

**1. Scope of Validity**

- 1.1. The present Conditions are valid for erection, bringing into service and test operations of machines and plants, hereinafter referred to as Services. The present Conditions of erection shall also apply to the supervision of the erection, unless special agreements are in existence or will be concluded.

**2. Conclusion of Contract**

- 2.1. The contract is deemed concluded when Contractor has accepted the order.

**3. Technical Documents**

- 3.1. Any technical documents of Contractor remain its intellectual property and may be neither copied nor reproduced nor communicated to a third party in whatever way. Such documents may only be used for the completion of the contract.

**4. Obligations of Contractor**

- 4.1. Contractor undertakes to carry out the Services by qualified and specialised personnel or to have them executed by third parties who, under the present conditions of erection, are also referred to as contractors.

**5. Obligations of Purchaser**

- 5.1. Purchaser shall undertake all that is necessary to enable the Services to be commenced in time and carried out without any hindrance or interruption. The Contractor's personnel shall not be called upon until all preliminary work has been completed.
- 5.2. Purchaser shall arrange about getting all necessary entry, exit, residence, work and any other official permits for the Contractor's personnel.
- 5.3. Purchaser shall carry out skilfully all the civil engineering and other preliminary work at its own expense and risk, if necessary in accordance with the documents supplied by Contractor.
- 5.4. Purchaser shall inform Contractor of any legal, official or other regulations applying to the erection work and plant operation.
- 5.5. Purchaser shall, at its own costs, take the necessary measures to prevent accidents. In particular, it shall inform Contractor expressly where special consideration for its own business and/or that of other contractors is required or where relevant regulations must be observed. Contractor shall be entitled to refuse or stop any Services if the safety of the personnel is not guaranteed. Purchaser shall provide any necessary assistance in case of accident or illness of Contractor's personnel.
- 5.6. The materials to be erected shall be stored in such a manner that they are protected from any damage or deterioration. Before erection work is commenced, the material shall be checked for completeness and damage by Purchaser in the presence of the Contractor's personnel. Should any items be lost or damaged during storage, they shall be replaced or repaired at Purchaser's expense.
- 5.7. Purchaser shall arrange for the transport access route(s) to the erection site to be passable and for the erection site itself to be in a condition allowing erection work to commence. It shall also provide for the access to the erection site to be guaranteed and for all rights of way required to be assured.
- 5.8. Purchaser shall provide for heated or air-conditioned, lockable rooms for the Contractor's site management, including suitable sanitary facilities for the personnel. In addition, Purchaser shall provide lockable, dry rooms for the storage of materials and equipments. All said rooms shall be located in the nearby area of the place of work.
- 5.9. At its own cost and in accordance with Contractor's instructions or erection programme, Purchaser shall supply in time the following services:
- 5.9.1. Provision of qualified skilled workers and auxiliary staff such as fitters, welders, electricians, masons, painters, sheet-metal workers, etc., including the necessary tools and equipments. The said workers shall follow the working instructions of Contractor. However, they are in the employ of Purchaser.
- 5.9.2. Supply of suitable and operational cranes and lifting gears with operating personnel, appropriate scaffolding and means of transport for personnel and materials, appropriate workshop equipment and measuring devices.
- 5.9.3. Provision of the necessary consumable and installation materials, cleaning materials, lubricants and miscellaneous items for the erection etc..
- 5.9.4. Supply of the electrical energy and lighting required, including the necessary connections up to the erection site, heating, compressed air, water, steam, fuel, etc..
- 5.9.5. If necessary, provision of its own means of communication such as telephone, telex etc..
- 5.10. Purchaser shall take care that Contractor obtains in time the necessary licences for the import and export of tools, equipments and materials.
- 5.11. After completion of the Services, Purchaser shall, without delay and at its own expense and risk, send back the tools and equipments supplied by Contractor to the place designated by Contractor.
- 5.12. Purchaser shall involve future operating personnel with the erection in order to enable them to become familiar with the methods and techniques of

Contractor. Contractor is ready to undertake the technical training of the said operating personnel, based on a separate agreement.

