

General Conditions of Installation

1. Scope of Validity

- 1.1 These General Conditions of Installation are valid for the installation, commissioning and test operation of machines and plant to be referred to in the following as services.
- 1.2 These General Conditions of Installation shall also apply to installation supervision unless individual agreements have been or shall be concluded in this respect.
- 1.3 These General Conditions of Installation are only applicable if the given circumstances are not covered by the Contractor's General Terms of Sale and Delivery. The Contractor's General Terms of Sale and Delivery take precedence over these General Conditions of Installation in case of doubt. In no event do the General Conditions of Installation grant the Employer more extensive rights than he is entitled to by virtue of the General Terms of Sale and Delivery.

2. General

- 2.1 The contract shall be deemed to have been entered into upon receipt of Contractor's written acknowledgement stating its acceptance of the order. Tenders, which do not stipulate an acceptance period, shall not be binding.
- 2.2 These General Conditions of Installation shall be binding if declared applicable in the tender or in the order confirmation. Any conditions stipulated by the Employer which are in contradiction of these General Conditions of Installation shall only be valid if expressly acknowledged by the Contractor in writing.
- 2.3 All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid. However, transmission thereof by E-Mail or Fax shall suffice.

3. Plans and technical documents

- 3.1 Data provided in plans and technical documents by the Contractor are binding.
- 3.2 Each party to the contract retains all rights to plans and technical documents provided to the other. The party receiving such documents recognizes these rights and shall – without previous written consent of the other party – not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

4. Obligations of the Contractor

The Contractor undertakes to carry out the work in a workman like manner and with qualified personnel, or to have it performed by third parties. The installation personnel will commence work on-site latest one month after being called for from the Employer.

5. Obligations of the Employer

- 5.1 The Employer has to inform the Contractor, at the latest at the time of the tender, of any regulations and standards which relate to execution of the installation and other work, to the plant operation as well as to illness and accident prevention.
- 5.2 The Employer shall undertake to complete the installation pre-requisites as specified in the Technical Memo No. SHT.6032 and all that is deemed necessary in order that the work can be commenced on time and carried out without hindrance or interruption.
The Contractor's personnel shall not be called for until all preparatory work has been completed, in particular completion of the building (including lighting and any false ceilings), compressed air pipelines, air conditioning equipment, flues and waste collection piping where applicable, and the Employer can provide the necessary skilled and auxiliary personnel in accordance with order confirmation. If so requested by the Contractor, the Employer must confirm in writing the completion of the preparatory work when calling for the installation personnel.
The Contractor reserves itself the right to invoice Employer for waiting time or overruns of the stipulated installation time due to the Employer's failure to perform preparatory work or perform it adequately, or because the Employer provides insufficient or inadequately qualified skilled personnel and auxiliary personnel, at the usual installation rates. The cost of the preparatory work to be performed and the skilled auxiliary personnel to be provided by the Employer will be borne by the Employer.
The Employer has to carry out all the civil engineering and other preparatory work skillfully at his expense and responsibility, in particular in accordance with the specifications and documentation supplied by the Contractor. If the preparatory work has not been performed properly by the Employer, the Contractor is entitled to delay the start of installation work or to discontinue the same until such preparatory work is completed or any defects have been remedied. The costs incurred by the Contractor or the Employer from such a delay (in particular waiting and traveling time) will be borne by the Employer.
- 5.3 The Employer has to ensure that all entry, exit, residence, work and any other official permits required by the Contractor's personnel are obtained in good time. Any costs incurred for permits and approvals to be obtained in the country of the Employer will be borne by the Employer.
- 5.4 The Employer must inform the Contractor of the legal, official and other regulations relating to the performance of installation work and the plant.
- 5.5 The Employer has, at his own expense, to carry out all the accident prevention measures required. In particular, he has

to inform the Contractor expressly when special consideration has to be shown for him and/or any other contractor. The Employer has also to draw the attention of the Contractor to any regulations, which have to be complied with.

The Contractor shall be entitled to refuse or stop any work if the safety of the personnel is not guaranteed.

The Employer is to provide any necessary assistance should the Contractor's personnel suffer an accident or become ill.

