

1. Scope

- 1.1 Our General Terms and Conditions of Business for Assembly, Commissioning and Service (hereinafter: GTC) shall apply to all contracts, including contracts for ancillary services, consulting and information which we, i.e. FLSmidth Pfister GmbH (Augsburg, Germany), FLSmidth Pfister GmbH (Saint Quentin Fallavier, France), FLSmidth Pfister, Inc. (Bethlehem, United States), FLSmidth Pfister Ltda. (Jundiai, Brazil), FLSmidth Pfister GmbH Malaysian Branch (Petaling Jaya, Malaysia) or FLSmidth Pfister China (Qingdao, China), may enter into as the contractor.
- 1.2 These GTC shall govern exclusively with respect to all of our assembly, commissioning and repair and maintenance services (hereinafter: Works and Services), including ancillary services, consulting and information. By awarding a contract to us, clients are deemed to have simultaneously acknowledged application of our GTC and accepted their incorporation as an element of the contract. We hereby object to terms and conditions of the client which conflict with or differ from our GTC. Such terms and conditions shall only be deemed incorporated into the contract where we consent to them in an individual case. Our GTC shall also apply where, without stating any reservations, we perform Works and Services for the Client with knowledge of terms and conditions of the Client which conflict with or deviate from our GTC.
- 1.3 By way of supplementation to these GTC, our General Terms and Conditions of Sale and our Special Terms and Conditions of Business for Assembly, Commissioning and Service for telesupport (which we will provide to the Client at any time upon request and which may be downloaded on the Internet from www.pfister.de) shall apply subordinately.
- 1.4 Our GTC shall only apply *vis-à-vis* entrepreneurs (§ 14 of the German Civil Code), to public law legal entities or to special funds under public-administrative law within the meaning of § 310 (1) sentence of the German Civil Code.
- 1.5 Our GTC shall also apply to all such future contracts as we may enter into as contractors with the Client.
- 1.6 No agreements made between us and the Client or any amendments or addenda to such agreements shall be valid unless made in writing. The foregoing shall also apply to any waiver of the requirement of a writing.

2. Offer, offer documentation

- 2.1 Our offers shall in all cases be non-binding and subject to change. Our offers shall only be binding exceptionally and in an individual case where we tender the offer in writing and expressly designate it as binding. We shall only be bound by a binding offer until such date as is referenced in our offer, but in no event for any longer than two weeks from the date we dispatch the offer to the Client.
- 2.2 All costs estimates and any and all associated documents (e.g. plans, drawings, calculations, illustrations, papers, construction designs, models) that, in the course of contract negotiations or in the course of our contractual relationship, are provided to the Client / to third parties attributable to the sphere of the Client shall remain our property and may neither be duplicated nor disclosed to third parties without our consent. The documents must be returned to us in complete form upon our request, which we may make at any time. At the latest at the time of a decision not to award a contract to us or upon termination of our contractual relationship, the Client shall return the complete documents to us unbidden. The Client shall not be entitled to assert any right of retention with respect to the documents.

3. Periods, deadlines, delays

- 3.1 Periods/deadlines that we have indicated or that are agreed with us shall in all cases be non-binding unless otherwise agreed in writing. Where, by way of exception, periods are agreed to be binding, sections 3.2 through 3.6 below shall apply; sections 3.2 through 3.6 shall apply *mutatis mutandis* to deadlines which, by way of exception, are agreed to be binding.
- 3.2 Periods shall only begin to run at such time as all of the details relevant to our performance of the Works and Services have been clarified/resolved, but the earliest date on which they shall begin to run shall be the date on which we forward our order confirmation and on which the Client pays any agreed down payments or advances.
- 3.3 Periods shall cease to be binding where material changes or extensions are made to the scope of the contract after the period has been agreed.
- 3.4 Periods shall be deemed extended in the event of circumstances for which we bear no responsibility and circumstances of *force majeure* of any kind (e.g. unforeseeable operational, transport or shipping disruptions, damages due to fire, flood, unforeseeable shortages of labor, energy, raw materials or consumables, material shortages arising subsequently, import and export restrictions, strikes, lock-outs, orders and directives of public authorities, epidemics, violent civil unrest, armed conflicts and similar unforeseeable events) sub-

