

1 Scope

- 1.1 These Conditions shall apply to all Contracts for erection, erection supervision, commissioning and trial operation abroad (hereinafter referred to as "Work").

Erection supervision includes the advice or the technical instruction given to personnel belonging to the Client or a third party contracted by him and, as far as practicable, the control of the work executed by these personnel based on the advice and/or instructions given.

- 1.2 In the case of overhaul, repair, service work and the like, the Contractor's "Conditions for Servicing and Modification Work (Foreign Countries)" shall apply with priority over these Conditions.

Should the Contract also cover deliveries, these shall supplementarily be subject to the "General Conditions of Supply and Delivery for Products and Services", published by the Zentralverband Elektro- und Elektronikindustrie e.V. (ZVEI), Germany (except for Section VI "Erection and Installation" and except for Section XIII.2 as to the applicable law).

2 Conclusion of Contract

The Contractor's conditions shall apply to all transactions. Any other conditions stated by the Client shall not be considered as binding by the Contractor, even if the latter does not object to any such conditions. This shall also apply in cases where the Client expressly excludes the validity of the Contractor's conditions in his order. Other conditions or modifications of the Contractor's conditions will be considered valid only if confirmed in writing by the Contractor.

3 Contractor's Obligations

The Contractor agrees to carry out the Work in a workmanlike manner and with qualified personnel of his own or of a third party.

4 Technical Documentation

All the technical documents shall remain the Contractor's property and shall not be copied, duplicated or made accessible in any way to a third party without his written consent. Such documentation shall only be used for erection work, commissioning, operation and maintenance in connection with the products and services provided by the Contractor

5 Co-operation of the Client

- 5.1 The Client shall undertake all that is deemed necessary to ensure that the Work is started on time and performed without hindrance or interruption.
- 5.2 The Client shall be responsible for performing any site and other preparatory work in a workmanlike manner at his own cost in accordance with the documents supplied by the Contractor, if any.
- 5.3 The Contractor's personnel shall not be called upon until all the preparatory work has been completed.
- 5.4 The Client shall ensure that all the entry, exit, residential, work or any other permits necessary for the Contractor's personnel are obtained in due time.
- 5.5 At his own cost, the Client shall make the necessary arrangements for accident prevention. In particular, he shall bring to the attention of the Contractor any matter which has to be observed in his interest or that of other contractors, or where local regulations have to be complied with.
- The Contractor shall be entitled to refuse or stop to work if safety is not assured.
- 5.6 In the event of the Contractor's personnel being involved in an accident or becoming ill, the Client shall provide the necessary assistance.

- 5.7 The material to be erected shall be stored in such a way that it is properly protected against any damage or deterioration. Before the commencement of Work, the Client shall check whether the material is complete and free from damage, in the presence of the Contractor's personnel. Should any items be lost or damaged during the storage period they shall be replaced or repaired at the cost of the Client.
- 5.8 The Client shall ensure that the access facilities to the site are in a usable state and the place of erection in such a condition that Work may be started at any time. Furthermore, he shall ensure free access to the place of erection and arrange for the provision of all necessary rights of way.
- 5.9 The Client shall arrange for the provision of heated or air-conditioned, lockable rooms, equipped with adequate sanitary installations, for the site management and the Contractor's personnel. Furthermore, the Client shall place lockable dry rooms for the storage of material, tools etc. at the Contractor's disposal. All these rooms shall be located within the immediate vicinity of the place of work.
- 5.10 At his own cost and in accordance with the instructions given by the Contractor's personnel or as specified in the Contractor's erection programme, the Client shall provide the following in due time:
- 5.10.1 Skilled personnel (fitters, welders, electricians, bricklayers, painters, plumbers etc.) and non skilled labour, with the necessary tools and equipments. Such persons shall follow the instructions given by the Contractor's personnel. Nevertheless, they will remain the Client's employees, subordinated and responsible to him.
- 5.10.2 The Contractor recommends that the future operating personnel should assist in the erection work so that they can familiarize themselves with the Contractor's engineering and techniques. The Contractor is prepared to make special arrangements for the technical training of the Client's personnel.
- 5.10.3 Cranes and lifting tackle, which are to be in proper working order, the necessary operating personnel, suitable scaffolding as well as means of transport for personnel and material, appropriate workshop facilities and measuring devices.
- 5.10.4 The necessary consumables and materials required for installation, cleaning and lubrication, as well as small items for erection purposes.
- 5.10.5 The necessary electrical power and lighting as well as heating, compressed air, water, steam and operating media etc., including the required connections to the place of erection.
- 5.10.6 If required, means of communication such as the telephone, telex etc.
- 5.11 The Client shall ensure that the respective permits for the import and export of tools, equipment and material are obtained in due time.
- 5.12 On completion of the Work, all tools and equipment provided by the Contractor shall be returned without delay to the destination specified by the Contractor at the Client's risk and expense.
- 5.13 If the afore-mentioned requirements are not or only partially fulfilled, the Contractor shall be entitled to undertake same himself or to call upon the services of a third party. The costs incurred for this non-fulfilment shall be borne by the Client. He shall also be liable for any claims made against the Contractor by a third party.
- 5.14 The Client shall bring to the attention of the Contractor any special statutory, governmental and other regulations concerning erection and operation of the plant.

