

## 1. Scope of Application, Offer and Conclusion of Contract

- 1.1. All offers and contracts concerning the rendering of service work (inspection, repair and maintenance work) hereafter referred to as "service" by the contractor, are governed by the general terms and conditions of service (hereafter referred to as "terms and conditions of contract") set out below. The contractor does not recognize any terms and conditions of the customer that conflict with or deviate from these terms and conditions unless the contractor accepts to do so by giving his express consent in writing. Even if the contractor unconditionally executes the services in the knowledge of those conditions of the customer which conflict with or deviate from the terms and conditions of the customer, this does not constitute agreement - in this respect the terms and conditions of the contract also apply.
- 1.2. The offers made by the contractor are without engagement. If the order placed by the customer is classified as an offer, the customer can accept this within ten working days. The orders placed require the written confirmation of the contractor to become binding.
- 1.3. Any agreements made with the customer on an individual case basis (including ancillary agreements, supplements and changes) have priority over these terms and conditions of contract. The content of such individually concluded agreements is a written contract or the written confirmation of the contractor, the text form being sufficient.
- 1.4. The contractor retains the property rights to cost estimates, drawings and other documentation and also the copyright insofar as protection under copyright law is possible. The customer is not to permit third parties to have access to them.
- 1.5. The underlying service contract as well as these terms and conditions of contract apply only towards a trader, a legal person governed by public law or a special purpose entity organized under public law in accordance with Section 310 sub-section 1 Point 1 of the German Civil Code.

## 2. Details of Cost, Cost Estimate, Termination by the Customer

- 2.1. As far as possible, the customer will give the estimated cost of service at conclusion of the contract. Alternately the contractor can set cost limits.
- 2.2. If the service work cannot be effected at this price or if the contractor, during service work, deems that the execution of additional work or the utilization of additional parts or material necessary, agreement of the customer is to be sought if the given costs are exceeded by 20%.
- 2.3. If it transpires during the execution of the services that the costs, in the interest of a correct and proper execution of the work, will be exceeded by more than 20%, the customer is to be notified of this in writing. The customer is assumed to have given his consent if he does not immediately refuse to agree to the expansion of the services – the contractor is additionally to specifically refer to this legal conclusion in his written notification.
- 2.4. If a cost estimate containing binding details of the cost is desired before execution of service work, it is to be expressly requested by the customer. Such a cost estimate is - insofar as nothing to the contrary is agreed - only binding if submitted in writing, the text form being sufficient. The preliminary services rendered up to the submission of this cost estimate are not charged to the customer insofar as they can be utilized during the execution of the service work.

## 3. Price and Payment

- 3.1. Payment shall be made upon acceptance and submission or sending of the invoice without discount.
- 3.2. The contractor is authorized to demand a reasonable advance payment upon signing of the contract.
- 3.3. Unless otherwise indicated, the prices are always to be understood exclusive of the statutory value added tax.
- 3.4. The customer has a right of offsetting or retention only if his counter claims have been established as legally binding, ready for a decision in court proceedings, undisputed or recognized by the contractor.

## 4. Involvement of the Customer at his Place of Service

- 4.1. When rendering the services, the customer is to provide support at his own expense to the service personnel of the contractor.
- 4.2. It is incumbent on the customer to protect persons and material at the place of service.
- 4.3. The customer is obliged to ensure suitable working conditions and the safety of the place of service.
- 4.4. The service manager of the contractor is to be instructed by the customer about the safety regulations that need to be observed insofar as this is necessary. The customer is to notify the contractor of any violations of the safety regulations committed by the service personnel of the contractor.

