

I. General

1. The following terms and conditions of GMC EUROPE SÜD GmbH (hereinafter referred to as "GMC EUROPE SÜD") apply to any person who, when concluding the contract, is acting in the exercise of his commercial or independent professional activity (entrepreneur), legal entities under public law or special funds under public law.
2. GMC EUROPE SÜD SÜD's deliveries and services are based exclusively on these terms and conditions and any separate contractual agreements, any deviating terms and conditions of purchase of the customer shall not become part of the contract, even if the order is accepted, and shall be considered to have been rejected. A contract only comes into effect with the supplier's written order confirmation.
3. GMC EUROPE SÜD SÜD reserves all ownership and copyright rights to all samples, cost estimates, drawings, project plans and other information of a physical and non-physical nature, including in electronic form. Third parties may only access this information with GMC EUROPE SÜD SÜD's prior consent, and it must be returned to GMC EUROPE SÜD SÜD upon request if the order is not placed with GMC EUROPE SÜD SÜD. GMC EUROPE SÜD SÜD undertakes to make information and documents designated as confidential by the customer accessible to third parties only with the customer's consent.
4. The employees of GMC EUROPE SÜD or its representatives or subcontractors are not authorised to make verbal supplementary agreements or give verbal assurances that go beyond the content of the written contract.

II. Scope of Services

1. The task, the procedure and the type of service to be provided shall be specified in detail in the respective contract between the customer and GMC EUROPE SÜD. GMC EUROPE SÜD's offers are subject to change and non-binding, unless otherwise shown.
2. The company acts based on an order confirmation in writing by the contractual partner or a completed contract in which the services to be provided are defined.
3. Services not included in the scope of services, or the following services must be provided by the customer at no added cost to GMC EUROPE SÜD, unless expressly agreed in the offer in the individual items:
 - a. The operating materials needed for installation, such as water, electricity, etc.
 - b. The heavy equipment needed for assembly, such as transportation and lifting equipment, hoists, forklifts, scaffolding, tank covers, etc.
 - c. Unhindered access to the assembly hall for assembly vehicles and unhindered access to the assembly site.
 - d. A lockable room or container for assembly materials and tools.
 - e. Labor to unload and store our materials and to transport them to the installation site.
 - f. All construction work such as the construction of an installation pit, the foundations required for installation, floor openings, roof openings including roof bracing and any auxiliary beams required on the roof structure to support the load as well as other structural changes in the areas intended for the installation of the system. Preparation of construction drawings needed for project planning and construction of the plant. Production drawings for construction and foundation work, especially with construction calculations.
 - g. Static calculations and drawings for hall sections to which the system is attached, installed or suspended.
 - h. All scaffolding and covers needed for the installation of the system.
 - i. A reliable Internet connection at the installation site.
 - j. Electrical connection between switch cabinet and main distribution board.
 - k. Preparing the electrolytes and filling the Tanks.

- l. Supply of the chemicals needed for operating, cleaning and commissioning the system.
 - m. Delivery and installation of the ventilation system for the hall.
 - n. Delivery and installation of lighting equipment for the plant or area.
4. Changes, additions or extensions to the scope of services, the procedure and the type of work documents require a special agreement to be legally effective.
 5. The delivery of the service is not restricted to a specific person. GMC EUROPE SÜD may, for good cause, send a person other than the agreed person to perform the service.

III. Prices and Payment

1. The service fee is based on the contractually agreed rate. The value added tax of the Federal Republic of Germany at the respective statutory rate shall be added to the prices.
2. GMC EUROPE SÜD expressly reserves the right to adjust prices if the main cost factors change significantly after the offer has been made or the order has been confirmed and before delivery.
3. If GMC EUROPE SÜD has started to install the cables and unless otherwise agreed, the customer shall bear all necessary ancillary costs such as travel, transport and shipping costs as well as allowances and insurance costs in addition to the agreed remuneration.
4. Unless expressly agreed otherwise, payment of the invoice shall be made cashless to the business account of GMC EUROPE SÜD with the agreed payment term in such a way that the amount agreed for the settlement of the invoice is available to GMC EUROPE SÜD by the due date at the latest. Payment shall only be considered to have been made when GMC EUROPE SÜD has the amount at its disposal.
5. In the absence of a separate agreement, payment shall be made net without deductions within 10 calendar days of the invoice date.
6. If The customer does not pay within 10 calendar days of the invoice date, he shall be in default even without a reminder. In case of default payment, GMC EUROPE SÜD shall be entitled to claim statutory default interest in accordance with § 247 BGB.
7. The customer shall only be entitled to withhold payments or offset them against counterclaims to the extent that his counterclaims are undisputed or have been legally established.
8. GMC EUROPE SÜD is entitled to issue monthly or weekly part invoices.