sequently rendering performance by us or our sub-contractors or freight forwarders more difficult or impossible by a period equal to the duration of the impediment plus a reasonable re-start time; the foregoing shall apply in particular in cases covered by para 6. We shall inform the Client with respect to such impediments to contractual performance. We shall likewise be deemed not to be responsible for such impediments to our contractual performance where they arise during any default.

- 3.5 Where we default in effecting delivery for reasons for which we bear responsibility, the Client shall be entitled to set a reasonable written grace period (which, as a rule, must be at least four weeks in duration) and thereafter to resile from the contract with respect to the as-yet unperformed portion thereof. The foregoing shall not apply where, at the end of the grace period, we have already commenced performing the contractual obligations.
- 3.6 Compliance with contractual periods on our part shall be subject to the condition precedent that the Client has properly performed its contractual obligations. In the event of a default by the Client, all periods shall be deemed extended by a period equal to the duration of the default plus a reasonable re-start time.
- 3.7 Delays to contractual performance for which we bear no responsibility shall be for the account of the Client. The Client shall bear the costs for such waiting time and additional travel to and from the site by our staff as arise therefrom.

4. Requests for performance of Works and Services and supply of personnel, special conditions precedent/requirements, default of acceptance

- 4.1 The Client's request for our provision of assembly, commissioning and service personnel (hereinafter: Personnel) must be effected in writing in a timely fashion, at least 21 calendar days prior to the date on which the Works and Services are to commence.
- 4.2 The Client shall only request the presence of our Personnel for the date on which all Client-provided Works and Services have been fully completed in accordance with the applicable provisions of law and the locally applicable construction codes and regulations.
- 4.3 Any special requirements or conditions precedent with respect to our Works and Services, in particular requirements or conditions precedent relating to the Client's operations, shall require the Client's express indication thereof prior to formation of the contract.
- 4.4 Where the Client declines to accept our Works and Services even after expiration of a reasonable grace period (default of acceptance), we shall be entitled (without prejudice to our further and other rights) to resile from the contract and to demand compensatory damages. We shall in such case be entitled to demand 20% of the agreed / tentative net compensation as compensatory damages without the need to furnish proof of such damages, except where the Client furnishes evidence to us that we have incurred no damages or only a lesser amount of damages. In any case, we shall at all times be entitled to demand compensation of such damages as we have actually incurred.

5. Performance of Works and Services

- 5.1 The Client shall, at its own cost and expense, support our Personnel in performing the contract. In particular, the Client shall timely provide for this purpose and at its own cost and expense the following, to the extent these are clearly needed or requested by us for the specific Works and Services we are to perform:
- temporary staff, specialist tradesmen (e.g. masons, assembly mechanics, electricians) and other Personnel in such numbers as we may demand;
 - all earth, masonry and concrete works, including materials;
 - electrical power, compressed air, including the necessary connections to the work site;
 - electrical installations to the connection point of the systems, assembly units, parts and controls supplied by us as we may direct, in compliance with the VDE Guidelines and the relevant local requirements;
 - equipment and tools (e.g. hoisting devices, welding devices, working platforms, scaffolding);
 - securable rooms for storage of our materials and tools as well as for Personnel to use for changing and for storage of their personal property during the term of our Works and Services;
 - material for load testing and calibration weights as we shall indicate.
- 5.2 In order to enable us to perform our Works and Services in a rapid manner free of disruptions, from the inception of our Works and Services the Client shall maintain at the work site all such systems, component groups, parts and controls as we are to install and may otherwise require. The Client shall store the systems, component groups, parts and controls in a protected location and treat them with care until we perform the installation. Where additional Personnel becomes necessary or is requested by the Client beyond the specifications set forth in our offer and the other contract documentation, the Client shall bear all of the costs

