

# General Conditions of Erection 2009

## 1. Scope of Validity

These General Conditions of Erection are valid for the erection, commissioning and test operation of machines and plant, to be referred to in the following as services.

These Conditions shall also apply to erection supervision unless individual agreements have been or shall be concluded in this respect.

## 2. General

2.1 The contract shall be deemed to have been entered into upon receipt of Contractor's written acknowledgement stating its acceptance of the order.

Tenders which do not stipulate an acceptance period shall not be binding.

2.2 These General Conditions of Erection shall be binding if declared applicable in the tender or in the order acknowledgement. Any conditions stipulated by the customer which are in contradiction of these General Conditions of Erection shall only be valid if expressly acknowledged by the Contractor in writing.

2.3 All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid.

## 3. Plans and technical documentation

3.1 Data provided for in technical documents are only binding in so far as having been expressly stipulated as such.

3.2 Each party to the contract retains all rights to technical documents provided to the other. The party receiving such documents recognises these rights and shall – without previous written consent of the other party – not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

## 4. Obligations of the Contractor

The Contractor undertakes to carry out the work in a workman-like manner and with qualified personnel. Any third parties involved in this respect are also designated as contractors in these Conditions.

## 5. Obligations of the Employer

5.1 The Employer has to inform the Contractor, at the latest at the time of the order, of any regulations and standards which relate to execution of the erection and other work, to the plant operation as well as to illness and accident prevention.

5.2 The Employer shall undertake all that is deemed necessary in order that the work can be commenced on time and carried out without hindrance or interruption.

The Contractor's personnel shall not be called upon until all preparatory work has been completed.

5.3 The Employer has to ensure that all entry, exit, residence, work and any other official permits required by the Contractor's personnel are obtained in good time.

5.4 The Employer has to carry out all the civil engineering and other preparatory work skilfully at his expense and responsibility in accordance with the documentation supplied by the Contractor, if any.

5.5 The Employer has, at his own expense, to carry out all the accident prevention measures required. In particular, he has to inform the Contractor expressly when special consideration has to be shown for him and/or any other contractor. The Employer has also to draw the attention of the

Contractor to any regulations which have to be complied with.

The Contractor shall be entitled to refuse or stop any work if the safety of the personnel is not guaranteed.

The Employer is to provide any necessary assistance should the Contractor's personnel suffer an accident or become ill.

5.6 The materials to be erected are to be stored in such a manner that they are protected from any damage or deterioration. Before erection work is commenced, the materials to be erected are to be checked for completeness and damage by the Employer in the presence of the Contractor's personnel. Should any items be lost or damaged during storage, they are to be replaced or repaired at the Employer's expense.

5.7 The Employer is to ensure that the transport access route(s) to the erection site is/are usable and that the erection site itself is in a condition allowing erection work to commence. In addition, the Employer is to arrange that access to the erection site is guaranteed without hindrance and all rights of way required have been assured.

5.8 The Employer is to arrange for the provision of heatable or air conditioned, lockable rooms for the Contractor's site management, restrooms and changing rooms for the Contractor's erection personnel, including suitable sanitary facilities for the personnel. In addition, the Employer is to provide lockable, dry rooms for the storage of materials and equipment. All these rooms are to be located in the immediate vicinity of the place of work.

5.9 The Employer is to supply the following at his own expense, in good time, in accordance with the Contractor's instructions or erection programme:

5.9.1 Qualified skilled and unskilled workers, such as fitters, welders, electricians, masons, painters, sheet metal workers and assistants with the necessary tools and equipment. These workers have to comply with the Contractor's working instructions, but will nevertheless remain the Employer's employees, subordinated and responsible to him.

5.9.2 Suitable cranes and other lifting devices, in good working order, with attendant personnel; appropriate scaffolding, as well as means of transport for personnel and materials, appropriate workshop equipment and measuring devices.

5.9.3 Necessary consumable and installation materials, cleaning materials, lubricants and miscellaneous small items required during erection.

5.9.4 Electrical energy and lighting including the necessary connections up to the place of erection, heating, compressed air, water, steam, fuels, etc.

5.9.5 Means of communication, such as telephone, fax, telex, PC-modem.

5.10 The Employer is to ensure that the Contractor receives, in good time, all the necessary permits for the import and export of tools, equipment and materials, and shall bear any related charges.

