General Terms & Conditions of Maintenance

issued by the Association of the Austrian Electrical and Electronics Industries (FEEI)

1 Scope

These terms & conditions apply to maintenance work of any kind, in particular also with regard to equipment, machines and installations, (hereinafter referred to as "Services") and only to legal transactions between companies. Unless otherwise agreed between the contract partners, the ÖNORM EN 13306 standard in the version of 15/01/2018 "Maintenance – maintenance terms" shall apply.

2 Contract conclusion, amendment and interpretation

2.1 The principal's general terms and conditions shall not apply under any circumstances.

2.2 Unless otherwise specified in the offer, offers of the contractor shall, in case of doubt, be considered non-binding.

2.3 The contract shall be deemed concluded once the contractor has sent a written order confirmation or a delivery or once it has started to perform the service after receipt of the order.

2.4 No warranty claims may be derived nor liabilities established from information provided in catalogues, brochures, advertising material and written or oral statements not included in the contract.

2.5 Any subsequent amendments and/or supplements to the contract (including an amendment of the following formal requirements), its termination as well as all (other) unilateral declarations of intent provided for in the contract or these provisions or in connection therewith shall be made in writing to be valid.

2.6 Unless otherwise agreed, each party shall bear its own costs associated with the execution, performance and termination of the contract.

2.7 For the purposes of interpretation of the contract and in the absence of any express agreement to the contrary in individual cases it is expressly understood that the contractor is an independent contractor and that the contractor or its owners, partners, employees, consultants or sub-contractors are not or shall not be deemed to be agents, adjuncts, partners, joint ventures or employees of the principal.

3 Charging for Services

3.1 Unless otherwise agreed, the Services shall be charged according to time and effort (daywork). If agreed in writing, they may also be charged at a flat rate. Unless explicitly agreed otherwise, the Services shall be performed during the contractor's usual business hours.

3.2 Daywork services

The Services provided by the contractor shall be charged as follows:
Consideration for staff: The principal shall confirm the hours worked by the contractor's staff in writing.
The working time shall begin upon arrival of the staff on the principal's premises and shall end when they leave. If the principal fails to provide appropriate confirmation without sufficient reason, the records of the contractor shall be taken as a basis for invoicing. The rates agreed or specified in the offer shall apply to the hours worked.
Spare parts: Spare parts installed by the contractor shall be charged based on the time and material required.

3.3 Services at flat rates

The flat rate shall cover the Services agreed in writing to be provided by the contractor. It presupposes an unimpeded workflow and timely completion of all work to be performed by the principal in advance. Additional expenses incurred by the contractor due to circumstances outside the latter's sphere of influence, such as subsequent modifications of the content or scope of the Services, waiting times etc., shall be borne by the principal.

3.4 Prices are exclusive of VAT and, unless otherwise agreed, also exclusive of any other taxes, charges and fees.

4 Payment

4.1 To the extent that the Services are charged on a daywork basis, the prices to be charged shall be invoiced after the Services have been performed.

4.2 Payments shall be made in the currency agreed to the contractor's paying office without any deductions or charges. All associated interest and expenses (such as debiting and discount charges) shall be borne by the principal. Unless otherwise agreed, invoices shall be payable no later than 14 days after invoicing in any case.

4.3 The principal shall not be entitled to retain or offset payments on account of warranty claims or other claims.

4.4 A payment shall be deemed made on the date the contractor is able to dispose of the amount paid.

4.5 If the principal is in default on an agreed payment or any other performance from this or any other legal transactions, the contractor may – unless otherwise agreed – without prejudice to any other rights the contractor may have

a) postpone performance of its own obligations until this payment or any other performance has been effected, and claim an appropriate extension of the period of performance,
b) demand payment of all outstanding receivables from this or any other legal transactions and invoice the statutory default interest for these amounts, with effect from the respective due date, unless the contractor is able to provide proof of any additional costs,
c) in the event of qualified insolvency of the principal, i.e. after two instances of default, perform other legal transactions only against cash in advance.

At any rate, the contractor shall be entitled to charge any pre-trial expenses, in particular dunning expenses and lawyers' fees, according to applicable statutory provisions, to the principal.

