General Conditions of Erection (GCE)
PFEIFER Structures GmbH

1. Scope

1.1 These General Conditions of Erection (GCE) apply to the offers of Pfeifer Structures GmbH ("Contractor") regarding the performance of Erection Work ("Works") including commissioning and test operation of the Work and to all contracts that such performance is based on.

1.2 These GTE also apply to all future Works agreed between the parties even if Contractor completes the Works being aware of deviating or opposed conditions.

1.3 Differing GCE and purchase conditions of the Employer shall not apply and are not accepted even if the Contractor does not explicitly contradict them.

1.4 These GCE shall also apply to erection supervision unless individual agreements have been or shall be concluded in this respect.

2. Contract Conclusion

2.1 The contract is concluded upon receipt of supplier's written order confirmation, with which the supplier accepts Employer's order. Offers from the supplier that do not contain an acceptance period are non-binding

2.2 There are no oral agreements. All agreements and legally relevant declarations of the parties must be in writing in order to be valid.

3. Plans and Technical Documentation

3.1 Data provided for in technical documents and plans are only binding if explicitly stipulated as such.

3.2 Each party retains all rights to technical documents and plans provided to the other. The party receiving such documents/plans recognises these rights and shall – without previous written consent of the other party – not disclose these documents 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 perform the Works in a workmanlike manner and with qualified personnel and/or subcontractors. Any subcontractors involved in this respect are also designated as Contractors in these Conditions.

5. Obligations of the Employer

5.1 The Employer has to inform the Contractor, within a reasonable time prior to contract conclusion, of any regulations and standards which relate to the execution of the Works, to the plant operation as well as to sickness and accident prevention.

5.2 The Employer shall undertake all that is deemed necessary in order to commence the Works on time and carry them out without hindrance or interruption.
The Contractor's personnel shall not be called up until all preparatory work has been completed.

5.3 The Employer has to ensure that all entry, exit, residence, work and any other official permits required by Contractor's personnel/subcontractors are obtained in time.

5.4 The Employer has to carry out all the civil engineering and other preparatory work skilfully at his expense and responsibility in accordance with the documents supplied by the Contractor, if any.

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 explicitly if special consideration is necessary with regard to him and/or any other contractors or to any regulations which have to be complied with.
The Contractor shall be entitled to refuse or stop any Works if the safety of his personnel/subcontractors is not guaranteed.
The Employer shall provide any necessary assistance in case of accident and/or sickness of Contractor's personnel.

5.6 The Employer has to provide appropriate storage facilities for the Materials to be erected that they are protected from any damage or deterioration. Before Works are commenced, the Materials to be erected shall be checked for completeness and damage by the Employer in the presence of Contractor's personnel. Should any items be lost or damaged during storage, they are to be replaced or repaired at Employer's expense.

5.7 The Employer has to ensure that the transport access route(s) to the erection site is/are usable and that the erection site itself is in a condition allowing erection works to commence on time. In addition, the Employer has to arrange that access to the erection site is guaranteed without hindrance and all way-leaves required are granted.

5.8 The Employer shall provide heated or air conditioned, lockable rooms for Contractor's site management, restrooms and changing rooms for Contractor's erection personnel/subcontractors, including suitable sanitary facilities. In addition, the Employer shall provide lockable, dry rooms for the storage of Materials and equipment. All these rooms are to be located close to the erection site.

5.9 The Employer has to supply the following at his own expense, in time, and in accordance with Contractor's instructions and/or the erection programme:

5.9.1 Qualified skilled and unskilled workers, such as fitters, welders, electricians, masons, painters, sheet metal workers and assistants with the necessary tools and equipment. These workers have to comply with Contractor's working instructions, but will nevertheless remain Employer's personnel, subordinated and responsible to him.

5.9.2 Suitable cranes and other lifting devices, in good 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 erection.

5.9.4 Electrical energy and lighting including the necessary connections up to the place of erection, heating, compressed air, water, steam, fuels, etc.

5.9.5 Means of communication, such as telephone, access to the internet,

5.10 The Employer shall ensure that the Contractor receives, in time, all the necessary permits for the import and export of tools, equipment and the Materials, and shall bear any related charges.

5.11 The Employer shall immediately return the tools and equipment provided by the Contractor to the location designated by the Contractor. 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 Works, shall be transferred 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 erection site, at Employer's risk.

The tools made available 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 erection site, at Employer's risk.

5.12 The Employer shall make available his operating personnel to assist already during the erection phase, in order to become familiar with the methods and techniques of the Contractor. The Contractor is prepared to undertake the technical instruction of said operating personnel, provided this has been explicitly agreed by the parties.