5.11 The Employer is to immediately return the tools and equipment provided by the Contractor to the location designated by the Contractor. The Employer shall bear the dispatch costs, insofar as these are not included in the price.

Ownership of tools purchased by the Employer from the Contractor, and which the Contractor continues to use during the erection work, shall be transferred to the Employer after completion of the works. Unless instructions are given to the contrary, these tools shall be kept available for the Employer on the erection site, at the latter's risk.

The tools made available to the Contractor by the Employer shall be returned to the Employer after completion

of the works. Unless instructions are given to the contrary, these tools shall be kept available for the Employer on the erection site, at the latter's risk.

5.12 The Employer shall use future operating personnel to help already during the erection phase, in order that they become familiar with the methods and techniques of the Contractor. The Contractor is prepared to undertake the technical instruction of the said operating personnel, provided this has been expressly agreed.

5.13 Should the Employer not or only partially fulfil his obligations, the Contractor is entitled to remedy such deficiencies either himself or by means of third parties. The costs arising from such a procedure are to be paid by the Employer. The Employer shall also indemnify the Contractor against his liability towards third parties.

5.14 Should the Contractor's personnel encounter any danger or be considerably hindered in carrying out the work due to any reason beyond the control of the Contractor, the Contractor is allowed to withdraw the site erection personnel. In such cases, and also should personnel be retained after completion of the work, the corresponding hourly/daily rates are invoiced as waiting time, plus the travelling expenses and daily allowances.

## 6. Work carried out on the instructions of the Employer

Without written permission of the Contractor, the Employer is not allowed to employ the Contractor's personnel for work which does not form part of the contract. Even if the Contractor has agreed to such work, no responsibility for same is taken by the Contractor.

The Contractor accepts no responsibility for any work carried out to the order of the Employer without his particular instruction.

## 7. Working time

7.1 Subject to differing compelling regulations at the erection site, the working times shall be laid down in the Appendix.

7.2 The normal weekly working time is, in general, to be distributed over five working days. If, due to reasons beyond the control of the Contractor, a shorter working time has to be maintained, the normal working time is invoiced.

The working hours of the Contractor's personnel shall be distributed according to the Employer's requirements and the local conditions. The limits for normal daily working hours shall be 6 am and 8 pm.

7.3 Working hours in excess of the normal weekly or daily working time are defined as overtime.

Overtime work is only permitted when agreed by both parties. The 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 6 am and 8 pm are defined as overtime.

7.5 The normal working time, worked between 8 pm and 6 am on working days, is defined as night work (except when overtime on night work).

7.6 Overtime worked between 8 pm and 6 am is defined as night work overtime.

7.7 Sunday work is defined as work on Sundays or on other weekdays which are statutory rest days at the erection site.

Holiday work is defined as work on days which are statutory holidays at the erection site.

## 8. Travelling time and other times defined as being equivalent to travelling time

8.1 Travelling times as well as appropriate preparatory and winding up times after the journey which are necessary in order to comply with the contractual conditions are to be regarded as being equivalent to working time in accordance with paragraph 7.1.

Travelling time includes:

- the time required for the journey to and from the place of work
- the time required to move into the accommodation on site as well as
- the time required for official registration and departure formalities.

8.2 Should it be impossible to obtain suitable accommodation and/or adequate meal facilities near to the place of work, the time required for the transit each day between the accommodation and/or meal facilities' location(s) and the place of work in excess of one half hour per single journey is charged as working time.

All expenses arising from the above, as well as the costs for the use of suitable means of transport or a hire car, are to be paid by the Employer.

8.3 If the Contractor's personnel are hindered in carrying out the work due to reasons beyond the control of the Contractor, or if the Contractor's personnel are retained on site after completion of the work for any reason whatsoever, the Contractor is entitled to invoice the waiting time as working time. All other costs associated with the above are also to be paid by the Employer. The same applies also for any other hours lost due to reasons beyond the control of the Contractor, such as local public holidays at the erection site.

## 9. Pricing

### 9.1 Principle

The services of the Contractor are invoiced according to time and material on the basis of his cost rates at the time of execution of the erection work, unless a fixed price (lump sum) or a sliding price as per the Appendix has been agreed upon.

