

General assembly, conversion, maintenance and repair conditions of ITG Induktionsanlagen GmbH, Hirschhorn (As of: 09/2017)

ITG Induktionsanlagen GmbH hereinafter the "Contractor"

In case of maintenance work, the customer is hereinafter also referred to as the "Client".

1. GENERAL

- 1.1 All assemblies, conversions, maintenance work and repairs that Contractor performs on the customer's systems shall be subject to the following conditions. If Contractor also performs commissioning and instruction in operation of a system supplied by him, the following terms shall apply accordingly.
- 1.2 These terms shall apply as amended from time to time as a master agreement for future contracts on the assembly, conversion or repair with the same customer as well, without Contractor having to refer to it again from case to case; the Contractor shall inform the customer of any changes to these conditions without delay.
- 1.3 These terms shall apply exclusively. Any deviating, contrary or supplementary general terms and conditions of the customer shall only become part of the contract if and as far as Contractor has expressly consented to their application. This requirement of consent shall apply in any case, e.g. also if Contractor performs the service without reservation in spite of knowing the customer's terms and conditions.
- 1.4 Any individual agreements entered into from case to case with the customer (including any side agreements, supplements and modifications) shall in any case take precedence over these terms. The written confirmation from Contractor shall be relevant for the content of such agreements.
- 1.5 Legally relevant declarations and reports that must be made towards Contractor by the client after conclusion of the agreement (e.g. setting of periods, reports of defects, withdrawal declarations or reduction) shall require written form to be valid.

2. CONCLUSION OF THE CONTRACT

- 2.1 Contractor's offers shall be subject to confirmation and non-committal and shall only be a request to the customer to make an offer where nothing else is expressly determined in the offer.
- 2.2 The order for the service placed by the customer or Client shall be deemed a binding offer of contract. Where the order does not specify anything different, Contractor shall have the right to accept this contract offer within two (2) weeks of its receipt.
- 2.3 A contract shall only be entered into upon the written order confirmation by Contractor. If Contractor does not send the order confirmation within the above period of 2 weeks, the offer shall be deemed rejected. A delayed order confirmation shall then be a binding offer of contract by Contractor that the orderer may accept within one (1) week.
- 2.4 The precise specification of the scope of the maintenance services shall be determined by the parties in individual contracts.

3. PERSONNEL REQUIREMENTS, ASSEMBLY, CONVERSION, MAINTENANCE AND REPAIR PERIODS

- 3.1 Contractor shall use technically suitable staff at an appropriate number at his own discretion based on the type and scope of the ordered services and the agreed duration of the services. Contractor shall have the right to use qualified staff of subcontractors for rendering services at a suitable scope.
- 3.2 Contractor assesses the expected duration of the services charged based on his experience to the best of his ability; the service duration estimated in this manner shall be non-committal while no deviating express written agreement with the customer has been reached. If the commencement of the services shifts or execution is

delayed due to circumstances for which Contractor is not at fault, the performance duration shall extend appropriately, but at least by the period in which the circumstances that cause the shift or delay are effective. Any unavoidable costs arising for Contractor or Client from such a delay or shift shall be assumed by Client.

- 3.3 Where binding deadlines have been agreed on, and the service requires acceptance pursuant to § 640 BGB or trial has been agreed on, Contractor shall have complied with the deadline if Contractor reports readiness for acceptance of trial to the customer by the end of the deadline. If the acceptance or trial is delayed due to circumstances for which Contractor is not at fault, Contractor shall have the right to withdraw his employees. The costs of Contractor resulting from the delay, e.g. waiting times, additional travelling expenses, shall be assumed by the customer.
- 3.4 If the customer's or Client's system on which Contractor is to render assembly, conversion, maintenance or repair work is destroyed before acceptance of the service for reasons for which Contractor is not at fault or if it deteriorates to the point where rendering of the service owed according to the contract becomes impossible, Contractor shall be free of his obligation to perform but shall retain his claim to the agreed compensation minus expenses saved.

