

**General Terms and Conditions
of
Contract
for
Engineering Services
(GCE)**

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1. Contractual Program

The subject of the **purchase order** are engineering services for the development, production, construction, sampling, commissioning, and maintenance of the **project** described in the **purchase order**.

2 . Definitions

The terms used in these GCE mean:

- **Working documents:** Project-independent working specifications from the **Customer** to be adhered to by the **Contractor**, especially site standard documents, which can comprise guidelines, site standards, and forms.
- **Purchase order:** Written individual order, including all annexes, changes, supplements, and amendments.
- **Participant:** Anyone who is commissioned as a subcontractor of the **Contractor** or another contractor of the **Customer** to fulfill the engineering services in connection with the manufacture of the ordered system.
- **On time:** A service is deemed to be **on time** if it is available in full to the **Customer** on the agreed date and has all the properties agreed in the contract.
- **Project:** New construction or modifications to industrial plants or other buildings.

3. Contract Fundamentals

3.1 General

If not agreed otherwise in writing, these GCE apply exclusively. Contradictory or additional provisions from the Contractor do not commit the Customer, even if it has not expressly contradicted these or has accepted services from the Contractor without provision.

3.2 Sequence

In case of contradictions, the following apply in the order below for services provided by the Contractor:

- the terms and conditions of the purchase order,
- the working documents supplied to the Contractor,
- the regulations of these GCE,
- the generally accepted state of the art,
- the relevant laws and regulations for engineering services, especially the specifications of the work agreement and other statutory provisions.

4. Service Obligations

4.1 Principle

The **Contractor** will be responsible for all engineering services required to implement the ordered services. If the **purchase order** and/or the **working documents** contain omissions and do not contain certain services that are necessary for fulfillment of the contract, these services are deemed to have been ordered in the **purchase order** (= included in the scope of services).

4.2 Creating the documents

The **Contractor** will provide all engineering services, especially the documents and calculations it has to provide, fully and correctly. They must be suitable for carrying out the planned **project**, its economic implementation, and economic operation, with special consideration of the criteria of simple operation and maintenance. The **Contractor** must also present the information required to fulfill its engineering services fully and in an understandable manner; for example, on the basis of an inspection list, so that the **Customer** can control quality and quantity.

4.3 Submitting documents

The **Contractor** shall submit to the **Customer** all plans and all other documents it has created or been given in the course of its work relating to the **project** (e.g., calculations, specifications, test reports, expert opinions, operating instructions, logs, etc.) at any time if the **Customer** requests. When these plans and documents are submitted, they become the property of the **Customer**.

The **Contractor** will mark all documents with the date and processing and reference marks in the proper places. The abbreviation of the **Contractor's** company should be stated as the processing department.

The **Contractor** shall provide the **Customer** with all engineering documents, drawings, specifications, computer programs or program segments and other documents and files created for the **Customer** at no additional cost. Files will also be submitted on data media. The information contained in the **purchase order** regarding data formats will apply.

4.4 Retention

Contractor may not retain the documents to be submitted according to Section 4.3 GCE—regardless of the legal basis.

4.5 Non-assignment clause

Assignments on the part of the **Contractor** outside the scope of application of Section 354 a of the German Commercial Code (HGB) are excluded; exceptions require the agreement of the **Customer**.

4.6 External documents

The **Contractor** will check engineering documents and other documents belonging to the **Customer** and other **participants** on its own responsibility, assuming these are significant for fulfillment of the **purchase order**. On the **Customer's** instructions it will use these documents for its own services. The **Contractor** shall immediately inform the **Customer** in writing if it has any concerns in this respect, shall include its own solution suggestions, and shall also cooperate in removing any deficits in the documents.

4.7 Interfaces

The **Contractor** will coordinate interfaces between its services and those of the **Customer** and other **participants**.

4.8 Verification right

The **Customer** may verify the services of the **Contractor** and the services of other **participants** at any time. It may inspect all documents related to the **project** and may insist that they be explained by the **Contractor**.

The **Contractor** will ensure that subcontractors it employs grant the **Customer** an appropriate right to verify documents.