4.6 The contractor shall be entitled to submit the invoice electronically.

5 Cooperation obligations of the principal

5.1 Unless otherwise agreed, the principal shall be obliged

a) to do whatever is necessary to ensure that the Services may be started in due time and performed without interruptions,
b) to perform expertly any preparatory work required on site and otherwise under its own responsibility and make all existing documents available to the contractor in time (e.g. plant documentation, operation and control manuals). These documents shall remain the property of the principal and may be used by the contractor and/or the latter's subcontractor only for the purpose of the Services.
c) to take the necessary measures to prevent accidents. The principal shall in particular inform the contractor if special measures need to be taken for its own protection or the protection of third parties, or if statutory or administrative regulations must be complied with.
d) to secure those parts of the installation on which work is performed before service work is started by the contractor and to disconnect upstream or downstream components. The contractor shall be entitled to reject or interrupt service work whenever security is not ensured.
e) to provide comprehensive insurance for the staff members provided by it and to assume any liability for such staff members,
f) to provide spare parts or other tools in due time, if so agreed, and to check them for completeness and damage before the start of the Services, together with the contractor (for instance, by providing ascent aids incl. safety devices in proper condition)
g) to provide heatable or air-conditioned rooms that can be locked as well as sanitary facilities for the contractor's staff free of charge, if required,
h) to inform the contractor about any temporary shutdown of installations and the occurrence of faults,
i) to dispose of any removed parts, unless they are the property of the contractor based on this agreement, any equipment not required and any other waste, in compliance with specifications.

5.2 If the principal fails to meet its obligations, the contractor shall be entitled to refuse the provision of services and to rescind the contract in accordance with the legally applicable regulations. At any rate, the principal shall be liable for any damage (for instance, downtimes, etc.) incurred by the contractor due to non-compliance with this obligation.

5.3 The contractor shall be entitled to process data from the installation that is the object of the service order using IT systems and to perform statistical analyses in a neutralised form.

5.4 The contractor shall be entitled to use subcontractors in respect of all deliveries and elements of the performance, provided he informs the principal accordingly.

6 Execution deadline

6.1 A deadline specified for completion shall only be binding if expressly agreed as binding in writing.

6.2 Unless otherwise agreed, the Service shall be deemed completed if the installation is ready for use by the principal and/or ready for trial, if such trial is provided for in the contract.

6.3 If a deadline for execution of the Services is agreed between the principal and the contractor, this deadline shall be reasonably extended but in any case by the duration of the impediment, if unforeseeable circumstances or circumstances independent of the will of the parties occur, such as all cases of force majeure, which impede compliance with the agreed delivery deadline; these include, in particular, natural disasters, armed conflicts and terrorist attacks, cyber-attacks, the outbreak and spread of large-scale diseases, endemics, epidemics, pandemics, official interventions and bans, energy and raw material shortages, labour disputes, embargoes and sanctions whose non-compliance with may expose the contractor to penalties or other disadvantages, transport and customs clearance delays, delivery stoppages and bottlenecks, transport damage, non-availability of a major supplier who is difficult to replace and other problems along the supply chain.
Circumstances such as the aforementioned shall also allow an extension of the delivery period if they occur at the contractor's suppliers and/or subcontractors. If the impediment lasts longer than 6 months, the contractor shall be entitled, after an unsuccessful attempt to reach an amicable settlement and according to the regulation under 8.5, to rescind the contract with regard to the parts of the contract that have not yet been performed or the performance of which has not yet commenced.

6.4 If, upon conclusion of the contract, a contractual penalty for default in delivery has been agreed and no deviating provision has been agreed, such penalty shall be paid in compliance with the following provision and, for the rest, any deviation from this provision in individual respects shall not affect its applicability: In case of a delay in performance that has demonstrably occurred solely through the fault of the contractor, the principal shall be entitled to claim, for every full week of delay, a contractual penalty of no more than 0.5 %, up to a maximum of 5 %, of the value of that part of the overall delivery which cannot be used due to the delay in delivery of an essential part, provided a loss was incurred by the principal in that amount. Any further claims for damages from the delay are excluded if a contractual penalty is agreed upon.

6.5 In the cases described in 6.3 a contractual penalty is not applicable

7 Acceptance of performance

7.1 The contractor shall inform the principal about completion of the Services. The principal shall then immediately check the Services and subsequently accept them.

7.2 If acceptance of the Services is delayed for reasons outside the sphere of influence of the contractor, acceptance is deemed effected after expiry of two weeks following the notification of completion of the Services.

