

# General Conditions of Maintenance and Repair 2009

AMT AG, Badstrasse 34, 5312 Döttingen (Switzerland)

## 1. Scope of validity

These Conditions apply to work undertaken in connection with maintenance, repair and modifications, as well as with recommissioning (hereinafter referred to as «Service Works») in the commercial and industrial sector.

## 2. Scope of performance

The scope of performance results from the Contractor's Order Acknowledgement and the work report of the service personnel.

## 3. Conclusion of contract

- 3.1 The contract is deemed to have been entered into upon receipt of the Contractor's written acknowledgement stating its acceptance of the order (Order Acknowledgement), or upon receipt of the Service Works.
- 3.2 These Conditions shall be binding if declared applicable in the tender or in the Order Acknowledgement. Any conditions stipulated by the Employer which are in contradiction to these Conditions shall only be valid if expressly acknowledged by the Contractor in writing.
- 3.3 All agreements and legally relevant declarations of the parties to this contract must be in writing in order to be valid.

## 4. Plans, technical documentation and computer programs

Each party to the contract retains all its rights to plans, technical documents and computer programs, including, without limitation, checking and test programs, provided to the other party. The party receiving such documents acknowledges these rights and shall not make these documents available to any third party, either in whole or in part, without the prior written consent of the other contracting party, nor use them for purposes other than those for which they were handed over.

## 5. Rights and obligations of the Employer

- 5.1 The Employer has to instruct the Contractor as to the irregularities, damage or deficiencies observed which make the Service Works necessary, or has to indicate the scope of inspection to be done by the Contractor. Such information shall be provided as early as possible and in any case no later than the beginning of any actions taken by the Contractor's personnel.
- 5.2 The available technical documentation relevant to the object in question shall be made available to the Contractor. Should the Contractor request that this technical documentation be supplemented, the Employer undertakes to obtain the same if possible from the manufacturer.
- 5.3 If the Service Works are carried out at the Employer's premises, the Employer shall provide the Contractor's personnel with suitable workshop facilities.
- 5.4 The spare parts shall be obtained by the Employer in due time and placed at the disposal of the Contractor's personnel in so far as they are not to be supplied by the Contractor pursuant to the Order Acknowledgement.
- 5.5 The Employer ensures dismantling and transportation in accordance with the Contractor's instructions.
- 5.6 The Employer shall inform the Contractor expressly if special consideration is required towards the Employer, third parties or other contractors, or if relevant regulations must be observed.
- 5.7 The Employer makes sure that the parts, machines and plants affected by the Maintenance or Repair are cleaned before the Contractor's personnel starts. If this is not the case the costs for any delays of the work will be charged to the Employer.

## **6. Rights and obligations of the Contractor**

- 6.1 The Contractor undertakes to carry out the Service Works in a workmanlike manner, using qualified personnel. Any third parties involved in this respect are also designated as Contractor in these Conditions.
- 6.2 The object of the Service Works will be examined by the Contractor to determine the amount of work and material required. If labor and/or material requirements exceed the agreed scope of the Service Works, they shall – subject to the Employer's agreement – also be provided.
- 6.3 The Service Works shall be performed by the Contractor at the Employer's premises or the Contractor's premises, at the latter's discretion.
- 6.4 The Contractor is entitled to refuse Service Works or to discontinue the same if the safety of personnel is not assured or the Employer does not fulfil its obligations.
- 6.5 The Contractor shall inform the Employer in written on the Service Works executed. For the purpose of reporting, the Employer shall make time available to the Contractor during working hours.

## **7. Notice of warning**

The inspection findings, as well as any oral or written statements by the Contractor to the Employer or his representative concerning the condition, deployment, safety and usability of the object being serviced, as well as any reservations expressed in the same form in respect of orders, instructions or measures of the Employer or other factual circumstances, shall be deemed a notice of warning and shall exempt the Contractor from any liability.

## **8. Time schedule for performance**

- 8.1 All indications concerning time-limits for performance are based on estimates and are thus not binding.
- 8.2 A binding time-limit for performance can be agreed upon only after the scope of the Service Works has been determined.
- 8.3 Any binding time-limit for performance shall be suitably extended:
- If the instructions required by the Contractor to carry out the Service Works are not provided in good time, or if the Employer subsequently changes such instructions; or
  - If the Employer does not comply with his contractual obligations, in particular if he does not comply with the duties pursuant to paragraph 5, or the terms of payment pursuant to paragraph 10 on time or in the proper manner; or
  - In the case of circumstances beyond the control of the Contractor such as epidemics, the threat or actuality of mobilization, war, civil war, acts of terrorism, rioting or sabotage, as well as labor disputes, accidents, late or incorrect deliveries of necessary material, actions or omissions by local or state authorities, unforeseeable transportation hindrances, fire, explosion, or natural incidents.
- 8.4 If a binding time-limit for performance has been agreed upon and this time-limit is not complied with due to circumstances which are solely the responsibility of the Contractor, the Employer may, provided he has suffered damage, claim payment of compensation for damage resulting from delay amounting to 0.5% per completed week up to a maximum of 5%. The amount of the compensation is calculated from the price of the Contractor's work for that part of the plant which cannot be commissioned at the proper time due to the said delay. Further rights and claims in respect of delay, in particular for damages, are excluded.
- 8.5 A time-limit is also complied with, even though parts are missing or readjustments still have to be made, if operation for the intended purpose is possible and unhindered.

