

## **1. Scope of Validity**

1.1 These General Conditions of Contract for Remote Technical Assistance Services are valid for all contracts ("Contract") entered into by Burckhardt Compression ("Contractor") for remote work (meaning off-site services provided through communication technology such as e-mail, telephone including video-call or other, text messages, 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, supervision and trainings (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2.2 Tenders shall remain open for acceptance by the period stated in the Tender unless it is previously withdrawn but no longer unless a further period is expressly agreed between the parties in writing.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 Customer 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 is specified in the Tender and order acknowledgement and in appendices or as specified in the respective frame agreement/ Contract 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. Plans, Technical Documents and Data**

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

4.2 Each party to the Contract retains all rights to technical, physical, digital or video documents and/or recordings 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.

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

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

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

## **5. Obligations of the Contractor**

5.1 The Contractor undertakes to carry out the work in a workmanlike manner and with qualified personnel including as required, hardware, software, user rights and licences.

## **6. Obligations of the Customer**

6.1 The Customer has to inform the Contractor within the validity of the Contractor's proposal of any regulations and standards which relate to execution of the Remote Services, to the plant operation as well as to illness and accident prevention.

6.2 The Customer 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.

6.3 The Contractor's personnel shall not be called upon until all preparatory work has been completed and the Customer shall be responsible to coordinate the onsite activities.

6.4 The Customer shall carry out all physical work skilfully at his expense and responsibility in accordance with the documentation and instructions supplied by the Contractor, if any. Where indicated in the Tender, Customer personnel require prior Contractor training and certification to carry out certain work.

6.5 The Customer 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 Customer has also to draw the attention of the Contractor to any regulations which have to be complied with.

6.6 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 after having issued prior warning of such danger.

6.7 Any loss of and/or damage to the supplied remote support hardware to be covered by the Customer.

6.8 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 tools, equipment and materials to be used, erected, commissioned or maintained are to be checked for completeness and damage by the Customer. Should any items be lost or damaged during storage, they are to be replaced or repaired at the Customer's expense.

6.9 The Customer is to ensure that the communication technology is/are usable and in a condition allowing the Remote Services to commence. In addition, the Customer is to arrange that access to the communication technology is guaranteed without hindrance and in the required quality including but not limited to sufficient network capacity.

6.10 Unless otherwise agreed in writing, the Customer shall supply the following at his own expense, in good time, in accordance with the Contractor's instructions or erection programme:

6.10.1 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 Customer's employees, subordinated and responsible to him.

6.10.2 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.

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

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

6.10.5 The communication technology including as required hardware, software, user rights, licences, including but not limited to, network connection (WiFi or cellular 3G).

6.10.6 The Customer 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.

6.10.7 The Customer 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, or as otherwise agreed. The Customer shall bear the dispatch costs, insofar as these are not included in the price.

6.11 Ownership of Contractor tools provided by the Contractor, and which the Customer 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 Customer.

6.12 The Customer 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.

6.13 Should the Customer 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 Customer. The Customer shall also indemnify the Contractor against his liability towards third parties.

6.14 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.

## **7. Terms of Use of the Remote Services**

7.1 To provide Remote Services to Customer, Contractor may provide devices to Customer which Contractor manages ("Managed Devices"). Ownership of the Managed Devices shall remain vested in the Contractor and Customer shall return the Managed Devices to Contractor upon first demand by the Contractor. The risk of loss of and damage to the Managed Devices shall pass to Customer on delivery of the Managed Devices.

7.2 The Managed Devices use third-party software licensed by software providers ("Software Providers") to enable the Contractor to provide the Remote Services to Customer.

7.3 Some Remote Services may require, or may be enhanced by local software (e.g., agents, device management applications) ("Apps") on the Managed Device. The Apps may collect diagnostic data about the use and performance of the Apps and/or the Managed Device, which may be transmitted to the Contractor and/or Software Provider.