- 5.13. Where Purchaser fails to comply with its obligations, in whole or in part, Contractor is entitled to remedy such deficiencies either by itself or by means of third parties. Any cost incurred with respect to this shall be borne by Purchaser. It shall indemnify Contractor against third party claims.

- 5.14. Where the Contractor's personnel encounter any danger or are considerably hindered in carrying out the work due to any reason beyond the Contractor's control, then Contractor is entitled to order the withdrawal of the erection staff. In such cases and also in those cases where the staff are retained after completion of the Services, the corresponding hourly or daily rates are charged to Purchaser as waiting time, plus travelling expenses and daily allowances.

**6. Works on Purchaser's Order**

- 6.1. Unless Contractor has given its written consent, Purchaser is not entitled to involve Contractor's personnel for works that are not stipulated in the contract. Even if Contractor agrees to such work, no responsibility for same is taken by Contractor. Contractor shall not assume responsibility for works carried out on the Purchaser's order without special instructions of Contractor.

**7. Working Time**

- 7.1. The Labour Agreements of the Swiss Mechanical Engineering Industry shall apply to the normal weekly working time as well as to overtime, night work, shift work and work on Sundays and public holidays.
- 7.2. The normal weekly working time shall be, as a rule, distributed over five working days. Where for reasons beyond the Contractor's control a shorter working time must be maintained, the normal working time is invoiced. As far as working hours are concerned, the Contractor's personnel shall observe the operational requirements of Purchaser and the local conditions. The normal daily working time is between 0600 hours and 2000 hours.
- 7.3. Working hours in excess of the weekly or daily working time are defined as overtime. Overtime work is only permitted when agreed by both parties. Overtime work should not, as a rule, exceed the daily working time by more than two hours and the normal weekly working time by more than ten hours.
- 7.4. The hours in excess of the normal daily or weekly working time worked between 0600 hours and 2000 hours are deemed to be overtime.
- 7.5. Normal working hours on weekdays between 2000 hours and 0600 hours are defined as night work (except for overtime night work).
- 7.6. Overtime work between 2000 hours and 0600 hours is defined as overtime night work.
- 7.7. Are deemed to be Sunday working hours any works carried out on Sundays or on weekly days of rest applying for the country of the erection site and on any other statutory holidays in the Contractor's country.

**8. Travelling Times and other Times equivalent to Working Times**

- 8.1. Travelling times and suitable time for preparation and settlement of the journey in accordance with the contract are defined as working time pursuing to clause 7.2. Travelling time includes:
- the time required for the journey to and from the erection site;
  - the time required to move into the accommodation on the site as well as for official registration and departure formalities.
- 8.2. Where it is impossible to find suitable board and lodging near the place of work, the time used daily for the single journey exceeding half an hour between the accommodation or the meal facilities location and the place of work is charged as working time. All expenses arising from the above as well as the costs of the use of suitable means of transport shall be borne by Purchaser.
- 8.3. Where, due to any circumstances beyond the Contractor's control, the Contractor's personnel are hindered in carrying out the Services or retained, for any reason whatsoever, after completion of the Services, then Contractor is entitled to invoice the waiting time as working time. All related further costs shall also be borne by Purchaser. The same shall apply to any other hours lost due to reasons beyond the Contractor's control, such as local public holidays at the erection site.

**9. Pricing**

- 9.1. Principle  
The Contractor's Services shall be invoiced on the basis of time and expenditure (by result), unless a fixed price (lump sum) is agreed upon in writing.
- 9.2. Works by result  
The Services provided by Contractor are invoiced as follows:
- 9.2.1. Staff costs  
Purchaser confirms the working hours carried out by the Contractor's personnel on time sheets. Where this confirmation is not given in time by Purchaser, the entries of the Contractor's personnel shall serve as the basis for calculation.

