

# General Maintenance and Service Conditions



## 1. Scope

- 1.1. The present General Maintenance and Service Conditions (hereinafter referred to as „conditions“) stipulate the provisions of Fette Compacting GmbH (hereinafter referred to as “Contractor“). These conditions shall apply to all offers and contracts for inspection, repair, maintenance, calibration and other service works, such like installation works and commissioning, performed by the Contractor (hereinafter referred to as „services“).
- 1.2. These conditions shall exclusively apply to companies according to § 310 para. 1 *BGB* [German Civil Code].

## 2. General – Scope

- 2.1. The conditions hereunder shall exclusively apply. Any conditions of the Principal to the contrary or deviating from these conditions shall not be accepted by the Contractor, unless the Contractor has given its prior consent in writing. The General Maintenance and Service Conditions of the Contractor shall also apply in the event that the Contractor performs the service for the Principal being aware of any such provisions to the contrary or deviations from this General Maintenance and Service Contract.
- 2.2. These General Maintenance and Service Conditions shall be applicable in the respective valid version as framework agreement for future contracts for the performance of services in favour of the same Principal without the need for the Contractor to make reference to these conditions in each individual contract.
- 2.3. Individual arrangements with the Principal (including collateral agreements, amendments and modifications) shall have priority over these General Maintenance and Service Conditions in any case. The contents of such arrangements shall be subject to a written contract and/or the written consent of the Contractor.
- 2.4. Legally binding declarations and notifications, which are to be made after the effective date of the contract by the Principal to the Contractor, shall be made in writing to become legally valid.

## 3. Specification and estimate of costs

- 3.1. The Principal shall be informed about the anticipated price for performing the respective service to the extent possible; otherwise the Principal is entitled to fix price limits. If the ordered service cannot be performed at the anticipated costs specified or if the Principal in the course of performing the service considers it necessary to carry out additional works, then the consent of the Principal shall not be required, unless the specified costs are exceeded by more than 20%.
- 3.2. If the Principal requires a cost estimate indicating the binding prices prior to performance of the service ordered, then this shall explicitly requested by the Principal. Unless otherwise agreed, this cost estimate shall not be valid, unless made in writing. The services rendered in order to prepare such cost estimate shall not be charged to the Principal provided that they can be applied in performing the ordered services.

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## 4. Price and terms of payment

- 4.1. The Contractor shall be entitled to require reasonable instalments upon signing the contract and reasonable progress payments in the course of performing the services.
- 4.2. The calculation of the service to be rendered shall include the prices for parts and materials used and special services as well as the prices for labour works, travel and transport costs, each of which is to be stated separately. Travel times shall be considered as working times. Any installation works to be performed shall be subject to the applicable installation charging rates of the Contractor. If the service is performed under a binding quotation, reference made to such quotation shall be sufficient, whereas only deviations from the scope of services shall be specified in particular.
- 4.3. All prices, costs and other expenses shall be excluding the statutory value added tax.
- 4.4. Any corrections to the invoice by the Contractor and objection on the part of the Principal shall be made within four weeks from the date of receipt of invoice.
- 4.5. The Contractor may not accept the retention of payments or the setoff against claims of the Principal that are disputed or not acknowledged by the Contractor and that are legally established by force of law or pending a decision in legal proceedings. The Principal may exercise its right to retain payment provided that its counterclaim is made upon the same contractual relationship.

If the performance services, which was already confirmed, are cancelled or postponed on the part of the Principal, then the Principal shall reimburse the Contractor any costs arising in connection with the change or cancellation.