5. Other Contractual Duties of the Contractor

5.1 Meetings

Meetings between the **Contractor** and the **Customer** will generally be held at the **Customer's** premises. Exceptions to this for specific reasons (e.g., accepting models) may be arranged by mutual agreement. The **Contractor** will take minutes of the meetings

5.2 Representation of interests, power of attorney

Within the scope of its services the **Contractor** may and shall protect the rights and interests of the **Customer**. It may not enter into contractual obligations, especially those associated with financial services, for the **Customer**. In particular the **Contractor** may not involve third parties in the name and on the account of the **Customer** and/or place orders or additional orders with **participants** without the prior written agreement of the **Customer**.

5.3 Support in disputes

The **Contractor** shall support the **Customer** in out-of-court and court disputes with **participants** or third parties. This obligation applies also when all the services have been provided.

5.4 Returning IDs

The **Contractor** will ensure that if an employee leaves its company, he or she returns the contractor ID issued by the **Customer** and any authorizations to take drawings or written documents of the **Customer** to the **Customer** without delay.

5.5 Safety regulations

If the **Contractor** provides its services in the **Customer's** sites or plants, it will ensure that it adheres to the statutory and official regulations for accident prevention and the site and/or plant-specific safety regulations imposed by the **Customer** and all other guidelines issued by the trade supervisory authority, the employers' accident insurance fund, etc.

6. Changes and Additional Services

6.1 Engineering changes

If the **Customer** plans to order changes or services not included in the contract (together "additional services") and if the **Customer** requests, the **Contractor** will provide the **Customer** with a written offer including the estimated costs of the additional services. The **Contractor** may carry out the additional services only when the quotation has been accepted in writing by the **Customer**. Preparation of a quotation for additional services will be free of charge for the **Customer**.

6.2 Deadline assurance

If additional services are associated with extending deadlines, the **Contractor** will indicate this in its quotation according to Section 6.1 GCE. This indication is a requirement for any claim for deadlines to be extended.

6.3 Written form

Written agreements will be made for the performance of additional services. If this does not take place in individual cases, regardless of the reason, the **Contractor** will perform the services if the **Customer** requests this in writing and the **Contractor** has no justified reason not to perform them, for example, because the **Contractor's** business is not set up for such services.

6.4 Compensation for additional services

If not otherwise agreed between the **Customer** and the **Contractor**, the additional services will be compensated on the basis of the compensation for the **purchase order**, in other words, especially on the same price basis and with the same discounts.

7. Compensating the Contractor

7.1 Principle

Compensating the **Contractor** is regulated in the **purchase order**. If not agreed otherwise, the agreed compensation includes all the services listed in the **purchase order** and in these GCE, including all incidental costs.

7.2 Due date

The compensation will be paid net within 30 days after the services listed in the **purchase order** and these GCE have been provided in full and **Customer** has received a verifiable invoice. Payments made by the **Customer** do not necessarily mean that it has accepted the services provided by the **Contractor**.

8. Cut-Off Dates and Deadlines

8.1 Responsibility

- 8.1.1 The time schedule contained in the **purchase order** or annex to the **purchase order** will apply. The **Contractor** is responsible for adhering to and checking this time schedule. It will coordinate its services and the services of its sub-contractors smoothly and will align its work accordingly. In particular, the **Contractor** will ensure that the engineering documents are provided to the

Customer on time and on the agreed date. If no time schedule exists, work should be carried out without delay.

8.1.2 If it appears that deadlines cannot be met, the **Contractor** will notify the **Customer** of this in writing without delay, stating the reasons, the new date, and the measures taken to keep the delay as short as possible.

8.2 Penalty

8.2.1 If the time schedule is not adhered to for reasons that are attributable to the **Contractor**, the **Customer** may demand that the **Contractor** pay the penalty agreed in the **purchase order** or may retain this amount. The penalty will also be due if the services are defective or incomplete at the individual deadlines.

8.2.2 Other claims by the **Customer** due to delays by the **Contractor** remain unaffected, although any penalties forfeited may be offset.

8.2.3 Deviating from Section 341(3) of the German Civil Code (BGB), the penalty may also be declared due up to 2 weeks after the **Customer** has received the final invoice.

