

Terms and conditions of GASCADE Gastransport GmbH and associated companies for construction and installation work



(hereinafter referred to as Company) - issued: March 2012 -

1. General information

These terms and conditions apply to contracts for construction and installation work issued by Company. Any variation to the terms and conditions stipulated by Contractor will not be recognised. Even if the goods, work or services have been supplied and accepted by Company without reservation, Company will not recognise other terms and conditions stipulated by Contractor.

2. Contract components of the terms and conditions for construction and installation work

The following components shall apply in the order set out below:

- a) the general terms and conditions of construction and installation work of GASCADE Gastransport GmbH and associated companies;
- b) part C of the German regulation governing construction work contracts in the version applicable at the time when the contract is concluded.

3. Scope of work

3.1 Unless otherwise indicated in the performance description, the following conditions shall apply:

Contractor is required to appoint in writing a site manager for the whole construction period until the time of acceptance. No change of such appointment is permissible without notification of and consent by Company.

3.2 Contractor is required to inspect the site at an early stage when tendering or negotiating the contract. Any obstructions and difficulties must be clarified and priced when tendering or during the contract negotiations. If this is not done, any obstacles and difficulties that would have been identifiable on careful inspection to ensure proper performance are covered by the agreed prices.

3.3 Furthermore Contractor has the following duties, which are covered by the agreed prices:

- a) provision of the site facilities for the entire scope of services provided by Contractor;
- b) supply of electricity, water and sewage services to the construction segment during the construction period and until acceptance, including any connection charges incurred, if not otherwise agreed;
- c) assuming responsibility for traffic safety for the contracted work, as well as compliance with the accident-prevention measures stipulated by the employers' liability insurance association as well as the HSE guidelines issued by Company;
- d) protection of the work already performed against damage and theft until acceptance; in particular protection against weather damages and ground water;
- e) locating and protecting existing pipelines and cables, both underground and in structural units;
- f) obtaining the necessary acceptance from local authorities, including all own costs and charges incurred as a result, if not otherwise agreed;
- g) carrying out the surveying work required during the construction period, including any costs and charges incurred as a result;
- h) preparing all as-completed documents and revision plans as well as submission of the operating documents, operating instructions and maintenance instructions, if not agreed otherwise before acceptance of the works;
- i) provision and maintenance of all necessary access routes to the construction segment and affixing a construction sign in consultation with Company, if not agreed otherwise;
- j) daily cleaning of the site to remove waste, packaging material etc. relating to this contract; disposal of such waste;
- k) cleaning, maintenance and securing of paths and roads;
- l) taking part in all construction meetings that relate to this contract;
- m) continuous employment of at least one German-speaking employee on site, in all key positions;
- n) checking documents provided by Company, and any future documents provided by Company, to ensure that they are complete and technically suitable; Contractor is required to check all information provided; if Contractor believes that a discrepancy has arisen, it is required to point this out to Company without delay and in writing; and
- o) observing the accepted engineering standards and codes of practice. In so far as specific characteristics are stipulated by the written or unwritten rules of construction practice, such characteristics are deemed to be contractually agreed. If there are several technically feasible performance options, the one offering better quality must be chosen.
- p) preservation of evidence concerning adjacent development.

4. Contract performance

4.1 Contractor is required to inform the Company without delay and in writing if it has any concerns about the intended way in which the work is to be carried out, about instructions issued by Company, about the quality of the materials and structural elements supplied by Company or about the performance of other contractors.

4.2 Contractor is required to inform Company without delay and in writing of any necessary deviation from the nature and scope of the agreed performance. Company's prior written approval must be obtained for any such deviation, except in the event of imminent danger.

4.3 If work has to be discontinued on account of unavoidable stoppages or breakdowns at Company's plants/sites, Contractor is not entitled to make any claims against Company.

5. Conduct during the performance of the contract

Contractor's employees and agents are required, for reasons of security, to submit to the entry controls to Company's facilities when working there, to conform to the normal hours of work and procedures, as well as to observe the safety regulations applicable in those areas and to comply with the Company's instructions in that regard.

