



**ERHARDT PROYECTOS S.L.**

**GENERAL TERMS AND CONDITIONS FOR ENGINEERING, CONSTRUCTION, ERECTION AND INSTALLATION**

*All commercial and contractual relations between Erhardt Proyectos and its clients will be governed by this terms and conditions and no other terms shall be applicable unless otherwise agreed in writing.*

*In the event of conflict between the General Terms and Conditions and the content of the Contract, the stipulations of the Contract shall take precedence.*

**1. Definitions:**

- 1.1 "General Terms and Conditions": these terms and conditions;
- 1.2 "Documentation": the material, drawings, specifications (including technical specifications), designs, calculations, models, prototypes and other documents, that are or will be made available by one Party to the other Party concerning and/or in connection with the Services;
- 1.3 "Erhardt": the Erhardt Proyectos S.L. entity, its affiliates, parent companies, agents or subsidiaries strictly engaged in the execution of the Services;
- 1.4 "Client": the person or legal person that enters into a Contract with Erhardt concerning the Services;
- 1.5 "Services": any engineering, construction, erection, lifting, assembling, setup, conversion, repair, overhaul and/or installation performed by Erhardt, including its preparation, the performance of process-engineering work, supply and execution, whether on site or any other place.
- 1.6 "Specifications": any technical, material or legal requirement from the Client, whether in electronic format, drawings, calculations or any other form.

**2. Scope and application of the General Terms and Conditions:**

These Terms and Conditions shall be applicable to any Service rendered, or to be rendered by Erhardt to the Client, including the bidding, contracting, execution and closing of the Services or any part thereof.

**3. Preparation for Services**

Unless otherwise agreed in writing, Client shall:

- a. Take care of all preparations and provision of materials, at its own cost in such way that the execution of the Services may start without delay upon arrival of Erhardt's stuff and materials and may be carried out smoothly without endangering any person and/or property. These activities shall consist, but not limited to, preparation of Client's/services site, including suitability of the ground and materials to be provided by Clients, for the execution of the Services.
- b. Take any necessary measure for the safety and protection of the personnel and/or property at the place of Services, when place is designated, nominated or under control of the Client, its agents, affiliated, main clients, suppliers and/or service providers. Clients will properly and timely advise Erhardt of any special safety regulations applicable to Erhardt stuff.
- c. Provide any special safety and protection equipment and outfit that may be required for Erhardt's stuff for the execution of the Services.
- d. Provide transport services for Erhardt stuff designated for the Services from place of accommodation to the site.
- e. Supply of necessary, eligible, heated and locked accommodation for Erhardt staff (including light, washing facilities, sanitary installations) as well as for keeping the required tools and delivered parts.





- f. Be responsible for any groundwork preparation, Foundation preparation, protection or covering of underground facilities, packing material or similar required for laying of skid track complete with push/pull system and/or hydraulic jack;
- g. Supply of adequate and proper heating, fuel, light, electrical energy, water including the necessary connections for the execution of the Services.
- h. Clear the site where Services are to be rendered, from any hindrance or obstacle, whether physical or regulatory for the activities included within the Services, including the preparation and installation of any equipment or machinery, so that these vehicles, machinery or equipment can easily turn, maneuver, load and unload to the pre-determined location.
- i. Provide, unless otherwise agreed in writing, all necessary permits, licenses or authorization from public authorities for the execution of the Services.

**4. Information and Documentation:**

Clients must provide in advance, and always before the commencement of the Services, any information related to or in connection with the Services, including but not limited to:

- a. Nature, dimensions, weights, center of gravity, lifting points and any other technical detail of the cargo to be lifted, installed, assembled and or repaired.
- b. Drawings of the site where the services are to be rendered, including heights, lengths, ground materials and resistance etc...
- c. Detailed technical requirements for the execution of the services and any other information that Erhardt may reasonably require for the successful performance of the Services.

Any Documentation shall be submitted by the Client in the format required by Erhardt.

Clients shall provide the above referred Documentation and warrant that such Documentation will be complete, correct and accurate. Clients shall be responsible for any loss or damage caused as a consequence of any fault, error or neglect in the accuracy or detail of any Documentation referred herein with.

**5. Variation, deviation and changes:**

The contents of the Offer/Contract, including dates, prices, rates, fees and dues by Erhardt for the execution of Services have been calculated and estimated in accordance to the Documentation provided by Clients. Any variation of whatsoever nature that directly affects the suitability of the Services may imply a revision of the conditions contained within the Offer/Contract. Any variation of these terms must be duly and timely proved by Erhardt.

Economic and technical suitability of the Services are subject to presentation of proper Documentation by Clients.

The Client is entitled to instruct Erhardt to change the Services or part thereof.

The Client is not entitled to issue an instruction that would make Erhardt act in conflict with professional standards or outside its area of expertise.