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6 Work Not Covered by the Contract

Without the Contractor's written permission, the Client shall not be allowed to call upon the Contractor's personnel to perform Work not covered by the Contract. The Contractor will not accept any liability for Work performed by order of the Client but without specific instructions given by the Contractor.

7 Working Time

7.1 The normal working time, as well as overtime, late work, night work and work on Sundays or public holidays is governed by the tariff agreement of the metal industry of North Wuerttemberg/North Baden of the Federal Republic of Germany.

7.2 The normal daily working time is 8 hours within the limits of 06.00 and 19.00 hours. The normal weekly working time is 40 hours, generally distributed over a period of 5 working days. If, for reasons beyond the Contractor's control, the working time is less than that specified, the Contractor shall charge the normal working time. The working hours of the Contractor's personnel shall be distributed according to the Client's requirements and the local conditions.

7.3 Any hours worked in excess of the normal daily or weekly working time shall be regarded as overtime. Overtime shall only be permitted by mutual agreement. In general, it should not exceed the daily working time by more than two hours and the weekly working time by more than ten hours.

7.4 Late working time shall be considered to mean the working time starting after 12.00 hours and ending after 19.00 hours.

7.5 Night-work shall comprise those hours worked between 19.00 and 06.00 hours.

7.6 Overtime night-work shall comprise overtime hours worked between 19.00 and 06.00 hours.

7.7 Sunday work and work on public holidays shall comprise the working hours performed on Sundays and public holidays between 00.00 and 24.00 hours. Sundays and public holidays shall be those days which are general rest days at the site.

Good Friday, Corpus Christi Day and the 25th December shall be considered public holidays. Work on Sundays and public holidays shall only be allowed in case of emergency and by mutual agreement.

8 Travelling and Other Time Deemed Equivalent to Working Time

8.1 Travelling time as well as a reasonable preparatory and finalizing period in connection with the Contract (reporting and evaluating) shall be regarded as working time in accordance with Clause 7.

The following shall be deemed as travelling time:

- the period required for travel to and from the site
- the time needed to move into the accommodation on the site, as well as for settling the arrival and departure formalities.

8.2 If no reasonable accommodation and catering facilities can be found in the vicinity of the place of work, the time required daily for the trip between the place of accommodation to the site and the place of work, in excess of 30 minutes per trip, shall be charged as normal working time. All the expenses incurred in this respect, as well as the cost of an adequate means of transport shall be charged to the Client.

8.3 If, for any reason beyond the Contractor's control, the Contractor's personnel are hindered in their work or detained after termination of Work, the waiting time shall be charged

as working time. All the other associated costs shall be payable by the Client. This shall also apply to any other waiting times for which the Contractor is not responsible, e.g. local public holidays.

9 Charges for Personnel and Ancillary Costs

9.1 The work shall be charged on a time and material basis (according to result) or at lump sum prices or on a unit price basis. Unless otherwise agreed upon, the Work shall be charged according to result.

