

1 Scope

These terms & conditions apply to maintenance work of any kind, in particular also with regard to equipment, machines and installations, (hereinafter referred to as "Services") and only to legal transactions between companies. Unless otherwise agreed between the contract partners, the ÖNORM EN 13306 standard in the version of 01/10/2010 "Maintenance – terms, definitions and measures" shall apply.

2 Conclusion of the contract

- 2.1 The terms & conditions of the contractor shall apply exclusively, any other terms & conditions and deviations from the terms & conditions of the contractor require the contractor's explicit written confirmation to become effective.
- 2.2 The contract shall be deemed concluded once the contractor has sent a written order confirmation or consigned a delivery after receipt of the order.
- 2.3 No warranty claims may be derived nor liabilities established from information provided in catalogues, brochures, advertising material and written or oral statements not included in the contract.
- 2.4 Any subsequent amendments and supplements to these terms & conditions shall be confirmed in writing to be valid.

3 Charging for Services

Unless otherwise agreed, the Services shall be charged according to time and effort (daywork). If agreed in writing, they may also be charged at a flat rate. Unless explicitly agreed otherwise, the Services shall be performed during the contractor's usual business hours.

3.1 Daywork services

The Services provided by the contractor shall be charged as follows: **Consideration for staff:** The principal shall confirm the hours worked by the contractor's staff in writing.

The working time shall begin upon arrival of the staff on the principal's premises and shall end when they leave. If the principal fails to provide appropriate confirmation without sufficient reason, the records of the contractor shall be taken as a basis for invoicing. The rates agreed or specified in the offer shall apply to the hours worked.

Spare parts: Spare parts installed by the contractor shall be charged based on the time and material required.

3.2 Services at flat rates

The flat rate shall cover the Services agreed in writing to be provided by the contractor. It presupposes an unimpeded workflow and timely completion of all work to be performed by the principal in advance. Additional expenses incurred by the contractor due to circumstances outside the latter's sphere of influence, such as subsequent modifications of the content or scope of the Services, waiting times etc., shall be borne by the principal.

3.3 Unless otherwise agreed, accommodation and travel costs of the contractor's staff shall not be included in the price and shall be charged separately.

3.4 In case of doubt, quotations made by the contractor shall be deemed non-binding.

3.5 If it turns out during a maintenance or repair order that the contractor is unable to perform this work, the latter shall be entitled to bill the expense for locating the defect at cost.

3.6 Prices are exclusive of VAT and, unless otherwise agreed, also exclusive of any other taxes, charges and fees.

4 Payment

4.1 To the extent that the Services are charged on a daywork basis, the prices to be charged shall be invoiced after the Services have been performed. In case of Services the duration of which exceeds one month, according to the contractor's calculation, a partial invoice will be issued at the end of each month. The flat rates agreed for recurring Services (in particular maintenance services) shall be paid in advance for the period agreed.

4.2 Payments shall be made in the currency agreed to the contractor's paying office without any deductions or charges. All associated interest and expenses (such as debiting and discount charges) shall be borne by the principal. Without prejudice to any other rights of the contractor, statutory default interest shall be calculated if the payment dates agreed upon are not complied with. Unless otherwise agreed, invoices shall be payable no later than 14 days after invoicing in any case.

4.3 The principal shall not be entitled to retain or offset payments on account of warranty claims or other claims.

4.4 A payment shall be deemed made on the date the contractor is able to dispose of the amount paid.

4.5 If the principal is in default on an agreed payment or any other performance from this or any other legal transactions, the contractor may, without prejudice to any other rights the contractor may have

- a) postpone performance of its own obligations until this payment or any other performance has been effected, and claim an appropriate extension of the period of performance.
- b) demand payment of all outstanding receivables from this or any other legal transactions and invoice the statutory default interest plus VAT for these amounts, with effect from the respective due date, unless the contractor is able to provide proof of any additional costs,

- c) in the event of qualified insolvency, i.e. after two instances of default, perform other legal transactions only against cash in advance.
- d) terminate the contract with immediate effect, granting a period of grace of 14 days. At any rate, the contractor shall be entitled to charge any pre-trial expenses, in particular dunning expenses and lawyers' fees, according to applicable statutory provisions, to the principal.

4.6 The contractor shall be entitled to submit the invoice electronically.

5 Cooperation obligations of the principal

5.1 The principal shall be obliged

- a) to do whatever is necessary to ensure that the Services may be started in due time and performed without interruptions,
- b) to perform expertly any preparatory work required on site and otherwise at its own expense and under its own responsibility and make all existing documents available to the contractor in time (e.g. plant documentation, operation and control manuals). These documents shall remain the property of the principal and may be used by the contractor and/or the latter's subcontractor only for the purpose of the Services.
- c) to take the necessary measures to prevent accidents at its expense. The principal shall in particular inform the contractor if special measures need to be taken for its own protection or the protection of third parties, or if statutory or administrative regulations must be complied with.
- d) to secure those parts of the installation on which work is performed before service work is started by the contractor and to disconnect upstream or downstream components. The contractor shall be entitled to reject or interrupt service work whenever security is not ensured.
- e) to provide comprehensive insurance for the staff members provided by it and to assume any liability for such staff members,
- f) to provide spare parts or other tools in due time, if so agreed, and to check them for completeness and damage before the start of the Services, together with the contractor (for instance, by providing ascent aids incl. safety devices in proper condition)
- g) to provide heatable or air-conditioned rooms that can be locked as well as sanitary facilities for the contractor's staff free of charge, if required,
- i) to inform the contractor about any temporary shutdown of installations and the occurrence of faults,
- j) to dispose of any removed parts, unless they are the property of the contractor based on this agreement, any equipment not required and any other waste at its own expense, in compliance with specifications.