4. PRICES

- 4.1 Unless something different has been expressly agreed on, Contractor shall render all assembly, conversion, maintenance and repair work at the effort-related prices applicable for the work at the time of conclusion of the contract. Material and spare parts shall be delivered according to the respective applicable general sales terms of Contractor and charged additionally according to the respective applicable price list.
When performing maintenance work, Contractor shall submit the respective current price list, including the rules on surcharges for difficult work and surcharges for overtime or Sunday and night work to Client together with the offer.
- 4.2 The assembly, conversion, maintenance and repair services shall also include travel times, equipment and preparation, as well as cleaning times. Travelling expenses, transport costs for personnel, luggage and tools, daily allowance for the staff, luggage and flight insurance costs shall be covered by the customer or Client at an appropriate scope. The travelling expenses shall be deemed appropriate if corresponding to the internal travelling directives of Contractor.
- 4.3 Contractor shall invoice any wear parts exchanged in the scope of maintenance and any other material costs to Client separately at the list prices applicable at the time of the maintenance unless expressly agreed on differently in the individual contract.
- 4.4 The prices indicated shall be net prices. Contractor shall charge transaction taxes (VAT, etc.) additionally according to the statutory provisions applicable at the place of performance at the time of performance of the contract.

5. PAYMENT TERMS

- 5.1 Contractor shall invoice his services to the customer or Client at his discretion every month at prorated amounts to be separately agreed on between Contractor and the customer or after completion of the services.
- 5.2 In the absence of any separate agreement, the payment shall be due at once after receipt of the services, in EURO and without any deduction to the account indicated by Contractor in the order confirmation. Any fees, expenses or other costs that arise for Contractor from the payment, any separately agreed-on payment surrogates (cheque, bill of

**General assembly, conversion, maintenance and repair conditions of ITG Induktionsanlagen GmbH, Hirschhorn
(As of: 09/2017)**

- exchange) or payments in foreign currencies, shall be assumed by the customer or Client.
- 5.3 The right to retain payments or to set off against any counter-claims from other legal relationships shall only be due to the customer or Client where his counter-claims are undisputed or have been finally determined.
- 5.4 If the customer or Client makes his payment with a delay or enters default of payment, the statutory provisions pursuant to §§ 288 BGB, 353 HGB shall apply.
- 6. CONTRIBUTION OF THE CUSTOMER OR CLIENT**
- 6.1 The customer or Client shall support Contractor appropriately in execution of the services, in particular by rendering the technical support (see item 7.) at the site of assembly, conversion, maintenance or repair ("Service Location").
- 6.2 Client shall provide the objects or systems to be serviced and put them into a condition that enables Contractor to perform the work without delay after his arrival. Client shall further ensure that Contractor will not be interrupted in performing the services by third parties or by Client.
- 6.3 Client shall inform Contractor without delay, but in any case in time before execution of any maintenance work, of any changes Client or third parties charged by him made to the systems to be serviced.
- 6.3 The customer shall also collect any authority approvals required for performing the services under the laws applicable at the Service Location, provide the objects or systems to be installed, serviced or repaired and to put them in such a condition that Contractor can perform the work directly after arrival. The Client shall further ensure that Contractor will not be interrupted in performing the services by third parties or by the customer.
- 6.4 The customer or Client shall ensure safety and protection of Contractor's employees and any objects brought along by them to the Service Location, appropriately insure them there against existing risks and dangers, and take any measures required for this. The customer or Client shall inform Contractor of any existing safety provisions. In case of severe violations of Contractor's employees against the safety provisions, the customer or Client may send the violating party from the Service Location in coordination with Contractor and refuse further access to the Service Location.
- 6.5 The customer or Client shall track the working times and services rendered by Contractor's staff and certify them every week on the settlement forms provided by Contractor.
- 6.6 Where required, the customer or Client will support Contractor's staff deployed for the services in procurement of appropriate accommodations and meals near the Service Location. The customer or Client shall inform Contractor's staff at the latest at arrival of any obligations they are subject to (information, reports, etc.) towards the local authorities. Furthermore, the customer or Client shall support Contractor's staff in interaction with the local authorities and shall support them in procurement of the necessary certificates. If the Service Location is outside of Germany, the customer or Client shall also represent Contractor towards authorities and perform the necessary formalities.
- 6.7 The customer or Client shall bear any fees (taxes, social security contributions, duties, etc.) to be paid at Contractor's Service Location for the staff deployed there.
- 6.8 The customer or Client shall inform Contractor without delay if any employee of Contractor deployed at the customer's site falls ill, dies or has an accident. The customer or Client ensures medical treatment, any required transfer to the hospital, any transport home or any other required measures, and shall prepay the expenses resulting for this. Against written evidence, Contractor shall reimburse the customer or Client for these costs.
- 6.9 The customer or Client shall support Contractor at an appropriate scope in transport and return of the assembly, repair, maintenance and inspection tools provided by Contractor and of spare and exchange parts.
- 7. COOPERATION, TECHNICAL SUPPORT SERVICES OF THE CUSTOMER OR CLIENT**
- 7.1. The parties commit to always cooperating trustingly to ensure economic and secure completion of tasks, to inform each other in the scope of this in time and to coordinate any measures that affect the areas provided for under this contract.
- 7.2 The customer or Client shall be obligated at his expense to provide Contractor with appropriate and required technical support, in particular:
- 7.2.1 To provide the necessary, suitable helpers at the required number and for the required time; the helpers must observe the technical and other subject-related instructions of the contract designated by Contractor. Liability for the helpers shall remain with the customer or Client.
- 7.2.2 To perform any required earthworks, construction, embedding and scaffolding work, including procurement of the necessary materials;
- 7.2.3 To provide any required devices and heavy tools as well as any other required objects and materials;
- 7.2.4 To provide heating, lighting, operating power, water, including the required connections, and other equipment;
- 7.2.5 To provide dry and lockable rooms for storing materials and tools if present
- 7.2.6 To transport any tools and parts at the Service Location as far as required; to protect the Service Location and the required materials from any harmful influences of any kind and to clean the Service Location; to dispose of any packaging and residual wastes, lubricants, etc., in particular where occurring during maintenance work, at his own account.
- 7.2.7 To provide suitable theft-protected common rooms and work rooms (with heating, lighting, washing opportunities and sanitary facilities) and to provide first aid for Contractor's staff where required, but at least to ensure co-use of the common and work rooms of Client.
- 7.2.8 To provide materials and to take any other actions that are required in case of separately agreed regulations of the object of delivery or execution of a trial.
- 7.3 If the customer or Client does not meet his contribution and technical help obligations, Contractor shall, notwithstanding any other rights, not be obligated to perform such actions due to the customer or Client in his place and at his expense after setting a grace period.
- 8. TRANSFER OF TASKS TO THIRD PARTIES**
- Contractor shall have the right to transfer the tasks assigned to him wholly or partially to technically qualified third parties as subcontractors without this releasing Contractor from his obligation to perform. Contractor shall furthermore be responsible for the third party's services as for his own services.
- 9. ADDITIONAL PROVISIONS WHEN CONDUCTING REPAIRS AT A FACTORY OF CONTRACTOR**
- THE FOLLOWING TERMS SHALL APPLY TO REPAIR SERVICES THAT CONTRACTOR RENDERS IN ONE OF HIS OWN FACTORIES; THEY SHALL APPLY PREDOMINANTLY BEFORE THE ABOVE TERMS WHERE THEY CONTRADICT THESE:
- 9.1 The customer shall deliver the object to be repaired at his expense at risk to Contractor in the agreed factory in time.
- 9.2 The customer shall deliver the object to be repaired in packaging that permits easy and safe handling and that is suitable for reuse for return transport. Risk and expenses