## 5. Cooperation and technical support of the Principal when performing the service outside the plant of the Principal

- 5.1. The Principal shall support the personnel of the Contractor in performing the service at its own expense. In particular, the Principal shall enable the employees of the Contractor access to machinery and equipment subject to the contract that were cleaned by the Principal. The Principal shall moreover provide the Contractor with information on the machinery and equipment subject to the contract as well as the corresponding documents.
- 5.2. The Principal shall take all necessary and appropriate measures at the place of performance in order to prevent any injuries or damage. The Principal shall also advise the project and/or operation manager of the Principal on any applicable special safety regulations, in particular with the processing of toxic and nuclear products to the extent required for the personnel of the Contractor (especially e.g. identification of hazard class). The Principal shall notify the Contractor of any breaches against such applicable safety regulations. The Contractor confirms that the machinery and equipment subject to the contract do not exceed the maximum radioactivity and toxicity values as permitted by law. The Principal shall immediately notify the Contractor of any contaminations of the machinery and equipment subject to the contract, in which circumstance the Principal has no obligation of performance.

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- 5.3. The Principal shall at own expense provide for technical support, in particular
- a. Provision of appropriate and qualified support personnel in the required number and for the required period as to perform the agreed services, where the support personnel shall follow the instructions of the project manager of the Contractor. The Contractor shall not assume any liability for support personnel. Any damage or defect caused by support personnel as a result of following the instructions of the project manager of the Contractor shall accordingly be subject to the regulations of sections 10 and 11.
  - b. Carrying out excavation, construction and scaffolding works including procurement of necessary construction materials.
  - c. Provision of the necessary facilities and heavy tools and the necessary equipment and materials.
  - d. Provision of electrical energy, protective clothing (in particular also head, hand or respiratory protection), heating, light operating power, water, including the necessary connections.
  - e. Provision of necessary dry and lockable rooms for storage of tools provided by the Contractor.
  - f. Protection of the maintenance and/or installation kits against any damaging impacts.
  - g. Provision of appropriate theft-proof common and working rooms (with heating, light, washing and sanitary facilities) and First Aid for the personnel of the Contractor.
  - h. Provision of materials and performance of all other measures required for adjusting the service object and for conducting any tests under the contract.
- 5.4. The scope of the technical support provided by the Principal shall ensure that the services are performed immediately upon arrival of the Contractor's personnel and carried out without any delays until acceptance by the Principal. Any special plans or instructions of the Principal required by the Contractor shall be provided to the Contractor in due time.
- 5.5. If the Principal fails to meet its obligations, then the Contractor shall be entitled, but not obliged, subject to having granted a reasonable period, to carry out the services to be performed by the Principal at the Principal's costs. However, this shall not affect in any way the statutory rights and claims of the Principal.

## 6. Transport and insurance with service performance in the plant of the Contractor

- 6.1. Unless otherwise agreed, delivery and transport of the service object – including possible packaging and shipping – shall be performed upon the Principal's request and at its expenses, otherwise the service object shall be delivered by the Principal at its expenses to the Contractor and collected from the premises of the Contractor by the Principal after completion of the service.
- 6.2. The risk of transport shall be borne by the Principal.
- 6.3. Upon the Principal's request, the Contractor shall provide for insurance for the transport and, if required, return of the insurable transport risks, including but not limited to theft, breakage, fire etc.

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- 6.4. There is no insurance coverage for the performance of services in the plant of the Principal. The Principal shall maintain such existing insurance coverage for the object of performance, e.g. with regard to fire, tap-water, windstorm and machinery breakdown insurance. Insurance coverage for the aforementioned risks may be provided by the Contractor only upon expressly written request and at the expense of the Principal.
- 6.5. In case of failure to takeover on the part of the Principal, the Contractor shall be entitled to impose warehousing charges for the storage in its plant. The object of performance may be stored also in another way, whereas the costs and risks of warehousing shall be borne by the Principal.

