

## GENERAL CONDITIONS FOR WORKSHOP MAINTENANCE BY A CONSTRUCTOR-SERVICE CONTRACTOR

### 1. General Provisions

#### **1.1 - Professional practice**

These general maintenance conditions codify the professional practices of constructors-service contractors for pumps, vacuum pumps, compressors, plumbing fittings, ancillary equipment and provision of services. They therefore constitute the professional benchmark and are lodged with the Practices Office of the Paris Commercial Court Registry.

#### **1.2 - Application of general conditions**

They comply with competition law rules.

Pursuant to article L441-6 of the French Commercial Code, the supplier's general terms and conditions constitute the sole legal basis for commercial negotiations.

These general conditions apply to all contractual relations between the "constructor-service contractor" and the client company, hereafter called the "Client".

Any departure from these general conditions must be effected by an express written acceptance thereof by the constructor-service contractor.

These conditions shall not apply under the constructor's guarantee for any defect noted after delivery of equipment, which is covered by the constructor's guarantee during the contractual guarantee period.

### 2. Definitions

For the purposes of these general conditions, the following definitions apply:

**Maintenance:** All operations whose content is defined under the special conditions and which may, as appropriate, comprise the detection, analysis, correction or prevention of equipment dysfunction. These operations may be described as "**services**" or "**works**".

**Constructor-service contractor:** contractor to which the maintenance service is consigned, and which is also a manufacturer of the same type of equipment.

**Equipment:** appliance made available for maintenance by the client to the constructor-service contractor, whether or not the latter is the manufacturer.

**Client:** person or entity assigning equipment maintenance to the constructor-service contractor.

### 3. Transport and risk

The equipment must be:

- Identified;
- Clean and free from pollution.

In the absence of special provisions, the cost and risk of loss or damage caused to or by the equipment shall be borne as follows:

#### **3.1 - Delivery to workshop**

The cost and risks of delivery of equipment to the constructor-service contractor's workshop shall be borne by the client.

A detailed delivery notice prepared by the client must accompany the equipment.

The constructor-service contractor will effect equipment receipt and identification in the workshop.

#### **3.2 - During work**

Risks related to the period of works shall be borne by the constructor-service contractor, save for those caused by inherent defects in the equipment which existed prior to its responsibility therefor.

#### **3.3 - Return to client**

The cost and risks of return of the equipment and the destination site shall be subject to agreement between the constructor-service contractor and the client.

Any special packaging and packing shall be paid for by the client.

A detailed delivery notice prepared by the constructor-service contractor must accompany the equipment.

Insurance must be contracted and paid for by each party to cover its individual risk liability.

### 4 - Documents and information

For optimum service quality, the constructor-service contractor may require the client to provide:

- Technical documentation (plans, notices including the manufacturer's instructions, security and maintenance notices, user manuals, etc), the history of modifications, repairs and interventions effected to the equipment and the operating logs, when the constructor-service contractor does not possess such items. The agreed intervention periods will not commence until remittance of all such documents and information.
- Documents concerning traceability and source of spare parts and equipment made available to it by the client.

The constructor-service contractor undertakes to ensure the traceability of its own interventions.

### 5 - Inspection and assessment

The constructor-service contractor undertakes to inspect and assess the equipment with a view to its maintenance.

Vis-a-vis the constructor-service contractor, the client is deemed to be the owner of the equipment consigned.

In all cases, the cost of inspection, dismantling and assessment shall be borne by the client.

### 6 - Quotation, response time

If no response is received from the client within the period specified in the quotation or, failing this, within a reasonable time from collection of the equipment, the manufacturer-service contractor may invoice the equipment holding costs to the client, and reserve the right to dispose of such equipment.

### 7 - Orders and acceptance

The estimate shall form the basis of commitment.

The transaction shall be considered as having been concluded when the constructor-service contractor, after receiving an order, sends a confirmation of order or notice of receipt of order.

The contract shall only come into force on receipt of the agreed deposit, and subject to provision of the documents stipulated in the contract, appropriate and usable by the constructor-service contractor.

The contract shall be executed pursuant to its terms; any amendment shall be by endorsement agreed by both parties.

### 8 - Completion time

The time estimated for completing the work shall not constitute a commitment by the constructor-service contractor unless expressly agreed as such.

The work shall be deemed to have been completed when the equipment is ready to be returned to the site and so notified to the client by the constructor-service contractor.

The constructor-service contractor shall be entitled to prolong duration of works it undertakes when:

- The client places additional work orders accepted by the constructor-service contractor;
- The client modifies the scope of the planned work with the agreement of the constructor-service contractor;
- An event of force majeure, as defined in Clause 16, occurs;
- The client breaches one of its obligations.

Should any of the said events occur, a new completion time will be agreed.

### 9 - Delayed completion

The constructor-service contractor undertakes to inform the client whenever delay in completing the services proves inevitable.

Penalties for delay may only be applied if expressly agreed, in which case their accumulated amount may not in any circumstances exceed 5% of the amount excluding VAT of the cost of the work.

Should such penalties apply, they shall be deemed to be fixed damages and constitute the limit of the constructor-service contractor's liability.

No penalty or compensation shall be due if delay is due to any cause attributable to the client or to any of the events listed in the preceding clause or if the delay causes no prejudice to the client.