8 Termination and rescission of the contract

8.1 Each party shall be entitled to terminate the contract if, upon violation of a contractual provision, the other party failed to comply, within 30 days after receipt of a written request by the other party to remedy such violation, to comply with such request.

8.2 Unless any more specific provision was agreed, the principal shall be entitled to rescind the contract for default in delivery resulting from gross negligence on the part of the contractor and the unsuccessful expiry of a reasonable period of grace granted.

8.3 Notwithstanding its other rights, the contractor shall be entitled to rescind the contract

a) if the delivery of the goods and/or commencement or continuation of the performance becomes impossible for reasons within the sphere of responsibility of the principal or is delayed despite an appropriate period of grace being granted,
b) if concerns with regard to the solvency of the principal have been raised and the latter does neither make an advance payment upon request by the principal nor provide suitable security before delivery, or
c) if the principal does not or not duly meet the obligations imposed upon it under item 15 or any other contract between the contracting parties.

8.4 If insolvency proceedings are opened with respect of the assets of the principal or a request for initiation of insolvency proceedings is rejected for lack of sufficient assets, the contractor shall be entitled to rescind the contract without granting a period of grace. If such rescission is declared, it shall become effective immediately once the decision is made not to continue the company. If the company is continued, such rescission shall become

effective only 6 months after opening of the insolvency proceedings or after rejection of the request for initiation for lack of assets. In any case, the contract shall be terminated with immediate effect, provided that the insolvency law governing the insolvent contracting party does not provide otherwise or if termination of the contract is essential to avoid serious financial disadvantages for the contractor.

8.5 Notwithstanding the contractor's compensation claims including pre-trial costs, in the event of rescission, every performance or partial performance already effected shall be settled and paid as contractually agreed. This shall also apply to any delivery or performance not yet accepted by the principal as well as for any preparatory measures effected by the contractor. The contractor shall also be entitled to request the return of products already delivered instead.

8.6 Termination of the contract under 8.1 does not establish any liability on the part of the party terminating the contract

8.7 The rescission must be declared by registered letter. Any other consequences of rescission are excluded.

8.8 Any claims asserted by the principal for laesio enormis, error and frustration of contract shall be excluded.

9 Retention of Title

The contractor shall retain title to all goods delivered until full payment of the amounts invoiced plus interest and costs. To secure the contractor's purchase price claim, the principal hereby assigns to the contractor its claims from reselling goods subject to retention of title, even after they have been further processed, transformed or mixed. The principal shall be authorised to dispose of the goods subject to retention of title in case of reselling with payment of the purchase price being deferred, on the condition that the principal informs the secondary buyer about the assignment for security, concurrently with the resale, or notes down the assignment in its books. Upon request, the principal shall inform the contractor about the claim assigned and the relevant debtor and provide all information and documents required for collection of the claim and to notify the third-party debtor about the assignment. In case of seizure or other claims being made, the principal shall be obliged to refer to the contractor's title and to notify the latter immediately

10 Warranty

10.1 If the terms of payment agreed are complied with, the contractor shall be obliged to remove any defect existing at the time of handover that is detrimental to functionality and based on faulty design or material or poor workmanship, in accordance with the following provisions.

10.2 Unless otherwise agreed, the statutory period of warranty shall apply. This shall also apply to objects of delivery and performance that are firmly attached to a building structure or to the ground. The warranty period shall commence at the time the risk is transferred which, unless otherwise agreed, shall be governed by the provisions of INCOTERMS®2020 - ICC for EXW deliveries. The limitation period shall commence immediately at the end of the warranty period.

10.3 If the Services are interrupted for reasons outside the sphere of influence of the contractor, the warranty period for the Services performed before the interruption shall start no later than two weeks after the beginning of the interruption.

10.4 The warranty claim is contingent upon the prerequisite that the principal has reported any defects that have occurred in writing in due time and that the contractor receives this report. The principal shall provide evidence that the defect exists within an appropriate period of time, in particular by providing to the contractor the documents and/or data available on the principal's premises. In the event of a defect covered by warranty, the contractor may first rectify or replace the goods at its discretion. If this is not possible or involves disproportionate costs and effort, principal and contractor may agree on a price reduction. A rescission from the contract on the grounds of warranty is excluded in any case.

10.5 For rectified or replaced parts of the delivery or service, the warranty period starts anew, but ends in any case no longer than 6 months after the end of the initial warranty period.

