

## General Terms of Erection for Foreign Countries (GTE for Foreign Countries) of the Companies of the BORSIG Group

### 1. Scope

These General Terms of Erection ( " GTE for Foreign Countries " ) shall apply for the erection work performed by a mechanical engineering company (installation company), unless otherwise agreed upon on a case-by-case basis. The GTE for Foreign Countries forms an integral part of the orders valid for the erection services. By accepting the present GTE for Foreign Countries without contradiction the purchaser agrees to the exclusive validity of these terms for the respective order and for possible follow-up transactions. In the event that special arrangements are made for a certain order, which differ from the present GTE for Foreign Countries, the terms of the GTE for Foreign Countries shall have lower priority and they shall apply in addition to such arrangements.

### 2. General requirements for erection

- 2.1 Prior to beginning with the erection, the site must be cleared at floor height and levelled. All earth-moving, bricklayers', carpenters' and all other required preparatory work must have progressed so far as to permit the erection work to be commenced forthwith and to be performed without any interruption and without endangering the service personnel. Consolidated access roads have to be available for smooth and unhindered transport in particular if heavy loads are to be handled.
- 2.2 In case of erection work out-of-doors the site has to be weatherproofed, and heated in the winter, at the expense of the purchaser. In case of erection work in tropical countries the purchaser has to provide weather protection against excessive solar radiation and against rain during the wet season.
- 2.3 In case of erection work inside buildings, same must, prior to commencement of erection, be properly roofed and covered, fitted with doors and windows and heated in winter time for the duration of the erection.
- 2.4 If the purchaser demands that the erection work is continued in spite of danger of frost he shall be liable for any property damages or injury to persons caused by the frost. All resultant extra costs shall be borne by the purchaser as well.
- 2.5 The purchaser shall be responsible for protecting the job site inventory – in particular the construction site trailers – against theft, damage and unauthorised use.
- 2.6 The purchaser shall insure all tools, equipment, hoisting devices and scaffoldings against fire, explosion, theft, burglary, water damage, storm losses and other acts of God at his own expense.
- 2.7 The service personnel shall not be entitled to make any statements binding for the installation company, which go above and beyond the operating and maintenance instructions for the erection object.
- 2.8 The service personnel may not perform works that have not been instructed by the installation company. In the event that such works are still performed at the instruction of the local site or plant management of the purchaser, the purchaser shall be fully responsible for this; liability of the installation company – of whatever kind – for such works shall therefore be excluded.
- 2.9 Deadlines agreed for the execution of the erection and/or repair works shall be reasonably extended, if unforeseen events occur, which cannot be influenced by the installation company and which have a considerable impact on the timely completion of the works. Unforeseen events include for example strikes, lockouts and extraordinary difficulties affecting the erection that are caused by atmospheric factors.

### 3. Contribution of the purchaser

- 3.1 The purchaser shall support the service personnel in performing the erection at his own expense.
- 3.2 The purchaser shall be obliged to take all necessary special measures for ensuring safety of persons and property at the erection site. Furthermore, he shall inform the chief erector about the existing special safety regulations as far as they are applicable for the service personnel. The purchaser shall give notice to the installation company of any violation of such safety regulations committed by the service personnel. In case of severe violations, the offender may be prohibited from entering the erection site after consultation with the chief erector.

### 4. Technical support of the purchaser

- 4.1 The purchaser undertakes to render the following services at his own expense, with which he may also commission the installation company at extra cost:
  - a. Provision of the necessary suitable support staff (welders, mechanics and other specialists, helpers) – in number as required for the erection and for a sufficient period of time, they must be sufficiently insured according to na-

tional law; the support staff has to follow the instructions of the chief erector. The installation company does not assume liability for the support staff. In the event that defects or damages are caused by the support staff as a consequence of the instructions given by the chief erector, para. 14 or para. 15 shall apply;

