

1. Scope of validity

These General Conditions of Contract for Remote Technical Assistance Services are valid for remote work (meaning off-site services provided thru communication technology such as e-mail, telephone including video-call or other, text messages, Remote access through VPN (initiated by the Employer or the Contractor), etc.) undertaken in connection with erection, commissioning and testing operation of machines and plant and also for scheduled and unscheduled maintenance, repair, modifications and recommissioning of machines and plant (hereinafter referred to as "Remote Services").

2. General

2.1 The Contract shall be deemed to have been entered into upon receipt of Contractor's written acknowledgement stating its acceptance of the order.

2.2 Tenders shall remain open for acceptance by the period stated in the Tender unless it is previously withdrawn but no longer unless a further period is expressly agreed between the parties in writing.

2.3 Tenders which do not stipulate an acceptance period shall not be binding.

2.4 These Conditions shall be binding if declared applicable in the Tender or in the written order acknowledgement. Any conditions stipulated by the Employer which are in contradiction of these Conditions shall only be valid if expressly acknowledged by the Contractor in writing.

2.5 All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid.

3. Scope of supply for Remote Services

3.1 The extent of the Remote Services are specified in the Tender and order acknowledgement and in appendices thereto. The Contractor shall be entitled to make any changes which lead to improvements provided such changes do not result in a price increase.

4. Trending of compressor data

Contractor suggests trending the analog compressor data such as pressure, flow, temperature, level, compressor load, control valve control and feedback signal, distance, position, rod drop, speed, current and vibration with a cycle rate of maximum one second and such data, including but not limited to, any available historic data and daily back-ups, shall be made available to the Contractor free of charge upon request.

5. Remote equipment access for technical assistance

5.1 If and when required, Contractor shall be granted remote access via Team Viewer to the equipment (PLCs and HMIs) at site.

5.2 VPN Access shall be carried out under a separate access code protected by identification and authentication mechanisms (user ID, password, token, etc.).

5.3 As long as access is not required, the access identifier shall be deactivated. Access options shall be limited to the required extent. Separate access codes shall be set up for special authorizations, different PLCs and / or HMIs to be accessed.

5.4 Employer is aware and consents to possible access of the Contractor to confidential technical data during execution of the Remote Services.

5.5 Contractor shall upon request by the Employer correct, delete, and/or block the data that the Contractor receives or has access to during execution of the Remote Services.

6. Plans and technical documents

6.1 Data provided for in technical documents are only binding in so far as having been expressly stipulated as such.

6.2 Each party to the contract retains all rights to technical documents provided to the other. The party receiving such documents recognizes these rights and shall – without previous written consent of the other party – not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

6.3 Any documents submitted by the Contractor to the Employer shall be reviewed and commented within five (5) days failing of which the documents shall be deemed to be approved without comments.

7. Obligations of the Contractor

The Contractor undertakes to carry out the work in a workmanlike manner and with qualified personnel. Any third parties involved in this respect are also designated as contractors in these Conditions.

8. Obligations of the Employer

8.1 The Employer has to inform the Contractor within the validity of the Contractor's proposal of any regulations and standards which relate to the execution of the Remote Services, including but not limited to the plant operation as well as to illness and accident prevention.

8.2 The Employer shall undertake all that is deemed necessary in order that the Remote Services can be commenced on time and carried out without hindrance or interruption.

8.3 The Contractor's personnel shall not be called upon until all preparatory work has been completed.

8.4 The Employer has to carry out all physical work skilfully at his expense and responsibility in accordance with the documentation and instructions supplied by the Contractor, if any.

8.5 The Employer has, at his own expense, to carry out all the accident prevention measures required. In particular, he has to inform the Contractor expressly when special consideration has to be shown for him and/or any other contractor. The Employer has also to draw the attention of the Contractor to any regulations which have to be complied with.

8.6 The Contractor shall be entitled to refuse or stop any work as part of the Remote Services if the safety of the personnel on site is not guaranteed.