- 5.6 The materials to be installed are to be protected from any damage or deterioration, and in particular stored in a locked, dry room. Before installation work is commenced, the materials to be installed are to be checked for completeness and damage by the Employer in the presence of the Contractor's personnel. Should any items be lost or damaged during storage, they are to be replaced or repaired at the Employer's expense.
- 5.7 The Employer is to ensure that the transport access route(s) to the installation site is/are usable and that the installation site itself is in a condition allowing installation work to commence. In addition, the Employer is to arrange that access to the installation site is guaranteed without hindrance and all rights of way required have been assured.
- 5.8 The Employer is to arrange for the provision of heated or air conditioned, lockable rooms for the Contractor's site management, restrooms and changing rooms for the Contractor's installation personnel, including suitable sanitary facilities for the personnel. In addition, the Employer is to provide lockable, dry rooms for the storage of materials and equipment. All these rooms are to be located in the immediate vicinity of the place of work.
- 5.9 The Employer is to supply the following at his own expense, in good time, in accordance with the Contractor's instructions or installation program:
- 5.9.1 Qualified skilled workers, such as mechanics, electricians, and assistants with the necessary tools, measuring instruments and equipment. These workers have to comply with the Contractor's working instructions, but will nevertheless remain only employees of the Employer.
- 5.9.2 Suitable cranes and other lifting devices, in good and safe working order, with attendant personnel; appropriate scaffolding, as well as means of transport for personnel and materials, appropriate workshop equipment and measuring devices.
- 5.9.3 Necessary consumable and installation materials, cleaning materials, lubricants and miscellaneous small items required during installation.
- 5.9.4 Electrical energy and lighting including the necessary connections up to the place of installation, heating, compressed air, water, steam, fuels etc.
- 5.9.5 Means of communication, such as telephone, fax, LAN, WLAN, provided at the Contractor's request, whereby due attention must be paid to data protection requirements of the Employer.
- 5.10 The Employer is to ensure that the Contractor receives, in good time, all the necessary permits for the import and ex-

port of tools, equipment and materials, and shall bear any related charges.

- 5.11 The Employer is to immediately return the tools and equipment provided by the Contractor to the location designated by the Contractor after the completion of the relevant works. The Employer shall bear the dispatch costs, insofar as these are not included in the price. Ownership of tools purchased by the Employer from the Contractor, and which the Contractor continues to use during the installation work, shall be transferred to the Employer after completion of the works and full payment of the purchase price. Unless instructions are given to the contrary, these tools shall be kept available for the Employer on the installation site, at the latter's risk. The tools provided to the Contractor by the Employer shall be returned to the Employer after completion of the works. Unless instructions are given to the contrary, these tools shall be kept available for the Employer on the installation site, at the latter's risk.
- 5.12 The Employer shall use future operating personnel to help already during the installation phase, in order that they become familiar with the methods and techniques of the Contractor. The Contractor is prepared to undertake the technical instruction of the said operating personnel, provided this has been expressly agreed.
- 5.13 Should the Employer not or only partially fulfil his obligations, the Contractor is entitled to remedy such deficiencies either himself or by means of third parties. The costs arising from such a procedure are to be paid by the Employer. The Employer shall also indemnify the Contractor against his liability towards third parties.
- 5.14 Should the Contractor's personnel encounter any danger or be considerably hindered in carrying out the work due to any reason beyond the control of the Contractor, the Contractor is allowed to withdraw the site installation personnel. In such cases, and also should personnel be retained after completion of the work, the corresponding hourly/daily rates are invoiced additionally as waiting time, plus the traveling expenses and daily allowances.

6. Work carried out upon the instructions of the Employer

Without written permission of the Contractor, the Employer is not allowed to employ the Contractor's personnel for work that is not agreed in the contract. Even if the Contractor agrees to such work, the Contractor undertakes no liability caused thereby.

The Contractor accepts no responsibility for any work carried out according to the order of the Employer without the Contractor's particular instruction.