## **9. Pricing and supplementary costs**

- 9.1 Unless otherwise agreed, the Service Works shall be invoiced according to the time spent and material used on the basis of the Contractor's rates. This shall also apply to the preparation of technical documents, inspection reports, expert's reports and the evaluation of measurements and tests in connection with the order. The cost of materials also includes the costs of the use of special tools and equipment, as well as consumables and incidental material.

Travelling times as well as a reasonable amount of preparatory time and winding up time after the journey which is necessary for compliance with the contractual conditions, is deemed to be working time.

The Employer shall certify the performance by signing the respective reports. If the Employer refuses to grant certification without reason, or it is not granted in due time, the entries of the Contractor's personnel shall serve as a basis for calculation.

9.2 Travelling expenses, transportation costs and hotel expenses, as well as payment of the board (daily allowance) and additional costs, are invoiced to the Employer.

9.3 The Employer shall be informed of the expected extent of work prior to the commencement of the Service Works. Any statements concerning the expected costs are estimates and shall not be binding. Should the Employer, on the basis of the anticipated work, not wish the Service Works to be executed, the costs incurred to the Contractor shall be charged to the Employer.

9.4 The costs incurred for transportation, dismantling and installation shall be borne by the Employer.

## **10. Terms of payment**

10.1 Unless otherwise agreed, the price and the costs pursuant to paragraphs 9.1 and 9.2 are invoiced monthly. All amounts due to the Contractor shall be paid by the Employer within 30 days of the date of the invoice. The Contractor reserves the right to require an advance payment of 20% of the presumed amount.

Payments are to be made to the Contractor by the Employer at the Contractor's registered office without deductions of any kind (discount, expenses, taxes, fees, etc.). Payment is regarded as carried out when Swiss francs in the amount invoiced are made freely available to the Contractor in Switzerland.

Taxes, dues, fees, social insurance contributions and the like which the Contractor must pay in connection with the contract or with the Service Works are charged to the Employer.

10.2 The Employer is not allowed to withhold or decrease payments because of complaints, claims for counterclaims not accepted by the Contractor. The payments are also to be made should the Service Works be delayed or become impossible for reasons beyond the control of the Contractor.

10.3 If the Employer fails to effect payment on the agreed dates, he shall – under the proviso of other rights being claimed and without formal notice – be liable to pay interest on the overdue amount(s) from the date due at a rate based on the interest rates prevailing at the Employer's registered office. Payment of default interest shall not release the Employer from paying the sums due under the terms of the contract.

## **11. Ownership, bearing of risk, and insurance**

11.1 Unless otherwise agreed, replaced parts remain the Employer's property.

11.2 The Employer bears the risk of damage to or loss of the object to be worked upon or any part thereof during performance of the works, even if such incidents occur at the Contractor's premises or during necessary transportation or storage.

11.3 It is the duty of the Employer to obtain insurance against losses of any kind.

11.4 If an environmentally appropriate disposal of replaced parts or of consumables (oils, gases, dust, etc.) resulting from the service is required, it shall be arranged by the Employer.

## **12. Warranty; liability for defects**

12.1 The Contractor guarantees for a period of 12 months after the completion of the Service Works and in accordance with the following provisions that the work has been carried out in a workmanlike and careful manner.

The warranty period lapses in any event two years after the conclusion of the contract.

Should the Service Works be interrupted for the reasons referred to in paragraph 8.3 above, the warranty period for the works completed before the interruption commences at the latest one month after the beginning of the interruption.

12.2 In the event that the object worked upon, parts of the same or replacement parts delivered or installed under the terms of the contract prove to be defective or unusable during the warranty period, and if this proves to be due to poor performance of the Service Works or defective material supplied by the Contractor, then such parts shall either be repaired or replaced by the Contractor, at its own discretion and within or replaced by the Contractor, at its own discretion and within a reasonable period of time, provided that such defects are notified to the Contractor in writing during the warranty period, and immediately upon their detection.

The Contractor shall be only responsible for deficiencies related to the work performed under his supervision by the Employer's personnel or those of a third party if it can be proven that such deficiencies are attributable to gross misconduct of the Contractor's personnel in the course of instruction or supervision.

12.3 No warranty shall be provided if the Employer or a third party undertakes modifications or repairs without the Contractor's written permission, or if the Employer does not immediately take appropriate measures to reduce the possible damage.

12.4 For parts repaired under warranty, the Contractor shall provide warranty to the same extent as for the original Service Works but not beyond the warranty period of the latter.

12.5 Any claims and rights relating to deficiencies other than those specified under paragraphs 12.1 to 12.4 above are excluded.

### **13. Limitations of liability**

13.1 The Contractor shall be liable to the Employer only for such property damage which his personnel has caused through its fault in the execution of the Service Works or during the repair of any deficiencies.

13.2 The Contractor's liability shall in total be limited to an amount corresponding to the remuneration, but is not to exceed a total amount of CHF 500'000 (five hundred thousand Swiss francs).

13.3 Any further claims by the Employer, in particular the claim of indirect or consequential losses, such as, for instance, loss of production, loss of use, loss of orders, loss of profits or compensation for damage of any other type are excluded, irrespective of the legal ground on which they may be claimed.

13.4 This exclusion of liability does not apply as far as it is contrary to mandatory law.

### **14. Jurisdiction and applicable law**

**The place of jurisdiction for both the Employer and for the Contractor shall be at the registered office of the Contractor. The Contractor shall, however, be entitled to sue the Employer at the latter's registered address.**

The contract is governed by Swiss substantive law.

### **15. Severability**

Should a provision of these General Conditions of Maintenance and Repair prove to be wholly or partially invalid, the parties to the contract shall jointly seek an arrangement having a legal and economic effect which shall be as similar as possible to the invalid provision.