The rates referred to in appendix 1 shall apply to the working time, overtime, night, Sunday and holiday working times, travelling time and any other times equivalent to working times. Daily travelling times shall not exceed 12 hours per day. For works to be carried out under particularly dirty or difficult conditions, e.g. at great heights or depths, or where special protective clothing or breathing equipment must be worn, a surcharge for particularly hard work is charged per hour (in accordance with appendix 1) in addition to the normal rates and stay costs.

#### 9.2.2. Travelling costs

The costs for the journey to and from the country concerned and the travelling costs within the said country in means of transport to be chosen by Contractor, including all necessary extras for e.g. insurance, freight, customs duties, charges for luggage, passports and visas, provision of the entry, residence and work permits, for medical examination on arrival and departure as well as vaccination of the Contractor's personnel are charged to Purchaser on the basis of time and expenditure. Unless special circumstances require the use of another class, the following cost shall be invoiced:

- economy class to flight destinations inside Europe
- business class to flight destinations outside Europe
- 1<sup>st</sup> class for rail and ship
- 2<sup>nd</sup> class rail travel in Switzerland for erection personnel
- compensation per kilometre according to appendix 1 for use of private car.

#### 9.2.3. Cost of board and lodging (daily allowance)

Purchaser shall provide the Contractor's personnel with perfect and sufficient food as well as good and clean, heated and/or air-conditioned single accommodation at the erection site or in its nearby area.

The daily allowance referred to in appendix 1 shall be charged in order to cover the cost of board and lodging which are not paid by Purchaser, as well as the extra cost for drinks, laundry etc..

Contractor reserves the right to change the said rates if there is an increase in the cost of living prior to the commencement of or during the Services or if the fixed daily allowances prove to be insufficient.

Purchaser may pay the costs of board and lodging (daily allowance) directly to the Contractor's personnel if Contractor has given its written consent. Unless otherwise stipulated, Purchaser shall always pay for board and lodging a fortnight in advance.

#### 9.2.4. Home leave

Where the Services require a long period of time, the Contractor's personnel shall be entitled to home leave. The period of absence that gives the right to such home leave is specified in appendix 1. The cost for the journey from the erection site to the Contractor's registered office and back shall be borne by Purchaser.

The time required for the journey there and back and for the daily allowance shall be invoiced according to clauses 8.1 and 9.2.3.

Insofar as conditions at the erection site allow, the Contractor's personnel may decide to have themselves accompanied by their spouses as an alternative to home leave. The travelling costs resulting thereof shall be charged to Purchaser.

#### 9.2.5. Costs for tools and equipments

Contractor provides its personnel with the normal set of tools necessary for the execution of the Services. Any further tools, equipment, measurement and testing devices shall be charged to Purchaser according to appendix 1. The duration of hire shall be calculated as from the day of dispatching the items ex works of Contractor until their return to the works.

Tools and equipments not returned will be charged to Purchaser at replacement costs.

Transport and insurance costs and any other expenses, duties and fees in connection with the import and the export of the tools and equipments shall be borne by Purchaser.

#### 9.2.6. Costs for consumable materials and miscellaneous items

Costs for consumable and installation materials and for miscellaneous items supplied by Contractor shall be charged according to result.

#### 9.2.7. Where the condition of the sick or injured person requires transport home or involves a longer stay in hospital, Contractor is entitled to organize transport home.

#### 9.3. Services at lump sum prices

##### 9.3.1. The lump sum price covers the Services to be provided by Contractor in accordance with the written agreements.

It is applicable provided that Services can be carried out without hindrances and that Purchaser has completed all required preliminary work and the necessary extra services in time.

##### 9.3.2. Additional expenditure incurred by Contractor due to reasons beyond its control, such as subsequent changes to the contents or scope of the agreed work, waiting times, re-treatment, additional travelling, shall be borne by Purchaser. Their calculation is based on clause 9.2.

#### 9.4. Taxes, duties, fees, social insurance contributions

Taxes, duties, fees, social insurance contributions and the like, owed by Contractor or its personnel in connection with the contract or with works carried out outside Switzerland, shall be borne by Purchaser.