10.6 If the services are interrupted for reasons for which the contractor is not responsible, the warranty period for the services performed prior to the interruption shall begin no later than 2 weeks after the beginning of the interruption.

10.7 In the event that it becomes clear only after the contractor has carried out the services to determine and remedy the defect that the contractor would not have had a warranty obligation under these warranty provisions, then the principal shall pay for the contractor's services in accordance with the contractor's repair rates applicable at that time.

10.8 Unless otherwise agreed, the warranty shall not include any defects that result from arrangement and assembly not effected by the contractor, insufficient adjustment, non-compliance with installation requirements and conditions of use, excessive stress on parts beyond the performance specified by the contractor, negligent or incorrect treatment and use of inappropriate operating material; this shall also apply to defects resulting from material provided by the principal. Nor shall the contractor be liable for damage resulting from acts by third parties, atmospheric discharges, overvoltage and exposure to chemicals. The warranty shall not cover the replacement of parts that are subject to natural wear.

10.9 The warranty shall lapse immediately once the principal itself or a third party not explicitly authorised by the contractor effects any modifications or repairs to the goods or services without written consent by the contractor.

10.10 Any supporting staff, lifting devices, scaffolding and incidentals etc. required for performing warranty work on the principal's premises shall be provided. Materials and parts replaced by the contractor within the scope of the warranty work shall pass into its ownership free of charge.

10.11 Items 10.1 to 10.10 shall apply accordingly to every instance of assuming responsibility for defects on other legal grounds.

10.12 Unless otherwise agreed, a statutory updating obligation covered by Directive (EU) 2019/771 is excluded for goods with digital elements and for digital services.

11 Liability and insurance

11.1 Unless otherwise agreed, the contractor shall only be liable for any damage to the installation and/or any object as a result of the services, provided intent or gross negligence can be proven to the contractor or its agents, within the scope of the statutory provisions. Unless otherwise agreed, the contractor's total liability for gross negligence shall be limited to the amount of the net maintenance fee for one year. In the case of multi-year maintenance contracts, the average annual indexed net maintenance fee shall be used as a reference. In the case of unlimited maintenance contracts, the average indexed net maintenance fee of the previous term, but no more than the last three years, shall be used as a reference.

11.2 Unless otherwise agreed, any liability for slight negligence, with the exception of personal injury, and compensation for consequential damage, pure financial loss, indirect loss, loss of production, downtime costs, cost of financing, cost of substitute power, loss of power, data or information, lost profit, savings not achieved, interest losses and losses from third-party claims asserted against the contractor shall be excluded.

11.3 Unless otherwise agreed, any compensation shall be excluded in case of non-compliance with any requirements for assembly, commissioning and use (such as those included in operating instructions) or official authorisation requirements.

11.4 If contractual penalties have been agreed, any further claims for damages shall be excluded.

11.5 Unless otherwise agreed, the provisions of item 11 shall apply to all liability claims of the principal against the contractor, irrespective of their legal basis and title, and shall also apply to all employees, subcontractors and suppliers of the contractor.

11.6 If the staff of the contractor is directly ordered by the principal to perform additional services, this shall be at the principal's risk exclusively, and any liability on the part of the contractor shall be excluded.
Such recourse to the contractor's staff by the principal beyond the agreement in question shall be subject to the contractor's prior consent in writing and based on previously determined or customary consideration.

12 Assertion of claims

All claims of the principal shall be asserted in court within 3 years after performance of the services, otherwise they shall be forfeited, unless other deadlines are provided for by mandatory statutory provisions.

13 Disposal of waste electrical and electronic equipment

The principal, which has its registered office in Austria, shall ensure that all information is made available to the contractor so that it is able to fulfil its obligation as manufacturer/importer in accordance with the legally applicable regulations.

14 Data protection

14.1 The parties undertake to comply with the provisions and requirements of data protection law, in particular Regulation (EU) 2016/679 ("GDPR") and the Datenschutzgesetz (DSG) [Austrian Data Protection Act], in their up-to-date versions, in the course of the execution of the present legal transaction.

14.2 If, in compliance with the aforementioned provisions, further data protection agreements should become necessary for the execution of the legal transaction, the parties shall agree on these separately in writing.

15 Compliance with export regulations

15.1 The principal shall comply with the applicable provisions of national and international export control law when passing on the goods delivered or the services rendered, including pertinent documents, technology and technical support of any kind. In any case, the principal shall comply with all applicable national export control regulations as well as those of the EU and/or the USA. If required to comply with export control regulations, the principal shall provide the contractor without undue delay upon request with all information about the final recipient, the intended use of the goods delivered or services rendered and any applicable export control restrictions.