6. Materials, auxiliary resources

6.1 Subject to sub-section 6.4, all materials (e.g. general and construction materials, spare parts) as well as auxiliary resources (i.e. tools, equipment, machinery, vehicles, scaffolding, site huts, energy, water etc.) are to be provided by Contractor without Contractor being entitled to additional remuneration. The relevant delivery notes must be submitted to Company for any deliveries to Company's facilities.

6.2 Contractor is required to remove any material and auxiliary resources no longer required immediately after completion of the contract. Evidence of such material and resources having been previously delivered by Contractor must be provided when such items leave Company's facilities.

6.3 Contractor shall allow Company, or a third party designated by Company, to share the use of auxiliary resources provided by Contractor.

6.4 If it has been agreed that material and/or auxiliary resources are provided in whole or in part by Company, Contractor is required to collect and immediately inspect such items from the relevant sections in Company's facilities, quoting the order number and the purpose of those items. Immediately upon handover, all risk shall be transferred to Contractor. Company must be informed without delay and in writing of any complaints. Company will not accept complaints submitted at a later stage.

6.5 Contractor shall be responsible for storing and securing all materials and auxiliary resources. Upon vacating Company's premises, prior return of all materials and auxiliary resources needs to be verified. Company does not accept any liability, nor will Company provide any compensation for the materials and auxiliary resources delivered by Contractor or for any other items belonging to Contractor and located at the construction site.

7. Insurance

It is Contractor's responsibility to insure materials and auxiliary resources against the risk of fire and explosion.

8. Remuneration, invoicing, payments

8.1 The agreed prices include remuneration for all goods, work and services required for the performance of the contract (in particular personnel, materials, auxiliary resources and the goods, work and services specified in these conditions); this also applies to partial performance not expressly mentioned in this contract, as well as to all trial runs and commissioning in so far as required for providing the individual goods, work and services.

8.2 All work and services, additional work and services and measures that become necessary to provide protection against damage and the effects of the weather until acceptance are included in the agreed prices.

8.3 The agreed prices are not affected by increases in labour costs, the price of materials, social security contributions, tax rates or similar until acceptance. An exception to this is any change in the rate of value-added tax (VAT).

8.4 In so far as part payments have been agreed, Company will only pay 90 % of the amounts shown on verifiable interim invoices within the agreed credit period on the basis of proven performance records. The remaining 10 % will be paid with the final payment and will be stated as remaining liability of the partial invoice until final regulation. Partial payments are only made if they exceed 10 % of the estimated total remuneration and amount to at least €10,000.

8.5 Contractor is required to prepare the final invoice with all the necessary original documents, as recognised by Company per signature, in a verifiable form, and to send these to Company by recorded delivery within four weeks of acceptance. Company will check and pay the final invoice within 30 days of receipt, deducting the amount retained as security as agreed in sub-section 14.3.

8.6 In accordance with articles 48 and further German Income Tax Law (ESTG) Company is required – unless the Contractor submits a notice of exemption – to pay 15 % of the contract value to Contractors local tax office. To ensure that Company can satisfy this obligation Contractor must provide the details of Contractor's tax office at the latest on submission of the invoice. Alternatively the Contractor is allowed to submit the note of exemption together with the invoice to Company. Company expressly advises Contractor that the provision of these details is a prerequisite for the payment becoming due for settlement.

8.7 Company will not pay for any working hours expended by Contractor's supervisory staff on paper work carried out in the interests of Contractor, which also includes writing out the daily time sheets, as well as for the expenditure of time and materials on fulfilling the obligations set out in sections 3, 4 and 5.

8.8. In so far as billing and remuneration have been agreed by site measurements, the following applies in addition to sub-sections 8.1 to 8.7:

- a) If standard rates have been arranged on the basis of a mutually agreed assumption of a particular total contract scope, then adjustment of the agreed standard rates may be claimed if the scope of work actually provided is more than 25 % above or below the assumed total scope. Contractor shall inform Company without delay if it becomes evident that the level of 25 % above or below the scope of the contract will be exceeded.
- b) Only such services/performance shall be deemed billable in partial or final invoices that are based on a site measurements document to be prepared jointly on site, in which all billable items are verifiably documented, and which must be signed by Contractor's representative, having been authorised by contractor in writing, or his deputy.
- c) Quantity surveys, site measurement lists, original receipts and certificates of material consumption must be made available by contractor to Company upon Company's request. Quantities must be ascertained on the basis of mathematical formulae (not by using an approximation method).

