

## GENERAL CONDITIONS FOR ON-SITE 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.

**Site:** agreed location for the constructor-service contractor's intervention.

**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 handling

The constructor-service contractor shall assume the risks of transport and handling, for which it is contractually liable.

### 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 - Orders and acceptance

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.

### 6 - Obligations of constructor-service contractor

The constructor-service contractor undertakes to fulfil the order to the highest quality, within the agreed lead times and using qualified personnel.

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

The constructor-service contractor undertakes to effect the services defined in the order and agreed by the constructor-service contractor.

The services exclusively concern the equipment and are effected pursuant to the detailed description contained in the order and agreed by the constructor-service contractor.

The equipment is and shall remain in the custody and under the responsibility of the client.

It also undertakes to provide the client with the results of its intervention.

If during the work, the constructor-service contractor considers that an operation not envisaged in the order is necessary, it shall inform the client thereof as soon as possible and supply a list of works and parts required, together with an estimate of the cost, even in the case of a fixed-price service. The constructor-service contractor shall not be liable for any damage arising from the client's refusal to effect necessary work. In such event, the guarantee clause may not be applied to any risk thereby incurred.

### 7 - Obligations of client

#### 7.1 – Access, materiel and human resources

The client shall provide free access to the constructor-service contractor and its representatives assigned to the contract, in good time and without danger, to the installations together with the free use of consumables and facilities available in the installation, including: oil, grease, lighting, electricity, compressed air, water, lockable cloakroom, lockable tool storage area.

Unless otherwise provided, the Client shall freely make available in good time and under its own responsibility, lifting and handling resources necessary for effecting maintenance, together with approved and qualified personnel and, where appropriate, any specific tools.

#### 7.2 - Security

The client shall provide the constructor-service contractor with written details of security and any other regulations applicable to the installation and necessary for effecting the work.

The client shall be liable for site security. It must in particular ensure compliance with security regulations concerning outside contractors.

Pursuant to special stipulations under the French Employment Code and applicable to work effected in an establishment by outside contractors, the Client shall ensure coordination of preventive measures on its site.

These measures shall be defined after joint inspection of the workplaces and risk analysis. They shall, where appropriate, be contained in a prevention plan prepared pursuant to Article R4511-1 French Employment Code. This Plan shall apply throughout the term of the contract.

The client must effect any works necessary to ensure the security of the installation and to put it in compliance with regulations applicable on the effective contract date or which come into force during its lifetime.

Such works shall be effected at the client's expense, unless they are the exclusive responsibility of the constructor-service contractor.

#### 7.3 – Modifications

The client shall inform the constructor-service contractor in writing of any modifications made or planned to the installation or the employment conditions liable to affect the maintenance conditions.

#### 7.4 – Storage of parts and tools

At the time of the intervention, spare parts and specific tools made available to the constructor-service contractor by the client should be stored in satisfactory conditions and pursuant to the maker's

instructions. These parts must be available from the start of the intervention to avoid delaying the maintenance operations.

#### **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 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;
- more generally, 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 work not yet completed;
- they shall represent fixed compensation in full discharge and exclude any other penalty or compensation;
- such penalties shall only apply to the part of the supplies or services in question.

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

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

In the absence of special provisions, acceptance shall be deemed to have taken place on signature of the document recording the end of the work.

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.

Acceptance shall be deemed to be effected by simple remittance of the intervention sheet when:

- the client's approved acceptance agent is absent;
- the equipment is wholly or partly put into service.

#### **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 of the 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 lump-sum compensation of 40 Euros for collection costs pursuant to 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 is 3 months from the acceptance date as defined in Clause 10.

The constructor-service contractor undertakes to remedy any operational fault caused by poor workmanship in the maintenance service.

It undertakes to remedy any manufacturing or material defect in the parts or components it supplies, excluding intervention costs.

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 3 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.

#### **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 - Postponement, interruption or cancellation due to client**

Should maintenance be postponed, interrupted or cancelled for a reason attributable to the Client, the constructor-service contractor shall be entitled to claim from it all costs incurred thereby.

**18 - Subcontracting**

The constructor-service contractor reserves the right partially to subcontract the work consigned to it without thereby affecting its liability to the Client. It shall inform the Client thereof.

**19 - 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.

*Filed with the Bureau of Customary Professional Practices at the Clerk's Office of the Commercial Court of Paris under number 2016015605 on 07/03/2016.*