7. Working time

- 7.1 Subject to differing compelling regulations at the installation site, the working times shall be agreed upon between the Employer and the installation leader when installation work commences.
- 7.2 The normal working time is between 6 am and 9 pm. The working hours of the Contractor's personnel shall be distributed according to the Employer's requirements and the local conditions.

- 7.3 Working hours in excess of the agreed weekly or daily working time are defined as overtime, for which a surcharge on the agreed standard hourly rate must be paid in the case of installation work performed on a labour and materials basis. Overtime work is only permissible upon mutual agreement.
- 7.4 Work performed between 9 pm and 6 am is defined as night work. A surcharge on the agreed standard hourly rate must be paid for night work in the case of installation work performed on a labour and materials basis.
- 7.5 Sunday work is defined as work performed on weekly rest days and statutory holidays at the installation site. A surcharge on the agreed standard hourly rate must be paid for Sunday and holiday work in the case of installation work performed on a labour and materials basis.

8. Traveling time and other times defined as being equivalent to traveling time

- 8.1 Traveling times as well as appropriate preparatory and winding up times after the journey which are necessary in order to comply with the contractual conditions are to be regarded as being equivalent to working time in accordance with paragraph 7.2.
- Travelling time includes:
- the time required for the journey to and from the place of work;
 - the time required to move into the accommodation on site; as well as,
 - the time required for official registration and departure formalities.
- 8.2 Should it be impossible to obtain suitable accommodation and/or adequate meal facilities near to the place of work, the time required for the transit each day between the accommodation and/or meal facilities' location(s) and the place of work in excess of half an hour per single journey is charged as working time. All expenses arising from the above, as well as the costs for the use of suitable means of transport or a hire car, are to be paid by the Employer.
- 8.3 If the Contractor's personnel are hindered in carrying out the work due to reasons beyond the control of the Contractor, or if the Contractor's personnel are retained on site after completion of the work for any reason whatsoever, the Contractor is entitled to invoice the waiting time as working time. All other costs associated with the above are also to be paid by the Employer. The same applies also to any other hours lost due to reasons beyond the control of the Contractor, such as local public holidays at the installation site.

9. Pricing

9.1 Principle

The services of the Contractor are invoiced according to time and material on the basis of his cost rates at the time of execution of the installation work, unless a lump sum price has been agreed upon.

9.2 Work charged according to time and material

The services provided by the Contractor are invoiced as follows:

9.2.1 Personnel costs

On presentation of the time sheets, the Employer shall certify the work performed by the Contractor's personnel with his signature. If this certification is not undertaken by the Employer in due time or is undertaken by personnel not competent for the purpose, the entries of the Contractor's personnel shall serve as a basis for calculation.

The relevant, valid cost rates are to apply to the working time, overtime, night, Sunday and holiday working times, travelling time and other times regarded as being equivalent to working time. A maximum of 12 hours per day can be reckoned as travelling time. When the work is carried out under difficult or dirty conditions, for example at great heights or depths, or when special protective clothing or breathing equipment has to be worn, a difficulty/dirty work conditions' surcharge per working hour is invoiced in addition to the Contractor's generally valid cost rates and to the costs of board and lodging.

9.2.2 Traveling costs

The costs for the journey to and from the country concerned, as well as for traveling within the said country using a means of transport as chosen by the Contractor, are invoiced to the Employer. Invoicing is also to include such associated costs as insurance, freight, custom duties, charges for luggage, passports and visas, provision of the entry residence and work permits, medical examination on arrival and departure, as well as vaccination of the Contractor's personnel, if installation is being performed on a labour and materials basis.

Unless special circumstances necessitate the use of another class, the following are invoiced:

- economy class for air travel;
- second class for rail and ship,
- use of private car to be reimbursed according to the relevant, valid lump sum allowance for kilometers travelled, or actual hire car costs.

9.2.3 Costs of board and lodging (daily allowance)

The Employer is to provide the Contractor's personnel with wholesome and adequate food as well as good, clean, heatable and air-conditioned single accommodation in its near vicinity.

The daily allowances stipulated in the introductory letter are to be invoiced to cover the board and lodging costs which are not directly paid by the Employer. This applies also to the supplementary costs for drinks, laundry, etc. Installation and service personnel are also entitled to the daily allowance on days off.