5.13 Should the Employer not or only partially fulfil his obligations, the Contractor is entitled to remedy such deficiencies either by himself or by means of third parties. The cost arising from such a procedure shall be paid by the Employer. The Employer shall also indemnify the Contractor against any liability towards third parties.

5.14 Should Contractor's personnel/subcontractors encounter any danger or be considerably hindered in carrying out the Works due to any reason beyond the control of the Contractor, the Contractor is allowed to withdraw his personnel/subcontractors from the erection site. In such case, and if personnel/subcontractors are retained after completion of the Works, the corresponding hourly/daily rates are invoiced as waiting time, plus the travelling expenses and daily allowances.

6. Works Performed on Request of the Employer

Without written permission of the Contractor, the Employer is not allowed to employ Contractor's personnel for work which does not form part of the contract. Even if the Contractor has agreed to such work, no responsibility for such work is taken by the Contractor.

The Contractor accepts no responsibility for any work carried out on request of the Employer.

7. Working Time

7.1 Subject to differing compelling regulations at the erection site, the working times shall be agreed by the parties.

7.2 The normal weekly working time is 5 working days 10 hours per working day. If, due to reasons beyond the control of the Contractor, a shorter working time has to be maintained, the normal working time is invoiced.

The working hours of Contractor's personnel shall be scheduled according to the Employer's requirements and the local conditions. The limits for normal daily working hours shall be 6 am and 8 pm.

7.3 Working hours in excess of the normal weekly or daily working time are defined as overtime.

Overtime work is only permitted when agreed by both parties. The overtime work should not, as a rule, exceed the daily working time by more than two hours and the normal weekly working time by more than ten hours.

7.4 The normal working time, worked between 8 pm and 6 am on working days, is defined as night work (except when overtime on night work).

7.5 Overtime worked between 8 pm and 6 am is defined as night work overtime.

7.6 Sunday work is defined as work on Sundays or on other weekdays which are official holidays at the erection site. Holiday work is defined as work on official holidays at the erection site.

8. Travelling Time and other Times defined as being Equivalent to Working Time

8.1 Travelling times as well as appropriate preparatory and winding up times after arrival at the site which are necessary in order to comply with the contractual conditions are to be regarded as working time in acc with Sec. 7.1.

Travelling times include:

- time required to and from the erection site
- 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 board facilities next to the erection site, the time for transfer from the accommodation and/or board facilities' to the erection site is in excess of one half hour per single transfer is charged as working time.

All expenses arising from the above, as well as the costs for transport or a rented car, are to be paid by the Employer.

8.3 If Contractor's personnel are hindered in carrying out the Works due to reasons beyond Contractor's control, or if Contractor's personnel are retained on site after completion of the Works for any reason whatsoever, the Contractor is entitled to invoice the waiting time as working time. All other costs associated with the above are to be paid by the Employer as well. The same applies also for any downtimes due to reasons beyond Contractor's control, e.g. public holidays at the erection site.

9. Remuneration

9.1 *Principle*

The Works of the Contractor are invoiced according to time and Materials on the basis of his remuneration rates at the time of execution of the Works, unless a fixed price (lump sum) has been agreed upon.

9.2 *Works charged according to time and Materials*

The works provided by the Contractor are invoiced as follows:

9.2.1 *Personnel costs*

On presentation of the time sheets, the Employer shall certify the Works performed by 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 Contractor's personnel shall serve as a basis for calculation.

The remuneration rates valid at Contractor's premises at the time of Works' performance shall be applied for 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 Works are 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 Contractor's generally valid remuneration rates and to the costs of board and lodging.

9.2.2 *Travelling costs*

The costs for the transfer to and from Employer's country, as well as for travelling within said country using 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.

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

- business class for air travel outside Europe
- first class for rail and ship
- use of private car to be reimbursed according to the kilometres travelled, as valid in Contractor's country, or actual hire car costs.

9.2.3 *Costs of board and lodging (daily allowance)*

The Employer shall provide Contractor's personnel with wholesome and adequate food as well as good, clean, heated and air conditioned single room accommodation at the erection site or near by.

The daily allowances are to be invoiced to cover the board and lodging costs which are not directly paid by the Employer.

9.2.4 *Home leave*

If Contractor's personnel have to spend more than 3 weeks away from home, they shall be entitled to a home leave every three weeks. The costs of the return transfer, i.e. from the site to Contractor's registered office and back, shall be borne by the Employer.

The required travelling time, as well as the total daily allowance, is invoiced according to Sec. 8.1 and 9.2.3.

As far as conditions at the erection site allow, Contractor's personnel can decide to take their partners with them as an alternative to home leave. The corresponding travelling costs are invoiced to the Employer.