9. Personnel

9.1 Customer

The **Customer** will provide the **Contractor** with the names of one or more contacts in the **purchase order** who will be responsible for processing the **purchase order**. These contacts will generally be described as representatives in the **purchase order**. This does not give these persons the right to represent the **Customer** in legal matters or to provide statements that change the terms of the contract for the **Customer**.

9.2 Contractor

9.2.1 The **Contractor** will provide the **Customer** with the name of a representative or contact who is responsible for providing all the necessary information and, where necessary, is adequately authorized to clarify material issues and make decisions.

9.2.2 If requested, the **Contractor** will provide the **Customer** with the names of all employees who are deployed to fulfill the **purchase order**. They must be very familiar with the services being provided by the **Contractor**, have the necessary expertise, and, if the **Customer** so desires, be available on site where the **projects** is being implemented and be available without delay for questions by the **Customer** and other **participants** until the commissioning or acceptance phase of the **project**.

9.2.3 The **Customer** may demand that individual employees of the **Contractor** be replaced if it believes that they are unsuitable for the requirements of Section 9.2.2 GCE or for other good reasons. As opposed to Section 831 of the German Civil Code, the **Contractor** may not release itself from its liability for its employees by proving that it has chosen and monitored its employees correctly.

9.2.4 The **Contractor** will obligate the employees it hires to adhere strictly to all guidelines contained in the **purchase order** and the GCE, especially the non-disclosure obligation (Section 15 GCE).

10. Subcontracts and Joint Ventures

10.1 Subcontracts

- 10.1.1 To fulfill the **purchase order** and the GCE (completely or partially) the **Contractor** may subcontract **participants** and/or third parties with the written agreement of the **Customer**. The **Customer** is free to decide whether it gives its consent or not.
- 10.1.2 The **Contractor** will ensure that its subcontractors and their employees have proper employment contracts and are registered for social security contributions.
- 10.1.3 As opposed to Section 831 of the German Civil Code, the **Contractor** may not release itself from its liability for its subcontractors by proving that it has chosen and monitored them correctly.

10.2 Joint venture

- 10.2.1 If the **Contractor** is a joint venture, and when it is commissioned by the **Customer**, it shall name one leading member. If it does not name a member, the member that the **Customer** chooses will be the leading member. This leading member, named by the **Contractor** or the **Customer**, will represent all the members of the joint venture to the **Customer**. Restrictions regarding its authority to represent the other members of the joint venture, resulting from the joint venture agreement, will have no effect as far as the **Customer** is concerned.
- 10.2.2 Every member of the joint venture will be responsible jointly and severally for fulfillment of the contractual obligations, even after the joint venture has been dissolved.
- 10.2.3 The **Customer** will make payments with a discharging effect only to the leading member of the joint venture or according to its written instructions. This will apply even after the joint venture has been dissolved.

11. Termination, Withdrawal

11.1 General

If the **Customer** terminates a **purchase order**, the compensation due to the **Contractor** will be regulated according to Section 645(1) of the German Civil Code with exclusion of the provisions of Section 649 of the German Civil Code; however, the **Contractor** will be adequately compensated for costs for future partial services.

The right of extraordinary termination or withdrawal in case of interference with the basis of the contract or for a compelling reason will remain unaffected. Interference with the basis of the contract or a compelling reason will apply especially if an application is made for insolvency proceedings against the **Contractor's** assets or, in case of a joint venture, against one of the member's assets.

11.2 Procedure in case of extraordinary termination

- 11.2.1 If the agreement is terminated for a compelling reason that is not the responsibility of the **Contractor**, the **Contractor** will be due the pro rata fee for services it has provided up to the point of termination if the service has been provided properly and the **Customer** can use it objectively. In addition, partial services must be complete in themselves. No other claims for remuneration will be accepted. Claims for compensation by the **Customer** remain unaffected.
- 11.2.2 In all other cases of extraordinary termination the **Contractor** will be due the pro rata fee for services it has provided up to the point of termination. No other claims by the **Contractor** will be

accepted unless the **Customer** has acted with intent or has breached an essential obligation of this agreement with gross negligence.