### 9.2 Work charged according to time and material

The services provided by the Contractor are invoiced as follows:

#### 9.2.1 Personnel costs

On presentation of the time sheets, the Employer shall certify the work performed by the Contractor's personnel with his signature. If this certification is not undertaken by the Employer in due time or is undertaken by personnel not competent for the purpose, the entries of the Contractor's personnel shall serve as a basis for calculation.

The rates given in the Appendix are to apply for the working time, overtime, night, Sunday and holiday working times, travelling time and other times regarded as being equivalent to working time. A maximum of 12 hours per day can be reckoned as travelling time. When the work is carried out under difficult or dirty conditions, for example at great heights or depths, or when special protective clothing or breathing equipment has to be worn, a difficulty/dirty work conditions' surcharge per working hour is invoiced in accordance with the Appendix, in addition to the Contractor's generally valid cost rates and to the costs of board and lodging.

#### 9.2.2 Travelling costs

The costs for the journey to and from the country concerned, as well as for travelling within the said country using a means of transport as chosen by the Contractor, are invoiced to the Employer. Invoicing is also to include such associated costs as insurance, freight, custom duties, charges for luggage, passports and visas, provision of the entry residence and work permits, medical examination on arrival and departure, as well as vaccination of the Contractor's personnel.

Unless special circumstances necessitate the use of another class, the following are invoiced:

- business class for air travel
- first class for rail and ship
- use of private car to be reimbursed according to the kilometres travelled, as given in the Appendix, or actual hire car costs.

#### 9.2.3 Costs of board and lodging (daily allowance)

The Employer is to provide the Contractor's personnel with wholesome and adequate food as well as good, clean, heatable and air conditioned single accommodation at the erection site or in its near vicinity.

The daily allowances in the Appendix are to be invoiced to cover the board and lodging costs which are not directly paid by the Employer. This applies also to the supplementary costs for drinks, laundry, etc.

The right is reserved to change these rates should the board and lodging costs increase before the

commencement of or during the erection work. The same applies also should the daily allowance rates quoted prove to be insufficient.

Payment of the board and lodging can take place directly from the Employer to the Contractor's personnel, provided that the Contractor has given approval in writing for such a procedure. When not otherwise agreed, board and lodging is always to be paid 14 days in advance.

#### 9.2.4 *Home leave*

If the Contractor's personnel have to spend a long period of time away from home, they shall be entitled to home leave. The period of absence for such an entitlement is specified in the Appendix. The cost of the return journey, i.e. from the site to the Contractor's registered office and back, shall be borne by the Employer.

The time required for the journey to and from, as well as the total daily allowance, are invoiced according to paragraphs 8.1 and 9.2.3.

As far as conditions at the erection site allow, the Contractor's personnel can decide to take their partners with them as an alternative to home leave. The corresponding travelling costs are invoiced to the Employer.

#### 9.2.5 *Costs for tools and equipment*

The Contractor is responsible for equipping his erection personnel with a normal set of tools. Further tools, equipment, measurement and testing devices are invoiced in accordance with the Appendix. The duration of use is to be calculated from the day the items are despatched from the Contractor's premises until their return.

Tools and equipment not returned will be invoiced to the Employer at the price required to replace same.

Transport and insurance costs, as well as further expenses, dues and charges in connection with the delivery to and return of tools and equipment from the site are to be paid by the Employer.

#### 9.2.6 *Consumables and sundry erection materials*

Consumables, installation and sundry erection materials supplied by the Contractor shall be charged according to costs.

#### 9.2.7 *Costs in connection with sickness and accident*

In the case of sickness or accident to the Contractor's personnel, the Employer shall guarantee the requisite appropriate medical treatment and care, whereby the Contractor's right to take his personnel home at any time shall not be prejudiced. The Contractor shall be responsible for all costs arising.

The Employer shall be required to continue to pay the agreed daily allowance for a period of 10 days from commencement of the treatment.

If the return to good health of the ill or injured person is likely to take more than 10 days, then the Contractor is to arrange for an equivalent replacement at his own expense.

#### 9.3 *Work to lump sum prices*

9.3.1 The lump sum price covers the services to be provided by the Contractor and which have been agreed upon in writing.

This price is based on the proviso that all preliminary work is carried out and completed by the Employer in good time and that erection can proceed smoothly and with no hindrance due to matters beyond the control of the Contractor.