9.2.5 *Costs for tools and equipment*

The Contractor is responsible for equipping his erection personnel with a normal set of tools. Further tools, equipment, measurement and testing devices are invoiced to the Employer. The duration of use is to be calculated from the day the items are despatched from the Contractor's premises until their return. Tools and equipment not returned will be invoiced to the Employer at the price required to replace same.

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

9.2.6 *Consumables and erection incidentals*

Consumables, installation and erection Materials supplied by the Contractor shall be charged according to costs incurred.

9.2.7 *Costs in connection with sickness and accident*

In case of sickness or accidents to Contractor's personnel, the Employer shall guarantee the 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 recovery of the sick/injured person is likely to take more than 10 days, then the Contractor shall arrange for an equivalent replacement at his own expense.

9.3 *Works to lump sum prices*

9.3.1 The lump sum price covers the Works to be provided by the Contractor and which have been agreed upon in writing.

This price is based on the proviso that all preliminary Works are carried out and completed by the Employer in time and that erection can proceed smoothly and with no hindrance due to matters beyond Contractor's control.

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 scope of the agreed Works, waiting times, re-working, additional travelling, are invoiced to the Employer in accordance with Sec. 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 Contractor's personnel in connection with the Works outside Germany, are charged to the Employer, with the exception of personal income taxes.

10. Terms of Payment

10.1 Unless otherwise agreed, the price and the 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 Contractor's registered office without deductions of any kind (discount, expenses, taxes, fees, etc.). Payment is regarded as carried out when the amount invoiced are made freely available to the Contractor in Germany.

10.2 The Employer is not allowed to withhold or decrease payments because of complaints, claims or counterclaims not accepted by the Contractor. Payments are also due if the Works are delayed or have been made impossible for reasons beyond Contractor's control.

10.3 If the Employer fails to effect payment on the agreed date(s), he shall – under the proviso of any other rights to be 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 amounts due under the terms of the contract.

11. Time Schedule

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

11.2 The agreed duration of Works shall be suitably extended:
- if the instructions required by the Contractor to carry out the Works are not provided in 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 Sec. 10, or the obligations according to Sec. 5, or if the Employer's suppliers are behind schedule with their Works, or
- in the case of events beyond Contractor's control, e.g. epidemics, mobilization, war, civil war, acts of terrorism, rioting or sabotage, as well as strikes, labor disputes, accidents, late or incorrect deliveries of necessary Materials, official actions or omissions by local/state authorities, 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 liquidated damages resulting from default amounting to 0.5 % per completed week up to a maximum of 5 %. The amount of the compensation is calculated from the price of Contractor's Works for that part of the plant which cannot be commissioned at the proper time due to said default. Further rights and claims in respect of default, in particular for damages, are excluded. For erection periods of more than three months, there is no claim for liquidated damage resulting from default in respect of the first two weeks of default.

12. Acceptance of the Works

12.1 The Works shall be considered ready for acceptance when the Materials delivered by the Contractor have been erected. The same shall apply if the erected Materials cannot be commissioned for reasons beyond Contractor's control and responsibility.

12.2 As soon as the Contractor has notified the Employer that the Works are ready for acceptance, they shall be inspected by the Employer or his appointed representative in the presence of the person in charge of the Works. Any deficiencies are to be reported immediately in writing to the Contractor. If the Employer fails to do so, the Works shall be deemed to have been accepted.

13. Transfer of Risk

The Employer shall bear the risk of damage or loss for the Materials to be erected during the performance of Works, and for tools, equipment and materials provided by him. The Contractor shall be entitled to claim the agreed remuneration even if the erection cannot be carried out or can only be partially carried out, as a result of destruction or partial destruction of the Materials to be erected.

14. Rights of the Employer in case of Defects

14.1 The Contractor warrants for a period of 12 (twelve) months from completion of the Works that the Works have been carried out in a workmanlike and careful manner in accordance with the following provisions.

If the Work are interrupted for the reasons stated in clause 11.2, the warranty period for the Works completed prior to the interruption shall commence no later than three months after the start of the interruption.

The warranty period shall in any case end two years after the agreed commencement of the work.

14.2 The Works will be free of physical and legal defects at the time risk passes to the Employer.

Irrelevant deviations from qualities agreed upon shall not constitute defects.

14.3 Nonetheless, Contractor shall not be held liable for defects or damage arising from:

14.3.1 Defects resulting from constructions prescribed or specified by the Employer, defects resulting from materials (including sample materials) prescribed, specified or supplied by the Employer, or defect resulting from other input of the Employer.