7.4 The Contractor and/or Software Providers access the Managed Devices from time to time to update, modify, or otherwise change the condition of the Managed Device. Where the Managed Devices do not contain the latest condition, such Managed Devices shall be updated prior to commencing the Remote Services. The Customer must not reset, modify, reprogram or otherwise change a Managed Device and/or the software contained on the Managed Device.

7.5 To access the Remote Services on the Managed Devices, each Customer personnel requiring access ("User") must apply for a log-in ("Log-In"). The Log-In is valid for the term. Users shall always keep their Log-In credentials such as username and password confidential and must not disclose and/or transfer them to other Customer personnel and/or third parties. If Customer requires third parties to participate in the Remote Services, such third party must conclude a Contract to that effect with the Contractor. Customer shall immediately inform the Contractor of any changes in User status requiring the deactivation or other of a Log-In.

7.6 By accessing the Remote Services using the Log-In, the User confirms to have read, understood and agreed to the terms of use as contained herein as well as to the terms of use imposed by the Software Provider.

7.7 Users may not use a Remote Service in any way prohibited by law, regulation, governmental order or decree (i) to violate the rights of others, (ii) to try to gain unauthorized access to or disrupt any service, device, data, account or network, (iii) to spam or distribute malware, (iv) in a way that could harm the Remote Service or impair anyone else's use of it, (v) in any application or situation where failure of the Remote Service could lead to the death of or bodily injury to any person, or to environmental damage ("High-Risk Use"), or (vi) to encourage or assist in any of the above. Without prejudice to any other provisions, rights or remedies under this Contract or law, violation of the acceptable use policy will result in suspension of the Remote Service and/or user-deactivation.

7.8 Modern technologies, and especially platform technologies, may be used in new and innovative ways, and Customer must consider whether its specific use of these technologies is safe. The Remote Services are not designed or intended to support any High-Risk Use. Accordingly, it is within Customer's responsibility to ensure that an interruption, defect, error, or other failure of the Remote Services does not endanger people, the environment, or property. Customer's High-Risk Use of the Remote Services is at its own risk.

7.9 Where the Software Provider terminates or modifies a product for any reason and such termination or modification results in the Remote Services being unusable, Customer shall have the right to terminate such part of the Contract, provided however that Contractor shall be given a period of ninety (90) days to remedy the situation first.

## **8. Work Carried out on the Instructions of the Customer and Time Schedule for Performance**

8.1 Without written permission of the Contractor, the Customer 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 Customer without his particular instruction.

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

## **9. Working Time**

9.1 Unless otherwise agreed in the Service & Installation Rate Sheet (as provided in the Tender documents) 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.

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

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

9.4 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.

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

9.6 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).

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

9.8 Working time between 6 am and 8 pm on Saturday and Sunday is defined as weekend overtime work, or on other weekdays which are statutory rest days at the site.

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

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

9.11 Working time includes without limitation any time required by the Customer for the download, set-up, installation, registration and trouble-shooting or other of the communication technology provided by the Customer and/or the Contractor.

9.12 If the Contractor's personnel are hindered in carrying out the work due to reasons beyond the control of the Contractor, 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 Customer. The same applies also for any other hours lost due to reasons beyond the control of the Contractor.

## **10. Variations and Claims**

10.1 The Customer has the right at any time to request a change to the Contract ("Variation Request").

10.2 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 Customer in writing the effects of such a variation with respect to the time schedule and/or the Contract Price ("Variation Proposal").

10.3 The Customer 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.

10.4 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.

10.5 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 Customer.

10.6 If the Customer 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 Customer shall give notice to the Contractor not later than thirty (30) days after the Customer 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 Customer fails to give notice of a Claim within said period, the Contractor shall be discharged from all liabilities in connection with the Claim. Customer 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.

## **11. Pricing**

### **11.1 Principle**

The Remote Services of the Contractor are invoiced according to time, material and services 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 Tender has been agreed upon.