11.3 Customer's right of subrogation

In the event of termination the **Customer** may, but is not obliged to, deal with the **Contractor's** subcontractors in place of the **Contractor** (also individual). The **Contractor** will agree with **participants** it employs that in case the **purchase order** is terminated the **Customer** may, through written declaration to the respective **participants**, enter the respective basic agreements in place of the **Contractor**.

12. Liability for Defects and Compensation for Damage

12.1 Principle of liability for defects

12.1.1 The **Contractor** ensures that it will provide its services in agreement with the contract fundamentals (Section 3 GCE); this refers to the time when the service is accepted.

12.1.2 In case of defects—in addition to any statutory claims and rights—the **Customer**, at its option, may demand that the **Contractor** rectifies the defect or supplies a new object for the **Customer** free of charge and without delay and that it compensates the **Customer** for all expenses resulting from the subsequent fulfillment. In urgent cases or after a prior written warning the **Customer** may rectify the defect itself or have it rectified by a third party at the **Contractor's** expense.

12.2 Period of limitation

12.2.1 Claims for defects by the **Customer** will be statute-barred five years after it has accepted the services.

12.2.2 For defects in title see Section 14.2.1 GCE.

12.2.3 Apart from legally prescribed cases of suspension of periods of limitation, the period of limitation for claims and rights in cases of material defects and defects in title will also be suspended in the time between the notice of defect and the time when the defect is rectified. For wholly or partially newly delivered, replaced, or rectified services, the period of limitation according to Sections 12.2.1 or 14.2.1 GCE will begin anew.

12.3 Cooperation on the part of the Customer

The **Contractor's** liability will not be limited if the **Customer** provides assistance in fulfillment of the agreement. Excluded from this regulation is liability for defects in engineering or other damage that was caused by an express instruction given by the **Customer**. The **Contractor** may invoke these exceptions only if it has warned the **Customer**, especially as described in Section 4.6 GCE.

12.4 Arbitrator

If and to the extent that before or after the **Contractor** has provided its engineering services the **Customer** and the **Contractor** cannot agree on the existence of defects or that services have not been provided in full, a suitable way and/or the cost of rectifying or providing them and/or the resulting claims for a reduction in price by the **Customer**, an arbitrator will decide this conclusively for the parties. If the parties cannot agree on an arbitrator, each party may contact the Chamber of Industry and Commerce of North Westphalia and have it name a certified plant or building expert as an arbitrator. Both parties will pay half the costs of the arbitrator.

13. Insurance

13.1 Scope of insurance

If not agreed otherwise in the **purchase order**, the **Contractor** will take out and maintain the following insurance policies with an indemnity limit of €2.5 million for personal injury, property damage and financial losses; the **Contractor's** deductible may not exceed €25,000:

- 13.1.1 Operating, product, and environmental liability insurances according to AHB (general liability insurance conditions), including especially relevant conditions and clauses for architects and engineers. In particular, the following must also be insured: work on third-party property, processing, work, and custody damage on third-party property and the **Customer's** property, participation in joint ventures, supply and service consortiums, overseas damage (apart from the USA and Canada), dismantling and installation cost cover according to the product liability model, and damage caused by environmental effects in soil, air, and water.
- 13.1.2 Engineering liability insurance that covers all claims by the **Customer** based on faulty engineering, assuming insurance cover is available within the usual framework.

13.2 Proof of insurance

The **Contractor** will present a copy of its insurance policies to prove that it has taken out insurance and paid the premiums.

14. Copyright, Patents, Industrial Property Rights

14.1 Rights to use engineering services

The **Contractor** transfers to the **Customer** the exclusive right to use its engineering services, including the subsequent **project**. The **Customer** may copy, edit, and change the plans and documents it receives from the **Contractor** and may modify the **project**, including its dismantling and demolition.

