

ANNEX 1

to the
GENERAL COMMERCIAL CONDITIONS
for the Purchase of
Plants, Plant Components and Services
APRIL 2019
(GCC 04/2019)

21. SPECIFIC TERMS AND CONDITIONS FOR THE EXECUTION OF CIVIL WORKS AS WELL AS ERECTION- AND COMMISSIONING ACTIVITIES

21.1 Validity

The following terms and conditions shall be valid in addition to and in connection with the General Commercial Conditions (GCC 04/2019), Article 1 through 20.

21.2 Standards, Regulations, Laws in the Country of Deployment

21.2.1 The Contractor shall be obligated to strictly obey all applicable laws, directives, regulations and guidelines effective or becoming effective in the country of deployment during execution of the contract.

21.2.2 The Contractor expressly states that he has full knowledge of the subject contract, the local conditions, material conditions, the conditions of deployment on site and of all circumstances related to implementation of the project. In the event the Contractor does not have sufficient information with respect to the above, he shall obtain such information in due time at his own expense. Furthermore, the Contractor confirms that he has familiarised himself prior to the conclusion of the contract with the site and its surroundings, the local soil conditions, working conditions, traffic conditions and all other circumstances relevant to the execution of supplies/services as well as with all information and documents of the Purchaser and/or Final Customer. Any cost and damages resulting from the Contractor's failure to comply with this obligation shall be borne by the Contractor.

21.2.3 The relevant professional standards and regulations as well as internal standards of the Final Customer, shall apply unless otherwise specified in the order and/or the specifications.

21.2.4 The Contractor states that he is entitled to execute and perform the services agreed upon in the country of deployment.

The Contractor is responsible for an adequate registration of his company in compliance with commercial and fiscal laws, if required in the country of deployment.

All costs incurred in this connection shall be borne exclusively by the Contractor.

21.3 Prices

The following regulation shall apply in deviation to Article 3 of GCC 04/2019:

21.3.1 The prices are fixed prices for the complete, proper and workmanlike execution on time of the services under this contract in accordance with the standards of engineering and in compliance with the terms and conditions of this contract. They are understood to be free site.

21.3.2 The prices agreed upon include all expenditures for consideration of the governmental, legal and other regulations and provisions in force, etc., and particularly comprise the following:

21.3.2.1 salaries and wages including all extra pays, difficulty allowances, as well as reimbursement of overnight stays, travelling expenses, bad weather allowance, social insurance, costs for visas, work and residence permits, etc.

21.3.2.2 all material costs including transport costs as well as loading and unloading, packing costs and costs for packing disposal, item-related costs of construction equipment including fuels, stock-keeping of devices, services of subcontractors and related extra charges, etc.

21.3.3 All expenditures incurred for meeting the requested deadlines of implementation are included in the prices agreed upon.

21.3.4 Furthermore, the prices include all taxes, levies, customs, duties, etc., incurred with regard to the Contractor's supplies and services.

21.3.5 Unless otherwise specified in the order, the prices for supplies are "Delivered at place" (DAP) according to Incoterms 2010.

21.4 Consortiums

Any planned organisation of a consortium shall be reported to the Purchaser and shall be subject to the Purchaser's prior written consent. All individual members of a consortium shall be jointly and severally liable towards the Purchaser for performed services. In the event of non-fulfilment or improper fulfilment of the contract in whole or in part by one member, no member shall be released from his liability with reference to a default of another member, but all members shall be jointly and severally liable for the complete and proper fulfilment of the contract.

21.5 Implementation

21.5.1 Purchaser's Site Manager

The Purchaser's site manager shall control and supervise the implementation of contractual work activities. These activities shall in no way restrict the extensive responsibilities of the Contractor.

In particular, the Purchaser shall be entitled to personally carry out all tests and inspections of materials and components considered to be necessary or to have them executed by third parties.

All delays and costs resulting from these tests and inspections shall be borne by the Contractor.

The Purchaser's site manager shall reserve the right at any time to issue binding instructions, such as the following:

- removal of materials and components from the site to the extent that the Purchaser's site manager is of the opinion that they are not in conformity with the contract.
- removal and adequate reconstruction of structures or parts thereof, which in the Purchaser's site manager's opinion have not been constructed in compliance with the specification.
- order to remove the Contractor's personnel or subcontractors from the site (also see Section 20.5.5).
- in the event of non-compliance with the contractual obligations relating to deliveries and services: disposition of further use of site facilities, construction equipment, tools, materials, etc., on site.