## 10. Terms of Payment

10.1. Unless otherwise stipulated, the price and the costs are invoiced monthly and shall be paid by Purchaser within 30 days of the date of the invoice. Contractor is entitled to require partial or complete payment in advance of the presumed amount.

Payments shall be made by Purchaser without any deduction (such as discount, expenses, taxes, fees, etc.) at Contractor's headquarters. Payment is deemed effected as soon as the amount in Swiss Francs has been made freely available to Contractor in Switzerland.

10.2. Purchaser shall not withhold or reduce any payments on account of complaints, claims or counter-claims not accepted by Contractor. Payment shall also be made if Services are delayed or become impossible for reasons beyond Contractor's control.

10.3. If Purchaser fails to observe the arranged payment terms, it shall be in default without formal reminder, and interest for late payment shall be charged at the usual interest rates at Purchaser's domicile. Contractor reserves the right to further claims. Payment of such interest does not release Purchaser from its obligation to make payments in accordance with the contract.

## 11. Deadlines

11.1. Deadlines for the completion of the Services are only binding if accepted in writing by Contractor. The time limit starts running as soon as all prerequisites for the commencement of the Services are fulfilled; it shall be deemed duly observed if the machinery or plant erected is ready for acceptance on its expiry.

The time limit for completion is also deemed to be met if parts are missing or re-treatment is required, which, however, do not prevent the plant or machinery from being used in accordance with the contract.

11.2. Agreed binding deadlines shall be adequately extended:

- if information necessary for the execution of the Services is not given to Contractor in time, or if Purchaser makes additional subsequent modifications, or
- if Purchaser fails to observe its obligations arising from the contract, in particular if it fails to comply with the terms of payment under clause 10 and the obligations pursuant to clause 5, or if its suppliers delay in carrying out their deliveries, or under circumstances beyond the Contractor's control, such as threat of mobilization, war, civil war, riot or sabotage, or if such risks have occurred, or in case of labour-conflicts, accidents, illnesses, delayed or deficient delivery of necessary materials, measures or omissions by authorities or State institutions, unforeseeable transport difficulties, fire, explosion, acts of God.

11.3. Where an agreed deadline is not met for reasons for which Contractor is solely responsible, Purchaser is, if it has suffered damage by this, entitled to a compensation for delay of 0,5% per week completed, but not exceeding 5%. The percentage of the compensation shall be calculated on the basis of the price for the Services of Contractor charged for the part of the plant which could not start operating in time due to the delay. Any further claims and rights due to the delay, in particular for damages, are excluded.

Where erection time limits of more than three months have been stipulated, Purchaser has no claim for compensation for damage resulting from delay during the first two weeks.

## 12. Acceptance of the erected Machinery/Plant

12.1. The erected machineries or plants are ready for acceptance as soon as they are able to render useful service. This is also true if non-essential parts are missing, re-treatments are necessary or if the erected machinery and plants cannot start operating for reasons beyond the Contractor's control.

12.2. As soon as Purchaser is notified that the erected machineries or plants are ready for acceptance, it shall proceed, without delay, to the testing of the installation in the presence of the person in charge of the erection and to notify Contractor in writing of any possible deficiency without delay. Where it fails to do so, the machineries/plants shall be deemed to be accepted.

## 13. Faulty Performance or Non-Performance

13.1. If Contractor fails to commence the Services without any reason or if faulty execution of essential contractual obligations by gross negligence can certainly be anticipated or if essential works have been executed contrary to the contract due to gross negligence of Contractor, then Purchaser is entitled to give Contractor an adequate supplementary time limit for remedy. If, during such supplementary time limit, Contractor still fails to comply with its obligations, Purchaser may cancel the contract and transfer the works, at Contractor's costs, to a third party. The corresponding claims against Contractor shall be confined to the amounts referred to in clause 15.1. Any further claims of Purchaser, in particular for damages of any kind, shall be excluded notwithstanding the legal grounds.