The right is reserved to change these rates should the board and lodging costs increase before the commencement of or during the installation work. The same applies also should the daily allowance rates quoted prove to be insufficient.

9.2.4 Home leave

If the Contractor's personnel have to spend a long period of time away from home, they shall be entitled to home leave. Such periods of home leave will be agreed upon with the Employer in advance. The cost of the return journey, i.e. from the site to the Contractor's registered office and back, may be invoiced to the Employer.

The time required for the journey to and from, as well as the total daily allowance, is invoiced according to paragraphs 8.1 and 9.2.3.

9.2.5 Costs for tools and equipment

The Contractor is responsible for equipping his installation personnel with a normal set of tools. Tools and equipment not returned by the Employer will be invoiced to the Employer at the price required to replace them.

Transport and insurance costs, as well as further expenses, dues and charges in connection with the delivery to and return of tools and equipment from the site are to be paid by the Employer.

9.2.6 Consumables and sundry installation materials

Consumables, installation and sundry installation materials supplied by the Contractor shall be charged according to costs.

9.2.7 Costs in connection with sickness and accident

In the case of sickness or accident to the Contractor's personnel, the Employer shall guarantee the requisite appropriate medical treatment and care, whereby the Contractor's right to take his personnel home at any time shall not be prejudiced. The Contractor shall be responsible for all costs arising.

The Employer shall be required to continue to pay the agreed daily allowance for a period of 10 days from commencement of the treatment.

If the return to good health of the ill or injured person is likely to take more than 10 days, then the Contractor is to arrange for an equivalent replacement at his own expense.

9.3 Work to lump sum prices

9.3.1 The lump sum price covers the services to be provided by the Contractor which have been agreed upon in writing. This price is based on the proviso that all preliminary work is carried out and completed by the Employer in good time and that installation can proceed smoothly and with no hindrance due to matters beyond the control of the Contractor.

9.3.2 Extra work which has to be carried out by the Contractor due to reasons beyond his control, such as subsequent changes to the content or scope of the agreed work, waiting times, reworking, additional traveling, are invoiced to the Employer in accordance with paragraph 9.2.

9.4 Taxes, dues, fees, social insurance contributions

Taxes, dues, fees, social insurance contributions and the like, which have to be paid by the Contractor or the Contractor's personnel in connection with the contract or with work outside the country, in which the Contractor has its registered office, are charged to the Employer, with the exception of personal income taxes. The Employer also undertakes to assist the Contractor in reclaiming withholding taxes and the like to be paid by the installation personnel.

10. Terms of payment

10.1 Unless otherwise agreed in written, the price and other costs are invoiced monthly and are to be paid by the Employer within 30 days of the date of the invoice. The Contractor reserves the right to require partial or complete payment in advance of the presumed amount.

Payments are to be made by the Employer at the Contractor's registered office without deductions of any kind (discount, expenses, taxes, fees etc.). Payment is regarded as

carried out when Euros or another agreed currency are made freely available to the Contractor at the Contractor's registered office.

10.2 The Employer is not allowed to withhold or decrease payments because of complaints, claims or counterclaims not accepted by the Contractor. The payments are also to be made should the work be delayed or have been made impossible for reasons beyond the control of the Contractor.

10.3 If the Employer fails to effect payment on the agreed date(s), he shall – under the proviso of other rights being claimed and without formal notice – be liable to pay interest on the overdue amount(s) from the date due at a rate based on the interest rates prevailing at the Employer's registered office. Payment of default interest shall not release the Employer from paying the sums due under the terms of the contract. Furthermore, the Contractor is entitled to suspend installation work until the outstanding payments have been received. All costs incurred by the Contractor or the Employer in connection with the suspension of work must be borne by the Employer, even if a lump sum reimbursement has been agreed upon.

11. Time schedule

11.1 A time limit for the completion of the installation work is only binding when accepted in writing by the Contractor. The installation time begins when all preliminary requirements for the commencement of the work have been complied with. It shall be deemed duly observed if the machinery or plant installed is ready for acceptance on its expiry. A time limit is also complied with, even though parts are missing or readjustments have still to be made, if operation of the machinery/plant is possible and unhindered.