General assembly, conversion, maintenance and repair conditions of ITG Induktionsanlagen GmbH, Hirschhorn (As of: 09/2017)

resulting from non-compliance with these provisions shall be assumed by the customer.

- 9.3 Contractor shall keep the object to be repaired with his usual care. The risk of accidental deterioration or accidental destruction shall be assumed by the customer.
- 9.4 The customer shall be obligated to accept the repair service without delay at his expense after readiness for shipment is reported. If the customer does not do so, acceptance shall be deemed granted 10 working days after completion of the service is reported.
- 9.5 Contractor shall end the object to be repaired at the customer's expense and risk to the address indicated by the customer. Where the customer does not expressly determine something different, Contractor shall insure the repaired object against the common transport risks including breakage at the customer's expense.
- 9.6 If return of the repaired object is delayed due to circumstances for which Contractor is not at fault, the customer shall be obligated to pay the repair costs from the time at which readiness for dispatch is reported; the risk shall pass to the customer at the same time.
- 9.7 Contractor shall have the right to retain the repaired object until all claims of any kind resulting from the business relationship, including secondary claims, have been paid by the customer.

10. ACCEPTANCE

- 10.1 Acceptance must take place at once after completion of the service if Contractor demands it. Client shall confirm compliance with the contract by signing a declaration of acceptance.
- 10.2 If neither party demands acceptance or if acceptance is delayed for reasons not due to the fault of Contractor, the service shall be deemed accepted at commissioning by the customer, but no later than at the end of ten working days after the written report on completion of the service or the corresponding invoicing.