- b. Execution of all earth-moving, foundation building, construction and chiselling work, including all required building materials, grouting of base plates and anchor bolts, bricking-in of girders, brackets, rolls, pipe clamps as well as any other preparatory work and provision of particular facilities;
  - c. Building the required foundations, these have to comply with the installation company's specifications with regard to the static and dynamic loads and have to be built in such a way that vibration cannot propagate. Prior to commencing with the erection the foundations have to be complete and fully capable of bearing the loads.;
  - d. Provision of the required equipment and heavy tools (e.g. hoisting devices, compressors) as well as of the necessary utensils and materials (e.g. construction wood, wedges, supports, cement, plastering and sealing material, lubricants, fuels, paint/coat, driving ropes and driving belts);
  - e. Provision of electric power (three phase 380/220 volts), compressed air, heating as well as of potable and industrial water, including the necessary connections, cabling, tubing and piping up to the place of work and to the construction site trailers; provision of adequate lighting of the entire jobsite;
  - f. Provision of adequate space for storing component parts and installation equipment as well as for placing the construction site trailers in the immediate vicinity of the place of work, however, no farther than 50 m away from it;
  - g. Provision of suitable and lockable rooms, which should also in case of need be heated and lighted, for storing tools and hoisting devices, valuable parts supplied etc.;
  - h. Provision of suitable thief-proof recreation and work rooms (with heating, lighting, washing and sanitary facilities) and of first aid for the service personnel;
  - i. Provision of materials and taking any other measures necessary for adjusting the object to be erected and for performing the tests as stipulated in the contract;
  - j. Payment of all duties and taxes which may arise for the installation company in the country of erection.
- 4.2 All services to be performed by the purchaser according to para. 4.1 must meet the requirements of the industrial safety regulations and other safety regulations applicable in the country of erection.
- 4.3 In the event that the purchaser does not fulfil his obligations, the installation company shall – after setting a time limit – be entitled but not obliged to take the measures, which are subject to the purchaser's obligations, acting in place of the purchaser and at the expense of the purchaser. As for the rest, the legal rights and claims of the installation company shall remain unaffected.

### 5. Hourly rate, working time, extras

- 5.1 For the assignment of service personnel, engineers and supervisors to foreign countries the installation company will charge for each normal working hour or such spent in waiting, travelling or on the road its hourly rate valid at the time.
- 5.2 The normal working time will be in accordance with the tariff regulations in force in the tariff area of the installation company.
- 5.3 If, without the fault of the installation company, the service personnel are prevented from working full shifts the daily working time will nevertheless be charged for.
- 5.4 The purchaser shall certify the rendered working hours on the installation wage slip. One copy of this document shall be kept by the purchaser at the jobsite. A second copy is submitted via a bank on a collection basis together with the commercial invoice or letter of credit. Foreign bank charges shall be borne by the purchaser. Payment of hourly wages shall be effected immediately after receipt of invoice and independently of any other payment. Set-off or withholding of payments shall be excluded.
- 5.5 Extras for overtime, work at night, on Sundays and on holidays as well as for work performed under dirty or dusty conditions, in extreme heat or cold, in places of gas danger, at great height or underground will be charged according to the tariff regulations valid in the tariff area of the installation company. Should this change while the work is being performed the hourly rate and/or the extras will be adapted accordingly with effect from the date the change in tariff comes into force.

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5.6 In the event that the works are stopped due to reasons for which the installation company is not responsible, the costs for the withdrawal of the service personnel provided shall be borne by the purchaser.

5.7 Overtime premiums and waiting times for which the installation company is not responsible as well as extra-contractual work shall be charged additionally according to the applicable charge rates for hourly wages.

### 6. Allowance for subsistence

6.1 Apart from the hourly rate an allowance for subsistence will be fixed in the contract for each calendar day of absence from the location of the installation company, which is intended to cover the costs of board and lodging as well as the pocket money of each specialist. The allowance will be invoiced in Euro.

6.2 32 % of the allowance rate are for lodging. If the service personnel are unable to obtain convenient lodging according to the German standard of living near the erection site at these prices, it is up to the purchaser to help them in this respect as well as to defray the costs above and beyond the share of the allowance intended for lodging. This applies also to such cases where during an extended period of erection the cost of living in the jobsite country goes up.

6.3 The purchaser may grant free lodging to the service personnel. In that case the allowance rate will be reduced by 32 % if such lodging meets central European standards. Board, on the other hand, cannot be given in kind, but has to be paid for in cash.

6.4 The service personnel are entitled to the allowance in full. Thus, if any taxes or other public dues are charged on the allowance these will have to be paid by the purchaser himself or added to the allowance paid to the service personnel.

6.5 If German fitters of other contractors are paid higher rates at the same place, the allowance rate agreed upon is to be automatically increased accordingly.

6.6 In case of illness payment of the full allowance is to continue.

### 7. Expenses for travelling and time spent on the road

7.1 The domicile of the installation company is the basis for calculating the fares, travelling times etc.

7.2 For the trip to and from as well as the journeys for holidays with their families to which the service personnel are entitled, the following will be charged for:

7.2.1 The costs incurred for the business class flight (including costs for excess baggage, especially in the case of extended erection work) and/or fares for rail travel and sea voyages 1st class.

7.2.2 The costs incurred for the transport of the personnel and of their baggage to and from the railway station and/or the airport.