11.2 The agreed duration of installation shall be suitably extended:

- if the instructions required by the Contractor to carry out the installation work are not provided in good time, or if the Employer subsequently changes such instructions; or
- if the Employer does not comply with his contractual obligations, in particular with regard to the terms of payment according to paragraph 10, or the obligations according to paragraph 5, or if the Employer's suppliers are behind schedule with their work; or
- in the case of circumstances beyond the control of the Contractor, such as threat or actuality of mobilization, war, civil war, rioting or sabotage, as well as strikes, working to rule, accidents, illnesses, late or incorrect deliveries of necessary materials, local or state official actions or omissions, unforeseeable hindrances to transport, fire, explosion, or natural incidents.

11.3 If an agreed completion date is not complied with due to circumstances which are solely the responsibility of the Contractor, the Employer may – but only if a damage has occurred – require the payment of a compensation for damage resulting from delay, amounting to 0.5% per completed week up to a total not exceeding 5%. The amount of the compensation is calculated from the price of the Contractor's work for that part of the plant, which cannot be commissioned at the proper time due to the said delay. Further

rights and claims in respect of delay, in particular for damages, are excluded.

For installation periods of more than three months, there is no claim for compensation for damage resulting from delay in respect of the first two weeks of delay.

12. Acceptance of the installation work

- 12.1 The installation work shall be ready for acceptance when the machinery or plant has been installed. The same shall apply if the installed machinery or plant cannot be commissioned for reasons outside the control of the Contractor.
- 12.2 As soon as the Employer is notified in writing by the installation leader that the installation work is ready for acceptance, it shall be inspected by the Employer or his appointed representative in the presence of the person in charge of the installation. Any deficiencies are to be reported immediately in writing to the Contractor in a documentary record drawn up and signed by both parties (Acceptance Report). Acceptance must take place in any event within five days after notification by the installation leader that the work is ready for acceptance. If the Employer fails to do this, or puts the installation into operation before joint acceptance procedures have been performed, the installation work shall be deemed to have been accepted. The Contractor is entitled to call in for acceptance an independent expert appointed by the local chamber of commerce in the Contractor's country of domicile.

13. Non-performance and its consequences

- 13.1 In all cases of non-performance not expressly dealt with in these General Conditions of Installation, in particular if the Contractor, without cause, commences execution of the works so late that completion of the works on time can no longer be anticipated, the Employer shall be authorized to set the Contractor a reasonable further deadline amounting to at least one month for remedy of the work concerned, under threat of withdrawal, should he fail to comply.
- 13.2 Upon the fruitless expiration of this subsequent deadline through the fault of the Contractor, then the Employer may withdraw from the contract with respect to the works which have not been executed or the non-execution of which is unquestionably anticipated, and reclaim the associated portion of payments already made. Any claim for damages by the Employer is precluded, except in cases of gross negligence or intention on the part of the Contractor. The obligation to pay the purchase price for the machinery delivered remains in force.

14. Risk of damage or loss

The Employer shall bear the risk of damage or loss for the material to be installed during performance of work, and for tools, equipment and materials provided by him. The Contractor shall be entitled to claim the agreed remuneration even if the installation cannot be carried out or can only be partially carried out, as a result of destruction or partial destruction of the items to be installed, the premises or the site in/on which the items are to be installed.

