for defects**

**6.1** BOLL & KIRCH shall remedy obvious defects provided they were duly reported by the customer upon acceptance (Section 5.1).

**6.2** BOLL & KIRCH shall remedy any defects that occur after acceptance and for which BOLL & KIRCH is liable in accordance with the provisions of this Section 6 and of Section 7, provided that the customer notifies BOLL & KIRCH of such a defect in writing immediately and no later than within 5 days after its discovery. The remedy of defects is carried out to the exclusion of all other claims of the customer.

**6.3** If the defect is irrelevant for the interests of the customer, or if the defect is due to a circumstance attributable to the customer, BOLL & KIRCH shall not be obliged to remedy the defect.

**6.4** The customer shall grant BOLL & KIRCH the necessary and reasonable time and opportunity to remedy the defect (including travel times) and set a corresponding deadline. Only in urgent cases (endangerment of operational safety and prevention of disproportionately large damage), about which BOLL & KIRCH must be notified immediately, or if BOLL & KIRCH allowed the reasonable deadline set for the rectification of defects to expire, does the customer have the right to rectify the defect himself or have it rectified by third parties and to demand reimbursement of the necessary costs.

**6.5** If BOLL & KIRCH, taking into account the statutory exceptions, fails to meet a reasonable deadline set for it to remedy the defect, the customer shall be entitled to a price reduction within the scope of the statutory provisions. The customer also has the right to a price reduction in other cases of failure to rectify the defect. The customer can withdraw from the contract instead only if works are demonstrably of no interest to the customer despite the reduction.

**6.6** The installation staff of BOLL & KIRCH are not entitled to carry out work on products or systems which do not come from Boll & Kirch ("third-party parts"). Unless otherwise provided for in Section 7.1, BOLL & KIRCH is not subject to claims for defects. This also applies with regard to the function of third-party parts.

**6.7** Furthermore, BOLL & KIRCH is not subject to claims for defects

a) if the customer or third parties make changes to the item the work is performed on without the written consent of BOLL & KIRCH or do not observe Boll & Kirch's specifications when doing their own (preparatory) work;

- b) if defects or damages are due to inadequacy or defective condition of the set-up and lifting equipment provided by the customer as well as other equipment or support measures; or
- c) if, despite knowledge of a defect, the customer does not immediately take suitable measures to reduce the damage, even though this would have been possible and reasonable for him to do.

## **7 Liability, limitation of liability**

**7.1** If an installation part supplied by BOLL & KIRCH or a third-party part was damaged while carrying out the works due to the fault of BOLL & KIRCH, BOLL & KIRCH shall, at its option, either repair it again at its own expense or replace it. If items which works are carried out on are damaged or destroyed for reasons for which BOLL & KIRCH is not responsible, Boll & Kirch retains the right to the agreed remuneration.

**7.2** If the installed item cannot be used by the customer in accordance with the contract as a result of BOLL & KIRCH's culpably omitted or incorrect suggestions or advice before or after conclusion of the contract, or through the culpable violation of other contractual ancillary obligations – in particular instructions for operation and maintenance of the installed item – the provisions of Section 6 and Sections 7.1 and 7.3 shall apply accordingly to the exclusion of further claims of the customer.

**7.3** BOLL & KIRCH shall only be liable for damages, irrespective of the legal reason, (i) in the case of intent, (ii) in the case of gross negligence on the part of its legal representatives or executive employees, (iii) in the case of culpable injury to life, body or health, (iv) in the case of defects which BOLL & KIRCH has fraudulently concealed or whose absence BOLL & KIRCH has guaranteed, (v) insofar as liability for personal injury or material damage to privately used objects is provided for under product liability law. In the event of culpable violation of essential contractual obligations, BOLL & KIRCH shall also be liable in the event of gross negligence on the part of non-executive employees and in the event of slight negligence, in the latter case limited to reasonably foreseeable damage typical for the contract. Essential contractual obligations are those which are essential for the proper performance of the contract and on whose compliance the customer may regularly rely.

**7.4** Further claims for damages against BOLL & KIRCH are excluded, irrespective of the legal grounds. Insofar as BOLL & KIRCH's liability for damages is excluded or limited, this shall also apply to the personal liability for damages on the part of BOLL & KIRCH's employees.

## **8 Statute of limitation**

**8.1** All claims of the customer – on whatever legal grounds - become statute-barred after 12 months. In the case of claims for damages under Section 7.3, the statutory periods shall apply; this shall also apply to the work of BOLL & KIRCH within the meaning of Section 438 (1) No. 2 German Civil Code or within the meaning of Section 634a (1) No. 2 German Civil Code.

## **9 Applicable law, place of jurisdiction, other provisions**

**9.1** Exclusive place of jurisdiction for all disputes arising from or in connection with contracts for works within the meaning of these terms of installation including their coming into existence is the registered office of BOLL & KIRCH. However, BOLL & KIRCH shall have the right to sue the customer at his general place of jurisdiction.

**9.2** All contracts for works, these terms of installation and all claims arising from and in connection therewith shall be governed exclusively by German law to the exclusion of the conflict of laws provisions and to the exclusion of the UN Convention on Contracts for the International Sale of Goods of 11/04/1980 (CISG).

**9.3** There are no verbal subsidiary agreements. Amendments and supplements to these terms of installation, including this Section 9.4, are only valid if they are set out in an additional contract signed by both parties.

**9.4** Declarations of any kind made by Boll & Kirch's installation staff shall only be binding for Boll & Kirch if they have been confirmed in writing or in text form by a person authorised by Boll & Kirch.

**9.5** For deliveries and other services of BOLL & KIRCH, the general terms and conditions of delivery and service of BOLL & KIRCH, which can be viewed on Boll & Kirch's website at [www.Bollfilter.com](http://www.Bollfilter.com), shall apply accordingly, insofar as the above terms of installation do not provide any regulation.

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