

GENERAL CONDITIONS FOR ERECTION, COMMISSIONING AND MAINTENANCE SERVICES OUTSIDE GERMANY (AB-Service-Abroad 07/05 E)

1 Preamble

These conditions are valid for all our offers regarding erection, commissioning and maintenance services as well as for all our maintenance contracts outside Germany. They come into force latest upon placement of order or upon order confirmation issued by us. Deviations and supplements require written agreement to become valid.

Should any stipulations of these conditions not be applicable or be ineffective, the validity of all other stipulations is not affected.

2 Costs

The hourly rates stated in the offer or in the maintenance contract refer to working, travelling and waiting times on normal working days from Monday to Friday from 06:00 a.m. to 06:00 p.m. for 8 hours per day. Altogether 2 hours are granted for preparation and feed-back time. They will be charged as working time.

Waiting time is every time during which our personnel is available to the customer on site, but is hindered due to circumstances beyond our control.

2.1 Supplementary Charges

2.1.1 Normal Working Days

25% for the first two hours of overtime.
50% for each additional hour of overtime.
30% for night work, (not in case of hours of overtime)
Travelling time by car is considered working time. Supplements for overtime will be charged if the travelling time exceeds 8 hours. Supplements for overtime do not apply to travelling time with other means of transport.

2.1.2 Supplements on Saturdays, Sundays and Public Holidays

On Saturdays

25% for the first two hours.
50% for each further hour.

On Sundays

50% on usual Sundays.
100% on Sundays falling on a public holiday.

On Public Holidays

50% on public holidays falling on a week-day.
100% on public holidays falling on a Sunday.
100% for works on Easter Monday, on Whit Monday (Pentecost) and for the following public holidays should they fall on a week-day: January 1st, May 1st, Christmas Day and Boxing Day as well as for work performed on December 24th and 31st from 4:00 p.m.

All public holidays in the country of the construction site are to be considered as free days.

2.1.3 Supplements on Difficult Working Conditions

10% for heat-, dirt- and gas influences.
15% for work performed under ground, on board or in areas where protective clothing have to be worn.

2.2 Travel Expenses

Travel expenses (incl. costs for transport and transport insurance of personal luggage and tools carried or dispatched) will be charged at cost. Costs for journeys home are also part of the travel expenses as per these conditions.

1st Class is chosen for travel by train and Business Class for travel by plane. Forwarding charges on air travel for excess luggage, tools and spare parts will be invoiced additionally.

For travel by car, a mileage allowance will be charged as stipulated in the offer or maintenance contract.

For spare parts transported by car, costs will be charged according to the German Railway (Deutsche Bahn AG) Tariff for transportation of express goods.

Single journeys between lodgings and working site exceeding ½ hour will be considered as working time.

2.3 Daily Allowances and Overnight Costs

The daily allowance does not include the overnight costs. These will be settled according to the lump sum stipulated in the offer. If the actual expenses for the lodging exceed the lump sum, they will be charged according to receipts submitted.

Appropriate lodging can also be made available by the customer.

The daily allowance applies also to Saturdays, Sundays and Public Holidays on which no work is done.

2.4 Journeys Home

After a nine-week continuous assignment on one or several sites, our personnel is entitled to a journey home if the site/s is/are at least 150 km away from their place of residence.

3 Acceptance

After its completion, all work performed must in principle be accepted by the buyer or his deputy and a corresponding acceptance certificate should be handed to our delegate. If, for any reason beyond our responsibility, the acceptance is not completed immediately after completion of the work performed, the plant is to be considered as accepted at the date of our personnel's departure. If a renewed presence of our personnel is requested for the acceptance, we will charge you with the costs incurred. Upon acceptance we are no longer liable for noticeable defects, provided the customer has not reserved the right to claim in the case of certain defects.

4 Settlement and Payment

Settlement of our personnel's services is done monthly or after completed assignment, at our discretion. The amounts have to be transferred punctually without deduction of taxes to our bank account according to the conditions stipulated in our offer/confirmation of order. In case of a missed deadline, we charge the usual bank interest. It is not allowed to retain payment or to charge it against counter claims.