The services provided by the Contractor are invoiced according to time and material as follows:

### **11.2 Personnel costs**

11.2.1 On presentation of the time sheets, the Customer shall certify the work performed by the Contractor's personnel with his confirmation or signature. If this certification is not undertaken by the Customer 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.

11.2.2 The rates given in the Service & Installation Rate Sheet shall apply to working time, overtime, night, weekend and holiday working times, travelling time and other times regarded as being equivalent to working time.

### **11.3 Costs for tools and equipment**

11.3.1 Tools, equipment, measurement and testing devices are invoiced in accordance with the Tender, 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, if applicable.

11.3.2 Tools and equipment not returned will be invoiced to the Customer at the price required to replace the same according to the Tender.

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

### **11.4 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 ten percent (10%).

### **11.5 Work to lump sum prices**

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

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

11.5.3 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 Customer in accordance with paragraph 11.

#### 11.6 Taxes, duties, fees, social insurance contributions

Taxes, duties, 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 Customer.

#### 11.7 Value Added Tax (VAT)

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

#### 11.8 Foreign Remote Services

Any Remote Services which are supplied from a country with and official currency that is different from the currency in the Tender shall be calculated upon the current rate of exchange between the Tender currency and the currency of the other country. Any increase or reduction in price consequent upon variation of the rate of exchange at the time of payments shall be debited or credited to the Customer.

11.9 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.

11.10 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 reason stated in Clause 13.3, 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 Customer.

### 12. Terms of Payment

12.1 Unless otherwise agreed, the price and the costs are invoiced monthly and are to be paid by the Customer within thirty (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 invoices remains due with the original due date and the modification will be credited through a credit note.

12.2 Payments are to be made by the Customer 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.

Taxes, duties, 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 Customer.

12.3 The Customer 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.

12.4 If the Customer fails to effect payment on the agreed date(s), it shall – under the provision 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 Customer from paying the sums due under the terms of the Contract.

### 13. Time Schedule

13.1 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. It shall be deemed duly observed if the machinery or plant subject to erection, commissioning, testing or maintenance is ready for acceptance on its expiry.

13.2 A time-limit is also complied with, even though parts are missing, or readjustments have still to be made, if operation of the machinery/plant is possible and unhindered.

13.3 The agreed duration of erection shall be suitably extended:

- if the instructions required by the Contractor to carry out the erection work are not provided in good time, or if the Customer subsequently changes such instructions, or
- if the Customer does not comply with his contractual obligations, in particular with regard to the terms of payment according to paragraph 12, or the obligations according to paragraph 6, or if the Customer's Contractors are behind schedule with their work, or
- in the case of circumstances beyond the control of the Contractor, such as epidemics, threat or actuality of mobilization, war, civil war, acts of terrorism, rioting or sabotage, as well as strikes, working to rule, accidents, late or incorrect deliveries of necessary materials, local or state official actions or omissions, unforeseeable hindrances to transport, fire, explosion, or natural incidents.

13.4 If an agreed Remote Services completion date is not complied with due to circumstances which are solely the responsibility of the Contractor, the Customer may – but only if a damage has occurred – require the payment of a compensation for damage resulting from delay amounting to zero point five percent (0.5%) per completed week up to a maximum of five percent (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.

13.5 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.

### 14. Acceptance of the Work

14.1 The work shall be accepted by the Customer when the erection, commissioning, overhaul, repair or maintenance of the machinery, plant or any part thereof has been completed and the Customer 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 Customer 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.

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



**15. Non-Performance, Faulty Performance and their Consequences**

15.1 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 Customer 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.

15.2 Upon the expiration of this subsequent deadline without remedy of the work concerned through the sole fault of the Contractor, then the Customer 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.

15.3 In such a case, the provisions under paragraphs 16, 17 and 18 shall apply accordingly with respect to any claim for damages by the Customer and with respect to the exclusion of further liability. The claim for damages shall be restricted to ten percent (10%) of the contractual remuneration for the Remote Services to which the withdrawal relates.