8.9. In so far as billing and remuneration have been agreed by time required, the following applies in addition to sub-sections 8.1 to 8.7:

Unless otherwise agreed Company will only make the following payments:

- a) Wage hours shall be entered daily and completely, in time sheets provided by Company, including the exact time of arrival and exit from premises. Time sheets need to be submitted to Company on a weekly basis, for inspection and approval. When entering actual working hours, legally required break periods shall be calculated as a minimum.
- b) Company will reimburse Contractor or the agent for the documented costs incurred as severance pay, commuting and travelling expenses paid to the deployed employees in so far as such payments have been included in the respective individual contracts.
- c) Accommodation costs (generally excluding breakfast) shall only be reimbursed upon submission of receipts, and if such reimbursement has been included in the respective individual contract.
- d) In the absence of any agreements on cost rates, Company shall remunerate only verified actual working hours (breaks not included), by an appropriate hourly rate, for each employee deployed by Contractor, respectively Contractor's agent. This rate shall not exceed the standard wage to be paid by Contractor / Contractor's agent, plus an appropriate company margin.

9. Amended or additional work

- 9.1. Contractor is required to carry out amended and/or additional work at Company's request if such work becomes necessary for the performance of the contractually agreed work. This does not apply if Contractor's operation is not set up appropriately. Contractor's remuneration is determined on the basis of the price established for the work, hereunder taking the special costs of the work demanded into account.
- 9.2. If work not foreseen in the contract or amended work is demanded by Company, Contractor is only entitled to special remuneration if it immediately and in writing advises Company of such a claim, duly submits a supplementary offer and agrees on costs with Company, before commencement of the work. Invoicing by Contractor of such additional work is only possible upon presentation of a written order signed by Company.
- 9.3. There is no entitlement to additional remuneration if Contractor's claimed supplement is based on circumstances which should have been foreseeable by diligent Contractors from the tender documents (construction plans and specification) in conjunction with the site inspection and where nevertheless no indication of this was given with details of the additional costs before the contract was concluded. Such work is then deemed to be additional work that is included in the calculations of the price requested together with the specification.
- 9.4. Orders for amended or additional work are only effective if they are issued by Company in writing.

10. Periods of performance

- 10.1 The contractually agreed dates or periods allowed are binding. This applies in particular to the agreed completion date, but also to the agreed commencement of work and to all interim dates, in particular the dates stipulated in a construction progress schedule.
- 10.2 Contractor is required to provide sufficient personnel, equipment, scaffolding, materials or structural components on site to allow Contractor to meet the deadlines. If this is not the case, Contractor is required to remedy the situation immediately at Company's request.
- 10.3 If Contractor believes to be hindered in the proper execution of the work, Contractor is required to notify Company of this without delay and in writing. If Contractor fails to provide such notification, Contractor is required to bear the costs of any resultant shortcomings and damage.

11. Functional tests and trial operation after installation work at plants, if not otherwise agreed

- 11.1 The plant is completed when the installation work has been finished. The functional tests then commence with and without load for the individual plant units, plant groups and the plant as a whole.
- 11.2 The plant is operational on completion of functional tests. If the plant proves to be ready for operation after commissioning, trial operation must be started immediately to determine the serviceability of the plant.
- 11.3 During the trial operation the plant is run in accordance with a programme to be stipulated by Company, although it will be running under the supervision of Contractor and at Contractor's responsibility.

11.4 Damage to the plant/machinery arising during the trial operation is the responsibility of Contractor unless Contractor can demonstrate that Company's operators acted contrary to the operating instructions made known and explained by Contractor.

11.5 An agreement with the other companies involved as well as Company's production and maintenance departments must be reached via Company's site office with regard to commencing the trial operation.