- of such additional deployment of Personnel. We shall inform the Client wherever it is necessary to deploy additional Personnel. Where the Client does not object to our notification within three business days from the date it receives our notice, the Client shall be deemed to have approved our chargeable deployment of additional Personnel where we have provided special notice of this to the Client in our communication.
- 5.3 The premises intended for control and measuring systems (e.g. control cabinets, control panels, control boxes etc.) must be such that we are able to carry out Works and Services in a dust-free environment which is unexposed to weather.
- 5.4 The Client shall take such actions as are necessary to protect persons and property at the work site, and shall inform our Personnel of the safety, labor, occupational health and safety, and administrative laws and regulations applicable at the work site and of the hazardous materials used by it / materials which are injurious to health used by it and of the proper manner of handling such materials, and, where appropriate, shall alert our Personnel to breaches of safety laws and regulations and shall furnish our Personnel with appropriate protective clothing free of charge.
- 5.5 To the extent necessary to enable us to perform the agreed Works and Services, the Client shall procure and submit to us work permits for our Personnel from the competent authorities in a timely fashion prior to the commencement of the Works and Services/ prior to travel by our Personnel.
- 5.6 The work site must permit free vehicular access, where appropriate using heavy goods vehicles and hoisting vehicles (e.g. cranes).
- 5.7 We reserve the right to have our Works and Services performed by third parties/sub-contractors.
- 5.8 The Client shall confirm to us at the end of each calendar week and upon the completion of our Works and Services the hours worked by our Personnel upon the assembly Works and Services confirmation sheets submitted by our Personnel, shall countersign the assembly Works and Services confirmation sheets and shall note thereon any remarks that are necessary from its perspective for purposes of our invoicing for the Works and Services. Where the Client fails to countersign our assembly Works and Services confirmation sheets or where the Client fails to make any remarks/comments thereon, the details our Personnel have indicated on the assembly Works and Services confirmation sheets shall be deemed acknowledged by the Client.
- 5.9 Prior to our commencement of the Works and Services, the Client shall designate an authorized representative who shall be authorized to provide and receive all such declarations as are relevant in the course of performance of the contract; his agency authority must, in particular, extend to countersigning or assembly Works and Services confirmation sheets, to conducting functional tests and commissioning, and to transferring possession of and performing formal legal acceptance of our Works and Services.
- 6. Countries and regions involving increased risk**
- 6.1 'Increased risk' within the meaning of this section 6 shall always be deemed present where a country or a region is covered by a travel warning or partial travel warning of the Ministry of Foreign Affairs of the Federal Republic of Germany. 'Increased risk' may, in addition, result from the risk assessments of relevant international security firms/security advisors with respect to the work site, the country of the Works and Services or the region of the Works and Services. Factors in assessing the risk situation of a country or a region are, in particular, political risks, security risks and all other travel and health risks. During the period prior to our decision on performing the Works and Services, the Client shall fully and truthfully answer all such questions as are relevant to our assessment of the security risk.
- 6.2 Where the work site is located in a country or a region with increased risk, then our performance of the Works and Services shall be at our reasonable discretion, taking reasonable account of the Client's interests and of the security of our Personnel. The same shall apply where the travel by our Personnel to the work site may only be effected via a country or a region with increased risk. Where increased risk arises or increases during the performance of our Works and Services, we shall, at all times, be entitled in our reasonable discretion, taking reasonable account of the Client's interests and of the safety of our Personnel, to interrupt in whole or in part our Works and Services for an undetermined period of time and to remove our Personnel in whole or in part from the work site, from the region or from the country. The Client shall support us and our Personnel in this respect in all matters. Any and all additional costs for interrupting the Works and Services, in particular including the costs of removing our Personnel as well as their travel back to the work site shall be borne by the Client.
