

1. Scope of validity

1.1 These General Conditions of Contract for Erection and Maintenance Services are valid for work undertaken in connection with erection, commissioning and test operation of machines and plant and also for scheduled and unscheduled maintenance, repair, modifications and recommissioning of machines and plant (hereinafter referred to as "Services").

1.2 These Conditions shall also apply to supervision of erection, commissioning, testing and maintenance 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.

2.2 Tenders shall remain open for acceptance by the period stated in the Tender unless it is previously withdrawn but no longer unless a further period is expressly agreed between the parties in writing.

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

2.4 These Conditions shall be binding if declared applicable in the Tender or in the written order acknowledgement. Any conditions stipulated by the Employer which are in contradiction of these Conditions shall only be valid if expressly acknowledged by the Contractor in writing.

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

3. Scope of supply for Services

The extent of the Services is specified in the Tender and order acknowledgement and in appendices thereto. The Contractor shall be entitled to make any changes which lead to improvements provided such changes do not result in a price increase.

4. Plans and technical documents

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

4.2 Each party to the contract retains all rights to technical documents provided to the other. The party receiving such documents recognizes 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.

4.3 Any documents submitted by the Contractor to the Employer shall be reviewed within five (5) days failing of which the documents shall be deemed to be approved.

5. Obligations of the Contractor

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

6. Obligations of the Employer

6.1 The Employer must inform the Contractor within the validity of the Contractor's proposal of any regulations and standards which relate to execution of the Services, to the plant operation as well as to illness and accident prevention.

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

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

6.4 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.

6.5 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.

6.6 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.

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

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

6.9 The materials to be erected, commissioned or maintained during the Services are to be stored in such a manner that they are protected from any damage or deterioration. Before the Services are commenced, the materials to be erected, commissioned or maintained 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.

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

6.11 The Employer is to arrange for the provision of heat able or air conditioned, lockable rooms for the Contractor's site management, restrooms and changing rooms for the Contractor's 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.

6.12 Unless otherwise agreed in writing and provided that Employer has not been in addition to the below the Employer is to supply the following at his own expense, in good time, in accordance with the Contractor's instructions or erection programme:

6.12.1 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.

6.12.2 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.

6.12.3 Necessary consumable and installation materials, cleaning materials, lubricants and miscellaneous small items required during the Services.

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

6.12.5 Means of communication, such as telephone, fax, telex, PC-modem, email, internet.

6.12.6 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.

6.12.7 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.

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

6.12.9 The tools made available to the Contractor by the Employer shall be returned to the Employer after completion of the Services. Unless instructions are given to the contrary, these tools shall be kept available for the Employer on the site, at the latter's risk.

6.13 The Employer shall use future operating personnel to help already during erection, commissioning and testing works, 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.

6.14 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.

6.15 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 personnel. In such cases, and also should site 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.

7. Work carried out on the instructions of the Employer and time schedule for performance

7.1 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.

7.2 All indications concerning time-limits for performance are based on estimates and are thus not binding.

7.3 A binding time-limit for performance can be agreed upon only after the scope of the Service Works has been determined.

7.4 Any binding time-limit for performance shall be suitably extended:

- If the instructions required by the Contractor to carry out the Service Works 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 if he does not comply with the duties pursuant to paragraph 5, or the terms of payment pursuant to paragraph 10 on time or in the proper manner; or
- In the case of circumstances beyond the control of the Contractor such as epidemics, the threat or actuality of mobilization, war, civil war, acts of terrorism, rioting or sabotage, as well as labour disputes, accidents, late or incorrect deliveries of necessary material, actions or omissions by local or state authorities, unforeseeable transportation hindrances, fire, explosion, or natural incidents.

7.5 If a binding time-limit for performance has been agreed upon and this time-limit is not complied with due to circumstances which are solely the responsibility of the Contractor, the Employer may, provided he has suffered damage, claim payment of compensation for damage resulting from delay amounting to 0.25% per completed week up to a maximum of 2.5%. 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.