7.2.3 The travelling time at the hourly rate valid at the time. Any time spent in waiting during the journey is considered as travelling time.

7.2.4 The allowance as per para. 6.

7.2.5 The additional costs incurred if it becomes necessary, during the journey, to stay overnight in hotels.

7.3 Apart from the travelling expenses listed under para. 7.2 the purchaser will be charged for the costs of the entry and exit formalities, such as obtaining passports and visas, costs of medical examination and vaccination, as well as the time spent for preparation for the journey, information and reporting after return.

7.4 For assignments to non-European countries Euro 250,- will be charged to cover part of the special gear required.

7.5 Suitable transportation is to be made available free of charge or the time spent in travelling and on the road is to be paid for.

### 8. Trips home

The service personnel shall be entitled to a trip home every 4 months and on special holidays such as Easter, Whitsun and Christmas. If for reasons for which the purchaser is responsible it should not be possible for the service personnel to take this trip, the personnel are entitled to the reimbursement of the costs of a flight ticket. The respective costs are to be borne by purchaser.

### 9. Holidays

Paid holidays will be those legally established in the respective country.

### 10. Lending fees for installation equipment and special tools

10.1 The fee for the use of the ordinary normal tools is included in the hourly rate stipulated in para. 5.1.

10.2 Freight for transport to and from the site will be invoiced according to the expenses actually incurred.

10.3 The lending of machines, devices, special tools, electric welding units, hoisting devices and scaffolding will be billed at the following rate, plus the freight expenses to and from the site:

10.3.1 At an erection period exceeding 4 weeks ..... 2 %

10.3.2 At an erection period up to 4 weeks ..... 3 - 4 %

of the "as new" value of such machines, etc. per week commenced, with effect from the day of shipment from the contractor's works until the day on which they arrive back in same.

10.4 The purchaser has to take charge of the duty-free entry and exit of all tools, equipment, etc. placed at the disposal by the installation company; any costs and/or fees are to be borne by purchaser.

### 11. Caring for the service personnel

11.1 The purchaser has to procure in good time the necessary entry, residence, working and other official permits and to assist the service personnel in all personal matters, particularly when dealing with public authorities. He will inform the service personnel in good time on formalities that have to be taken care of, such as e.g. duty to register or extension of permits limited in time.

11.2 In the case of illness of, or accident to, the service personnel, either on route or while on the site, the purchaser has to provide at his expense for medical attendance and medicaments and, if necessary, also for hospitalisation. In case of prolonged illness exceeding 4 weeks, the purchaser is entitled to send the sick person back home if no objections are raised against such transport by the medical adviser and to ask the installation company for a substitute. The travelling expenses for the sick person and his substitute will be to purchaser's account as per para. 7.

11.3 In the case of death, occurring either en route or while on the site, all resultant costs, including those of the transport home of the deceased, will be for the installation company's account.

11.4 For the time of their absence from the location of the installation company the same shall take out accident insurance in favour of the service personnel plus, in the case of assignment to non-European countries, a life insurance.

11.5 Any time of waiting due to unforeseen circumstances (e.g. war, strike or transport difficulties) is to purchaser's account.

### 12. Installation term, installation delay

12.1 The installation term is considered to be kept if the installation is – until the expiration of this term – ready for acceptance by the purchaser and for testing if stipulated in the contract.

12.2 In the event that installation is delayed due to measures resulting from industrial action, in particular strikes and lockouts, as well as to the occurrence of circumstances for which the installation company is not responsible, the installation term shall be reasonably extended if such hindrances have a demonstrable and considerable effect on the completion of the installation work.

12.3 If the purchaser suffers damages resulting from the delay, he shall be entitled to claim a lump sum compensation for delay. This compensation shall be 0.5% for each full week of delay, however, in total not exceeding 5% of the installation price of that part of the plant to be erected by the installation company, which cannot be used in time due to the delay.

If, after the due date, the purchaser sets a reasonable time limit for performance to the installation company – in consideration of the legal exceptional cases – and this deadline is not met, the purchaser shall be entitled to withdraw from the contract in compliance with the legal regulations. The purchaser undertakes to give notice of whether or not he will exercise his right of withdrawal within a reasonable period of time upon request of the installation company.

Further claims due to delay shall be exclusively subject to para. 15.3 of the present GTE for Foreign Countries.

