

## ANNEX 2

to the

## GENERAL COMMERCIAL TERMS AND CONDITIONS

for the purchase of  
plants, plant components and services

Edition July 2017  
("Annex 2 GCC 07/2017")

### **20. TERMS AND CONDITIONS FOR CARRYING OUT ASSEMBLY AND COMMISSIONING SERVICES**

#### *20.1. Validity*

The following rules apply in addition to and in connection with the provisions according to Articles 1 to 18 of GCC 07/2017.

#### *20.2. Standards, provisions, laws in the country of deployment:*

- 20.2.1. The Contractor is obliged to strictly adhere to all laws, regulations, rules and provisions applicable or adopted in the country of deployment during the execution period.
- 20.2.2. The Contractor expressly declares that he is aware of the subject matter of the contract, that he is aware of the local conditions, customs, material and operating conditions in the country of deployment and at the construction site and that he takes into account all external circumstances throughout the execution. Where the Contractor does not have sufficient information in accordance with the preceding paragraph, he will familiarize himself with the information at his own cost, in a timely manner. Furthermore, the Contractor confirms that prior to signing the contract he has familiarized himself with the construction site and its surroundings, with the local soil conditions and working conditions, traffic conditions and all other conditions relevant for carrying out services / deliveries as well as with the particulars and documents of the Purchaser and / or Final Customer. Damages and disadvantages arising as a result of the Contractor not having properly complied with this obligation shall be borne by him.
- 20.2.3. The Final Customer's relevant professional standards, provisions and factory standards apply, unless otherwise specified in the order and / or the specification.
- 20.2.4. The Contractor declares that he holds all the relevant authorizations for the execution and implementation of the agreed services, also in the country of deployment.

If required in the country of deployment, the Contractor is responsible for the relevant

commercial and tax law registrations of his company. All costs in this connection shall be borne exclusively by the Contractor.

### *20.3.Pricing*

In contrast to Article 3 GCC 07/2017 the following provision applies:

- 20.3.1. Prices shall be understood as fixed charges, (“frei Baustelle”) free construction site, to be calculated for the complete, professional, proper and timely execution of the services, which form the subject matter of the contract according to the generally accepted rules of technology and according to the conditions of this contract.
- 20.3.2. The agreed prices include all expenses in conformity with applicable official, legal and other provisions, rules etc. and include in particular:
- 20.3.2.1. All wages and salaries including wage bonuses and benefits, any work done on weekends, work on public holidays, as well as shift work (7-day week), any extra allowances for extreme working conditions, specific refunds, such as travel expenses, separation allowance, overnight accommodation, national insurance, costs of visa, work permits and residence permits etc.
- 20.3.2.2. All material costs including transport costs along with costs of loading and unloading, packaging and its disposal, cost of equipment including operating materials, cost of provision of tools, subcontractor services and related surcharges.
- 20.3.3. All expenses arising in connection with meeting required deadlines are included in the agreed prices.
- 20.3.4. The prices also include all taxes, levies and duties arising in connection with deliveries and services carried out by the Contractor.
- 20.3.5. As far as not foreseen otherwise in the order, price quotation for deliveries is considered “Delivered Duty Paid” (DDP) at the construction site indicated by the Purchaser according to Incoterms 2010.

### *20.4.Consortium*

Plans for the potential creation of a consortium have to be coordinated with the Purchaser prior to tendering.

### *20.5.Execution of service:*

#### 20.5.1. Purchaser’s Site Manager

The Purchaser’s Site Manager will monitor and supervise plant assembly and installation. These activities do not limit the Contractor’s overall responsibility in any way.

The Purchaser’s Site Manager can give binding instructions at any point in time, such as:

- Removal of materials and plant components from the construction site, if these are not in accordance with the contract in the opinion of the Purchaser’s Site Manager.
- Removal and proper restoration of plants and parts thereof, which were not carried out according to the specifications in the opinion of the Purchaser’s Site Manager.
- Authority concerning the removal of persons of the Contractor or his subcontractor from the construction site (see also Article 20.5.5).

- In the event that services and deliveries are not carried out in accordance with the contract:
- Authority concerning the further use of construction site facilities, equipment, tools, materials etc. The Contractor has to comply with any such instructions immediately and at his expense. If the Contractor fails to comply with these instructions, the Purchaser is entitled to entrust third parties with the execution of these instructions without giving further notice. All costs incurred shall be borne by the Contractor.

#### 20.5.2. Construction site / assembly management contractor

The Contractor has to appoint and nominate in writing an authorized construction site manager. The construction site manager can only be replaced in agreement with the Purchaser's Site Manager.