All such instructions shall be followed immediately by the Contractor at his own cost. In the event the Contractor fails to comply with such instructions, the Purchaser shall be entitled to entrust third parties with the execution thereof without granting additional extension of time. All related costs shall be borne by the Contractor.

At the Purchaser's request, the Contractor shall make available samples and material specimens for testing free of charge.

21.5.2 Contractor's Site Management

The Contractor shall nominate an authorised site manager and give adequate notice in writing. The replacement of the site manager shall be subject to the Purchaser's approval.

The Contractor shall be obligated to thoroughly check the construction documents prepared by the Purchaser and to request instructions from Purchaser's site manager in the event of discrepancies. Any objections to the instructions by the Purchaser or his site manager shall be indicated in writing in due time prior to execution of the work activities.

The Contractor shall provide the site supervision required until the work is completed.

At the request of the Purchaser, the Contractor shall be obligated to participate in the discussions with the Final Customer. Furthermore, the Contractor shall undertake to discuss the subject matter of the contract with the Final Customer exclusively in the presence of a representative of the Purchaser.

21.5.3 Commencement of Work

Prior to the start of each work segment the Contractor's site manager shall check with the Purchaser's site manager as to whether the work shall be performed in accordance with the contract documents or whether changes have been made. The Contractor shall bear all consequences arising from failure to seek confirmation prior to the start of any work segment.

21.5.4 Interruptions

The Contractor shall have no right to claim compensation for waiting and outage times and for reimbursement of other costs if the following applies:

- The services have been interrupted upon order of the Purchaser's site management because of doubts as to the proper fulfilment
- Force majeure

- Performance of Services was interrupted on account of undisciplined behaviour of the Contractor's personnel.
- Performance has been interrupted upon order of public authorities.
- Services from the Final Customer/Purchaser cannot be provided in accordance with the technical specification due to disturbances of supply.

21.5.5 Contractor's Personnel

The Contractor shall provide personnel in sufficient number and of adequate qualification. Unless otherwise specified in the order, the Contractor shall be held responsible for personnel transportation, accommodation and board. All costs incurred in this respect shall be borne by the Contractor.

The Contractor shall be held responsible for compliance of his own personnel and those of the subcontractors with the laws and other regulations in the country of deployment. This shall apply particularly to the import, possession or use of weapons, alcoholic beverages, food, drugs, currency, etc. The Contractor shall ensure that holidays, days of rest, and other customs of the country are respected by his personnel. The Contractor shall take adequate measures to avoid illegal or wrongful conduct of his personnel and shall be responsible for the protection of persons and property at the site and surroundings.

The Contractor shall inform demonstrably his personnel of the applicable site and erection regulations.

The qualifications required of the personnel deployed are to be substantiated at the request of the Purchaser by certificates (e.g. welding certificates) from an institute approved by the Purchaser. Without giving any reason, the Purchaser may require the personnel deployed by the Contractor to undergo a practical examination, at the expense and risk of the Contractor.

The Purchaser reserves the right to expel Contractor's personnel from site that is not adequately qualified or conducts improperly toward representatives of the Purchaser or the Final Customer or other persons. All related costs shall be borne by the Contractor.

The personnel delegated by the Contractor to the site shall exclusively execute the subject contract. The Contractor shall not employ the personnel for other purposes nor transfer them in whole or in part without the approval of the Purchaser.

The Contractor shall ensure that his managerial staff members are able to speak and write English fluently. In the event the managerial staff members do not speak English fluently, the Contractor shall make available adequately trained interpreters for the entire period of deployment on site.

21.5.6 Materials, Construction Equipment

The Contractor shall make available all materials and construction equipment required for the fulfilment of the Contract, unless otherwise expressly specified in the order. The quality of the materials shall be in compliance with the specification and standards and regulations indicated in the order and shall be documented at the Purchaser's request.

In the event materials are used that are not subject to any quality regulation, the Contractor shall furnish adequate quality certificates. The use of such materials is subject to the express approval of the Purchaser.

The Contractor shall ensure in a timely manner that there is an adequate stock of construction material, materials and consumables on site in due time.

Any consequences regarding delays attributable to delayed availability of materials, construction materials and consumables shall be borne by the Contractor.

All devices, construction equipment, consumables, temporary structures, construction materials and other supplies by the Contractor are intended to be used exclusively for the implementation and completion of the contractual work.

The Contractor shall not remove such devices and materials in whole or in part without approval of the Purchaser's site manager in writing (which shall not be withheld unreasonably) nor shall they be used for other purposes.