## 14. Risk of Damage or Loss

14.1. During the performance of Services, Purchaser shall bear the risk for loss of or damage to the material to be installed. If items, plants, etc., on which Services have been carried out, are destroyed or damaged for reasons beyond Contractor's control, Contractor is entitled to claim the contractual payment.

14.2. In addition, Purchaser shall also bear the risk for the tools, equipments and materials it has provided.

**15. Liability**

- 15.1. Within the scope of the legal liability, but not exceeding the extent of cover of the usual Swiss Conditions for Third Party Liability Insurances, Contractor is liable for personal injury and property damage that may be caused by the execution of the Services it has carried out.  
The Contractor's liability and that of its auxiliary staff is limited in total to an amount equivalent to the amount to be paid for the Services of Contractor, however not exceeding a total amount of CHF 1,000,000 (one million Swiss Francs).  
Any further claims of Purchaser, in particular for damages of any kind, are excluded notwithstanding their legal grounds.
- 15.2. Purchaser shall be responsible for any damage caused by its personnel. This applies also if the Contractor's personnel are directing or supervising the works, unless gross negligence in the instructions or the supervision has been proved to have caused the damage.  
Purchaser shall be responsible for any damage caused by deficiencies in the tools, equipments and materials it has provided. This applies also where the Contractor's personnel have used them without any complaints.

**16. Warranty**

- 16.1. For a period of twelve months after the completion of the Services and in accordance with the provisions below, Purchaser warrants that the Services carried out are free from any defects in material and workmanship.  
At any rate, warranty ceases three years after the conclusion of the contract. Where the Services are interrupted due to reasons referred to in clause 11.2, the warranty period for the Services completed before the interruption starts running three months after the commencement of the interruption at the latest.
- 16.2. Any deficiencies detected during the warranty period on items, plants, etc., on which such Services have been carried out, shall be remedied free of charge, provided that such deficiencies are notified to Contractor in writing immediately upon their discovery.  
Contractor shall only assume warranty for deficiencies related to the works performed under its supervision by Purchaser's personnel or by third parties, if such deficiencies can be proved to have been caused by gross negligence of its personnel in their instructions or supervision of the works.
- 16.3. No warranty is accepted if Purchaser or a third party make modifications or repairs without the Contractor's written consent or if Purchaser fails to take measures to reduce the damage without delay.
- 16.4. Where re-treatment work must be carried out under warranty, Contractor shall assume warranty to the same extent as for the original works, however, not beyond the warranty period of the latter.
- 16.5. Any claims and rights relating to deficiencies other than those specified in clauses 16.1 – 16.4 are excluded.

**17. Cancellation of the Contract by Contractor**

- 17.1. Where unforeseen events take place, which considerably change the commercial value or the contents of the Services or have an essential impact on the operations of the Contractor's plant, or where the execution of the Services subsequently proves to be impossible, then the contract shall be adapted reasonably. In cases where such adaptation is commercially unreasonable, Contractor has the right to cancel the contract in whole or in part.  
Purchaser has no right to claim for compensation as a result of such cancellation. If Contractor intends to make use of its right to cancel, it shall inform Purchaser immediately after it has realised the consequences of the event, notwithstanding any former extension of the erection time agreed with Purchaser.

**18. Place of Jurisdiction – applicable Law**

- 18.1. The place of jurisdiction for both Purchaser and Contractor is the registered office of Contractor. However, Contractor shall also be entitled to sue Purchaser before the court having jurisdiction over the place of business of the latter.\*

The contract shall be governed by Swiss law.

**19. Final Clauses**

- 19.1. Any modifications to the contract are only valid if agreed upon in writing.  
Should any clause herein prove to be null and void, this shall not affect the validity of the other clauses. The parties undertake to replace invalid provisions by new ones, which serve best the economic objective of the contract.

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\* Alternatively the following arbitration clause can be agreed upon:

"All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (Paris) by one or more arbitrators appointed in accordance with the said Rules."