IV. Delivery time, delivery delay

1. The delivery time is decided by the agreements between the parties. The compliance of the delivery time by GMC EUROPE SÜD presupposes that all commercial and technical questions between the contracting parties have been clarified and that the customer has fulfilled all obligations incumbent upon them, such as the provision of the necessary official certificates or permits or the payment of a deposit. If this does not occur, the Delivery Period shall be extended accordingly. This does not apply if GMC EUROPE SÜD is responsible for the delay.
2. Compliance with the delivery time is subject to correct and punctual delivery to GMC EUROPE SÜD. GMC EUROPE SÜD shall inform the customer as soon as possible if delays become clear.

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Specialist company as per § 62 WHG
Member of the Association of German Engineers e. V.



3. The delivery period shall be extended accordingly if the failure to meet the delivery period is due to force majeure, industrial disputes or other events beyond the control of GMC EUROPE SÜD. The customer shall not be entitled to derive any claims for damages from this. GMC EUROPE SÜD will inform the customer as soon as possible of the beginning and end of such circumstances.
4. GMC EUROPE SÜD shall be entitled to make partial deliveries to a reasonable extent. These partial deliveries shall be regarded as separate transactions and may be invoiced as such. This shall be paid for separately.
5. If the shipment or acceptance of the goods is delayed for reasons for which the customer is responsible, the customer will be charged for the costs incurred because of the delay.
6. When placing orders, GMC EUROPE SÜD assumes that the customer is creditworthy and solvent. If circumstances occur at the customer, which cause justified doubts about his creditworthiness and ability to pay, or if GMC EUROPE SÜD only becomes aware of circumstances affecting his creditworthiness after the conclusion of the contract, GMC EUROPE SÜD may make the commencement or continuation of the work dependent on the provision of security or advance payment. Evidence of doubtful creditworthiness is considered to be provided by information from a reputable credit reference agency or bank, without the client being able to demand the submission of the information. If GMC EUROPE SÜD exercises this right, GMC EUROPE SÜD shall be obliged to request the customer to provide security or advance payment within a reasonable period of time.
7. The delivery period shall be considered to have been complied with upon notification of readiness for delivery. If acceptance is to take place, the acceptance date shall be decisive - except in the case of justified refusal of acceptance - or alternatively the notification of readiness for acceptance.
8. If the supplier is finally unable to provide the entire service before the transfer of risk, the customer may have the option to withdraw from the contract without setting a deadline. In addition, should the execution of a part of the order become impossible, the customer may withdraw from the contract, provided that the customer has a legitimate interest in doing so. If this is not applicable, the customer will be responsible for paying the contract price portion corresponding to the partial delivery and services.
9. In the event of delays in delivery and performance for which GMC EUROPE SÜD is not responsible, GMC EUROPE SÜD shall be entitled to postpone the delivery or performance for the duration of the hindrance plus a period agreed by both contracting parties or to withdraw from the contract in whole or in part due to the part not yet fulfilled. If the delay in delivery and performance extends beyond the agreed duration of the hindrance, as well as an added period mutually agreed upon by both contracting parties, The customer may consider withdrawing from the contract for the part that has not yet been fulfilled.
10. If GMC EUROPE SÜD is unable to fulfill its obligations, and the customer experiences damage as a result, it is possible that the customer may have grounds to claim compensation. This amount would be limited to a maximum of 5% of the value of the part of the total delivery that cannot be used promptly or in accordance with the terms of the contract due to the delay. If the Customer sets a reasonable deadline for performance after the due date, considering the statutory exceptions, and if the deadline is not met, the Customer may have the possibility to withdraw from the contract within the framework of the statutory provisions. At the request of GMC EUROPE SÜD, he is bound to declare in writing within a reasonable timeframe whether he will exercise his right of withdrawal.

V. Obligations of the customer

1. The Customer agrees to support the activities of GMC EUROPE SÜD. Specifically, the Customer will create, at no added cost, all conditions within its sphere of operations that are necessary for the proper execution of the order.
2. The customer must inform GMC EUROPE SÜD immediately and without being asked about any changes to the information provided in the application/contract, particularly his name, his place of residence or business, his delivery and invoice address, his contact addresses, his legal form and his payment data, insofar as this information is required for the performance of the contract. GMC EUROPE SÜD will hold the customer liable for any damage that would have been avoided if the notification had been made in ample time. The customer is responsible for letting GMC EUROPE SÜD know immediately of any issues. If the customer provides incorrect or incomplete information, GMC EUROPE SÜD reserves the right to charge the customer for the added expenses incurred as a result and/or to discontinue the contractual services.
3. The customer is responsible for protecting the access data provided to him against access by third parties. The customer is liable for any damage resulting from unauthorized third parties using their access data.
4. The customer is responsible for providing GMC EUROPE SÜD with all information and documents needed for the performance of the services in a timely manner. The customer is responsible for providing GMC EUROPE SÜD with all information and documents needed for the performance of the services in a timely manner.
5. All business documents exchanged between the customer and GMC EUROPE SÜD, in particular pricing and quotations, are strictly confidential. The customer assures GMC EUROPE SÜD to take all measures to prevent unauthorized third parties' access to data and confidential information.