### 7. Service, term of service performance, delay in service performance

- 7.1. The information regarding to periods for performing the service are based on estimates and thus shall not be binding.
- 7.2. The agreement on a binding period for performing the service, which are deemed legally binding, may be requested by the Principal only if the scope of works has been determined.
- 7.3. The binding period for performing the service shall be deemed met, if the service object is ready for acceptance by the Principal upon expiration of such period or, upon the pre-acceptance in the event of an agreed acceptance test.
- 7.4. The agreed period of performing the service shall be accordingly extended in the event of subsequent additional or extended orders or in the event of required additional services.
- 7.5. In the event of failure to perform the services due to acts of god, administrative actions, strikes, lockouts or other events that are beyond the control of the Contractor, the period for performing the service shall be extended by the time such event prevails. The Contractor shall notify the Principal as soon as possible of the beginning and end of such events. This provision shall also apply to any events occurring with the supplier or sub-supplier of the Contractor.
- 7.6. If a binding date for performing the service is cancelled or changed for reasons attributable to the Principal, then the Contractor shall be compensated for any damage incurred by it as a result.
- 7.7. The Principal shall confirm the respective times of service performed by the Contractor by signing the installation performance protocol of the Contractor upon completion of each service, however at least one a week.
- 7.8. In the event of damage incurred by the Principal as a result of failure to perform on the part of the Contractor, then the Principal shall be entitled to require a lump sum compensation for default. Such compensation shall be 0.5% in total for each week in delay, but not more than 5% of the net-remuneration price for the respective part of the service, which could not be used due to such failure.
- 7.9. Subject to a reasonable additional period granted by the Principal to the Contractor after the due date in consideration of the statutory exceptions to perform the service and failure to comply with this additional period, the Principal shall be entitled to withdraw from the contract pursuant to the legal provisions. Upon request of the Contractor, the Principal shall explain itself whether it intends to exercise its right to withdraw from the contract.  
Any further claims for delay shall exclusively be subject to section 11.3 of these conditions.

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## 8. Acceptance

- 8.1. The Principal shall accept the works subject to notification of completion and, if agreed, testing of the service object. In doing so, the Principal shall confirm the proper execution of the performance in the service report form of the Contractor. If the performance fails to comply with the contract, then the Contractor shall be entitled to remedy such defect. This shall not apply if that defect is irrelevant for the interests of the Principal or is based on a circumstance attributable to the Principal. The Principal shall be entitled to reject acceptance, unless the defect is irrelevant.
- 8.2. If acceptance is delayed without the Contractor being at fault, then the acceptance is deemed to be effective two weeks after the date of notification of completion of works.
- 8.3. The Contractor shall not be liable for any visible defects upon acceptance, unless the Principal has reserved the right to claim for a specific defect.

## 9. Transfer of title, extended right of lien

- 9.1. The transfer of title to all used accessories, spare parts and exchange aggregates shall pass from the Contractor upon receipt of all payments made under the present contract. Any further security agreements may be concluded.
- 9.2. The Contractor shall be granted the right of lien to the service objects of the Principal, which came into its possession on the grounds of this contract, whereas such lien right results from its claim under this contract. The right of lien may also be exercised in relation to claims arising from works previously performed, supplies of replacement parts and other services provided that such claims are in connection with the service object. The right of lien shall not apply for any other claims arising under the business relationship, unless they are undisputed or legally effective or ready for decision in a proceeding.
- 9.3. In the event that the service object is combined with spare parts etc. of the Principal and if the service object is considered to be the principal subject, then the Principal shall convey a proportional co-ownership to the Contractor provided that the Principal is the owner of the service object. The Principal shall hold the co-ownership for the Contractor.

## 10. Liability for defects

- 10.1. Upon acceptance of the service, the Contractor shall be liable for any defects of the service excluding any other claims of the Principal without prejudice to section 10.5 and section 11 in such way as to remedy these defects. Any defect identified by the Principal shall be immediately notified to the Contractor.
- 10.2. The Contractor shall assume no liability for any defects irrelevant for the interests of the Principal or based on a circumstance caused by the Principal. This shall particularly apply to any parts provided by the Principal in this respect. Installations shall be irrespective of section 11, subject to restricted liability of the Contractor for original spare parts installed by the Contractor itself.