9.2 Work charged according to result

The Work performed shall be charged as follows:

9.2.1 Personnel costs

9.2.1.1 On presentation of the time sheets, the Client shall verify the time expended by the Contractor's personnel with his signature. If this verification is not undertaken by the Client in due time, the entries of the Contractor's personnel shall serve as a basis for calculation.

9.2.1.2 The rates/additions specified in the Rates Schedule shall be valid for Work conducted during normal working hours, overtime, night-work, Sunday work and Work performed on a public holiday, travelling time and any other time deemed equivalent to the working time.

9.2.1.3 In the event of Work being conducted under dirty or difficult conditions, e.g. at great heights or depths, or if special protective clothing and/or breathing apparatus have to be worn, the Contractor shall make a "difficult conditions" surcharge for each working hour (in accordance with the Rates Schedule) in addition to normal price rates and the daily allowance.

9.2.2 Travelling costs

9.2.2.1 The costs for the journey to and from and within the country concerned, — i.e. per rail, ship, aeroplane or another means of transport — including the necessary incidental expenses, such as insurance, freight and customs duties for luggage, passport and visa fees, the issue of entry, residential and work permits, medical examinations on leaving and returning to the home country, as well as vaccination of the Contractor's personnel, shall be payable by the Client according to time and cost involved.

9.2.2.2 As long as special conditions do not necessitate the use of another class of travel, the Contractor shall charge on the following basis:

- for air: economy class
- for rail travels and journeys by sea: 1st class
- for journeys with car: kilometre allowance according to Rates Schedule.

9.2.3 Daily allowance (living expenses)

The Contractor's personnel are entitled to healthy and sufficient food as well as good and clean, heated or airconditioned individual accommodation on the erection site or in its immediate vicinity. The daily allowance rates specified in the Rates Schedule shall be charged to cover the catering and accommodation costs, as well as incidental expenses for beverages, laundry etc., as far as these costs and expenses are not directly taken over by the Client.

9.2.4 Home leave

The Contractor's personnel shall be entitled to home leave. The costs for the journey from the place of erection to the location of the Contractor's business and back shall be borne by the Client. The time spent for travelling to and from the place of erection as well as the daily allowance rates shall be charged on the basis of Items 8.1, 9.2.2 and 9.2.3. As long as conditions on the site allow, the Contractor's personnel may decide to take their wives with them, or have them follow, instead of being entitled to home leave. In such cases, the Client shall only bear the costs of a trip home.

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9.2.5 Tools and equipment costs

The daily and hourly rates of the Contractor's personnel include the costs of a basic supply of normal tools and simple devices. If special devices and instruments are required for the performance of the Work, adequate hire rates shall be charged from the day of dispatch to the day of their return to and arrival at the place of dispatch. As a rule, such rents shall amount to 2 % per week of the respective purchase price. Items not returned by the Client shall be charged to him at the respective replacement price. Transport and insurance costs, as well as further expenses, dues and fees associated with the import and export of any items shall be charged to the Client.

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 In case of illness of or accident to the Contractor's personnel, the Client shall bear the costs for reasonable and proper medical treatment, including living expenses and nursing costs as well as the costs of all medicines as far as these costs are not reimbursed to the Contractor's personnel under current social insurance legislation. The Client shall pay the agreed daily allowance for the period in which the employee is unfit for work. It will be reduced accordingly for persons undergoing hospital treatment.

In the event of a member of the Contractor's personnel having to return home because of illness or accident, the Client shall bear the costs involved as well as the travelling costs for the sending of a replacement person.

9.2.8 Taxes, fees, dues, social insurance contributions or their equivalent which, in connection with the Contract, have to be paid by the Contractor or the Contractor's personnel outside the Federal Republic of Germany shall be charged to the Client.

9.3 Work performed on a lump-sum basis

9.3.1 The agreements made in writing shall apply to the scope of work undertaken on a lump-sum basis. The lump-sum price shall cover the agreed extent of work to be performed by the Contractor. The lump-sum price is conditional upon the non-hindrance of the Work, and the timely completion of any preparatory or ancillary work to be performed by the Client.