**16. Risk of Damage or Loss**

The Customer 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.

**17. Warranty**

17.1 Except as otherwise provided herein, the Contractor does not make, and the Customer shall not rely upon any express or implied warranty or representation regarding or related to any work, 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 warrant designs or equipment of third-party sellers of manufacturers furnished by the Customer.

17.2 The Contractor warrants 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.

17.3 Should the work be interrupted due to the reasons quoted in paragraph 13.3, the warranty period for the work completed before the interruption commences at the latest three months after the beginning of the interruption.

17.4 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.

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

17.6 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 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.

17.7 The Contractor shall be only responsible for deficiencies related to the work performed under his instructions by the Customer'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.

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

17.9 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 Customer to observe the operating instructions, and excessive loading due to different process conditions.

17.10 or 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.

17.11 Any claims and rights relating to deficiencies other than those specified under paragraphs 17.1 to 17.4 are excluded to the maximum extent permitted by the law defined in paragraph 21.

**18. Liability**

18.1 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 Customer 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), or any High-Risk Use 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 Customer. Customer further agrees to defend, indemnify and hold harmless Contractor from any claim made by end-user or Customer's clients for such losses.

18.2 The remedies of the Customer 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 ten percent (10%) of the Contract Price, unless claims arise from gross negligence or wilful misconduct of the Contractor or from Contractors legal liability for personal injuries.

18.3 The Customer 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 caused the damage.

18.4 The Customer 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 Customer could have noticed the deficiency had he exercised due attention.

## **19. Intellectual Property**

19.1 "Intellectual Property" shall mean inventions, whether or not patentable, copyrightable works, work product, know-how, trade secrets, software, including source code and object code, compositions of matter, procedures, and experimental results created pursuant to the Contract.

19.2 The Intellectual Property rights in all plans, reports, drawings, designs, specifications and all other documents provided by the Contractor shall remain with the Contractor. However, the Contractor grants to the Customer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free license to make full use of any supply for any purposes relating to the Contract, unless otherwise stated herein.

19.3 All ownership rights, title, and interest in and to Intellectual Property shall vest with Contractor. This Contract does not grant Customer any rights, title, or interest in or to Contractor's Intellectual Property rights, other than those set out in the Contract. Intellectual Property rights created by modifications, amendments, enhancements, or improvements (including tailor-made to the specifications of Customer) to Contractor's Intellectual Property rights, shall vest with Contractor when created.

19.4 If the supply delivered by the Contractor include software, the Customer during the term of this Contract is granted a non-exclusive right to use the software together with the Supplies unless otherwise agreed. The Customer is not entitled to copy (except for archival purposes, troubleshooting or to replace faulty data carriers) or to edit the software. In particular, the Customer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of the Contractor. In case of breach of these rules or infringement, the Contractor may cancel the right of use.

## **20. Force Majeure**

20.1 Contractor shall not be liable for any non-performance, loss, damage, or delay due to war, riots, fire, flood, strikes or labour difficulties, pandemics and/or epidemics even if known at the effective date of the Contract, governmental acts such as, but not limited, to quarantines, trade restrictions including embargoes, acts of God, acts of the Customer, its Customer 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.

20.2 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 Customer may terminate the Contract upon seven (7) days written notice to the other Party.

20.3 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. Customer shall be entitled to receive the work for which it has paid.

## **21. Place of jurisdiction and applicable law**

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

21.2 Any disputes arising out of or in connection with the Contract shall be settled amicably. If an amicable solution should not be possible, any disputes arising in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators. Each party shall appoint one arbitrator, and the Chairman shall be appointed by the two arbitrators. Place of arbitration shall be Zurich, Switzerland. The arbitral procedure shall be held in the English language.

## **22. Final conditions**

22.1 Any changes to the Contract are only valid if agreed upon in writing.

22.2 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.

## **23. Appendices**

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