### 13. Acceptance

13.1 The purchaser is obliged to realize the acceptance of the installation as soon as he receives notice of the completion of work and after testing of the erected object – if stipulated in the contract – has taken place. If the installation is found to be not in compliance with the stipulations of the contract, the

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installation company shall be obliged to rectify the defect. This does not apply to cases in which the defect is insignificant for the purchaser's interests or if the defect results from circumstances for which the purchaser is responsible. In case of immaterial defects the purchaser shall not be entitled to refuse acceptance.

13.2 In the event that acceptance is delayed without the installation company's fault, acceptance shall be deemed to be given after two weeks from notice of installation completion.

13.3 After successful acceptance, the liability of the installation company for obvious defects shall expire, unless the purchaser has reserved the right to assert claims for a certain defect.

#### 14. Claims based on defects

14.1 After acceptance of the installation, the installation company's liability for erection defects – excluding any other claims of the purchaser and without prejudice to the provisions in para. 14.5 and 15 – shall be limited to the rectification of defects. The purchaser shall be obliged to give immediate written notice to the installation company of any defect identified.

14.2 The installation company shall not be liable for defects that are insignificant for the purchaser's interests or for defects resulting from circumstances for which the purchaser is responsible.

14.3 In case of incorrect modifications or repairs performed by the purchaser or third parties without obtaining prior approval from the installation company, liability for the consequences thereof on the part of the installation company shall be excluded. Only in urgent cases involving danger to operational safety and in order to prevent disproportionately large damages – here immediate notice must be given to the installation company – or if a reasonable time limit for the rectification of defects set to the installation company – in consideration of the legal exceptional cases – has elapsed without the installation company taking the required measures, the purchaser shall be entitled to rectify the defect himself or have it rectified by third parties and to demand reimbursement of the necessary costs from the installation company in compliance with the legal regulations.

14.4 Out of the direct costs arising out of the rectification of defects the costs of the replacement part including shipping shall be borne by the installation company – if the complaint proves to be justified –. The installation company shall also pay the assembly and disassembly costs as well as the costs for the possible provision of the required technicians and support staff including travel expenses, unless this imposes an unreasonable burden on the installation company.

14.5 In the event that a reasonable time limit for the rectification of defects set to the installation company has elapsed without the installation company taking the required measures – in consideration of the legal exceptional cases – the purchaser shall have the right to reduce the price in compliance with the legal regulations. Only if the installation is demonstrably not of interest to the purchaser in spite of the reduction, the purchaser shall be entitled to withdraw from the contract.

#### 15. Liability of the installation company, exclusion of liability

15.1 Should an assembly component supplied by the installation company be damaged during the installation through the fault of the installation company, the installation company shall be obliged – at its own discretion - to either have the component repaired at its own expense or provide a new component .

15.2 If, through the fault of the installation company, the object mounted cannot be used by the purchaser as stipulated in the contract due to the non-implementation or incorrect implementation of suggestions, consultations and other secondary contractual obligations agreed/taking place before or after contract conclusion – in particular operating and maintenance instructions for the object mounted – the provisions in the paragraphs 14., 15.1 and 15.3 shall apply excluding any other claims of the purchaser.

15.3 The installation company assumes liability for damages not occurring to the mounted object itself – irrespective of legal basis – only in case of

- a) wilful intent,
- b) gross negligence on the part of the owner/the organs or the executive employees,
- c) culpable injury to life, body or health,
- d) defects that are fraudulently concealed by the installation company,
- e) damages being within the scope of guarantee promise,
- f) to the extent to which liability is assumed for property damages and damage to persons according to the Product Liability Act, which occur to objects that are privately used.

**In the event of culpable violation of essential contractual obligations the installation company shall also be liable for gross negligence on the part of the non-executive employees and for slight negligence. In the latter case liability shall be limited to reasonably foreseeable damages that are typical for this type of contract.**

All further claims shall be excluded.

#### 16. Statute of limitation

Any claims of the purchaser – irrespective of legal basis – become time-barred after 12 months. For claims for damages according to para. 15.3 a) – d) and f) the statutory periods shall apply. In the event that the installation company renders the erection services at a structure and causes defects on the structure, the statutory periods shall apply as well.

#### 17. Compensation by the purchaser

If the equipment or tools provided by the installation company are damaged or get lost at the erection site without the fault of the installation company, the purchaser shall be obliged to pay damages. Damages caused by normal wear and tear shall be excluded.

#### 18. Applicable law, place of jurisdiction

18.1 All legal relations between the installation company and the purchaser are exclusively governed by the law of the Federal Republic of Germany, excluding the conflict of laws rules of the German Private International Law.

18.2 Place of jurisdiction shall be the court competent for the place of business of the installation company. The installation company shall, however, be entitled to take action at the place where the purchaser is headquartered.