9.3.2 Any additional effort for which the Contractor is not responsible, e.g. subsequent modifications to the content or the extent of the agreed Work, as a result of waiting time, reworking, additional travelling time etc. shall be charged to the Client. The charges shall be in accordance with Clause 9.2.

9.4 Work performed on a unit price basis

9.4.1 Charges shall be made at the agreed unit prices. Travelling expenses, incidental travelling expenses and daily allowances (living expenses) shall be charged according to Items 9.2.2 and 9.2.3.

9.4.2 Charges for any additional effort shall be made in accordance with Clause 9.3.

9.5 Reservations with respect to rates

The Contractor reserves the right to change the rates as per Items 9.2 and 9.4 if up to the beginning of the Work or in the course of the Work the tariff agreements for wages and salaries, social legislation, other legal provisions or the costs of living should change or if the fixed daily allowances should not be sufficient.

10 Terms of Payment

10.1 Unless otherwise agreed, the accumulated erection costs shall be invoiced monthly at the end of each month. The invoices shall be paid immediately, net cash, in the contractual currency. The mode of payment shall be fixed for every

individual case. Payment shall be considered to have been made on the day on which the respective amount is available to the Contractor.

10.2 The Client shall neither withhold payment nor make any deduction whatsoever on the grounds of complaints, claims or counter-claims not recognized by the Contractor. Payment shall also be made if, for reasons beyond the Contractor's control, the execution of the Work is delayed or prevented.

10.3 If the Client fails to make payment on the agreed due dates, the legal consequences of the delay shall become effective without prior notice. Without prejudice to any other or further rights or claims, interest on defaulted payment shall be charged at the rate (in per cent) being the sum of 8 plus the amount of the then actual base rate under the legislation concerning the former discount rate of the German Federal Bank (i.e. 8 per cent above the "Basiszinssatz" under § 1 Diskontsatz-Überleitungs-Gesetz). Payment of such interest shall not release the Client from his obligation to make payment on the agreed dates.

10.4 In the event of late payment all amounts payable to the Contractor shall become due immediately.

11 Time Schedules for the Performance of Work

11.1 Dates and times specified for the performance of the Work shall only be considered binding if they are confirmed by the Contractor in writing. The scheduled time shall begin as soon as all the pre-requisites for the beginning of Work are fulfilled. It shall be regarded as being met when the Work has been completed on the due date of termination or, if the work is carried out in stages, with the completion of the respective stage.

11.2 Work shall also be considered completed if parts are missing or reworking is necessary, as long as the readiness for operation is not impaired.

11.3 The time shall be reasonably extended

- if the information required by the Contractor to execute the Work is not received in due time or if subsequent changes made by the Client delay the Work

- if the Client is in arrears in meeting his contractual obligations and especially if he does not meet his payment obligations in accordance with Clause 10 or his obligations under Clause 5, or if his other contractors should be behind schedule in their work

- in circumstances for which the Contractor is not responsible, particularly in the case of mobilization, war, civil war, riots, sabotage, labour disputes, accidents, illness, late or deficient deliveries of the necessary materials, actions and omissions on the part of administrative or governmental authorities, unforeseen transport difficulties, fire, explosion, natural disasters.

11.4 If an agreed, binding schedule is not fulfilled, for reasons for which the Contractor is solely responsible, the Client, should he have suffered damages as a result thereof, may demand liquidated damages for this delay amounting to 0.5 % per completed week up to a maximum of 5 %. The percentage figure for liquidated damages shall be calculated from the price of the Contractor's Work for the respective part of the plant, which because of the delay cannot be put into operation at the scheduled time. Further claims and rights in respect of delays are excluded. For periods of completion exceeding three months, no claims for liquidated damages shall be due for the first two weeks of delay.

The preceding limitations of the liability for delay shall not apply to Contractor's intention or gross negligence, but shall apply to the intention or gross negligence of persons employed by the Contractor for the performance of Contractor's obligations.

11.5 If, for any reason beyond the Contractor's control, the Contractor's personnel are exposed to any danger or considerably hindered in executing their work, the Contractor shall

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be entitled to call back his erection personnel. In such a case or in cases where the Contractor's personnel are detained after termination of Work, the waiting time charged according to the specified hourly or daily rates as well as the travelling costs including the catering and accommodation costs shall be borne by the Client.