The Purchaser shall be informed immediately about the Contractor's objection to the materials, components and equipment specified by the Purchaser and to instructions given in this regard to the Contractor.

21.5.7 Purchaser's or Final Customer's Supplies

In the event materials, prefabricated parts, construction materials, consumables, documentation, etc., are provided by the Purchaser or the Final Customer, the Contractor shall be fully responsible for their proper use. The use of the materials shall be substantiated by a materials accounting system in accordance with the bill of quantity items based on construction drawings. Any deficiencies due to improper storage or use, loss, waste, etc., shall be charged to Contractor's account at current prices. Final invoices without material accounting shall be regarded as incomplete.

The Contractor shall request such supplies in a timely manner and present a list of the materials, etc., to the Purchaser's site manager. The list shall be grouped according to the delivery deadlines and quantities.

21.6 Modifications to the Scope of Supplies and Services

The Purchaser shall have the right to modify and/or supplement the scope of supplies and services at any time. The Contractor shall implement any modifications or supplements to the supplies and services under the terms and conditions set forth in the order.

Modifications in quantities in comparison with the data given in the bill of quantities in no case entitles to a change in the agreed unit prices. Claims under this title, e.g., additional remuneration or compensation are excluded.

The Purchaser shall be given written notice of any changes in the time schedule within 2 working days. The changes to the time schedule shall be approved by the Purchaser.

21.7 Unspecified Supplies and Services, Work on an Hourly Basis

21.7.1 The Contractor shall not execute any supplies and services which are not included in the order without receiving prior instructions in writing from the Purchaser.

In the event the work activities becomes necessary in the course of executing contractually stipulated supplies and services for which the order does not specify any unit prices, and in the event such work is ordered by the Purchaser's site manager, the Contractor shall carry out such work and immediately present a supplementary offer in addition to entering the performed work activities into the site diary.

Supplementary offers shall be presented prior to the performance of these services, provided the progress of the works permits. The calculation of supplementary offers shall be accomplished on the basis of the order.

Supplementary offers shall be given only for work which in the opinion of the Purchaser's site manager cannot be allocated to any item in the bill of quantities. Supplementary offers will be checked by the Purchaser, discussed with the Contractor and confirmed as a supplementary order.

21.7.2 The Contractor shall undertake to carry out hourly work within the scope of the contract, to the extent the Purchaser instructs the Contractor to do so. Each day the Contractor shall list such services performed on an hourly and materials basis and present this list to the Purchaser's site manager or his representative for approval on the following working day at the latest. Lists presented late shall not be accepted.

Materials used during such work – to the extent not already determined in the order – shall be charged at reasonable current prices subject to revision by the Purchaser.

The rates for hourly work shall be determined prior to the commencement of work, unless otherwise specified, and shall be subject to confirmation/agreement of the Purchaser for accounting purposes. The rates determined shall be valid for the contract period.

21.7.3 The work carried out by the Contractor in accordance with Article 21.7.1 and 21.7.2 shall have no effect on the time schedule, and reimbursement in accordance with Article 20.7.1 and 20.7.2 shall constitute the full and final compensation for the work.

21.8 Deadlines

The Contractor shall be obligated to strictly adhere to the agreed time schedule. Flexible execution of the contract includes increased labour forces and/or equipment, overtime hours and shift operations in the event of impending or actual delays.

The take-over of delayed supplies and/or services by the Purchaser shall not be regarded as a waiver of any legal or contractual claim by the Purchaser which might result from such delays.

The Purchaser shall not grant any compensation for schedule or sequence changes during the construction and assembly period.

21.9 Safety/Order/Environmental Protection

21.9.1 The Contractor and his subcontractors shall have a functional safety, health and environmental protection organisation for all activities at the construction site and shall furnish proof of this by a certificate of a safety system such as SCC, BS 8800, OHSAS, etc. The Contractor shall be held solely responsible and liable in every respect for compliance with the legal and otherwise applicable safety measures, particularly for those pertaining to the site and the type of work activities, as well as for all laws pertaining to the employment of foreign workers, etc.

The Contractor shall repair or have repaired any defect that does not meet the respective safety standards in the equipment and machines. In the event the Contractor disregards this stipulation, the Purchaser shall be entitled to have repaired any defect that does not meet the respective safety standards in the equipment and machines at the expense of the Contractor.

The Contractor is solely responsible for the safety and quality of his supplies and services, even in the event they have been provided by the Purchaser or Final Customer. No inspection shall release the Contractor from his full responsibility.