15.2 Prior to passing on the goods or services, the principal shall verify and take appropriate measures to ensure that a) it does not violate any national or international sanctions and embargoes, in particular those of the EU, the USA and/or the United Nations – also taking into account any prohibitions of circumvention (e.g. through an unauthorized detour) – by such a passing on, by brokering contracts for such goods or services, or by providing other economic resources in connection with such goods or services; b) such goods or services are not intended for any prohibited or arms-related, nuclear or weapons-related uses that require a permit, unless any required permits have been obtained; c) the provisions of all relevant national or international sanctions lists, in particular those of the EU, the USA and/or the United Nations, concerning business transactions with the above-mentioned companies, persons or entities are complied with; or d) the goods and services mentioned by the respective current versions of the annexes of the applicable EU regulations, such as No. 833/2014, as amended, and No. 765/2006, as amended, or Annex I of the Dual-Use Regulation (EU) No. 2021/821, as amended, are not, in violation of EU law, (i) exported directly or indirectly – e.g. via countries of the Eurasian Economic Union (EAEU) – to Russia or Belarus or (ii) resold to a third party business partner who has not committed in advance not to export the goods or services to Russia or Belarus.

15.3 For deliveries of goods or the provision of services, including pertinent documents, technology and technical support of any kind, which are listed in the relevant EU legal acts, in particular in Annexes XI, XX, XXXV and XL of EU Regulation No. 833/2014, as amended, and/or in Annex I of EU Regulation No. 258/2012, as amended, to customers domiciled in a country outside the European Union and outside a partner country listed in Annex VIII of EU Regulation No. 833/2014, as amended, the following provisions shall in any case also apply while the regulations mentioned in this item are in force:

15.3.1 The principal must not directly or indirectly sell, export, re-export the goods and services provided by the contractor under this contract or in connection with this contract in accordance with item 15.3 to the Russian Federation or Belarus or perform such acts for use in the Russian Federation or Belarus.

15.3.2 The principal shall do its best to ensure that the purpose of item 15.3.1 is not frustrated by third parties in the commercial chain, including potential resellers.

15.3.3 The principal shall establish and maintain an appropriate monitoring mechanism to detect behaviour by third parties in the commercial chain, including potential resellers, that would frustrate the purpose of item 15.3.1.

15.3.4 Notwithstanding any rescission pursuant to item 8.3c), the contractor shall be entitled, but not obliged, to demand the immediate submission of a plan to remedy the breach and to suspend any business relationship with the customer and/or an affiliated company of the customer until the breach of item 15.3.1 has been remedied.

15.3.5 The principal shall provide the contractor with information regarding compliance with the obligations under items 15.3.1 – 15.3.3 within two weeks of a simple request. It shall immediately inform the contractor of any problems in

the implementation of items 15.3.1 – 15.3.3, including relevant activities of third parties which could frustrate the purpose of item 15.3.1.

15.4 In the event of a breach of the provisions contained in item 15, the principal shall fully indemnify and hold the contractor harmless from and against all claims, damages, penalties and costs asserted against the contractor by authorities or other third parties. In the event of a breach of the provisions contained in item 15.3, the principal shall pay an additional penalty. Unless otherwise agreed between the parties in an individual contract at the time of ordering the goods or services and depending on their volume, this penalty shall be 5% of the total net price.

16 General information

16.1 If individual provisions of the contract or of these terms & conditions are invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced with a valid provision that approximates the intended objective as closely as possible.

16.2 The German-language version shall be deemed the authentic version of the terms & conditions and shall also be used to interpret the contract.

17 Place of jurisdiction and applicable law

The exclusive place of jurisdiction for resolving all disputes arising from the contract – including those regarding its existence or non-existence – shall be the court with subject matter jurisdiction at the contractor's head office; in Vienna, this shall be the court located in the district of the Local Court of Innere Stadt. The contract shall be governed by Austrian law to the exclusion of conflict of law rules. Application of the UNCITRAL UN Convention on Contracts for the International Sale of Goods shall be excluded.

18 Reservation clause

Performance of the contract on the part of the contractor shall be subject to the reservation that no obstacles exist under national or international (re-) export regulations, in particular no embargoes and/or other sanctions.

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