9.3.2 Extra work which has to be carried out by the Contractor due to reasons beyond his control, such as subsequent changes to the content or scope of the agreed work, waiting times, re-working, additional travelling, are invoiced to the Employer in accordance with paragraph 9.2.

#### 9.4 *Taxes, dues, fees, social insurance contributions*

Taxes, dues, fees, social insurance contributions and the like, which have to be paid by the Contractor or the Contractor's personnel in connection with the contract or with work outside Switzerland, are charged to the Employer, with the exception of personal income taxes.

## 10. Terms of payment

10.1 Unless otherwise agreed, the price and the costs are invoiced monthly and are to be paid by the Employer within 30 days of the date of the invoice. The Contractor reserves the right to require partial or complete payment in advance of the presumed amount.

Payments are to be made by the Employer at the Contractor's registered office without deductions of any kind (discount, expenses, taxes, fees, etc.). Payment is regarded as carried out when Swiss francs to the amount invoiced are made freely available to the Contractor in Switzerland.

10.2 The Employer is not allowed to withhold or decrease payments because of complaints, claims or counterclaims not accepted by the Contractor. The payments are also to be made should the work be delayed or have been made impossible for reasons beyond the control of the Contractor.

10.3 If the Employer fails to effect payment on the agreed date(s), he shall – under the proviso of other rights being claimed and without formal notice – be liable to pay interest on the overdue amount(s) from the date due at a rate based on the interest rates prevailing at the Employer's registered office. Payment of default interest shall not release the Employer from paying the sums due under the terms of the contract.

## 11. Time schedule

11.1 A time-limit for the completion of the erection work is only binding when accepted in writing by the Contractor. The erection time begins when all preliminary requirements for the commencement of the work have been complied with. It shall be deemed duly observed if the machinery or plant erected is ready for acceptance on its expiry.

A time-limit is also complied with, even though parts are missing or readjustments have still to be made, if operation of the machinery/plant is possible and unhindered.

11.2 The agreed duration of erection shall be suitably extended:

- if the instructions required by the Contractor to carry out the erection work are not provided in good time, or if the Employer subsequently changes such instructions, or
- if the Employer does not comply with his contractual obligations, in particular with regard to the terms of payment according to paragraph 10, or the obligations according to paragraph 5, or if the Employer's suppliers are behind schedule with their work, or
- in the case of circumstances beyond the control of the Contractor, such as epidemics, threat or actuality of mobilization, war, civil war, acts of terrorism, rioting or sabotage, as well as strikes, working to rule, accidents, late or incorrect deliveries of necessary materials, local or state official actions or omissions, unforeseeable hindrances to transport, fire, explosion, or natural incidents.

11.3 If an agreed completion date is not complied with due to circumstances which are solely the responsibility of the Contractor, the Employer may – but only if a damage has occurred – require the payment of a compensation for damage resulting from delay amounting to 0.5% per completed week up to a maximum of 5%. The amount of the compensation is calculated from the price of the Contractor's work for that part of the plant which cannot be commissioned at the proper time due to the said delay. Further rights and claims in respect of delay, in particular for damages, are excluded.

For erection periods of more than three months, there is no claim for compensation for damage resulting from delay in respect of the first two weeks of delay.

## 12. Acceptance of the erection work

12.1 The erection work shall be ready for acceptance when the machinery or plant has been erected. The same shall apply if the erected machinery or plant cannot be commissioned for reasons outside the control of the Contractor.

12.2 As soon as the Employer is notified that the erection work is ready for acceptance, it shall be inspected by the Employer or his appointed representative in the presence of the person in charge of the erection. Any deficiencies are to be reported immediately in writing to the Contractor. If the Employer fails to do this, the erection work shall be deemed to have been accepted.

### 13. Non-performance, faulty performance and their consequences

13.1 In all cases of faulty performance or non-performance not expressly dealt with in these Conditions, in particular if the Contractor, without cause, commences execution of the works so late that completion of the works on time is no longer anticipated, if execution in breach of the contract through the fault of the Contractor is unquestionably anticipated, or if work has been executed in breach of the contract through the fault of the Contractor, the Employer shall be authorised to set the Contractor a reasonable further deadline for remedy of the work concerned, under threat of withdrawal, should he fail to comply.