VI. Transfer of Risk, Acceptance

1. The risk shall pass on to the customer when the delivery item has left the factory, even if partial deliveries are made or GMC EUROPE SÜD has assumed other services, e.g., shipping costs or delivery and installation. If acceptance is needed, it shall determine the passing of risk. They must appear immediately on the acceptance date. If this is not possible, notify GMC EUROPE SÜD of your readiness for acceptance. The customer may not refuse acceptance in the event of a minor defect.
2. If shipment or acceptance is delayed or does not take place because of circumstances for which GMC EUROPE SÜD is not responsible, the risk shall pass to the customer from the date of notification of readiness for shipment or acceptance. The supplier will take out the requested insurance policies at the customer's expense.
3. Partial deliveries are permissible, provided they are reasonable for the customer.
4. If a delivery is taken back in individual cases for reasons not related to GMC EUROPE SÜD and there's a special written agreement, the customer is responsible for the risk until the delivery is received by GMC EUROPE SÜD.

VII. Retention of Ownership

1. GMC EUROPE SÜD retains ownership of the goods and services until all payments are received, including any added services provided under the contract. GMC EUROPE SÜD retains ownership of the goods and services until all claims arising from deliveries of goods and services from the entire business relationship, including ancillary claims, claims for damages, cashing of checks and bills of exchange from the customer have been settled.
2. GMC EUROPE SÜD is entitled to insure the goods against theft, breakage, fire, water, and other damage, at the customer's expense, unless the customer has taken out insurance himself.
3. The customer is responsible for proper storage and safekeeping of the goods and marking it as delivered from GMC EUROPE SÜD. The customer may not sell, pledge, or assign the goods as security. In case of seizure, confiscation, or other dispositions by third parties, the customer must inform GMC EUROPE SÜD immediately.
4. If the customer acts in breach of contract, particularly in case of default in payment, GMC EUROPE SÜD shall be entitled to repossess the goods following a letter of notice and the customer shall be obliged to surrender it.
5. Due to the retention of ownership, GMC EUROPE SÜD may only demand the return of the goods if it has withdrawn from the contract.
6. GMC EUROPE SÜD is entitled to withdraw from the contract and demand the immediate return of the goods due to the commencement of insolvency proceedings. If the customer has already resold the goods, they assign all claims arising from this legal transaction.

VIII. Claims against Damages

Material damages

1. If any part is found to be damaged due to an issue that arose prior to the transfer of risk, GMC EUROPE SÜD will, at its discretion, repair or replace the part free of charge. If such damages are discovered, they must be reported to GMC EUROPE SÜD in writing immediately. Replaced parts become the property of GMC EUROPE SÜD.
2. Following consultation with GMC EUROPE SÜD, the customer must provide GMC EUROPE SÜD with sufficient time and opportunity to conduct all repairs and replacement deliveries that GMC EUROPE SÜD considers necessary. Otherwise, GMC EUROPE SÜD shall be released from liability for the resulting consequences. In urgent cases where operational safety is at risk or to prevent considerable damage, the customer has the right to rectify the damage themselves or to have it rectified by third parties and to demand reimbursement of the necessary expenses from GMC EUROPE SÜD.
3. GMC EUROPE SÜD will cover the direct costs of the repairs or replacements, including the cost of the replaced part, shipment and delivery thereof, if the complaint is found to be legitimate. It shall also bear the costs of removal and installation as well as the costs of any necessary provision of the required personnel, including travelling expenses, if this does not result in a disproportionate burden for GMC EUROPE SÜD.
4. In case of damage, customers may withhold payment to an extent that is reasonable proportionate to the damage. The customer may only withhold payments if a notice of damage is backed by irrefutable evidence of defects. The customer is not entitled to withhold payment if the period within which he is entitled to claim damages has expired. If the notification of damages is unjustified, GMC EUROPE SÜD shall have the right to claim compensation for expenses from the customer.

5. Within the framework of the statutory provisions, the customer shall be entitled to withdraw from the contract if GMC EUROPE SÜD - considering the statutory exceptions - allows a reasonable deadline, set by them for the repair or replacement delivery due to material damage, to expire without result. The customer shall only be entitled to a reduction in the contract price if the damage is insignificant. The right to reduce the contract price is otherwise excluded.
6. No liability is accepted in the following cases, in particular: Unsuitable or improper use and transport, faulty assembly or commissioning by the customer or third parties, natural wear and tear, faulty or negligent handling, improper use, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences - unless GMC EUROPE SÜD is responsible for it.
7. Claims by the Customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are excluded insofar as the expenses arise because the object of the delivery or service has subsequently been taken to a place other than the Customer's original place of performance, unless the transfer corresponds to its intended use.
8. If the customer or a third party conducts improper repairs, GMC EUROPE SÜD shall not be liable for the resulting consequences. The same shall apply to any changes made to the goods without the prior consent of GMC EUROPE SÜD.