8.7 The materials to be erected, commissioned or maintained during the Remote Services are to be stored in such a manner that they are protected from any damage or deterioration. Before the Remote Services are commenced, the materials to be erected, commissioned or maintained are to be checked for completeness and damage by the Employer. Should any items be lost or damaged during storage, they are to be replaced or repaired at the Employer's expense.

8.8 The Employer is to ensure that the communication technology is/are usable and in a condition allowing the Remote Services to commence. In addition, the Employer is to arrange that access to the communication technology is guaranteed without hindrance.

8.9 Unless otherwise agreed in writing and provided that Employer has not been in addition to the below the Employer is to supply the following at his own expense, in good time, in accordance with the Contractor's instructions or erection programme:

8.9.1 Qualified skilled and unskilled workers, such as fitters, welders, electricians, masons, painters, sheet metal workers and assistants with the necessary tools and equipment. These workers shall comply with the Contractor's working instructions, but will nevertheless remain the Employer's employees, subordinated and responsible to him.

8.9.2 Suitable cranes and other lifting devices, in good working order, with attendant personnel; appropriate scaffolding, as well as means of transport for personnel and materials, appropriate workshop equipment and measuring devices.

8.9.3 Necessary consumable and installation materials, cleaning materials, lubricants and miscellaneous small items required during the Remote Services.

8.9.4 Electrical energy and lighting including the necessary connections up to the place of erection, commissioning, or maintenance, heating, compressed air, water, steam fuels, etc.

8.9.5 The communication technology including as required hardware, software, user rights, licences, etc.

8.9.6 The Employer is to ensure that the Contractor receives, in good time, all the necessary permits for the import and ex-port of Contractor's tools, equipment and materials, and shall bear any related charges.

8.10 The Employer is to immediately return the Contractor's tools and equipment provided by the Contractor to the location designated by the Contractor upon completion of the work or upon Contractor's written request. The Employer shall bear the dispatch costs, insofar as these are not included in the price.

8.11 Ownership of Contractor tools provided by the Contractor, and which the Employer uses during the work, shall remain with the Contractor at all times. The use of these tools shall be at the sole risk and liability of the Employer.

8.12 The Employer shall use future operating personnel to help already during erection, commissioning and testing works, in order that they become familiar with the methods and techniques of the Contractor. The Contractor is prepared to undertake the technical instruction of the said operating personnel, provided this has been expressly agreed.

8.13 Should the Employer not or only partially fulfil his obligations, the Contractor is entitled to remedy such deficiencies either himself or by means of third parties. The costs arising from such a procedure are to be paid by the Employer. The Employer shall also indemnify the Contractor against his liability towards third parties.

8.14 Should the Contractor's personnel encounter any danger or be considerably hindered in carrying out the work due to any reason beyond the control of the Contractor, the corresponding hourly/daily rates are invoiced for waiting time.

9. Work carried out on the instructions of the Employer and time schedule for performance

9.1 Without written permission of the Contractor, the Employer is not allowed to employ the Contractor's personnel for work which does not form part of the contract. Even if the Contractor has agreed to such work, no responsibility for same is taken by the Contractor. The Contractor accepts no responsibility for any work carried out to the order of the Employer without his particular instruction.

9.2 All indications concerning time-limits for performance are based on estimates and are thus not binding.

10. Working time

10.1 Subject to differing compelling regulations at the remote service site, the working times shall be laid down in the Appendix.

10.2 Unless otherwise agreed in the Service & Installation Rate Sheet (latest revision as per Appendix) the normal weekly working time is, in general, to be distributed over five working days, Monday to Friday. If, due to reasons beyond the control of the Contractor, a shorter working time has to be maintained, the normal working time is invoiced.

10.3 The working hours of the Contractor's personnel shall be distributed according to the Employer's requirements and the local conditions. The limits for normal daily working hours shall be 6 am and 8 pm, Monday to Friday.

10.4 Working hours in excess of the normal weekly or daily working time are defined as overtime.

10.5 Overtime work is only permitted when agreed by both parties. The overtime work should not, as a rule, exceed the daily working time by more than two hours and the normal weekly working time by more than ten hours.