14.3.2 Defects or damage arising after the transfer of risk due to faulty or negligent treatment, operating by untrained staff, excessive use, inappropriate exchange materials, faulty construction work, inappropriate site or such defects arising due to special external circumstances not envisioned by the Contract, as well as non-repeatable software errors.

14.3.3 Modifications or maintenance work applied by the Employer or third parties.

14.3.4 Defects due to wear. Wear is the progressive loss of Materials on the surface of a solid body, due to mechanical causes. A wearing part is one used in places which unavoidably experience wear from operations, in order to protect other operating parts from wear, and which by design is intended for replacement.

14.4 Where a defect in the Works gives rise to the respective remedial rights of the Employer, the Employer shall, at first, only be entitled to demand remedial performance with regard to the defects within a reasonable time agreed by the Parties. The costs necessary for the purpose of remedial performance shall be borne by the Contractor. Replaced parts shall become Contractor's property.

14.5 When requested to do so by the Contractor and at the latter's expense, the Employer shall send the defective parts in question to the Contractor for repair or replacement, unless the defect requires repair at the place of erection. In such case, the Contractor's obligation to provide remedial performance with regard to the defective part shall be deemed to have been completely fulfilled if the Contractor returns the duly repaired part or sends a corresponding replacement part to the Employer.

14.6 Where the defective part of the Works is a product delivered or any other service rendered by a third party, the Contractor' s liability shall initially be limited to an assignment of the liability claims which the Contractor is entitled to against such third party. Only once legal action has been taken against such third party by the Employer shall our own liability be revived.

14.7 The Employer shall examine Contractor's remedial works directly upon receipt thereof and notify the Contractor of any recognizable defects without delay. This obligation of providing notice immediately shall also apply where a defect emerges later. Where the Employer omits such notice, the Works shall be deemed to have been approved regardless of any defect.

14.8 Where the Employer does not accept the remedial performance offered by the Contractor pursuant to the Contract, upon fruitless expiry of an extension of time allotted Contractor shall be released from liability for the claimed defect.

14.9 Where remedial performance has failed, the Employer shall be entitled – subject to the conditions contractually agreed upon – to make any other claims based on the defect.

14.10 The Contractor may refuse correction of a defect, where the Employer does not make payment as agreed upon. The Employer shall only be entitled to retain payment for cause, where the notice of defect is justified beyond all doubt. This right of retention shall be limited in its amount to four times the cost necessary to correct the defect. Where the Employer makes a claim based on a defect, and it is subsequently shown, in particular by means of an appropriate inspection by the Contractor, that the claim based on defect made by the Employer is unwarranted for factual or legal reasons, the Contractor shall be entitled to reasonable payment and reimbursement of all expenses for services, particularly those rendered in relation to the inspection.

14.11 All claims for damages shall be subject to the limitations, modifications and exclusions provided by the following Sec 15, as set out below.

15. Liability

15.1 The Contractor shall be liable to the Employer only for such property damage which his personnel has caused through its fault during the performance of the Works, the execution of the Works or during the repair of any defects of the Works. The total liability shall be restricted to 5% of the contract remuneration. In case of personal injury, the statutory liability shall apply.

Subject to intent or gross negligence, Contractor's liability towards the Employer for production shutdown, lost profit, loss of use, financial damages and losses resulting from a delay or interruption in Works as well as for contractual losses or consequential damages, shall be excluded.

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.

15.2 The Employer shall be responsible for any damage caused by his personnel. This applies also if Contractor's personnel are only directing or supervising the Works, unless it can be proved that gross negligence in connection with instructions, omissions or with the supervision caused the damage.

The Employer shall be responsible for any damage caused through deficiency in the tools, equipment and materials provided by him. This applies even if Contractor's personnel has used them without lodging a complaint, unless they could have noticed the deficiency had they exercised due attention.

16. Termination of the Contract by the Contractor

Should unforeseen events take place, changing the commercial value of the contents of the Works considerably or affecting the operations of Contractor's plant considerably, or should the execution of the Works subsequently prove impossible, the contract shall be amended respectively. If this is not reasonable from an economic aspect, the Contractor is entitled to rescind the contract wholly or in part.

The Employer has no right to claim for compensation as a result of such rescission. Should the Contractor decide to make use of his right to rescind, he shall inform the Employer immediately after he has recognized the consequences of such unforeseen events, even if an extension of the erection time had been agreed with the Employer earlier.

17. Dispute Settlement and Governing Law

17.1 Any dispute, controversy, or claim arising out of, or in relation to, this contract, including regarding the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules.

17.2 The number of arbitrators shall be one or three;

17.3 The seat of the arbitration shall be Zurich, Switzerland;

17.4 The arbitration proceedings shall be conducted in English language.