The Contractor is obliged to carefully examine the execution documents made available by the Purchaser and, in the event of discrepancies, to obtain the relevant instructions of the Purchaser's Site Manager. Concerns with regard to instructions given by the Purchaser or his Site Manager have to be notified in time prior to the execution of the work.

The Contractor has to provide the required construction site management until all work has been completed. At the Purchaser's request, the Contractor is obliged to attend discussions with the Final Customer. Furthermore, the Contractor undertakes to conduct meetings with the Final Customer in connection with the subject matter of the contract only in the presence of a representative of the Purchaser.

#### 20.5.3. Commencement of work

Prior to the commencement of each new service phase, the Contractor's construction site or assembly manager has to coordinate with the Purchaser's Site Management whether the work should be carried out without any changes or if there are any changes. If the Contractor does not coordinate with the Purchaser prior to carrying out the work, the Contractor bears all costs resulting from such an omission.

#### 20.5.4. Interruptions

The Contractor is not entitled to any compensation for waiting and otherwise non-productive periods and / or reimbursements of other costs, if

- his services were interrupted as a result of instructions of the Purchaser's Site Manager, because contractual fulfilment on behalf of the Contractor is questionable.
- a case of force majeure has occurred.
- the services were interrupted as a result of behaviour on behalf of the Contractor's staff, which is in breach of the contract.
- the services were interrupted as a result of official instructions / requirements.
- services of the Final Customer / Purchaser cannot be carried out according to the technical specifications in the event of supply disruptions.

#### 20.5.5. Contractor's Personnel

The Contractor has to ensure that he provides a sufficient number of personnel and with appropriate qualifications. If not otherwise agreed in the order, the Contractor is also responsible for his workers' transport, loading and boarding. All costs incurred shall be borne by the Contractor.

The Contractor is responsible for ensuring that his workers and the workers of his subcontractors comply with and follow the laws and other rules of the country of deployment. This is the case in particular with regard to the import, possession and use of weapons, alcoholic beverages, semi

luxury goods / food and drink, drugs, foreign currency etc. The Contractor has to take care that his staff members respect all festivals and public holidays as well as other customs and traditions of the country. The Contractor has to take adequate precautions to prevent unlawful or disorderly conduct by his staff and is responsible for the protection of persons and property at the construction site and its surroundings.

The Contractor is obliged, while keeping the Purchaser indemnified, to provide only such workers to the principal partner whose employment is in compliance with the relevant legal provisions and whose employment does not cause a violation of mandatory public law of the country of deployment. The Contractor is obliged, while keeping the Purchaser indemnified, in particular, to pay all taxes, fees and other levies resulting from or in connection with the supply of workers as per the contract in question on time.

The Contractor must brief his staff of the construction site regulations and assembly regulations applicable and furnish proof thereof. The Purchaser reserves the right to remove those staff members provided by the Contractor who do not have the relevant qualifications or behave improperly towards representatives of the Purchaser, the Final Customer or other persons at the construction site. All costs incurred in the process shall be borne by the Contractor. Any staff members sent to the construction site by the Contractor are deployed for the fulfilment of the contract in question only. The Contractor must not deploy his staff for other purposes nor must he remove his staff members, either in full or in part, without the Purchaser's permission.

The Contractor must ensure that his management has good command of spoken and written German language as well as the contract language specified in the tender. If the management staff members do not have a good command of the language(s), the Contractor has to provide interpreters trained accordingly for the entire duration of the work at the construction site at the expense of the Contractor.

#### 20.5.6. Material, equipment

The Contractor must provide all material and equipment necessary for the fulfilment of the contract, unless expressly specified otherwise in the order. The quality of the material must comply with the tender specifications and the standards and provisions specified in the order and must be documented at the Purchaser's request.

If materials are used, for which there is no quality specification, the Contractor must provide appropriate evidence of quality. These materials should be used only with the Purchaser's express approval. The Contractor must ensure timely provision of appropriate supplies of materials, components and resources. Any consequences resulting from a delay due to equipment, materials and resources not being available in time, shall be borne by the Contractor. All equipment, machinery, facilities, auxiliaries and components, auxiliary constructions and other services provided by the Contractor are intended for the execution and completion of the defined scope only. The Contractor must not remove such equipment and materials in full or in part without written permission of the Purchaser's Site Manager (which shall not be withheld without reason), nor may he use them for other purposes.

The Contractor has to notify the Purchaser immediately about any concerns the Contractor has with regard to materials, substances, components and tools stipulated by the Purchaser including any instructions given in this connection by the Purchaser.