7.6 A time-limit is also complied with, even though parts are missing, or readjustments still have to be made, if operation for the intended purpose is possible and unhindered.

8. Working time

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

8.2 Unless otherwise agreed in the Service & Installation Rate Sheet (latest revision as per Appendix) the normal weekly working time is, in general, to be distributed over five working days, Monday to Friday. If, due to reasons beyond the control of the Contractor, a shorter working time has to be maintained, the normal working time is invoiced.

8.3 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, Monday to Friday.

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

8.5 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.

8.6 The hours in excess of the normal daily or weekly working time worked between 6 am and 8 pm are defined as overtime.

8.7 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).

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

8.9 Working time between 6.00am and 8.00pm on Saturday and Sunday is defined as weekend overtime work, or on other weekdays which are statutory rest days at the site.

8.10 Working time, worked between 8 pm and 6 am on Saturday and Sunday, is defined as night work (except when overtime on night work).

8.11 Holiday working time is defined as work on days which are public statutory holidays either in the country of the Employer and/or Contractor.

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

9.1 Travelling times as well as appropriate preparatory and winding up times before and 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 8.1.

9.2 Travelling time includes:

- the time required for the journey to and from the site and
- the time required to move into the accommodation on site and
- the time required for official registration and departure formalities.

9.3 Should it be impossible to obtain suitable accommodation and/or adequate meal facilities near to site, the time required for the transit each day between the accommodation and/or meal

facilities' location(s) and the site in excess of one half hour per single journey is charged as working time.

9.4 As per the Service & Installation Rate Sheet (latest revision as per Appendix) all expenses arising from the above, as well as the costs for the use of suitable means of transport or a hire car including a handling fee, are to be paid by the Employer.

9.5 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.

10. Variations and Claims

10.1 The Employer has the right at any time to request a change to the contract ("Variation Request").

10.2 Depending on the nature and extent of such Variation Request, the Contractor shall, within thirty (30) days or any longer reasonable period after receipt, propose to the Employer in writing the effects of such a variation with respect to the time schedule and/or the Contract Price ("Variation Proposal").

10.3 The Employer shall, within twenty (20) days after receipt of a Variation Proposal, provide written reply to the Variation Proposal, failing of which the Variation Proposal shall be deemed to be accepted. In the event of rejection, the Parties shall without any delay agree on the action to be taken. If an agreement cannot be reached within twenty (20) days after the Contractor's receipt of the notice of rejection, Contractor shall be free to proceed with the works as described prior to the Variation Request with an extension of time for completion equal to the delay resulting from the Variation Request.

10.4 The Contractor, at his own discretion, shall be entitled to make minor changes to the Contract, which do not impact the Contract Price and/or delivery time.

10.5 Any changes to the Contract necessitated by changes in law or required by authorities after the effective date of the Contract shall be treated as a Variation Request. The Contractor shall, within thirty (30) days after learning of it submit a Variation Proposal to the Employer.

10.6 If the Employer considers himself to be entitled to any claim arising out of a clause of the Contract, or otherwise in connection with the Contract ("Claim"), the Employer shall give notice to the Contractor not later than thirty (30) days after the Employer became aware, or should have become aware of the event or circumstance giving rise to the Claim describing in detail the event(s) or circumstance(s) giving rise to the Claim and if requested provide further evidence. If the Employer fails to give notice of a Claim within said period, the Contractor shall be discharged from all liabilities in connection with the Claim. Employer waives any right to raise a Claim for late delivery, back-charges and any other Contract Price reduction six (6) months after delivery or completion of services.

11. Pricing

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

The services provided by the Contractor are invoiced as follows:

11.1 Personnel costs

11.1.1 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.

11.1.2 The rates given in the Appendix are to apply for the working time, overtime, night, weekend 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.

11.2 Travelling costs

11.1.1 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.

11.2.1 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 miles (or kilometres) travelled, as given in the Appendix, or actual hire car costs.

11.3 Costs of board and lodging (daily allowance)

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

11.3.2 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.

11.3.3 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.

11.3.4 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.