#### **10 - Post-maintenance acceptance**

In the absence of special provisions, acceptance shall be deemed to have taken place on issue of the delivery notice.

Formal acceptance shall only be effected insofar as expressly stipulated in the order and agreed by the constructor-service contractor.

In such case:

- Acceptance will be by verification by the client, in the presence of the constructor-service contractor, of the conformity of the completed maintenance and confirmation thereof in a report signed by both parties;
- The constructor-service contractor shall request the client to attend for acceptance which shall be held, unless otherwise agreed, in its workshop. Should the client fail to do whatever may be necessary to participate in acceptance within the time specified or at the date and time stated, acceptance shall be deemed to have taken place and the equipment deemed to have been accepted.

#### **11 - Prices**

Prices are expressed exclusive of VAT.

If the service to be provided exceeds that defined in the order, the extra amount shall be calculated on the constructor-service contractor's prevailing tariffs and be subject to an endorsement.

#### **12 - Payment**

Pursuant to Article L441-6, French Commercial Code, the period agreed between the parties for payment of sums due may not exceed sixty days from issue of the invoice.

Unless otherwise expressly agreed between the parties, the price shall be paid within 30 days from the date of issue of invoice, the usual payment period applied by the profession. Payments may not be delayed nor be subject to any deduction or set-off.

Pursuant to ordinary law, only effective collection of the funds shall constitute payment.

According to Article L441-6, § 12, of the French Commercial Code, as amended by the Act N°2012-387 dated March 22, 2012, transposing the Directive 2011/7/EU, any delayed payment makes automatically applicable, from the first day after the payment date mentioned on the invoice:

- Late payment penalties; the late payment penalties shall be determined by application of the refinancing rate of the European Central Bank, increased by ten points.
- A fixed compensation of 40 Euros for the recovery costs in accordance with the Article D441-5 of the French Commercial Code.

According to the aforementioned Article L441-6, when the recovery costs incurred are exceeding this fixed compensation, the Supplier is also entitled to obtain a justified additional compensation.

Any late payment of a sum due which continues eight days after formal notice to pay shall entail, at the constructor-service contractor's option, expiry of the contractual term or termination of the contract.

The fact that the constructor-service contractor avails itself of either of these provisions shall not deprive it of the right to apply the reservation of ownership clause below.

#### **13 – Reservation of ownership**

The constructor-service contractor shall retain full ownership of goods supplied until effective payment of the whole price in principal and incidentals. Default in payment of any sum due may entail a claim for such goods. However, the Client shall, as from delivery, be liable for any damage sustained or caused by the said goods.

#### **14 - Guarantee**

The guarantee period shall be 6 months from the date of issue of the delivery notice

The constructor-service contractor undertakes to remedy, in its workshop, any operational fault caused by poor workmanship in the

maintenance service.

It undertakes to remedy, under the same conditions, in its workshop, any operational fault caused by poor workmanship in the maintenance service.

In all cases, the guarantee applies subject to the following conditions:

- The client must give written notice of the defect without delay after its manifestation;
- The client must be capable of proving observance of operating conditions and maintenance of the equipment as requested by the constructor-service contractor;
- The guarantee shall not apply in the event of:
  - Normal wear and tear, or wear in equipment whose lifespan is less than 6 months;
  - Storage, installation or use of equipment not in compliance with its normal purpose, the constructor-service contractor's instructions or professional practice;
  - Intervention, repair or dismantling by the client or a third party not approved by the constructor-service contractor;
  - Default in or delayed payment.

The guarantee shall not apply, and the liability of the Supplier is excluded, in the event of non-payment by the Client which may not avail itself of any third-party claim to suspend or defer its payments.

#### **15 - Liability**

The constructor-service contractor shall only be liable insofar as the defective nature of its service has been established and defined.

Its liability is expressly excluded for any indirect and/or intangible loss or damage such as loss of income, lost production, lost contracts caused to the client or a third party.

Its liability is also excluded in the event of exclusion of guarantee stipulated in Clause 14.

In all cases, the constructor-service contractor's liability shall be limited, due to the various claims which it might receive, to 25% of total sums received for the services concerned.

#### **16- Force majeure**

No party hereto may be held liable for delay or default in performing any of its obligations hereunder if such delay or default is the direct or indirect effect of an event of force majeure, as most widely decided by French jurisprudence, such as: occurrence of a natural disaster; earthquake, storm, fire, flood etc; conflict, wars, attacks, acts of terrorism, workplace conflict, total or partial strike at the constructor-service contractor's business, the Client, or suppliers, subcontractors, providers of services, transporters, postal services, public services, etc.; imperative injunction from public authorities (import prohibition, embargo); operating accidents, machine breakage, explosion.

Each party shall inform the other without delay of the occurrence of any event of force majeure of which it becomes aware and which, in its opinion, is likely to affect execution of the contract.

The Parties shall hold discussions as quickly as possible to discern in good faith the consequences of the force majeure and jointly decide the measures to be taken.

#### **17 - Subcontracting**

The constructor-service contractor shall be entitled to subcontract, without its liability to the Client being thereby affected.

#### **18- Applicable law and disputes**

The contract and its consequences are governed by French law. Any dispute that may arise as to the validity, interpretation or execution of the contract, and which cannot be amicably resolved, shall be subject to the exclusive jurisdiction of the Courts for the registered office of the manufacturer-service contractor unless specialized courts are involved.

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