20.5.7. Provisions made by the Purchaser or the Final Customer:

If the Purchaser or the Final Customer provide any material, prefabricated parts, plant components, documentation etc., the Contractor is fully responsible for their proper use. The Contractor will be charged at daily rates for any potential shortcomings as a result of improper storage or use, loss etc.

The materials etc. to be provided by the Purchaser or Final Customer must be requested by the Contractor in time from the Purchaser's Site Manager by means of an auditable listing, staggered according to actual, necessary delivery dates and quantities.

*20.6.Changes to the scope of deliveries and services*

The Purchaser may change or amend the scope of deliveries and services at any time. The Contractor will implement the changes to the scope of deliveries and services in accordance with the conditions specified in the order.

Changes in quantity versus the particulars of the tender specifications do not, under any circumstances, entitle the Contractor to any changes of the agreed unit prices. Additional claims under the provisions of this title, i.e. additional wages or compensation, are ruled out.

The Purchaser has to be notified of any changes of deadlines arising from this within 2 working days in writing and these changes have to be coordinated with the Purchaser.

*20.7.Deliveries and services not documented; hourly wage work*

20.7.1. The Contractor must not carry out deliveries and services, which are not part of the order without written instructions of the Purchaser.

If, in the process of carrying out the contractual deliveries and services, the necessity arises for work, for which no unit rates have been agreed in the order, and if this work is ordered by the Purchaser's Site Manager, the Contractor must carry out the required work and immediately submit an additional offer for this scope of work in addition to noting the work in the construction records. Assembly and installation progress permitting, additional offers have to be submitted prior to carrying out the work. The calculation for additional offers will be done on the basis of the order.

Additional offers can only be submitted for work, which, in the opinion of the Purchaser's Site Manager, cannot be assigned to any item of the tender specifications. Additional offers will be examined by the Purchaser, negotiated with the Contractor, and confirmed by documents as a supplement to the order.

20.7.2. The Contractor undertakes to carry out hourly wage work within the scope of the order based on instructions of the Purchaser's Site Manager. The Contractor has to keep daily time sheets for extra services and present these to the Purchaser's Site Manager or his representative for confirmation on the following working day at the latest. Late time sheets will not be accepted. Material used when carrying out hourly wage work will be charged at appropriate daily rates, to be examined by the Purchaser, if not otherwise specified in the order.

If not specified in the order, rates for hourly wage work have to be offered prior to carrying out the work and have to be agreed with the Purchaser so that they can be charged. The specified rates are valid for the term of the contract.

20.7.3. The Contractor will not claim any time consequences or costs for work according to Article 20.7.1 and 20.7.2, which he carries out in line with the scope of the order, and which go beyond the compensation to be agreed according to Article 20.7.1 and 20.7.2.

#### *20.8.Dates / Deadlines*

The Contractor is obliged to adhere to dates / deadlines agreed with the Purchaser, as well as key dates of the Final Customer, at all costs. The flexible execution of the order in the event of potential or actual delays also includes increases in equipment quantities and in the number of staff members, overtime and multi-shift operation.

The acceptance of delayed services does not constitute a waiver of any claims of the Purchaser – resulting from the delay, contractual or legal. Purchaser will not pay any compensation for any changes of dates while carrying out assembly and installation work.

#### *20.9.Safety / Order / Environmental Protection*

20.9.1. The Contractor and his subcontractors must have a work safety system in place.

The Contractor is responsible and liable, solely and in every respect, for complying with the legal and other safety measures, in particular those applying for the respective place of work and applicable for the type of work, as well as laws concerning employment of foreigners etc.

The Contractor must use only work equipment and personal protective equipment in good order and condition, and in compliance with the legal requirements. If there is an obligation for recurring inspection of the work equipment, the equipment must be used only after passing the inspection and in keeping with the inspection provisions and intervals. In the event that safety deficiencies or dangers are detected in his equipment and machinery, the Contractor must immediately have these repaired or remedied. In the event of non-compliance, the Purchaser is entitled to have the equipment and machinery repaired at the Contractor's expense.

The Contractor is solely responsible for the safety and quality of his deliveries and services. The Contractor must immediately and directly inform the competent authority and the Purchaser by means of statutory notice of any work accidents, should such work accidents occur involving any of his staff at the construction site.

The responsible representative of the Contractor must accept instructions by the Purchaser's Site Manager about the specifics of the work place and any related additional safety precautions, i.e. Purchaser's construction site instructions, customer specifications etc., and confirm in writing that he has read and understood them and / or that he has received leaflets about accident prevention. Instructions to this effect given by the Purchaser's construction site management or the safety representative have to be complied with in any case.