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- 10.3. Any modifications improperly performed by the Principal or third parties without the prior consent of the Contractor shall be excluded from the Contractor's liability for any consequences resulting thereof. Only in urgent cases in which the operational safety is at risk or to avoid unreasonable damage (of which the Contractor shall be informed immediately) or if the Contractor fails to remedy a defect within a reasonable period of time granted to it subject to any applicable statutory exceptions, then the Principal shall be entitled to remedy a defect by itself or have remedied a defect by third parties pursuant to the applicable legal provisions and to claim for compensation of the necessary expenses from the Contractor.
- 10.4. Insofar as the claim for defect is justified, the Contractor shall bear the direct costs for remedying a defect incurred for a replacement part including its dispatch. The Contractor shall also be liable for the costs in connection with de-installation and installation as well as the costs of any necessary provision of required operators and support staff, including travel expenses, unless this would cause an unreasonable burden for the Contractor.
- 10.5. If the Contractor fails to remedy a defect also within an additional period of time subject to applicable statutory exceptions, then the Principal shall be granted a right of reduction in price pursuant to the legal provisions. Only if the Principal has not veritable interest in the service despite reduction, then the Principal shall be entitled to withdraw from the contract.
- 10.6. Any further claims shall be subject to section 11.3 of the conditions specified herein.

### 11. Other liability of the Contractor

- 11.1. In case of damaged parts of the service object fault of the Contractor, the Contractor shall at its option provide for repair or replacement of such parts at its own expense. Notwithstanding section 11.3, the liability for damages shall be restricted to the amount equal to the price agreed under the contract.
- 11.2. If the service object cannot be used in accordance with the contract due to the fault of the Contractor resulting from failure to perform or non-compliant execution of suggestions and agreements made before or after signing the contract or from a breach of other secondary contractual obligations, in particular instructions for the operation and maintenance of the service object, then the provisions of section 10. and 11.1 and 11.3 shall apply accordingly, excluding any further claims of the Principal.
- 11.3. The Contractor shall not be liable for any damages not caused to the service object itself, for any legal reasons whatsoever, unless in cases of

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- intentional breach of Contractor's obligations
  - gross negligent breach of Contractor's obligations or in cases of intentional or gross negligent breach of obligations of any legal representative or vicarious agents of the Contractor
  - injury of life, body and health, which can be attributed to a negligent breach of the obligations of the Contractor or an intentional or negligent breach of obligations of any legal representative or vicarious agents of the Contractor
  - culpable breach of material obligations under the contract and where such breach endangers the fulfilment of the contract with regard to damage that is foreseeable and typical of such contracts
  - in such cases, where liability for personal injury or material damage to privately used items caused by defects to the service object is assumed according to the product liability law
  - defects that have been fraudulently concealed or the absence of which was guaranteed.
- Any further claims shall be excluded.

## 12. Limitation period

All claims of the Principal – for any legal reasons whatsoever – shall be subject to a limitation period of 12 months; the limitation period for claims according to section 10 shall begin on the date of acceptance. The applicable limitation period for damage claims according to section 11.3, however, shall be as provided by law. These shall also apply to defects in the construction works or delivered items, which are usually used for constructions and have caused the construction's defectiveness.

## 13. Applicable law, place of jurisdiction

- 13.1. The present contract shall be subject to the laws of the Federal Republic of Germany under the exclusion of the UN Convention for the International Sale of Goods.
- 13.2. The calibration, inspection, maintenance and optionally the modification and repair protocol to the extent of the respective order shall form an integral part of these conditions.
- 13.3. If the Principal is a merchant, legal entity under public law or a federal special fund under public law, the exclusive place of jurisdiction for all disputes arising from this contractual relationship, whether direct or indirect, shall be the registered seat of the Contractor. However, the Contractor shall have the right to institute legal proceedings at the general place of jurisdictions.

FETTE Compacting GmbH, November 2011

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