On a time sheet, the customer confirms to our personnel the performed services. A copy of this sheet remains with the customer.

5 Technical Assistance

The customer has to make available free of cost suitable recreation and working rooms with washing and sanitary facilities as well as first aid for our delegated personnel. Furthermore, dry and lockable rooms to store tools and materials.

The storage of our tools in the rooms to be made available will be done at the customer's risk. The customer bears all costs for technical assistance, especially for:

- making available necessary skilled helpers in required number and for the required time,
- the transport of the parts to the erection site at own risk,
- protection of the erection parts and material against damaging influences of any kind,
- making available lifting devices, tools and means of transport and the required auxiliary energy.

The general supervision and especially the instructions to our personnel concerning local and operational safety regulations lie within the customer's responsibility.

6 Duration, Delays

- 6.1.** Particulars given by us on the duration of the works are only estimates and not binding. Exceeding given deadlines does not entitle the customer to cancellation, reduction in expenses or compensation. Should the work of our personnel be delayed due to no fault of their own, the customer will bear all costs thereby incurred; especially those for waiting periods and additionally required travel by our personnel.
- 6.2.** If services are completely performed by the end of an agreed deadline, although they were started later than agreed, they are considered to be fulfilled. If the performance of services is delayed by circumstances outside our responsibility, an appropriate prolongation of the execution deadline takes effect. This is also the case, if such circumstances occur when we are already in delay. The Purchaser is only entitled to rescind from the contract, if we have failed to keep a due date to execute services and have not observed an appropriate deadline given by the Purchaser on threat of refusal. Further claims of the Purchaser are excluded – subject to the provisions of paragraph 7.3.

7 Warranty, Limitation of Liability

- 7.1.** We are liable for the proper execution of services we were charged with on the equipment supplied by us to the exclusion of all other claims by the Purchaser, without prejudicing paragraph 7.3. That means that we remedy free of charge defects regarding erection, commissioning or repair as far as there exists a third party liability coverage or other insurance coverage. If a part mounted by us is damaged due to our fault, we will arrange repair or replacement at our own discretion.
- 7.2.** We are not liable, if the defect is of irrelevant interest to the Purchaser or if the defect is not attributable to our fault. In addition we are not liable, if changes or services were performed by the Purchaser or by a third party without our prior written consent. Only in urgent cases of operating safety endangerment and to avert disproportionately severe damages, whereof we have to be informed immediately, or if we have failed to meet a set appropriate deadline to remedy a defect, has the Purchaser the right to remedy the defect himself or by a third party.
- 7.3.** We are not liable for damages incurred to objects other than to the erection object itself. This applies especially to direct or indirect damages arising – whatever the legal basis - during erection, repair or commissioning. This exemption from liability does not apply, if
- a) the damage has been caused by our staff deliberately or due to gross negligence;
 - b) a culpable breach of duty by our staff has led to a loss of life or physical harm;
 - c) we have maliciously concealed any non-compliance or defect or if we have guaranteed their non-existence.
 - d) we are liable for damages to persons or to goods according to currently applicable German law.
- We are also liable for culpable infringements of important contractual obligations by our personnel and for negligence of the above mentioned persons. In case of negligence our liability is however restricted to damages which are usually provided for in a contract. We are not liable for work performed by our personnel which is not in direct connection with the ordered scope of performance.
- 7.4.** The purchaser shall inform us immediately about damages he has noticed. The purchaser's claims expire 12 months after completion of the work/performances.

8 Applicable Law

Only German law excluding the UN-purchase law is applicable between us and the purchaser, if no other agreement has been made.

9 Court of Arbitration

All disputes arising in context with this contract or its validity will be finally settled by one or more arbitrator(s) to be determined according to the regulations of the court of arbitration of the International Chamber of Commerce to the exclusion of due legal actions.