The Client shall compensate Erhardt, in accordance with the applicable rates, for delays, suspensions, changes and supplements that are not attributable to Erhardt. If no such rates have been agreed, or if those rates are not applicable, the compensation shall be established reasonably and fairly.

erhardt shall be entitled to a Variation in the following circumstances:

- a. Compulsory change of Law;
- b. a delay caused to the Erhardt's performance of the Services by credited Force Majeure;





- c. a delay caused by unworkable and or unsafe weather conditions (including, but not limited to, named storms, high ambient temperatures and rain) or conditions which exceed any working parameters contained in the Offer or Contract;
- d. a delay caused to the Erhardt's performance of the Services by the Clients failure to perform any of its obligations under this Terms and Conditions, the Contract or other act or omission of the Client or any Client contractor that prevents Erhardt from performing the Services; or
- e. a delay caused by other factors or events beyond Erhardt's reasonable control, including, but not limited to, breakdown of equipment or the equipment.
- f. A variation credited on the Documentation or information provided by Clients.

All Variations shall be priced in accordance with rates contained in the Offer/Contract. Where no rates are available, Erhardt shall price the Variation(s) at market rates.  
Any variation shall be credited and reasonably informed to Clients.

#### **6. Execution of Services:**

Erhardt shall execute the Services under the instructions, guidance and requirements established by Clients, as well as based on the information, drawings and Documentation provided by Clients. In those cases where the Services are rendered at any installation or premises controlled, provided, designated or arranged by Clients, any equipment provided or used by Erhardt as part of the Services, is only to be used at the location specified and only for the Services. No other use of the equipment is permitted unless agreed to in writing by Erhardt. Clients recognize that full title to, and property in, the equipment is held by and shall at all times remain with Erhardt and/or Erhardt's affiliates or suppliers. Client is not in any way entitled to lease or sublease the equipment or to grant any rights, of whatever nature, to or in the equipment to any other person. Client is responsible and liable to Erhardt for any defects and damages caused to the equipment while in the care, custody and control of Client, its suppliers, agents, main clients and service providers.

The Services will be carried out in daylight during normal working hours, unless otherwise agreed in writing and accepted by Erhardt and the public regulations. Erhardt may carry out any emergency works to continue or to make the Services or the site safe prior to leaving the site whether during or outside daylight hours without the need to seek the Client's consent. The Client will provide all lighting needed for works done outside daylight hours.

Erhardt reserves the right to provide alternative suitable lifting, transport, erection, installation and/or assembling equipment and timely and properly inform Clients for their approval, which cannot be unreasonable withheld.

#### **7. Prices:**

The price specified in the Offer or Contract is based upon performance under normal circumstances and under normal working conditions. Unless otherwise stated, the prices, rates, fees and dues:

- a. are only applicable for the execution of the Services as described within the Offer/Contract;
- b. are subject to availability at the time acceptance and written confirmation by Erhardt of an agreement coming into force in regards to such Offer;
- c. do not include applicable value added, sales, use, withholding or other taxes;





- d. are based on continuous operation with no delays or extensions caused by factors outside the control of Erhardt, including, for the sake of clarity, any force majeure event;
- e. are subject to the provisions set out in these Terms and Conditions including, without limitation, the timely and proper execution of Clients obligations;
- f. do not include overtime rates, which shall be charged, for any hours worked before 8:00 a.m. or after 4:00 p.m., and after 8 hours worked in any day, unless otherwise agreed/offered in writing;
- g. do not include overtime rates, which shall apply to all hours worked on weekends and/or holidays; and
- h. do not include, unless otherwise agreed/offered in writing, charges for assembly/mobilization and disassembly/demobilization, which shall be charged at Erhardt hourly rates.

If the Services period is extended and/or if the equipment is used and/or the services are performed in excess of the normal working hours per day or per week, then the offered/contracted price will be re-calculated by Erhardt and offered to Clients.

#### **8. Liability:**

Notwithstanding anything to the contrary contained in these Terms and Conditions or the Contract, the liability of the parties for losses, damages (of whatsoever nature, including personal injury claims) and/or delays arising pursuant to or in connection with the representations, warranties, indemnifications, covenants or other obligations (whether express or implied) of the parties under these Terms and Conditions or the Contract, shall not exceed of the 100% lumpsum price indicated in the Offer/Contract.

Clients shall indemnify Erhardt, against all claims, costs, liabilities, etc. from their contractors, sub-contractors, affiliates, parent company, co-venturers and customers (having a contractual relationship with the Clients, always with respect to the Services), and employees of any of the foregoing. When the referred claims is brought by any of the entities or personnel mentioned above, Clients shall provide, upon request, sufficient guarantee to cover the costs, damages, fees and duties claimed.

Clients expressly waive any right to request or execute any "action in rem" for the lien, arrest, seizure or embargo of any kind of the equipment or material supplied by Erhardt for the execution of the Services and must permit, authorize and grant free access to Erhardt for the desinstallation and removal of any equipment or machinery used for the execution of the Services.

