

Additional Terms and Conditions of Service for Assembly, Corrective Maintenance and Other Services Rendered by Bosch Rexroth AG (01/2015)

1. General terms

- 1.1. These Terms and Conditions of Service apply, in addition to the General Terms and Conditions of Delivery by Bosch Rexroth AG, to all assembly, corrective maintenance and other services (e.g. repairs) rendered by us. Insofar as it is necessary to deploy service personnel under the contract, sections 3, 4 and 5 below contain special provisions applying thereto.
- 1.2. Any oral agreements entered into prior to or upon conclusion of the contract must be confirmed by us in writing in order to be effective.

2. Price and price correction

- 2.1. If no specific remuneration has been agreed upon, our assembly, corrective maintenance and other services shall be invoiced on a time and material basis.
- 2.2. Prices of parts, materials, tools and other special services used (e.g. scrapping which we have assumed responsibility for), remuneration for the work service and, if service personnel is deployed, any additional travel and transport costs incurred, will be itemized separately.
- 2.3. If a non-binding cost estimate has been given and if we should ascertain during performance of the assembly, corrective maintenance or other services that they cannot be executed without substantially exceeding the amount of the cost estimate, we will notify the purchaser hereof without delay. The cost estimate is deemed to be substantially exceeded if the deviation from the cost estimate amounts to at least 15%.
- 2.4. When the purchaser receives our notification that a cost estimate is being substantially exceeded, the purchaser is obliged to decide whether it wishes to have performance of the assembly, corrective maintenance or other services continued. If the purchaser considers this to be inappropriate due to the additional costs, the purchaser may terminate the contract within two weeks after receipt of the notification. If the purchaser exercises its termination right, it has to pay us for that part of the remuneration corresponding to the performance that has been rendered and for the expenses not included in the remuneration. The same shall apply if the purchaser fails to respond within the set period of two weeks.

3. Remuneration of work performed, working hours

- 3.1. Remuneration of the work performed is calculated on an hourly basis by applying our rates for performance of services in effect at the time when the service is rendered. Our rates are established on the basis of cost factors applying at the time when the service is rendered (in particular wage costs, bonuses, subsistence allowances etc.). If there is a change to these factors, we reserve the right to adjust our rates accordingly. We shall notify the purchaser of this and provide evidence on request. If this leads to an increase in remuneration in excess of 5%, then the purchaser has the right to terminate the contract within two weeks after receipt of the notification.
- 3.2. Travel time shall be invoiced as working hours in accordance with our rates for services. Waiting periods which we are not accountable for at the place of performance shall also count as working hours, as does the necessary time spent on looking for accommodation required and on any reports to the authorities.
- 3.3. The purchaser has to confirm the service personnel's working hours in the format submitted by us to the purchaser – depending on customary practice either on a daily or weekly basis or after completion of the work – either in writing or in electronic form. Any objections by the purchaser shall be raised either in the format submitted or separately in writing.
- 3.4. Regular working hours and the remuneration of overtime, late hours, work at night, on Sundays or public holidays by the service personnel deployed by us to perform assembly, corrective maintenance or other services, shall depend on the collective agreements applicable to the respective employment relationship of the employee. Overtime shall be worked insofar as it is necessary and agreed with us. Working hours exceeding the maximum of 10 working hours a day and work on Sundays or public holidays may only be undertaken in urgent exceptional cases and necessitates our consent to this and, if applicable, the consent of the supervisory authority responsible at the place of performance. In this context the public holidays stipulated by law at the place of performance shall count as public holidays. A break of at least 11 hours is mandatory between two work shifts.

4. Travel and transport costs, journeys home

- 4.1. The costs of the transport and of the transport insurance of the service personnel's personal luggage and of the tools transported with the personnel or sent for performance of the service must be taken into account in particular in the transport costs of the service personnel.
- 4.2. Travel costs include the costs of journeys home by our service personnel during the time period of performance of the assembly, corrective maintenance and other services (i.e. to and from the assembly location to our service employee's normal place of work). Our service personnel's entitlement to journeys home shall be determined by the standards of statutory regulations or collective agreements respectively applying. The classes, tariffs or rates (e.g. km allowance) claimed by our service personnel for the means of transport required (e.g. rental vehicle, taxi, public transport, airplane, ship) are set forth in our price list in effect at the time of performance of the service.

5. Costs of provisioning tools

The rates for the service personnel include provisioning with basic equipment of tools, devices and measurement instruments customary in the trade. If, however, performance of the assembly, corrective maintenance and other services should require special tools, devices or measurement instruments, then they shall be invoiced separately in accordance with the price list.

6. Assembly, corrective maintenance and other services which cannot be rendered

The purchaser shall be charged for services rendered to submit a cost estimate and for other expenses incurred which are to be evidenced (time spent on an error search constitutes working hours) if the work cannot be carried out for reasons which are not our responsibility, in particular because, in the case of corrective maintenance work, the error complained of did not occur or because spare parts were not available through no fault of our own.