15. Warranty

- 15.1 The Contractor guarantees for a period of twelve months after the signature of the Acceptance Report by the Employer or, on his refusal to sign the Acceptance Report, after the Contractor has declared the work completed, that the work has been carried out in a workmanlike and careful manner in accordance with the provisions hereafter. Should the work be interrupted due to the reasons quoted in paragraph 11.2, the warranty period for the work completed before the interruption commences in any event at the latest three months after the beginning of the interruption. If shipping, acceptance or assemblies are delayed for reasons beyond the Contractor's control, the warranty period shall expire in any event no later than 18 months after notification by the Contractor that the machinery is ready for shipping.
- 15.2 Any deficiencies in the installation work detected during the warranty period shall be remedied free of charge, provided that such deficiencies are notified to the Contractor in writing immediately upon their discovery. The Contractor shall only be responsible for deficiencies related to the work performed by the Employer's personnel or those of a third party but under the Contractor's supervision, if it can be proven that such deficiencies are attributable to the fact that the Contractor's personnel has acted with gross misconduct in the course of instruction or supervision.
- 15.3 No warranty shall be provided if the Employer or a third party undertakes modifications or repairs without the Contractor's written permission, or if the Employer does not immediately take suitable measures to reduce the possible damage, or if the Contractor's original spare parts are not used during the warranty period.
- 15.4 For work carried out under warranty, the Contractor shall provide warranty to the same extent as for the original work but not beyond the warranty period of the latter.
- 15.5 Any claims and rights relating to deficiencies other than those specified under paragraphs 15.1 to 15.4 are excluded.

16. Liability

- 16.1 The Contractor shall be liable to the Employer only for such property damage which his personnel has caused through intent or gross negligence during the preparation for the installation, the execution of the works or during the repair of any deficiencies. The total liability shall be restricted to EUR 5,000,000.- (five million Euro). In case of personal injury, the relevant product liability legislation shall apply. The Contractor's liability for all kinds of financial damages, in particular for production shutdown, lost profit, loss of use, losses resulting from a delay or interruption in installation as well as for contractual losses or consequential damages shall be excluded in any event with the exception of cases of gross negligence or intention on the part of the Contractor.

In addition, any further claims by the Employer, in particular for the compensation of damages of any kind, regardless of their legal basis, shall be excluded. All cases of breach of contract and their legal consequences, as well as all contractual and non-contractual claims of the Employer, are thus conclusively dealt with in by these General Conditions of installation.

- 16.2 The Employer shall be responsible for any damage caused by his personnel. This applies also if the Contractor's personnel are directing or supervising the work, unless it can be proved that gross negligence in connection with instructions, omissions or with the supervision caused the damage. The Employer shall also be responsible for any damage caused through deficiency in the tools, equipment and materials provided by him. This applies also when the Contractor's personnel has used them without lodging a complaint, unless they could have noticed the deficiency had they exercised due attention.

17. Cancellation of the contract by the Contractor

Should unforeseen events take place, changing the commercial value of the contents of the services considerably or affecting the operations of the Contractor's plant considerably, or should the execution of the work subsequently prove impossible, the contract shall be adapted reasonably. If this cannot be justified from the economic aspect, the Contractor is entitled to cancel the contract wholly or in part. The Employer has no right to claim for compensation as a result of such cancellation.

Should the Contractor decide to make use of his right to cancel, he is to inform the Employer immediately after the consequence of the event has been recognized, even if an extension of the installation time had been agreed with the Employer.

18 Arbitral tribunal and applicable law

- 18.1 All disputes arising out of or in connection with the present contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The Contractor is entitled to determine the place and language of arbitration. The arbitrators may not be employed by one of the parties to the contract, either as staff, as executives or in any other capacity.
- 18.2 The Contractor is entitled to have recourse to the ordinary courts exercising jurisdiction at its domicile or that of the Employer instead of the arbitral tribunal unless arbitration proceedings have already been brought by one of the parties to the contract.
- 18.3 The contract is subject to substantive German law.

19. Concluding provisions

All agreements and legally relevant declarations by the parties to the contract are binding only if made in writing. If one or more provisions of the contract prove to be wholly or partly ineffective or invalid, this does not affect the effectiveness and validity of the remaining provisions of the contract. The parties to the contract will replace the ineffective or invalid provision by an effective or valid provision which most closely approximates the legal and financial object of that which has to be replaced.

20. Data Protection

The parties undertake to comply with the provisions of the applicable data protection legislation. Unless agreed otherwise, personal data obtained in connection with the services as set out herein, shall be exclusively used to the extent necessary for the performance of such services. For such purpose SUESSEN may also transmit personal data to companies associated with Rieter in another country. For further information on our processing of personal data please see the Data Privacy Statement on our homepage www.suessen.com.