Upon the fruitless expiration of this subsequent deadline through the fault of the Contractor, then the Employer may withdraw from the contract with respect to the works which have been executed in breach of the contract or the execution of which in breach of the contract is unquestionably anticipated, and reclaim the associated portion of payments already made.

13.2 In such a case, the provisions under paragraphs 15 and 16 shall apply accordingly with respect to any claim for damages by the Customer and with respect to the exclusion of further liability. The claim for damages shall be restricted to 10% of the contractual remuneration for the work to which the withdrawal relates.

### 14. Risk of damage or loss

The Employer shall bear the risk of damage or loss for the material to be erected during performance of work, and for tools, equipment and materials provided by him. The Contractor shall be entitled to claim the agreed remuneration even if the erection cannot be carried out or can only be partially carried out, as a result of destruction or partial destruction of the items to be erected.

### 15. Warranty

15.1 The Contractor guarantees for a period of twelve months after the completion of the work and in accordance with the following provisions, that the work has been carried out in a workmanlike and careful manner.

Should the work be interrupted due to the reasons quoted in paragraph 11.2, the warranty period for the work completed before the interruption commences at the latest three months after the beginning of the interruption.

The warranty period is terminated in all cases three years after the agreed commencement of erection.

15.2 Any deficiencies in the erection work detected during the warranty period shall be remedied free of charge, provided that such deficiencies are notified to the Contractor in writing immediately upon their discovery.

The Contractor shall only be responsible for deficiencies related to the work performed under his supervision by the Employer's personnel or those of a third party, if it can be proven that such deficiencies are attributable to the fact that the Contractor's personnel has acted with gross misconduct in the course of instruction or supervision.

15.3 No warranty shall be provided if the Employer or a third party undertakes modifications or repairs without the Contractor's written permission, or if the Employer does not immediately take suitable measures to reduce the possible damage.

15.4 For work carried out under warranty, the Contractor shall provide warranty to the same extent as for the original work but not beyond the warranty period of the latter.

15.5 Any claims and rights relating to deficiencies other than those specified under paragraphs 15.1 to 15.4 are excluded.

### 16. Liability

16.1 The Contractor shall be liable to the Employer only for such property damage which his personnel has caused through its fault during the preparation for the erection, the execution of the works or during the repair of any deficiencies. The total liability shall be restricted to CHF 5,000,000.– (five million Swiss francs). In case of personal injury, the statutory liability shall apply.

Subject to illegal intent or gross negligence, the Contractor's liability towards the Employer for production shut-down, lost profit, loss of use, financial damages and losses resulting from a delay or interruption in erection as well as

for contractual losses or consequential damages, shall be excluded.

In addition, any further claims by the Employer, in particular for the compensation of damages of any kind, regardless of their legal basis, shall be excluded.

16.2 The Employer shall be responsible for any damage caused by his personnel. This applies also if the Contractor's personnel are directing or supervising the work, unless it can be proved that gross negligence in connection with instructions, omissions or with the supervision caused the damage.

The Employer shall also be responsible for any damage caused through deficiency in the tools, equipment and materials provided by him. This applies also when the Contractor's personnel has used them without lodging a complaint, unless they could have noticed the deficiency had they exercised due attention.

### 17. Cancellation of the contract by the Contractor

Should unforeseen events take place, changing the commercial value of the contents of the services considerably or affecting the operations of the Contractor's plant considerably, or should the execution of the work subsequently prove impossible, the contract shall be adapted reasonably. If this cannot be justified from the economic aspect, the Contractor is entitled to cancel the contract wholly or in part.

The Employer has no right to claim for compensation as a result of such cancellation. Should the Contractor decide to make use of his right to cancel, he is to inform the Employer immediately after the consequence of the event has been recognized, even if an extension of the erection time had been agreed with the Employer.

### 18. Place of jurisdiction and applicable law

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

The contract shall be governed by Swiss substantive law.

### 19. Final conditions

Any changes to the contract are only valid if agreed upon in writing.

Should any provisions herein prove to be ineffective, this shall not affect the validity of the remaining conditions. The parties agree to replace non-valid conditions by new ones, which are consistent as far as possible with the economic objective of the contract.

### 20. Appendices

The following Appendices form an integral constituent of these Conditions of Erection. In the event of any contradictions, the Appendices shall prevail over the Conditions of Erection.

Appendix 1: Pricing sheet

Appendix 2: .....