11. WARRANTY

- 11.1 If the service rendered by Contractor does not have the contractually agreed properties, Contractor shall have the right to conduct subsequent performance by improvement.
- 11.2 If subsequent performance fails or Contractor refuses subsequent performance, the customer may, at his choice, demand reduction of the purchasing price (reduction) or reversal of the contract (withdrawal). If the service deviates only slightly from the contract, in particular at only minor defects, however, the customer shall not have any withdrawal rights. Further warranty rights of the customer shall be excluded where nothing different results from the following provisions.
- 11.3 Subject to § 640 para. 2 BGB, the customer shall report any obvious defects in writing no later than three weeks after acceptance or the time relevant according to item 10.2; non-obvious defects shall be reported in writing without delay, but no later than within three weeks of determination of the defect or the time at which the defect became obvious. The complaint must specify which defects have been found and whether these were discovered at once or only after further processing of the parts or commissioning of the system. If the customer does not submit the report in time or with the proper content, warranty claims shall be excluded. Contractor shall have the right to verify the defectiveness through own employees on site and the customer shall provide sufficient access and opportunity for this.
- 11.4 The customer shall grant Contractor the required time and opportunity to perform all improvement work that appears necessary according to reasonable discretion; otherwise, Contractor shall be released from the obligation to remove defects. Deviating from this, the customer shall only have the right to remove the defect directly or through third parties and to demand reimbursement for the required,

appropriate costs for this from Contractor in urgent cases – e.g. danger to the operational safety or to prevent disproportionately high damage – or if Contractor has entered default with removal of the defect; in any case, the customer shall inform Contractor of this without delay.

- 11.5 Contractor shall bear any direct costs resulting from subsequent performance only as far as the complaint has turned out to be justified and the violation of the contract has been properly reported in time according to item 11.3. This shall include the appropriate costs for removal and installation of the object of delivery damaged by the defective service or the affected parts and the transport, working, travelling and material expenses. Apart from this, the customer shall bear the costs.
- 11.6 The period of expiration for contractual and statutory claims shall, provided that there is no case of malicious concealing, be 12 months after the time of acceptance or completion of the service according to items 10.1 and 10.2. This period of expiration shall not include any damages claims due to violation of life, body or health or damage caused wilfully by Contractor. These shall be subject to the statutory expiration periods.
- 11.7 In case of subsequent performance, expiration shall occur no earlier than three months after the time at which the improvement work is completed.
- 11.8 When performing maintenance work, the provisions on service impairment shall apply:

If Contractor does not perform his obligations from this contract, does not do so in time, completely or properly, Client shall set an appropriate period for performing the contractual obligations to Contractor in writing. If Contractor does not meet his obligations within this period, Client shall have the right to perform the service directly or have it performed by a third party at Contractor's expense at the earliest after two improvement attempts by Contractor. Sentences 1 and 2 shall not apply where Contractor was not at fault for the violation of obligations. Further rights of Client from service impairment shall be excluded where nothing different results from the following provisions.

12. FORCE MAJEURE

Force majeure shall mean any events or circumstances that are outside of the control of Contractor, in particular war or war-like conditions, riots, revolution, acts of terrorism, strike and lock-out, release of or contamination with radioactive radiation, forces of nature such as earthquakes, storms, lighting strike, flood or similar events. If Contractor is prevented from meeting his contractual obligations for reasons of force majeure, he shall be released from performance in this respect for the duration of the impairment by force majeure. In any case, Contractor shall be obligated to inform Client of this in writing and in detail. If the interruption of services due to force majeure continues for more than six months, Client and Contractor shall consult on continuation of the project together. In no case shall Contractor be liable for damage of any kind due to interruption of the service by force majeure.

13. OTHER LIABILITY

- 13.1 Contractor shall be liable for damages - no matter the legal reason - in case of wilful intent and gross negligence. For simple negligence, he shall only be liable for

- (i) damage from violation of life, body or health,
- (ii) for damage from violation of an essential contractual obligation (i.e. an obligation the compliance with which is required to properly perform the contract and the compliance with which the contracting partner regularly trusts in and may trust in); in this case, however, liability of Contractor shall be limited to reimbursement of the foreseeable typical damage, notwithstanding the following paragraph.