- 6.3 Where, despite existing risks, we perform the Works and Services, the Client shall, at its own cost and expense, ensure that all necessary security measures / that all security measures we may request are put in place before, during and after our performance of the Works and Services.
- 6.4 We are entitled to charge a risk premium for Works and Services performed in countries or regions with increased risk. We shall set the amount of such premium in our reasonable discretion, taking reasonable account of the Client's interests and the safety of our Personnel.
- 7. Risk assumption, liability of client, formal acceptance**
- 7.1 The Client shall bear the risk that our Works and Services may be damaged or destroyed in whole or in part prior to formal acceptance as a result of *force majeure*, war, civil unrest or other unavoidable circumstances.
- 7.2 The Client shall bear liability for damage, theft or destruction of working equipment, systems, assembly units and parts where they are damaged or stolen/destroyed at a location which is subject to the Client's oversight.
- 7.3 The Client shall procure all conditions precedent necessary to enable functional testing, commissioning and our formal surrender/its formal acceptance of our Works and Services, which shall, in particular, include sufficient material for load testing and sufficient loading weights, materials to be weighed and transported and the necessary personnel.
- 7.4 The Client shall perform formal acceptance of our Works and Services without delay on the date on which we complete our Works and Services. Our notice to the Client of our completion of the Works and Services shall be deemed our request to perform formal acceptance. A joint formal acceptance log shall be prepared upon our request.
- 7.5 Where formal acceptance cannot take place immediately upon our completion of our Works and Services for reasons for which we bear no responsibility, the Client shall notify us of these circumstances prior to the formation of the contract/immediately upon learning thereof. In such case, we shall furnish Personnel upon a formal acceptance date to be agreed; the Client shall bear all such additional costs as arise therefrom, in particular including our Personnel costs at our regular rate charges per the annex to these GTC.
- 7.6 Where, for reasons for which we bear no responsibility, formal acceptance does not take place within 2 calendar weeks of the date we complete our Works and Services, then formal acceptance shall be deemed to have taken place at the end of the second calendar week even where formal acceptance is expressly declared at a later point in time.
- 8. Compensation, premiums, travel costs, overnight accommodation costs, costs of meals and subsistence, home leave travel**
- 8.1 The rate charges referenced in the annex to these GTCs for assembly, commissioning and service (hereinafter: Rate Charges) shall govern with respect to our compensation, unless terms departing therefrom are agreed by separate individual contract.
- 8.2 All compensation is quoted net of the legal rate of VAT, to the extent applicable.
- 8.3 An overtime premium shall be charged for all overtime of our Personnel exceeding the weekly working time set forth in the annex "Rate Charges", the amount of which shall be determined by the Rate Charges. We shall likewise charge a premium in accordance with our Rate Charges for Works and Services by our Personnel on Saturdays, Sundays and public holidays.
- 8.4 We reserve the right in the case of Works and Services to be rendered more than twelve months from the date of formation of the contract to make appropriate adjustments to our Rate Charges in the event of changes to the amounts of salaries and wages of our Personnel.
- 8.5 The costs for overnight accommodation, meals and subsistence for our Personnel shall be additionally borne by the Client and shall not be deemed covered by our compensation. Invoicing for overnight accommodation, meals and subsistence costs shall be based on actual costs, unless otherwise agreed. At our option, we shall be entitled (without the need to submit documentation) to invoice the Client at the lump sum rates set forth in our Rate Charges for overnight accommodation, meals and subsistence costs. The Client shall pay the overnight accommodation, meals and subsistence costs of our Personnel both for working days and for work-free Saturdays, Sundays and public holidays, for days of illness and for waiting times for which we do not bear responsibility.
- 8.6 The Client shall, in addition, bear all such other ancillary costs as are associated with our Personnel's performance of the Works and Services at the work site, in particular including the costs of insurance and visas for our Personnel.
- 8.7 The Client shall bear our Personnel's travel costs and these shall not be deemed covered by our compensation. Our Personnel's flight and other travel time shall be deemed working hours for which the Customer must pay. The amount of kilometer allowances payable