5.2 If the principal fails to meet its obligations, the contractor shall be entitled to refuse the provision of services and to rescind the contract in accordance with the legally applicable regulations. At any rate, the principal shall be liable for any damage (for instance, downtimes, etc.) incurred by the contractor due to non-compliance with this obligation.

5.3 The contractor shall be entitled to process data from the installation that is the object of the service order using IT systems and to perform statistical analyses in a neutralised form.

5.4 The contractor shall be entitled to use subcontractors in respect of all deliveries and elements of the performance, provided he informs the principal accordingly.

6 Execution deadline

6.1 A deadline specified for completion shall only be binding if expressly agreed as binding in writing.

6.2 The Service shall be deemed completed if the installation is ready for use by the principal and/or ready for trial, if such trial is provided for in the contract.

6.3 If a deadline for execution of the Services is agreed between the principal and the contractor, this deadline shall be reasonably extended

- a) if any unforeseeable circumstances or circumstances outside the parties' sphere of influence occur such as, for example, all instances of force majeure, which prevent compliance with the delivery period agreed upon; this shall include, in particular, terrorism, armed conflicts, official interventions and bans, transport and customs delays, transport damage, shortage of power and raw materials, industrial disputes and the loss of a crucial supplier that is difficult to replace. These above-mentioned circumstances shall also be deemed reasons for extending the delivery period if they affect suppliers.
- b) if the principal fails to meet its obligations (in particular those under item 5.1). The deadline shall be extended by the duration of these circumstances, at any rate.

6.4 If an instance of force majeure (within the meaning of item 6.3 a) lasts for more than three months, each party shall be entitled to terminate the contract by written notification, without the other party being able to derive any claims therefrom.

7 Acceptance of performance

- 7.1 The contractor shall inform the principal about completion of the Services. The principal shall then immediately check the Services and subsequently accept them. The principal shall not be entitled to refuse acceptance for minor defects.
- 7.2 If acceptance of the Services is delayed for reasons outside the sphere of influence of the contractor, acceptance is deemed effected after expiry of two weeks following the notification of completion of the Services.

8 Termination and rescission of the contract

- 8.1 Each party shall be entitled to terminate the contract if, upon violation of a contractual provision, the other party failed to comply, within 30 days after receipt of a written request by the other party to remedy such violation, to comply with such request.
- 8.2 If insolvency proceedings are opened with respect to the assets of a contracting party or a request for initiation of insolvency proceedings is rejected for lack of sufficient assets, the other contracting party shall be entitled to rescind the contract without granting a period of grace. If such rescission is declared, it shall become effective immediately once the decision is made not to continue the company. If the company is continued, such rescission shall become effective only 6 months after opening of the insolvency proceedings after rejection of the request for initiation for lack of assets. In any case, the contract shall be terminated with immediate effect, provided that the insolvency law governing the insolvent contracting party does not provide otherwise or if termination of the contract is essential to avoid serious financial disadvantages for the contract partner of the insolvent contracting party.
- 8.3 Termination of the contract under (1) does not establish any liability on the part of the party terminating the contract.

9 Retention of Title

Until receipt of all payments including interest and expenses to be made under the contract, the contractor shall retain title to all accessories, spares and replacement parts.