**General assembly, conversion, maintenance and repair conditions of ITG Induktionsanlagen GmbH, Hirschhorn
(As of: 09/2017)**

Liability according to the above item (ii) shall be limited to the respective net order value of the assembly, conversion, maintenance or repair service, except if Contractor is subject to gross fault pursuant to 13.1 sentence 1 or the damage is subject to (i). If the entire service becomes impossible for Contractor before acceptance pursuant to item 10., the customer may withdraw from the contract. If part of the service becomes impossible, the customer shall have the right to reduce the compensation accordingly; if the customer has a justified interest in refusal of a partial service, sentence 1 shall apply. Contractor shall reimburse any payments already made to the customer.

13.2 Customer shall furthermore have the right to withdraw if a service is delayed for reasons due to the fault of Contractor and an appropriate grace period connected to the threat that the customer will refuse acceptance of the service after unsuccessful expiration of this period has expired without success.

13.3 The limitations of liability resulting from 13.1 shall not apply where Contractor has wilfully concealed a defect or has assumed a warranty for the service's properties. The parties shall agree on any warranties in writing separately.

14. TERMINATION

Contractor shall have the right to terminate the contract before the end of the contract without notice for cause. Cause shall specifically be present if the customer or Client

- suffers loss of assets, in particular if opening of insolvency proceedings regarding his assets is applied for or refused due to lack of assets;
- does not comply with his payment obligation in spite of written reminder and setting of an appropriate grace period.

15. APPLICABLE LAW, PLACE OF JURISDICTION

15.1 Any legal relationships between Contractor and the customer shall be subject to the law of the Federal Republic of Germany exclusively, under exclusion of consistent international law, and in particular UN sales law.

15.2 The exclusive place of jurisdiction for any disputes from or in connection with the contractual relationship provided for here between the parties shall be Frankfurt a.M. However, Contractor shall have the right to raise a claim at the registered seat of the customer or Client.

16. SUPPLEMENTARY GENERAL TERMS OF SERVICE

In addition to the above terms, the following terms of service shall apply supplementarily – where not already contained in sections 1.-15.:

(a) Commissioning and services as incurred

Deployment of service staff for setup, commissioning, instruction of customer's staff, review and repair of plants shall be subject to our hourly rates according to the enclosed list.

(b) Hourly rates

The number of hours shall be calculated from the duration of the presence of our service engineer from departure to return at or factory (excepting resting and break times), as well as the preparation and follow-up times (see item e).

(c) Working time (06:00 AM – 8:00 PM)

The regular working time shall be 8.00 hours from Monday through Friday. Any additional work exceeding 8.00 hours or work outside of the regular working times shall be charged according to the current assembly rates.

(d) Flat-rate amounts

Flat-rate amounts for additional expenses for meals and overnight accommodation costs shall be charged at the respective applicable rates.

(e) Preparation and follow-up times

The following times shall be charged as a flat-rate per service engineer for the technical and administrative preparation and follow-up in addition to the hourly rates in the scope of the order: Service duration: 1 working day 1 hour 2 to 5 working days 2 hours 6 to 10 working days 4 hours 11 to 20 working days 6 hours more than 20 working days 8 hours These times shall be entered in the assembly hours documentation by us after completion of the work in the section "Assembly preparation".

(f) Material

Any required material shall be settled as consumed unless included in the order.

(g) Luggage transport and transfer

The costs for transport of tools and spare parts shall also be at your expense. Transfer costs to the airport and back shall be at the customer's expense.

(h) Execution of services

Service staff shall only be deployed upon written request (fax or letter) of the orderer. Requests from third parties, in particular through end customers, shall only be accepted non-committally by way of information.

Proper cost-efficient and timely execution of work shall only be possible if the following prerequisites are met. Our contracting partner shall be responsible for compliance:

Provision of power with matching connections, auxiliary staff and tools (lifting gear, etc.), as well as lockable rooms for our test equipment and tools.

Provision of an operator familiar with the system for the duration of assembly.

If assembly is interrupted or delayed without any fault of ITG, the costs resulting from this shall be at the orderer's expense.

(i) Pricing and payment

The prices named shall be net prices plus the statutory VAT. Settlement shall take place after completion of the

**General assembly, conversion, maintenance and repair conditions of ITG Induktionsanlagen GmbH, Hirschhorn
(As of: 09/2017)**

work. Assembly invoices shall be payable at once after receipt, without any deductions.

(j). Other terms

The terms shall be supplemented by the statutory and tariff provisions. Complaints (regarding service and material) shall be reported in writing within one week. Where any work is required in a territory subject to a condition of crisis or where this is expected, we shall have the right to delay the work until the crisis has passed.

Contractor requests that the working times of his service engineers be confirmed on the assembly hour documentation!