- by the Client for automobile travel by our Personnel is shown in our Rate Charges.
- Where our Personnel use rental vehicles, we shall invoice the Client for the vehicle rental and fuel charges as well as any other costs associated with the vehicle rental in accordance with actual expenditures. In addition, the Client shall bear the cost of any damages arising from its operations / from the material used and/or generated and/or of any fumes.
- We shall invoice the Client for rail travel at the rate of 2nd class travel plus all supplements for reservations, special train supplements, couchette coaches, sleeping coaches and additional charges for trams, buses, taxis, luggage forwarding etc.
- Air travel shall, as a rule, be in economy class, in justified exceptional cases, it may also be in business class.
- Our Personnel shall, as a rule, travel by automobile, rail or air. Absent any special agreement in this respect, we shall decide in our reasonable discretion, taking appropriate account of the reasonableness to the Client, with respect to the mode of transportation to be used by our Personnel. Where the Client wishes to request the use of certain means of transport or itineraries, it shall inform us thereof in writing seasonably prior to the commencement of travel by our Personnel. In such cases, invoicing of travel costs shall be by actual charges incurred.
- 8.8 Our Personnel shall be entitled to regular home leave travel provided that our performance of the Works and Services is not negatively impacted thereby. The frequency and duration of such home leave travel shall be determined by the distance ("as the crow flies") between the work site and the location of our branch office with which the Client entered into the contract.
- 0 – 80 km: Weekend travel to employee's home every weekend
 - 81 – 1,000 km: Weekend travel to employee's home every 6 weeks
 - Over 1,000 km: 5-day-long travel to employee's home every 3 months.
- The Client shall bear all of the costs for the home leave travel of our Personnel. In coordination with our Personnel, we shall specify the dates of home-leave travel by our employees at our reasonable discretion and in consultation with the Client / taking appropriate account of the reasonableness thereof to the Client.
- Section 8.7 hereof shall apply *mutatis mutandis* with respect to the costs of home-leave travel and of the means of transport and itineraries used. No charges for meals, subsistence and overnight accommodation shall arise for the duration of home leave travel.
- 9. Due dates, payment, payment default, set-off, retention, refusal to perform Works and Services**
- 9.1 All of our receivables shall be immediately payable strictly net at such time as our invoices are received by the Client. The date of our receipt of payment shall be determinative of the timeliness of the Client's payment.
- 9.2 We are authorized to demand progress payments at reasonable intervals for the Works and Services rendered by us, § 632 a German Civil Code shall remain unaffected by the foregoing.
- 9.3 Subject to any express notice to the contrary to the Client, our Personnel shall not be deemed entitled to effect collections.
- 9.4 Our claims for compensation and reimbursement of expenses/costs shall be deemed prescribed 5 years from the date they fell due, unless a longer prescription period applies by law.
- 9.5 Where the Client is in default of payment or where there are justified doubts as to the Client's ability to pay, we shall be entitled to immediately call in all of our receivables from the Client and/or to demand that the Client furnish security even prior to our commencement of the Works and Services, and we shall be entitled to postpone, in whole or in part, any Works and Services yet outstanding arising out of this or other contracts, or to resile in whole or in part from existing contracts.
- 9.6 The Client shall only be entitled to exercise a right of set-off, retention or refusal to make payment where the Client's counterclaims have been determined by *res judicata* court judgment or are undisputed by us. In addition, the Client shall only be authorized to exercise a right of retention where its counterclaim is based on the same contractual relationship.
- 10. Warranty rights, compensatory damages**
- 10.1 Claims by the Client for defects shall be deemed prescribed at the end of one year, calculated from the date of final acceptance. In derogation from the first sentence hereof, in the case of defects to Works and Services pertaining to building materials, construction elements, edifices or to planning and construction oversight services for an edifice, the statutory prescription periods shall apply.
- 10.2 Works performed by us on the basis of a notice of defects by the Client shall not constitute any acknowledgement of the existence of a defect, of a warranty claim or of an obligation on our part to render supplemental performance.