Client shall satisfy a penalty of 10% of the Offer/Contract lumpsum price for each day/pr that the equipment or material supplied by Erhardt is seized, retained or embargoed by Clients, its clients, service providers, parent companies and/or the employees of any of the foregoing.

#### **9. Consequential damages**

Neither party shall be liable to the other for any consequential damages whatsoever arising out of or in connection with the performance or non-performance of the Services, whether in contract or in tort, and each party shall protect, defend and indemnify the other from and against all such claims from any clients, agents, affiliates, parent/participated company or any subsidiary or employee of any of the foregoing.

"Consequential damages" shall include, but not be limited to, loss of use, loss of profits, shut-in or loss of production and cost of insurance, costs, charges, expenses, fines, levies or duties, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) whether or not foreseeable, or ought to be foreseeable at the date of the Services.





#### **10. Suspension of Services and Termination**

Erhardt is entitled to reasonably and proportionally suspend (including partly) its obligations under these Terms and Conditions or the Contract if the Client is in default in fulfilling one or more of its obligations, or has stopped fulfilling one or more of its obligations, including payment of any amount due, or the adoption of any necessary and adequate safety measure.

If the scope and/or progress of the Services is delayed and/or suspended as a result of circumstances, not being force majeure, that are caused by Erhardt, Erhardt shall not be liable for any loss, costs or damages.

If the scope and/or progress of the Services is delayed and/or suspended as a result of circumstances that are not caused by Erhardt, Erhardt shall be entitled to compensation.

Erhardt shall properly and adequately prove the circumstances that justifies the adoption of the above referred suspension of Services.

Each Party shall be entitled to cancel and/or terminate the Services with immediate effect, without the intervention of intermediaries or resorting to the courts, and without being obliged to pay any compensation to the other Party, under any of the following circumstances:

- a. if the other Party is in default and continues to be so after the Party that is in default has been called upon to rectify the default and (ten) working days have passed without the default being rectified (thereby complying with the summons/notice of default);
- b. if control of or the controlling interest in the other Party's company is transferred directly or indirectly to a third party;
- c. if the other Party is declared bankrupt, applies for or obtains suspension of payment (including provisionally), or in any other way loses free control of its company or its equity, without any prior notification being necessary.

#### **11. Title to the Documentation**

The Documentation prepared, delivered, submitted and/or shared by each party in accordance with these Terms and Conditions and the Services shall be considered as the property of the party who produced, delivered, submitted and/or shared the Documentation. Each party reserves all intellectual property rights on the Documentation and information provided, in particular copyright, right of inventions and confidential know-how ("IP-Rights"). Neither party shall disclose such Documents and information received to third parties without other party's prior written consent.

#### **12. Force Majeure:**

Force majeure is understood to mean circumstances, conditions and/or events that cannot be affected by any Party, that occur outside the fault or negligence of any Party and cannot be avoided or impeded by taking reasonable measures, that temporarily or permanently impede the implement of any obligation (with the exception of obligations to pay) under the Offer/Contract, such as strikes, mutiny, quarantine, epidemics, war (declared or undeclared), acts of war, terrorism, blockades, embargoes, riot, demonstrations, insurrection, fire, storm and/or other extreme weather conditions and/or other natural freaks of nature, as long as there has been no cause or contribution to those circumstances.

If the implementation of the Services by Erhardt is impeded temporarily as a result of an instance of force majeure, the consequences of that instance of force majeure will be only a delay to the





implementation of the work by Erhardt, and that instance will not be a reason for the Client not to fulfil its obligations to pay in accordance with what is stipulated in the Contract.

If implementation of the Services by Erhardt is impeded permanently by an instance of force majeure, or is impeded temporarily by an instance of force majeure for a period that is expected to be at least 20 (twenty) days, both parties are entitled to cancel the Services. Erhardt shall not be liable for any loss, costs or damages outside pro rata repayment of the price for the Services carried out.

**13. Insurances:**

Clients shall subscribe an All Risk Insurance for the cargo, machinery or any equipment to be maneuvered, installed, lifted, erected, repaired or assembled by Erhardt.

The All Risk Insurance shall include Erhardt as a co-insured for the Scope of Services, with a waiver of subrogation on behalf of or against Erhardt.

Erhardt shall arrange a Civil Liability Insurance, with a global limitation of liability of EUR 1.000.000,00.

**14. Entire Agreement:**

These Terms and Conditions and its Annexes constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

Each party agrees that it will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**15. Law and Jurisdiction**

All contracts to which these terms and conditions apply, and all further contracts that arise from them, shall be governed and interpreted exclusively by English law.

All disputes that arise in connection with the Contract, or further contracts that arise from it, shall be brought before the Court in London to the exclusion of other courts.