The Contractor shall report all accidents directly and immediately to the competent authority and the Purchaser in the event such accidents involve the Contractor's personnel.

The Contractor's representative shall request the Purchaser's site manager to provide information on the operating conditions and additional safety measures involved prior to commencement of work and shall confirm in writing that he took notice of and received the instruction sheets on the prevention of accidents. Any instructions given by the Purchaser's site manager or the safety personnel shall be observed in each case.

21.9.2 During the implementation of the work activities, all measures shall be taken to prevent damage or contamination of existing plants, railroad facilities and roads and to avoid any hindrances to plant operation. As pertaining to work activities carried out within the Plant area, the Contractor shall observe the restrictions regarding the transportation of passengers and goods (entry and exit, obligation to identify oneself, etc.).

The Contractor shall be held responsible for protecting the equipment and materials used on site against abuse and theft within and without the fenced-in site area.

The workplaces and transportation routes shall be kept clean at all times, waste and packing material shall be removed, taken outside and stored in such a manner that it is protected from fire and storm and disposed in accordance with the applicable legal regulations. All unclean areas resulting from the Contractor's work activities shall be cleaned immediately by the Contractor. In the event the Contractor fails to do his own cleaning, the work shall be outsourced to a third party at the expense of the Contractor.

In the event the party responsible for the unclean area is not determined, the costs incurred for cleaning shall be charged to the account of the Contractor on site at the respective time and shall be calculated proportionally to the respective contractual sums.

All parties involved shall be obligated to ensure smooth co-operation on site and to settle discrepancies in due time in conjunction with the Purchaser's site manager.

21.9.3 The Contractor shall be obligated to take all required measures (for casings, disposal of waste material, etc.) in upholding the environmental-protection laws.

21.9.4 Any breach of safety regulations, regulatory provisions and/or environmental protection regulations whatsoever shall be subject to a contractual penalty, the amount of which shall be regulated in the individual contracts/orders.

21.10 Liability

21.10.1 The Contractor shall be held fully liable for all damages attributable to him.

21.10.2 Any insurance policies provided by the Purchaser shall not release the Contractor from his liability. In the event that the Purchaser takes out insurance policies for the benefit of the Contractor, the Purchaser shall undertake to safeguard the insurance claims of the Contractor, however, without assuming the Contractor's risks, rights and obligations thereunder. Deductibles shall be borne by the Contractor.

21.10.3 For the elimination/correction of any damage and/or contamination within the construction area of the Contractor which cannot be determined to have been caused by a certain party, all companies involved in construction at the time of the event shall be liable in proportion to their individual order values to the extent ordered by the Purchaser.

21.10.4 In the event of any damage and/or accidents involving the Contractor's personnel, the Contractor shall be obligated to indemnify the Purchaser/the Final Customer as well as any third party.

21.10.5 The Contractor shall be fully responsible for actions of his personnel both on and off site. The Contractor shall indemnify the Purchaser and/or the Final Customer and/or third parties for all damages caused by his personnel.

21.10.6 Contrary to Article 11.2 of the GCC 04/2019, the guarantee period for civil works as well as erection/commissioning activities shall be in accordance with legal provisions applicable at the location of the work activities, however, the guarantee period shall in no event expire prior to 36 months from acceptance of the entire plant by the Final Customer.

21.10.7 Contrary to Article 17 of the GCC 04/2019, the passing of risk and ownership shall be in compliance with the Final Customer contract. The relevant provisions are known to the Contractor.

21.11 Invoicing

The following shall additionally apply to Article 4 of GCC 04/2019:

21.11.1 Unless otherwise defined in the order, partial accounts can be rendered on a monthly basis for services carried out by the end of a month.

A preliminary invoice which is subject to confirmation by the Purchaser's site manager shall be enclosed with the partial accounts.

21.11.2 The structure of all accounts shall be in compliance with the items of the bill of quantities.

21.11.3 The accounts on hourly wages and materials shall be numbered consecutively and rendered separately.

21.11.4 The final invoice in accordance with Article 4 of GCC 04/2019 shall not be issued until after elimination of defects or clarification of remaining items, if any.
All necessary accounting documents, such as mass calculations, accounting drawings, site measurements, time and material sheets, material accountings, etc., shall be enclosed with the final invoice. All dimensions of the mass calculations shall be indicated in the drawings and measurements and clearly allocable to the calculation.
The Purchaser is granted a period of up to 3 months to audit the final invoice.

21.11.5 At the time of invoicing, the fiscal regulations applicable in the respective EU country shall be taken into consideration (particularly the value-added tax).