- 10.3 In the case of a justified notice of defect by the Client, the Client shall be entitled, at our option, to claim for two attempts at remediation free of charge or a replacement/re-performance. Do two attempts at remediation or replacement/re-performance not result in success within a reasonable period, the Client shall be entitled to assert its statutory rights.
- 10.4 The Client's warranty rights and our liability shall be limited to the contractual scope of our Works and Services. The Client shall neither be entitled to any warranty rights nor to any compensatory damages claims against us for Works and Services by our Personnel performed on their own responsibility and which exceed the contractual scope of our Works and Services, including any extensions of contractual scope agreed with us.
- 10.5 The Client's warranty rights shall be deemed forfeited where the Client, without our consent, by its own action or by those of a third party, effects alterations, repair works, maintenance works to our Works and Services or otherwise interferes therewith. The foregoing shall not apply where and to the extent that we are nevertheless shown by evidence to be responsible for the defects.
- 10.6 The Client shall have no claims for compensatory damages whatsoever, irrespective of the legal basis thereof, arising directly or indirectly in connection with our Works and Services. This exclusion of liability shall not apply in cases of a breach of material contractual obligations (so-called cardinal obligations). Cardinal obligations are obligations without satisfaction of which it is not even possible to properly perform the contract and as to compliance with which the counterparty ordinarily relies and is entitled to rely, i.e. rights and obligations that the contract, in light of its substance and purpose, is essentially deemed to warrant.
- 10.7 Our liability is limited to compensation for such losses as are typical for the contract and foreseeable. Claims of the Client against us for compensatory damages which relate to penalty claims of our client's customers shall in no case be deemed foreseeable and typical for the contract within the meaning of the foregoing. In every case, we shall be entitled to submit evidence of a lesser amount of damages.
- 10.8 Unless otherwise agreed, in respect of service and maintenance works, details as to technical specifications and measurement units, in particular as to precision, tolerances, volume flow rates, etc. shall be deemed non-binding and non-warranted approximate values, which cannot be achieved in every case.
- 10.9 To the extent the losses are covered by a policy of insurance the Client has taken out for the relevant type of loss, our liability shall be limited to such disadvantages of the Client as are associated with the loss, e.g. higher insurance premiums or interest losses until such time as the insurance provider has met the claim.
- 10.10 The exclusions and limits on liability set forth in these GTCs shall not apply to losses arising from injury to life, limb or health to losses attributable to intentional or negligent breaches of obligations by us or by one of our legal representatives or vicarious agents. The exclusions and limitations on liability set forth in these GTCs shall likewise not apply to other losses which are based on intentional or grossly negligent breaches of obligation by us or one of our legal representatives or one of our vicarious agents, or where the other losses have arisen due to the lack of a warranted characteristic or due to fraudulent concealment of a defect.
- 11. Place of performance, forum, jurisdiction and venue, applicable law**
- 11.1 The place of performance for all obligations arising out of this contractual relationship shall be the location of our branch office with which the Client concluded the contract.
- 11.2 Exclusive jurisdiction and venue for all disputes arising directly or indirectly out of this contractual relationship shall lie with the courts of Augsburg, provided that the Client is a merchant within the meaning of the German Commercial Code. The foregoing shall also apply irrespective of the Client's status as a merchant where the Client moves his domicile or regular place of residence abroad or where his domicile or regular place of residence is unknown at the time of filing an action. In any event, we shall also be entitled to bring an action at the courts with general jurisdiction over the Client.
- 11.3 The business relations between the Client and us arising out of or in connection with this Agreement shall be exclusively governed by the law of the Federal Republic of Germany, but excluding application of the uniform UN Convention on the International Sale of Goods (CISG).