This includes that all Contractors take over complete work packages for the execution at customers' construction sites, are fully responsible for the on-site occupational safety of their employees, and it also includes instructions according to the Purchaser's and the Final Customer's occupational safety guidelines, creation of a safe work environment, implementation of safe

operational practices, properly inspected tools, machinery, equipment as well as wearing mandatory personal protective equipment (PPE).

The head of the supplier team will be instructed about all aspects of work safety by the Purchaser's Site Manager at the construction site – the instructions will be documented. The head of the supplier team must pass this information on to his team and must document these instructions; the Purchaser's Site Manager will receive this report (original version). This procedure must be followed whenever there is a change of staff without any request to this effect.

The head of the supplier team and the team must comply with the safety instructions of the Purchaser's Site Manager and the Final Customer's safety experts in any case. The Purchaser's Site Manager must be notified immediately of any deviations that may lead to an impairment of occupational safety.

If the Contractor transfers services to subcontractors, he is responsible for the qualified safety instruction and supervision of their employees. The report (original version) must be submitted to the Purchaser's Site Manager.

- 20.9.2. When carrying out work, all measures must be taken to prevent damage to or pollution of existing plant or railway facilities or road systems as well as any disruption to plant operation. When carrying out work within the plant area, the Contractor must adhere to the restrictions concerning the carriage of goods and passengers (entrance and exit, obligations concerning entry passes etc). The Contractor is responsible for securing equipment and material used at the construction site or place of work against misuse or theft, and this includes the assembly area within the fence.

The places of work and the transport routes must be kept clean at all times, waste and packaging material must be cleared, taken outside, secured against fire and storm and disposed of according to the relevant laws. Any pollution resulting from the work has to be cleared immediately. Should this not happen, it will be carried out by third parties at the expense of the Contractor. All parties concerned are obliged to ensure smooth cooperation at the construction site and to arrange clarification of matters under dispute with the involvement of the Purchaser's Site Manager in time.

- 20.9.3. The Contractor is obliged to take all necessary measures (i.e. containment, waste disposal etc.), in order to comply with the legal provisions and requirements concerning environmental protection.

## 20.10. *Liability*

- 20.10.1. The Contractor is responsible for any damages caused by him.

20.10.2. The Contractor's liability is categorically not repealed as a result of any insurance provided by the Purchaser. Where the Purchaser takes out insurance also for the interests of the Contractor, the Purchaser undertakes fiduciary safeguarding of the insurance-related claims of the contractor, without accepting the risks, rights and obligations of the contractor himself. Any excess shall be borne by the contractor.

- 20.10.3. In the event of damages and or pollution in the construction / assembly area of the Contractor, if it is not possible to determine without doubt who caused such damages or pollution, all companies involved in the construction project at the time of the event are liable for making good the damages and removing pollution in proportion to the respective order values.

- 20.10.4. The Contractor undertakes to keep the Purchaser / Final Customer and third parties indemnified against all claims with regard to any damages or accidents that his staff might suffer.
- 20.10.5. The Contractor is fully responsible for the actions of his staff within and outside the area of the construction site. He has to make good any damage caused to the Purchaser and / or Final Customer and / or third parties by his staff.
- 20.10.6. In contrast to Article 11.2 GCC 07/2017, the warranty period according to the legal requirements applicable at the place of construction, but at least 36 months from the date of approval of the entire plant, is applicable for assembly services.

*20.11. Invoicing*

In addition to Article 4 GCC 07/2017 the following applies:

- 20.11.1. Invoices for extra services must be numbered consecutively and submitted separately.
- 20.11.2. The final invoice according to Article 4 GCC 07/2017 can only be submitted once all potential shortcomings and additional points have been taken care of. Any necessary invoicing documents such as quantity calculations, settlement schedules, natural photographs, reports on extra scope of services, invoices for material etc., must be attached to the final invoice. Any measurements concerning quantity calculations must be clearly defined and recorded in the maps / designs and photographs and it must be possible to clearly assign them in the calculations.

The Purchaser's inspection period is a maximum of 3 months.

- 20.11.3. The applicable tax provisions in the relevant EU country (in particular VAT) must be taken into consideration in the invoicing process.

*20.12. Contract Language, Applicable Law and Jurisdiction*

- 20.12.1. Language of contract and correspondence  
The contractual language as well as the language used in correspondence shall be English.
- 20.12.2. Jurisdiction and applicable law  
All disputes arising from and in connection with this contract shall exclusively be referred to the courts having jurisdiction for Linz, Upper Austria. These Terms and Conditions shall be exclusively governed by and construed in accordance with Austrian law, to the exclusion of the Austrian conflict of law rules, if any, and the UN Sales Convention.

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For the Purchaser

For the Contractor

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