11.6. The transfer of risk, acceptance and start of the warranty or limitation period are not associated with the commencement of trial operation or with any other events during the trial operation.

12. Acceptance – if not agreed otherwise and in writing

12.1. Formal acceptance is effected by Company's signing of the acceptance form. The option of acceptance by putting the plant into operation is excluded. Both parties have the right to invite an acceptance inspection with seven working days' notice.

12.2. Contractor is required to assist during the acceptance procedure and to provide the necessary labour and measuring equipment.

12.3. The option of notional acceptance provided for in article 640 paragraph 1 sentence 4 BGB is excluded.

12.4. The option of acceptance by certificate of completion is excluded.

12.5 In so far as an acceptance is required, it is necessary to include the signed acceptance certificate when submitting the closing invoice.

13. Warranty

The warranty period for all work provided by Contractor is five years and begins with acceptance.

14. Securities

14.1 Unless otherwise agreed in writing, Contractor shall provide security of 10 % of the net contract sum plus the statutory rate of value-added tax for the duration of the contract performance. This contract performance security covers the performance of all obligations arising from the contract, in particular the performance of the work as stipulated in the contract, including invoicing, remedying of defects and compensation as well as the reimbursement for overpayments including interest. Contract performance security is to be provided in the form of an absolute guarantee, unlimited in time, from a major German bank or a German credit insurer. The security bond must include a waiver of the defence of set-off and of avoidance (article 770 BGB), the defence of preliminary proceedings against a principal debtor (article 771 BGB), as well as the right of deposit with a public authority. Contractor shall bear the costs for the guarantee.

The contract performance guarantee must be handed over to Company and the transfer documented within 14 days of the contract being executed.

14.2 If the guarantee is not handed over before the first interim invoice is due for payment, Company may retain the security payment from this until the guarantee is provided and may, if appropriate, retain amounts from subsequent interim invoices.

14.3 If it has been agreed in writing, Company will retain 5 % of the net billing total plus the statutory value-added tax from the final account as security. This is paid out to Contractor subject to Contractor providing security for the warranty for the same amount, with the same requirements applying to the security bond as set out in sub-section 14.1.

14.4 The contract performance guarantee is returned on Contractor's written request after acceptance and presentation of the final accounts as stipulated in the contract, when Contractor has performed the work stipulated in the contract, satisfied any claims (including third party claims) and has provided agreed security for the warranty period.

The warranty guarantee is returned by Company on Contractor's written request when the limitation periods for the warranty have expired and the claims raised until that time have been met.

15. Termination

15.1 Notwithstanding its other rights, Company may terminate the contract for a serious reason if Contractor is seriously in breach of the contract.

15.2 A serious breach of the contract is deemed to have occurred in particular if Contractor does not desist from non-trivial behaviour that is contrary to the terms of the contract, despite a warning having been given under threat of termination of the contract.

15.3 Serious breach of contract is deemed to have occurred in case of significant violation of HSE-regulations.

15.4 A serious breach of the contract is further deemed to have occurred if Contractor has filed a petition in bankruptcy or if Contractor has suspended his payments not merely as a temporary measure or if bankruptcy proceedings have been opened against Contractor or if the petition in bankruptcy has been dismissed for insufficiency of assets.

- 15.5 A serious breach of contract is also deemed to have occurred if Contractor instructs a sub-contractor without the written approval of Company or permits and/or tolerates the further transfer by the sub-contractor. In such a case Company is entitled to terminate the contract if Contractor has not removed the sub-contractor acting without written approval from the construction site within a period stipulated by Company.
- 15.6 In case of termination, a joint general site measurement must be carried out within three working days of its being requested by one of the parties to the contract.
- 15.7 After termination of the contract Company is entitled to have the part of the performance not yet completed carried out by a third party at Contractor's expense. Any further claims, in particular for compensation, remain unaffected.

16. Overpayment

In the event of Company claiming for recovery from overpayments (articles 812 and further BGB), Contractor may not invoke failure of enrichment (article 818 paragraph 3 BGB).