Legal Damages

1. If the use of the goods or services leads to an infringement of industrial property rights or copyrights domestically or abroad, GMC EUROPE SÜD shall, at its own expense, procure the right for the customer to continue using the goods or services or modify the goods or services in a way that is reasonable for the customer so that the infringement of property rights no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period, the customer shall be entitled to withdraw from the contract. GMC EUROPE SÜD is also entitled to withdraw from the contract under the same conditions. In addition, GMC EUROPE SÜD shall indemnify the customer against any undisputed or legally established claims of the respective owners of the industrial property rights.
2. The obligations of GMC EUROPE SÜD stated in Section VIII. 9. are conclusive, subject to Section IX. 2, in case of an infringement of industrial property rights or copyrights.

They only exist if:

- The customer informs GMC EUROPE SÜD immediately of any violation of industrial property rights or copyrights claimed,
- the customer supports GMC EUROPE SÜD to a reasonable extent in the defense of the asserted claims or enables the supplier to conduct the modification measures in accordance with Section VIII. 9,
- GMC EUROPE SÜD reserves the right to take all defense measures, including out-of-court settlements,
- The legal damage is not based on an instruction of the customer; and
- The legal damage was not caused by the fact that the customer has modified the delivery item without authorization or has used it in a manner not in accordance with the contract.

IX. Liability of the supplier, exclusion of liability

1. If the goods cannot be used by the customer in accordance to the contract due to the fault of GMC EUROPE SÜD as a result of neglected or faulty execution of suggestions and advice given before or after conclusion of the contract or due to the breach of other contractual secondary obligations - in particular instructions for operation and maintenance of the goods - the provisions of Sections VIII. and IX.2. shall apply to the exclusion of further claims by the customer.
2. For damages, which have not been caused by the goods themselves, GMC EUROPE SÜD is liable, for whatever legal reason, only for
 - a. in the case of intent
 - b. in the case of gross negligence on the part of the company or executive employees
 - c. in case of culpable injury to life, limb or health
 - d. in the case of damage fraudulently concealed within the scope of a guarantee promise.
 - e. in the case of damage to goods, to the extent that liability exists under the Product Liability Act for personal injury or property damage to privately used goods.
3. In case of negligent breach of material contractual duties, GMC EUROPE SÜD shall also be liable for gross negligence of non-managerial employees and for slight negligence. In the case of slight negligence, liability shall be limited to the reasonably foreseeable damage typical of the contract.
4. Any further liability - on whatever legal grounds - for compensation for damages that have not occurred to goods or services themselves, is excluded.

X. Statute of Limitation

1. All claims by the customer, regardless of legal basis, will automatically expire after 12 months. This does not apply to the purchase of consumer goods.
2. The statutory periods outlined in Section IX. 2 apply to claims for damages and defects in a Plant or to items delivered to the Plant that have been used in accordance with their normal use and have caused damages.
3. The limitation period begins from the transfer of risk.

XI. Software usage

1. If software is included in the scope of supply, the customer shall be granted a non-exclusive and non-transferable right to use the software supplied, including its documentation. It is provided for use on the designated system. Use of software on more than one system is prohibited.
2. The customer may only reproduce, revise, translate or convert the software from the object code into the source code to the extent allowed by law (§§ 69 a ff. UrhG). The customer undertakes not to remove manufacturer's details - in particular, copyright notices - or to change them without the prior express consent of GMC EUROPE SÜD. All other rights to the software and the documentation, including copies, shall remain with GMC EUROPE SÜD or the software supplier. The granting of sub-licences is not allowed.

XII. Privacy Policy

GMC EUROPE SÜD is entitled to process customer data about the business relationship or in connection with it, regardless of its origin from the customer or third parties. This data processing is carried out in accordance with the Federal Data Protection Act. This notice replaces the notification in accordance with the Federal Data Protection Act that personal data about the customer is stored and processed by EDP.

XIII. Applicable Law, Place of Jurisdiction

1. The law of the Federal Republic of Germany shall apply to these terms and conditions and to all legal relations between GMC EUROPE SÜD and the customer, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of GMC EUROPE SÜD if the customer is a registered trader within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law. However, GMC EUROPE SÜD shall also be entitled to take legal action at the customer's head office.

XIV. Severability Clause

Should one of the provisions be invalid, this shall not affect the validity of the remaining provisions of the contract. The invalid provision shall be replaced by a provision that comes closest to the economic purpose intended by the parties.