11.4 Home leave

11.4.1 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.

11.4.2 The time required for the journey to and from home, as well as the total daily allowance, are invoiced according to paragraphs 9.1, 9.4 and 9.5.

11.4.3 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.

11.5 Costs for tools and equipment

11.5.1 The Contractor is responsible for equipping his Services 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.

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

11.5.3 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.

11.6 Consumables, installation and sundry materials supplied by the Contractor for execution of the Services shall be charged according to costs plus a handling fee of 10%.

11.7 *Costs in connection with sickness and accident*

11.7.1 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.

11.7.2 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.

11.8 *Work to lump sum prices*

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

11.8.2 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.

11.8.3 Extra work which must 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 this paragraph 11.

11.9 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 of the country where the Contractor is domiciled, are charged to the Employer.

11.10 The prices exclude Value Added Tax (VAT) which must be paid to the Contractor by the Employer at the appropriate rate applicable to the goods and services provided.

11.11 Any Services which are supplied from a country that is different from the country of the Tender currency is based upon the current rate of exchange between the Tender currency and the currency of the different country. Any increase or reduction in price consequent upon variation of the rate of exchange at the times of payments will be charged or credited to the Employer.

11.12 The Contractor reserves the right to adjust the prices in case the wage rates vary between the submissions of the Tender and when the Contract comes into force.

11.13 In addition, an appropriate price adjustment shall apply after the Contract has come into force in case:

- The time to complete the Services has been subsequently extended due to any reason stated in paragraph 13.2, or
- The nature or the scope of the agreed Services has changed, or
- In case the Contract has been suspended for reasons attributable to the Employer.

12. Terms of payment

12.1 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. Even if an invoice needs adjustments or modifications the first due date of the first issue of the original

invoices remains due with the original due date and the modification will be credited through a credit note.

12.2 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 the amount(s) invoiced are made freely available to the Contractor.

12.3 Taxes, dues, fees, social insurance contributions and the like which the Contractor must pay in connection with the Contract or with the Services are charged to the Employer.

12.4 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.

12.5 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 with effect from the agreed date on which the payment was due at a rate of seven (7%) percentage points. Payment of default interest shall not release the Employer from paying the sums due under the terms of the contract.

13. Time schedule

13.1 A time-limit for the completion of the Services is only binding when accepted in writing by the Contractor. The time to complete the Services 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 subject to erection, commissioning, testing or maintenance 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.

13.2 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 11, or the obligations according to paragraph 6, or if the Employer's Contractors 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.

13.3 If an agreed Services 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.

13.4 For erection and commissioning 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.

14. Acceptance of the Services work

14.1 The Services work shall be ready for acceptance when the erection or maintenance of the machinery or plant has been completed. The same shall apply if the machinery or plant cannot be commissioned, or recommissioned, for reasons outside the control of the Contractor.

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

15. Non-performance, faulty performance and their consequences

15.1 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 Services work so late that completion of the work 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.

15.2 Upon the expiration of this subsequent deadline without remedy of the work concerned through the sole fault of the Contractor, then the Employer may withdraw from the Contract with respect to the work which has 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.

15.3 In such a case, the provisions under paragraphs 16, 17 and 18 shall apply accordingly with respect to any claim for damages by the Employer and with respect to the exclusion of further liability. The claim for damages shall be restricted to 10 % of the contractual remuneration for the Services to which the withdrawal relates.

16. Risk of damage or loss

The Employer shall bear the risk of damage or loss for the material to be erected or maintained during performance of the Services, and for tools, equipment and materials provided by him. The Contractor shall be entitled to claim the agreed remuneration even if the Services 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.

17. Warranty

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

17.2 Should the work be interrupted due to the reasons quoted in paragraph 12.2, the warranty period for the work completed before the interruption commences at the latest three months after the beginning of the interruption.

17.3 Any deficiencies in the Services 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.

17.4 The Contractor shall only be responsible for deficiencies related to the work performed by the Contractor's personnel or under the Contractor's 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.