10 Warranty

- 10.1 If the terms of payment agreed are complied with, the contractor shall be obliged to remove any defect existing at the time of handover that is detrimental to functionality, in accordance with the following provisions.
- 10.2 Defects found during the warranty period shall be remedied by the contractor free of charge, provided that the principal reports such defects in writing immediately, but no later than 14 days after their detection, within the warranty period, at any rate, and these defects are acknowledged by the contractor as being covered by the warranty. In this notice of defects, the defects shall be described in detail so as to allow an evaluation of the defects and their cause (including submission of any available electronic records regarding the defective part, the most recent maintenance report, a description of the measures already taken by the principal etc.).
- 10.3 If the Services are interrupted for reasons outside the sphere of influence of the contractor, the warranty period for the Services performed before the interruption shall start no later than two weeks after the beginning of the interruption.
- 10.4 Unless otherwise agreed, the warranty shall not include any defects that result from arrangement and assembly not effected by the contractor, insufficient adjustment, non-compliance with installation requirements and conditions of use, excessive stress on parts beyond the performance specified by the contractor, negligent or incorrect treatment and use of inappropriate operating material; this shall also apply to defects resulting from material and spare parts provided by the principal. Nor shall the contractor be liable for damage resulting from third-party acts, atmospheric discharges, overvoltage, exposure to chemicals, accidents, fire, force majeure, natural disasters (earthquakes, hurricanes), electric shocks, power failures, terrorism. The warranty shall not cover the replacement of parts that are subject to natural wear and tear. Moreover, the contractor shall not be liable for deliveries and services performed by the principal and/or by third parties commissioned by the latter, regarding existing installation parts (existing installations) which are not covered by the contract. The warranty shall lapse immediately once the principal itself or a third party not explicitly authorised by the contractor effects any modifications or repairs to the products delivered without written consent by the contractor. When reporting a defect, the principal shall have to provide evidence that none of these circumstances applies.
- 10.5 In the event that it becomes clear only after the Services to detect and eliminate the defects have been performed by the contractor that the contractor is not subject to any warranty obligation under these warranty provisions, the principal shall be obliged to pay for the services performed by the contractor according to the latter's repair rates.
- 10.6 In the event of a defect, the principal shall primarily have the right to rectify it.
- 10.7 Any supporting staff, lifting devices, scaffolding and incidentals required for performing warranty work on the principal's premises shall be provided.
- 10.8 Provisions 10.1 to 10.7 shall apply accordingly to every instance of assuming responsibility for defects on other legal grounds.

11 Liability and insurance

- 11.1 The contractor shall be liable for any damage to the installation and/or any object as a result of the services, provided intent or gross negligence can be proven to the contractor or its agents, with this overall liability being limited, in the event of gross negligence, to the total contract value or, for maintenance services, to the amount of one year's compensation for the agreed Services. The contractor's liability is limited to 25 % of the net contract value per event of loss.
- 11.2 Unless otherwise agreed, any liability for slight negligence, with the exception of personal injury, and compensation for consequential damage, pure financial loss, indirect loss, loss of production, downtime costs, cost of financing, cost of substitute power, loss of power, data or information, lost profit, savings not achieved, interest losses and losses from third-party claims asserted against the contractor shall be excluded.
- 11.3 Unless otherwise agreed, any compensation shall be excluded in case of non-compliance with any requirements for assembly, commissioning and use (such as those included in operating instructions) or official authorisation requirements.
- 11.4 If contractual penalties have been agreed, any claims of the principal beyond that arising from the relevant title shall be excluded.
- 11.5 The provisions of item 11 shall finally settle all claims of the principal vis-à-vis the contractor, on any legal ground and title whatsoever, and shall also apply to all staff members, subcontractors and sub-suppliers of the contractor.
- 11.6 If the staff of the contractor is directly ordered by the principal to perform additional services, this shall be at the principal's risk exclusively, and any liability on the part of the contractor shall be excluded.
- Such recourse to the contractor's staff by the principal beyond the agreement in question shall be subject to the contractor's prior consent in writing and based on previously determined or customary consideration.
- 11.7 The principal shall include the contractor, its subcontractors and consortium partners, if any, as well as the operational risks of the Services to be provided by the contractor in its existing machinery breakdown and machinery breakdown business interruption insurance and have the transferability of the insurance policy restricted in favour of the contractor. Upon written request by the contractor, the principal shall immediately, but no later than within seven business days following the request, submit an appropriate written confirmation by its insurance company regarding compliance with all obligations under this article.

12 Assertion of claims

All claims of the principal shall be asserted in court within 3 years after performance of the services, otherwise they shall be forfeited, unless other deadlines are provided for by mandatory statutory provisions.

13 Compliance with export regulations

- 13.1 When passing on the goods supplied by the contractor to third parties, together with the pertinent documents, regardless of the manner in which the latter are provided or the services performed by the contractor, including technical support of any kind, the principal shall comply with the applicable provisions of the national and international (re-)export regulations. In any case, the principal shall comply with the (re-)export regulations of the contractor's country of domicile, the European Union, the United Kingdom of Great Britain and Northern Ireland and the United States of America when passing on the goods and/or services to third parties.
- 13.2 If required for export control checks, the principal shall immediately provide to the contractor upon request all necessary information, among others about the final recipient, final destination and purpose of use of the goods and/or services.

14 General information

- 14.1 If individual provisions of the contract or of these terms & conditions are invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced with a valid provision that approximates the intended objective as closely as possible.
- 14.2 The English-language version shall be deemed the authentic version of the terms & conditions and shall also be used to interpret the contract.

15 Place of jurisdiction and applicable law

The exclusive place of jurisdiction for resolving all disputes arising from the contract – including those regarding its existence or non-existence – shall be the court with subject matter jurisdiction at the contractor's head office; in Vienna, this shall be the court located in the district of the Local Court of Innere Stadt. The contract shall be governed by Austrian law to the exclusion of conflict of law rules. Application of the UNCITRAL UN Convention on Contracts for the International Sale of Goods shall be excluded.

16 Reservation clause

Performance of the contract on the part of the contractor shall be subject to the reservation that no obstacles exist under national or international (re-)export regulations, in particular no embargoes and/or other sanctions.

These terms and conditions are based very closely on the terms and conditions – proposal of the FEEL – Association of the Electrical and Electronics Industry Austria.

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