12 Risk of Damage or Loss

12.1 During the performance of Work the Client shall bear the risk of loss or damage with respect to the material to be mounted. Should the plant/installation etc., on which the Contractor's personnel have been working, be destroyed or impaired for reasons beyond the Contractor's control, the Contractor shall be entitled to the contractual payment for the Work performed.

12.2 The Client shall also bear the risk for the tools, equipment and material provided by him.

13 Liability

13.1 Notwithstanding anything contained in the Contract to the contrary, Contractor's liability (including his employees, agents, subcontractors) – irrespective of the legal grounds (f.i. in connection with defects, delay, third party intellectual property rights, indemnity, recall actions) - shall be as follows:

a) ABB shall not be liable for loss of profit, loss of revenues, loss of use, loss of production, costs of capital or costs connected with interruption of operation, loss of anticipated savings or for any special indirect or consequential damage or loss of any nature whatsoever; however, Contractor's liability for delay shall be as laid down in Section 11.4;

b) Contractor's total liability in respect of any and all claims for damages or losses which may arise in connection with its performance or non-performance under the contract shall in no event exceed 100% of the contract price.

The preceding imitations shall not apply to Contractor's intention or gross negligence, but shall apply to the intention or gross negligence of persons employed by the Contractor for the performance of Contractor's obligations.

13.2 The Client shall be responsible for any damage caused by his personnel. This shall also apply if the Contractor's personnel are directing or supervising the Work, unless it is proven that they have acted with gross negligence in the course of instruction or supervision.

The Client shall also be responsible for damage that is sustained due to the use of defective tools, equipment and materials that he has placed at the Contractor's disposal. This shall also apply if these have been employed without previous objection by the Contractor's personnel.

14 Warranty

14.1 The Contractor warrants for a period of twelve months after the completion of the Work and in accordance with the following conditions, that the Work has been carried out in a workmanlike and careful manner.

14.2 If the Work is interrupted for reasons specified under Clause 11.3, the period of warranty for the work previously completed shall commence at the latest three months after the beginning of the interruption.

14.3 Any deficiencies in the Work detected during the warranty period on plants, installations etc. on which such work has been carried out, 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 the Contractor's supervision by the Client'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 have acted with gross negligence in the course of instruction or supervision.

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

14.5 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.

14.6 Any claims and rights relating to deficiencies other than those specified under Clause 14.1 to 14.5 are excluded.

15 Arbitration and Law Applicable

15.1 **Any disputes arising from the Contract and the formation of the Contract shall be finally settled by a court of arbitration, without recourse to legal action.**

Each party shall appoint an arbitrator. These arbitrators shall elect a third arbitrator as chairman. The chairman shall be of a nationality other than the parties and shall have a legal education which would qualify him to act as a judge of a law court. If one of the parties fails to nominate its arbitrator within 30 days after it has been requested to do so by the other party or if the two arbitrators fail to come to an agreement with regard to the election of the chairman within 30 days, the President of the Supreme Court of the Canton Zurich (Switzerland) shall be asked to appoint the chairman. The court of arbitration shall decide on the place and procedure of arbitration by taking into account the enforceability of the award. The award shall give the reasons in writing by stating the contractual conditions and, if applicable, the legal rules on which it has been based.

Should such an award not be enforceable, Mannheim shall be considered to have been agreed upon as the exclusive place of jurisdiction. Nevertheless, the Contractor shall be entitled to bring the dispute before the competent court in the Client's country.

15.2 The Contract shall be governed by Swiss Law excluding the rules of the UN Convention on Contracts for the International Sale of Goods.

16 Final Conditions

16.1 Changes to the Contract shall only be binding if effected in writing.

16.2 Any statements, irrespective of their nature, shall only be binding on the Contractor when confirmed by him in writing.

16.3 Should any provisions herein prove to be ineffective, this shall not affect the validity of the remaining provisions. The parties agree to replace any invalid provisions with new ones which are consistent as far as possible with the economic objective of the Contract.