## 5. Technical Assistance of the Customer at his Place of Service

- 5.1. The customer is obliged, if required, to provide at his own expense suitable assistance personnel in sufficient numbers and for the required period of time.
- 5.2. The assistance personnel is to follow the instructions of the persons entrusted by the contractor with directing the service work. The contractor assumes no liability for the assistance personnel thus provided.
- 5.3. The customer is obliged to provide at his own expense the energy required for the service work (e.g. lighting, operational energy, water), including the required power connections.
- 5.4. If necessary, secure theft-proof rooms are to be provided by the customer for storage of the tools of the service personnel and heated recreation rooms at his expense.
- 5.5. The customer is to provide at his own expense all materials and operating materials and to undertake all other measures necessary for adjusting the object of service and carrying out testing.
- 5.6. The customer is to ensure that the service personnel can immediately render their service services upon arrival. Any delays caused by the customer are at his expense.
- 5.7. If the customer does not fulfil his obligations, the contractor is entitled, although not obliged, after the expiry of a suitable period to undertake the measures incumbent on the customer in his stead and at his expense.
- 5.8. The statutory rights and claims of the contractor remain otherwise unaffected.

## 6. Time Limit for the Execution of the Service Work

- 6.1. Details of the service work time limits are based on estimations and are therefore not binding.
- 6.2. In the event of force majeure, labour disputes and the occurrence of unforeseeable obstacles that lie outside the sphere of influence of the contractor, the service time limit is extended by an appropriate length of time.
- 6.3. Insofar as the contractor does not supply himself with the required spare parts and materials although he has placed orders for such with his upstream suppliers or the respective manufacturers, the service time limit is

extended by an appropriate length of time. The contractor is to immediately notify the customer in this event.

- 6.4. Verifiable damage caused to the customer by a delay of the contractor will be reimbursed, however, in the case of ordinary negligence only up to 5% at most of the net service price. All other claims are irrespective of 12.2 of these terms and conditions of contract, excluded for ordinary negligence.
- 6.5. Should the customer grant the contractor a reasonable period to make up for the delay - insofar as no statutory exceptional case exists - and if this period is not observed, the statutory regulations allow the customer to withdraw from the contract. Further claims do not exist - irrespective of 12.2 of these terms and conditions of contraction.
- 6.6. Irrespective of 12.2 of these terms and conditions of contract, the contractor can decide instead of a flat rate compensation for delay in accordance with
- 6.7. Of these terms and conditions of contract can make available to the customer to an object comparable with the service object during the period of delay insofar as this is reasonable.

## **7. Acceptance of the Service, Handover by the Contractor**

- 7.1. The contractor is to notify the customer when the service work is completed. The sending of an invoice is also considered notification. Acceptance is to be effected within 2 weeks after notification of completion.
- 7.2. If the customer finds no fault with the service work during the acceptance procedure, or if the acceptance is not effected by the due date - for reasons that the contractor is not responsible for - the work is considered as being correctly and properly completed and as accepted.
- 7.3. In the event of a delay in acceptance on the part of the customer, the contractor is entitled to charge the customer for storage costs or to store in this case the object of service also at a third place at the expense of the customer.

## **8. Transfer of Risk and Transport**

- 8.1. The outward and return transport of the object of service is in principle the responsibility of the customer, who also bears the risk of the loss or damage during transport.
- 8.2. If it is agreed that the contractor undertakes the transport, this is effected at the expense and risk of the customer, even if the transport is effected with vehicles of the contractor.
- 8.3. The objects of service handed over by the customer for the purposes of service work are not insured against fire, theft, transport and storage damage etc. These risks are to be covered by the customer or can be covered by the contractor but only if expressly desired in writing by the customer and at the expense of the customer.

## **9. Retention of Title, Extended Lien**

- 9.1. The contractor reserves the right to retain ownership to all accessories, spare parts and exchange parts used until receipt of all payments arising out of the service agreement. More extensive collateral agreements cannot be made.
- 9.2. On account of his demands arising out of the service agreement, the contractor enjoys a right of lien to the object of service of the customer that is in his possession on account of the contract. The right of lien can also be asserted on account of claims deriving from work, spare part deliveries and other services executed at earlier dates insofar as these are in connection with the object of service. For other claims deriving from the business relationship the right of lien only applies insofar as it is

undisputed or established as legally binding or ready for decision in court proceedings.