10.6 The hours in excess of the normal daily or weekly working time worked between 6 am and 8 pm are defined as overtime.

10.7 The normal working time, worked between 8 pm and 6 am on working days, is defined as night work (except when overtime on night work).

10.8 Overtime worked between 8 pm and 6 am is defined as night work overtime.

10.9 Working time between 6.00 am and 8.00pm on Saturday and Sunday is defined as weekend overtime work, or on other weekdays which are statutory rest days at the site.

10.10 Working time, worked between 8 pm and 6 am on Saturday and Sunday, is defined as night work (except when overtime on night work).

10.11 Holiday working time is defined as work on days which are public statutory holidays either in the country of the Employer and/or Contractor.

10.12 Working time includes without limitation any work required to use the communication technology provided by the Employer, including but not limited to the download, set-up, installation, registration and trouble-shooting.

10.13 If the Contractor's personnel are hindered in carrying out the work due to reasons beyond the control of the Contractor is entitled to invoice the waiting time as working time. All other costs associated with the above are also to be paid by the Employer. The same applies also for any other hours lost due to reasons beyond the control of the Contractor.

11. Variations and Claims

11.1 The Employer has the right at any time to request a change to the contract ("Variation Request").

11.2 Depending on the nature and extent of such Variation Request, the Contractor shall, within thirty (30) days or any longer reasonable period after receipt, propose to the Employer in writing the effects of such a variation with respect to the time schedule and/or the Contract Price ("Variation Proposal").

11.3 The Employer shall, within twenty (20) days after receipt of a Variation Proposal, provide written reply to the Variation Proposal, failing of which the Variation Proposal shall be deemed to be accepted. In the event of rejection, the Parties shall without any delay agree on the action to be taken. If an agreement cannot be reached within twenty (20) days after the Contractor's receipt of the notice of rejection, Contractor shall be free to proceed with the works as described prior to the Variation Request with an extension of time for completion equal to the delay resulting from the Variation Request.

11.4 The Contractor, at his own discretion, shall be entitled to make minor changes to the Contract, which do not impact the Contract Price and/or delivery time.

11.5 Any changes to the Contract necessitated by changes in law or required by authorities after the effective date of the Contract shall be treated as a Variation Request. The Contractor shall, within thirty (30) days after learning of it submit a Variation Proposal to the Employer.

11.6 If the Employer considers himself to be entitled to any claim arising out of a clause of the Contract, or otherwise in connection with the Contract ("Claim"), the Employer shall give notice to the Contractor not later than thirty (30) days after the Employer became aware, or should have become aware of the event or circumstance giving rise to the Claim describing in detail the event(s) or circumstance(s) giving rise to the Claim and if requested provide further evidence. If the Employer fails to give notice of a Claim within said period, the Contractor shall be discharged from all liabilities in connection with the Claim. Employer waives any right to raise a Claim for late delivery, back-charges and any other Contract Price reduction six (6) months after delivery or completion of services.

12. Pricing

12.1 Principle

The Remote Services of the Contractor are invoiced according to time and material on the basis of the published rates at the time of execution of the Remote Services, unless a fixed price (lump sum) or a sliding price as per the Appendix has been agreed upon.

12.2 Work charged according to time and material

The services provided by the Contractor are invoiced as follows:

12.3 Personnel costs

12.3.1 On presentation of the time sheets, the Employer shall certify the work performed by the Contractor's personnel with his signature. If this certification is not undertaken by the Employer in due time or is undertaken by personnel not competent for the purpose, the entries of the Contractor's personnel shall serve as a basis for calculation.

12.3.2 The rates given in the Appendix are to apply for the working time, overtime, night, weekend and holiday working times, travelling time and other times regarded as being equivalent to working time.

12.4 Costs for tools and equipment

12.4.1 Tools, equipment, measurement and testing devices are invoiced in accordance with the Appendix, if any. The duration of use is to be calculated from the day the items are despatched from the Contractor's premises until their return.