14.2 Third-party rights, patents and other industrial property rights

- 14.2.1 In connection with its engineering services the **Contractor** must ensure that no third-party rights within the Federal Republic of Germany or in the agreed recipient country are breached. If claims are made against the **Customer** by a third party in this respect, the **Contractor** will release the **Customer** from these claims upon the first request by the **Customer**; the **Customer** may not make any agreements with the third party without the consent of the **Contractor**, especially not a settlement arrangement. The **Contractor's** duty to release the **Customer** from claims relates to all expenses that the **Customer** incurs from or in connection with any third-party claim.
- 14.2.2 If, while fulfilling a **purchase order** an invention is created and the inventor or co-inventor is the **Contractor** and/or employees of the **Contractor**, the **Contractor** will notify the **Customer** of this in writing immediately.
- 14.2.3 If the **Customer** so desires, the **Contractor** will lay unrestricted claim to the inventions or parts of inventions from its employees on the basis of the law on employee inventions and will register these and its own inventions or parts of inventions in its own name for protective rights in countries named by the **Customer**. In this case the **Customer** will pay the **Contractor** the employee inventor compensation on the basis of the applicable regulations and will also pay the costs of registration.

- 14.2.4 The **Customer** will acquire the exclusive, freely transferable and free right to use these inventions or partial inventions as long as the **Customer** pays the costs for maintaining the respective protective right.

15. Non-Disclosure

15.1 Principle

The **Contractor** will treat all information and documents it receives in connection with the **purchase order**, the GCE, and the engineering and implementation of the **project** as confidential for an unlimited time and will use the information and documents only to fulfill the **purchase order**. This applies especially but not exclusively to technical and other information, software programs, measured values, technical and operational workflows, operational experience, expertise, drawings, etc. It also applies to all information that the **Customer** describes as confidential or which is obviously an operational or company secret. The **Customer** may describe information and documents as confidential until the **Contractor** has fulfilled the **purchase order**.

15.2 Involvement of third parties

- 15.2.1 If not required to fulfill the **purchase order** and these GCE, **Contractor** will not disclose any drawings or information, especially not to employees, **participants**, Group or affiliated companies, or other third parties.

- 15.2.2 Disclosure of information and documents to **participants**, Group and affiliated companies or other third parties or any other type of disclosure requires the written consent of the **Customer**.

- 15.2.3 If the **Contractor** discloses information or documents to employees, **participants**, Group or affiliated companies or other third parties, it will obligate them to treat the information and documents as confidential to the same degree that it is obligated to do so.

- 15.2.4 The **Contractor** will return all information and documents physically submitted by the **Customer** to the **Customer** any time it asks for these to be returned, but at the latest when the **purchase order** has been completed.

15.3 Privacy protection, data transfer

The statutory provisions of privacy protection, especially those of Section 5 of the German Privacy Protection Law (BDSG) will apply.

15.4 Flat-rate compensation for damage

If the **Contractor** breaches the obligations contained in Section 15 of the GCE, it will pay 5% of the respective order total for each breach. Higher claims for compensation remain unaffected by this. The **Contractor** may prove that no or only minor damage occurred.

16. Language

The **purchase order** and the GCE will be written in German and/or—at the **Customer's** option—English. In case of contradictions the German version will take precedence.

Correspondence will be in German and/or—at the **Customer's** option—English.

All drawings, technical documents, annexes, diagrams, operating and maintenance manuals, catalogs, specifications, standards, and other documents to be drafted or procured by the **Contractor** will be in German and/or—at the **Customer's** option—English.

If the **Customer** wishes that the documents named in this Section 16 be drafted in English, this will not entitle the **Contractor** to claim additional remuneration.

17. Applicable Law

The law of the Federal Republic of Germany will apply to all legal relationships resulting from the **purchase order**, the GCE, or any secondary business.

18. Jurisdiction

The sole place of jurisdiction will be the **Customer's** headquarters, if the **Contractor** is a registered merchant. The **Customer** may also bring legal action in the court responsible at the **Contractor's** headquarters.

19. Amendments, Effectiveness

Amendments or supplements to the **purchase order** and the GCE must be in writing. This also applies to the written form clause.

20. Voidance Clause

Should any individual term or condition of the **purchase order** or the GCE be or become void or unenforceable, the validity of the remaining terms and conditions will in no way be affected. In such case the void and/or unenforceable term or condition will be replaced by a relative term or condition coming as close as possible to the sense and spirit and purpose of the **purchase order** or the GCE.