- 9.3. As a precautionary measure, the customer, in the event that he is not the owner of the object of service, assigns the claim and the expectancy of transfer of ownership or retransfer after complete settlement of all third party claims to the contractor and hereby irrevocably authorizes him to fulfil for the client. However, an obligation to fulfil instead of the customer does not exist for the contractor.
- 9.4. If the object of service is connected with spare parts and such like of the contractor and if the object of service to be viewed as the principal thing, the customer transfers to the contractor pro-rata joint ownership insofar as the object of service belongs to him until complete payment has been effected. The customer looks after the joint object of ownership for the contractor.

## **10. Used Parts**

It is incumbent on the customer to dispose of used parts and other objects no longer of use. Unless statutory regulations exist that specify something different the customer undertakes to come to a reasonable agreement with the contractor regarding recovery. In the process it should be assumed that the contractual partners make use of third parties to fulfil their recovery obligations.

## **11. Claims for Defects**

- 11.1. The contractor is liable towards the customer for any service defects to the extent that he can decide to rectify the defects in his workshop or at the site of the object of service. Further claims of the customer are irrespective of 11.3 and 12 of these terms and conditions of contract - excluded.
- 11.2. Defect claims expire 12 months after acceptance of the service. Any defects found are to be reported immediately to the contractor in writing. Should the customer execute incorrect service work himself without obtaining the consent of the contractor or have service work executed by a third party, this invalidates all liability claims against the contractor. The same applies if the customer desires that parts requiring renewal are not renewed.
- 11.3. If the contractor - in consideration of the statutory exceptions - allows a period for rectification that he has been given expire fruitlessly, the customer is entitled to a reduction in price as prescribed by law. This right to a reduction in price also exists in other cases of failure of rectification. Only if it can be proven that the service work is not of interest to the customer despite the reduction, can the customer withdraw from the contract.

## **12. Other Liability of the Contractor and Disclaimers**

- 12.1. If due to the fault of the contractor the object of service cannot be used by the customer for its contractual purpose as a consequence of omitted or faulty execution of suggestions and advice as well as other contractual subsidiary duties - in particular instruction for operation and service of the object of service, the provisions of points 11 and 12.2 of these terms and conditions of contract shall apply accordingly excluding further claims by the customer.
- 12.2. The contractor is liable for damage to the object of service itself, whatever the objective and legal reasons - only in the event of
  - a) intent
  - b) gross negligence of the owner / the organizations or executive employee,
  - c) culpable loss of life, injury or adverse effect on health,
  - d) defects that have been fraudulently concealed,
  - e) defects that the contractor assured were absent,

f) insofar as there is liability according to the product liability law for persons or material damage to privately used objects.

12.3. In the event of culpable violation of fundamental contractual duties, the contractor, even in the event of gross negligence on the part of non-executive employees and in the event of ordinary negligence in the latter case, bears limited liability up to the reasonably foreseeable damage typical of this contract type.

12.4. Further claims for damages are excluded.

### **13. Limitation Period**

All claims of the customer - for whatever legal reasons - become time-barred within twelve months. For claims for damages according to 12.2 of these terms and conditions of contract the statutory time limits apply. Should the contractor render service work on a building and thereby causes its defectiveness, the statutory time limits likewise apply.

### **14. Remote Service Work**

If the contractor renders work either entirely or partially as part of a teleservice, the teleservice terms and conditions of the contractor are supplemental to these general service terms and conditions.

### **15. Legal Venue, Applicable Law**

The parties shall endeavor, by mutual agreement, to resolve all disputes arising out of this Agreement, including those relating to its validity, irrespective of whether they occurred during the period of validity or until the end of the warranty period.

If no agreement can be reached and the Purchaser has his seat in the FRG, the matter will be finally decided according to the Rules of Arbitration of the German Institution of Arbitration e. V. (DIS) under the exclusion of ordinary legal action. Place of arbitration is Frankfurt / Main. German material law is applied.

However, if the Purchaser has his seat outside the FRG, the matter will be finally decided in accordance with the rules of arbitration of the International Chamber of Commerce (IHK) by one or more judges appointed under these rules. The place of arbitration is Geneva. Swiss substantive law is applied. The language of negotiation is German or English.