12.4.2 Tools and equipment not returned will be invoiced to the Employer at the price required to replace the same.

12.4.3 Transport and insurance costs, as well as further expenses, dues and charges in connection with the delivery to and return of tools and equipment from the site are to be paid by the Employer.

12.5 Consumables and sundry materials

Consumables, installation and sundry materials supplied by the Contractor for execution of the work shall be charged according to costs plus a handling fee of 10%.

12.6 Work to lump sum prices

12.6.1 The lump sum price covers the Remote Services to be provided by the Contractor and which have been agreed upon in writing.

12.6.2 This price is based on the proviso that all preliminary work is carried out and completed by the Employer in good time and that erection can proceed smoothly and with no hindrance due to matters beyond the control of the Contractor.

12.6.3 Extra work which has to be carried out by the Contractor due to reasons beyond his control, such as subsequent changes to the content or scope of the agreed work, waiting times, re-working, are invoiced to the Employer in accordance with paragraph 12.2.

12.7 Taxes, dues, fees, social insurance contributions

Taxes, dues, fees, social insurance contributions and the like, which have to be paid by the Contractor or the Contractor's personnel in connection with the contract or with work outside of the country where the Contractor is domiciled, are charged to the Employer.

12.8 Value Added Tax (VAT)

The prices exclude Value Added Tax which must be paid to the Contractor by the Employer at the appropriate rate applicable to the goods and services provided.

12.9 Foreign Remote Services

Any Remote Services which are supplied from a country that is different from the country of the Tender currency is based upon the current rate of exchange between the Tender currency and the currency of the different country. Any increase or reduction in price consequent upon variation of the rate of exchange at the times of payments will be charged or credited to the Employer.

12.10 The Contractor reserves the right to adjust the prices in case the wage rates vary between the submissions of the Tender and when the Contract comes into force.

12.11 In addition, an appropriate price adjustment shall apply after the Contract has come into force in case:

- The time to complete the Remote Services has been subsequently extended due to any reasons beyond the Contractor's control, whether partially or fully, or
- The nature or the scope of the agreed Remote Services has changed, or
- In case the Contract has been suspended for reasons attributable to the Employer.

13. Terms of payment

13.1 Unless otherwise agreed, the price and the costs are invoiced monthly and are to be paid by the Employer within 30 days of the date of the invoice. The Contractor reserves the right to require partial or complete payment in advance of the presumed amount. Even if an invoice needs adjustments or modifications the first due date of the first issue of the original invoice remains due with the original due date and the modification will be credited through a credit note.

13.2 Payments are to be made 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 the amount(s) invoiced are made freely available to the Contractor.

13.3 Taxes, dues, fees, social insurance contributions and the like which the Contractor must pay in connection with the Contract or with the Remote Services are charged to the Employer.

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

13.5 If the Employer fails to effect payment on the agreed date(s), he shall – under the proviso of other rights being claimed and without formal notice – be liable to pay interest on the overdue amount with effect from the agreed date on which the payment was due at a rate of seven (7%) percentage points.

Payment of default interest shall not release the Employer from paying the sums due under the terms of the contract.

14. Time schedule

14.1 A time-limit for the completion of the Remote Services is only binding when accepted in writing by the Contractor. The time to complete the Remote Services begins when all preliminary requirements for the commencement of the work have been complied with.

14.2 If an agreed Remote Services completion date is not complied with due to circumstances which are solely the responsibility of the Contractor, the Employer may – but only if a damage has occurred – once a grace period of two weeks is over require the payment of a 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.

14.3 For erection and commissioning periods of more than three months, there is no claim for compensation for damage resulting from delay in respect of the first two weeks of delay.

15. Acceptance of the Remote Services

15.1 The Remote Services shall be deemed accepted by the Employer upon completion of the same and the Employer shall confirm the work has been carried out in accordance with the instructions of the Contractor by signature of the relevant sections on the Contractor's forms (e.g. Commissioning Checklist, etc.). The same shall apply if the machinery or plant cannot be commissioned, or recommissioned, for reasons outside the control of the Contractor. If the Employer fails to do so, the work shall be deemed to have been accepted and carried out in accordance with the instructions of the Contractor upon taking the machine, equipment, plant or any part thereof into commercial operation.