17.5 In the event that the object worked upon, parts of the same or replacement parts delivered or installed under the terms of the contract prove to be defective or unusable during the warranty period, and if this proves to be due to poor performance of the Services or defective material supplied by the Contractor, then such parts shall either be repaired or replaced by the Contractor, at its own discretion and within or

replaced by the Contractor, at its own discretion and within a reasonable period of time, provided that such defects are notified to the Contractor in writing during the warranty period, and immediately upon their detection.

17.6 The Contractor shall be only 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 gross negligence of the Contractor's personnel in the course of instruction or supervision.

17.7 No warranty shall be provided if the Employer or a third party undertakes commissioning or recommissioning of the machinery or plant after the Services are completed without the written permission of the Contractor, or 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.

17.8 Also excluded are deficiencies in the machinery or plant resulting from normal wear and tear, improper maintenance by the Employers or a third party, failure by the Employer to observe the operating instructions, and excessive loading due to different process conditions.

17.9 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.

17.10 Any claims and rights relating to deficiencies other than those specified under this paragraph 17 are explicitly excluded.

18. Liability

18.1 Notwithstanding anything to the contrary in the Contract, including all documents making part thereof, and to the maximum extent permitted by law, in no event shall Contractor be liable to the Employer by way of indemnity, or by reason of any breach of Contract or of statutory duty or by reason of tort (including but not limited to negligence) for any loss of profit, loss of Contracts or earnings, delay damages, interruption or loss of production, loss of use or loss of opportunity or business, indirect, punitive, special or consequential damages whatsoever that may be suffered by Employer. Employer further agrees to defend, indemnify and hold harmless Contractor from any claim made by end-user or Employer's clients for such losses.

18.2 The remedies of the Employer set forth in the Contract are exclusive, and Contractor's liability with respect to any Contract, indemnity, tort (including negligence), under any warranty, strict liability or otherwise shall not exceed 100% of the Contract Price, unless claims arise from gross negligence or wilful misconduct of the Contractor or from Contractor's legal liability for personal injuries.

18.3 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.

18.4 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 have used them without lodging a complaint, unless they could have noticed the deficiency had they exercised due attention.

19. Cancellation of the Contract by the Contractor

19.1 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.

19.2 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.

20. Force Majeure

20.1 Contractor shall not be liable for any non-performance, loss, damage, or delay due to war, riots, fire, flood, strikes or labour difficulties, governmental acts such as, but not limited, to trade restrictions including embargoes, acts of God, acts of the Employer, its Employer or the end-user, delays in transportation, inability to obtain necessary labour or material from usual sources, or other causes beyond the reasonable control of Contractor.

20.2 In the event of delay in performance due to any such cause, the delivery date or time for completion of services will be extended to reflect the length of time lost by reason of such delay. Payment obligations shall not be affected by Force Majeure events. If the grounds for Force Majeure continue for more than six (6) months, either Contractor or Employer may terminate the Contract upon seven (7) days written notice to the other Party.

20.3 Contractor shall be entitled to be compensated for the extra costs caused by the interruption, or, in case of termination, for the work done prior to termination, and the expenses for non-cancellable procurements. Employer shall be entitled to receive the work for which it has paid.

21. Place of jurisdiction and applicable law

21.1 The Contract is construed and shall be interpreted in accordance with the laws of Switzerland.

21.2 In case of a dispute, the parties shall make their best effort to solve such dispute amicable. If such dispute has not been settled between the parties within sixty (60) days from the date of the relevant party's written notification of a claim to the other party, the courts at the registered office of the Contractor shall have exclusive jurisdiction. Contractor reserves the right to claim against Employer at Employer's registered office.

22. Final conditions

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

22.2 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.

23. Appendices

The Contractors appendices (e.g. Service & Installation Rate Sheet for the year 2015-2018 latest revision, etc.) submitted with the tender form an integral constituent of these Conditions of Contract for Erection and Maintenance Services. In the event of any contradictions, the appendices shall prevail over these Conditions. Any planning or program submitted to the Employer is on a non-binding basis for information only.