15.2 The Contractor has no obligation to inspect the work or any part thereof.

16. Non-performance, faulty performance and their consequences

16.1 In all cases of faulty performance or non-performance not expressly dealt with in these Conditions, in particular if the Contractor, without cause, commences execution of the Remote Services work so late that completion of the work on time is no longer anticipated, if execution in breach of the Contract through the fault of the Contractor is unquestionably anticipated, or if work has been executed in breach of the Contract through the fault of the Contractor, the Employer shall be authorised to set the Contractor a reasonable further deadline for remedy of the work concerned, under threat of withdrawal, should he fail to comply.

16.2 Upon the expiration of this subsequent deadline without remedy of the work concerned through the sole fault of the Contractor, then the Employer may withdraw from the Contract with respect to the work which have been executed in breach of the Contract or the execution of which in breach of the Contract is unquestionably anticipated and reclaim the associated portion of payments already made.

16.3 In such a case, the provisions under paragraphs 16 and 17 shall apply accordingly with respect to any claim for damages by the Employer and with respect to the exclusion of further liability. The claim for damages shall be restricted to 10 % of the contractual remuneration for the Remote Services to which the withdrawal relates.

17. Risk of damage or loss

The Employer shall bear the risk of damage or loss for the material to be erected or maintained during performance of the Remote Services, and for tools, equipment and materials provided by and/or to him. The Contractor shall be entitled to claim the agreed remuneration even if the Remote Services cannot be carried out or can only be partially carried out, as a result of destruction or partial destruction of the items to be erected.

18. Warranty

18.1 Except as otherwise provided herein, the Contractor does not make, and the Employer shall not rely upon any express or implied warranty or representation regarding or related to any products or services. Contractor disclaims any and all other warranties, whether express or implied, including, without limitation, warranties of fitness for a particular purpose and merchantability and any warranty against latent defects. Contractor does not warranty designs or equipment of third-party sellers of manufacturers furnished by the Employer.

18.2 The Contractor guarantees for a period of twelve months after the completion of the Remote Services and in accordance with the following provisions, that the work has been carried out in a workmanlike and careful manner.

18.3 Should the work be interrupted due to any reasons beyond the Contractor's control, whether partially or fully, the warranty period for the work completed before the interruption commences at the latest three months after the beginning of the interruption.

18.4 Any deficiencies in the Remote Services work detected during the warranty period shall be remedied free of charge, provided that such deficiencies are notified to the Contractor in writing immediately upon their discovery.

18.5 The Contractor shall only be responsible for deficiencies related to the work performed by the Contractor's personnel.

18.6 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 Remote Services 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 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.

18.7 The Contractor shall be only responsible for deficiencies related to the work performed under his instructions 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.

18.8 No warranty shall be provided if the Employer or a third party undertakes commissioning or recommissioning of the machinery or plant after the Remote Services are completed without the written permission of the Contractor, or 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 suitable measures to reduce the possible damage.

18.9 Also excluded are deficiencies in the machinery or plant resulting from normal wear and tear, improper maintenance by the Employers or a third party, failure by the Employer to observe the operating instructions, and excessive loading due to different process conditions.

18.10 For work carried out under warranty, the Contractor shall provide warranty to the same extent as for the original work but not beyond the warranty period of the latter.

18.11 Any claims and rights relating to deficiencies other than those specified under paragraphs 18.1 to 18.5 are excluded.

19. Liability

19.1 Notwithstanding anything to the contrary in the Contract, including all documents making part thereof, and to the maximum extent permitted by law, in no event shall Contractor be liable to the Employer by way of indemnity, or by reason of any breach of Contract or of statutory duty or by reason of tort (including but not limited to negligence) for any loss of profit, loss of Contracts or earnings, delay damages, interruption or loss of production, loss of use or loss of opportunity or business, indirect, punitive, special or consequential damages whatsoever that may be suffered by Employer. Expressly excluded from the Contractor's liability are any and all liabilities caused by a virus in the software of the Employer. Employer further agrees to defend, indemnify and hold harmless Contractor from any claim made by end-user or Employer's clients for such losses.

19.2 The remedies of the Employer set forth in the Contract are exclusive, and Contractor's liability with respect to any Contract, indemnity, tort (including negligence), under any warranty, strict liability or otherwise shall not exceed 10% of the Contract Price, unless claims arise from gross negligence or wilful misconduct of the Contractor or from Contractor's legal liability for personal injuries.

19.3 The Employer shall be responsible for any damage caused by his personnel. This applies also if the Contractor's personnel are instructing the work, unless it can be proven that gross negligence in connection with such instructions.

19.4 The Employer shall also be responsible for any damage caused through deficiency in the tools, equipment and materials provided by him and any deficiency in the tools, equipment and materials provided by Contractor, but only so far as the Employer could have noticed the deficiency had he exercised due attention.

20. Cancellation of the Contract by the Contractor

20.1 Should unforeseen events take place, changing the commercial value of the contents of the services considerably or affecting the operations of the Contractor's plant considerably, or should the execution of the work subsequently prove impossible, the contract shall be adapted reasonably. If this cannot be justified from the economic aspect, the Contractor is entitled to cancel the contract wholly or in part.

20.2 The Employer has no right to claim for compensation as a result of such cancellation. Should the Contractor decide to make use of his right to cancel, he is to inform the Employer immediately after the consequence of the event has been recognized, even if an extension of the erection time had been agreed with the Employer.

21. Force Majeure

21.1 Contractor shall not be liable for any non-performance, loss, damage, or delay due to war, riots, fire, flood, strikes or labour difficulties, governmental acts such as, but not limited, to trade restrictions including embargoes, acts of God, acts of the Employer, its Employer or the end-user, delays in transportation, inability to obtain necessary labour or material from usual sources, or other causes beyond the reasonable control of Contractor.

21.2 In the event of delay in performance due to any such cause, the delivery date or time for completion of services will be extended to reflect the length of time lost by reason of such delay. Payment obligations shall not be affected by Force Majeure events. If the grounds for Force Majeure continue for more than six (6) months, either Contractor or Employer may terminate the Contract upon seven (7) days written notice to the other Party.

21.3 Contractor shall be entitled to be compensated for the extra costs caused by the interruption, or, in case of termination, for the work done prior to termination, and the expenses for non-cancellable procurements. Employer shall be entitled to receive the work for which it has paid.

22. Data Protection

The Contractor is entitled to process the personal data of the Employer in order to perform the contract. Furthermore, the Employer consents in particular to the Contractor transmitting such data to third parties in for the purpose of performing and maintaining the business relationships between the parties.

23. Place of jurisdiction and applicable law

23.1 The Contract is construed and shall be interpreted in accordance with the laws of Switzerland.

23.2 In case of a dispute, the parties shall make their best effort to solve such dispute amicably. If such dispute has not been settled between the parties within sixty (60) days from the date of the relevant party's written notification of a claim to the other party, the courts at the registered office of the Contractor shall have exclusive jurisdiction. Contractor reserves the right to claim against Employer at Employer's registered office.

24. Final conditions

24.1 Any changes to the contract are only valid if agreed upon in writing.

24.2 Should any provisions herein prove to be ineffective, this shall not affect the validity of the remaining conditions. The parties agree to replace non-valid conditions by new ones, which are consistent as far as possible with the economic objective of the contract.

25. Appendices

The Contractor's appendices (e.g. Service & Installation Rate Sheet for the year 2015-2018 latest revision, etc.) submitted with the tender form an integral constituent of these Conditions of Contract for Remote Technical Assistance Services. In the event of any contradictions, the appendices shall prevail over these Conditions. Any planning or program submitted to the Employer is on a non-binding basis for information only.