We only have to return the purchaser's plant or machinery to the condition it was in before we commenced performance of our services at the purchaser's explicit request and in return for payment of the costs, unless the work undertaken was not necessary.

7. Collaboration by the purchaser

- 7.1. The purchaser shall support our service personnel at its expense in performance of the assembly, corrective maintenance and other services by our service personnel.
- 7.2. The purchaser shall take the special action necessary to protect persons and property at the place of performance. The purchaser shall also instruct our service personnel (or the head of the service group if several service employees are working at the same location) of existing safety and accident prevention regulations, insofar as such regulations are also of significance to our service personnel.
- 7.3. Any means of communications that are necessary shall be made available to us free of charge or subject to a reasonable charge.
- 7.4. If the subject matter of the service work to be performed encompasses commissioning on plant or machinery of the purchaser of the freely programmable computer controls from our product range, in case of doubt, merely bringing about and ensuring the functionalities and attributes described in the technical documentation of our computer controls is owed. User programming, i.e. determining and entering the machinery or plant specific control parameters and the conversion of the respective process engineering problem to a user program, whilst having knowledge and taking account of the machinery laws and accident prevention regulations, is the obligation of the purchaser and remains its responsibility.

8. Technical support by the purchaser

- 8.1. The purchaser is obliged to provide technical assistance at its expense, in particular to:
 - provide the necessary suitable auxiliary staff in the numbers and for the time required. We do not assume any liability for such auxiliary staff. If a defect or damage is caused by an auxiliary employee due to instructions given by the head of the service deployment, then the provisions of sections 11 and 13 shall apply accordingly.
 - undertake all the earthwork, construction work, bedding and scaffolding work, including procuring the necessary building materials and auxiliary materials.
 - provide the item on which the service is to be performed in a cleaned and shut down state.
 - provide the necessary devices and heavy tools (e.g. lifting gear, compressors) and the necessary items and materials of use (e.g. scaffolding wood, wedges, underlays, cement, plaster and sealing material, lubricants, fuel, drive ropes and belts).
 - provide heating, lighting, power supply, water, including the necessary connections.
 - provide necessary, dry and lockable rooms for the service personnel and for the tools and equipment brought with the service personnel.
 - transport any parts which have to be assembled to the service site, protect the parts and materials to be assembled or repaired against any kind of damaging influences and clean the assembly or repair site.
 - provide suitable burglar-proof rest rooms and working premises (with heating, lighting, washing and sanitary facilities) and first aid for the service personnel.
 - provide the materials and take all other action, in particular the safety precautions that are necessary to adjust the purchaser's plant or machinery and, if applicable, for any testing provided for by contract, provide and dispose of process media, cleaning cloths, oil binding agents, filter elements and packaging materials.
 - conduct safety measures to protect the service personnel.
- 8.2. The purchaser's technical support must ensure that the service work can be commenced as soon as the service personnel arrives and can be performed without any delay through to acceptance by the purchaser. Insofar as any special plans or instructions are required from us, we shall provide the purchaser with them in good time.
- 8.3. If the purchaser fails to comply with its obligations, we have the right, but not the obligation, after having set a specific time limit, to undertake the action incumbent on the purchaser ourselves in lieu of the purchaser and at the purchaser's expense. Our statutory rights and claims shall remain unaffected in all other respects.

- 9. Time period for performance of the assembly, corrective maintenance and other services, delay (supplements Section 3 of the General Terms and Conditions for Supplies and Services by Bosch Rexroth AG)**
- 9.1. All indications of time periods for performance of our services are based on estimates and are not therefore binding. The purchaser cannot demand an agreement on a binding deadline for completion of the services which has to be classified as binding until the scope of the work has been specified precisely.
- 9.2. A binding deadline for completion has been complied with if, pending expiry thereof, the plant or machinery forming the subject matter of assembly, corrective maintenance or other services, is ready for acceptance or takeover by the purchaser, or, if testing has been provided for by contract, when it is ready for such testing.
- 9.3. In the event of additional or extended orders being placed at a later date or if additional service work is necessary, an agreed date for completion shall be extended by the time necessary for performance thereof.
- 9.4. If the service work is delayed by industrial disputes, in particular by strike or lockout, or due to the occurrence of events for which we are not responsible, then the completion date shall be extended by the duration of the event delaying completion, insofar as such impediments are proven to have a considerable influence on the completion of the service work.
- 9.5. If, after the due date, the purchaser – taking account of the exceptional cases provided for by law – sets a reasonable time limit for performance and if such time limit is not met, then the purchaser has the right to withdraw from the contract in accordance with the provisions of statute. Upon our request the purchaser undertakes to declare within a reasonable period of time whether or not it will exercise its right of withdrawal.
- 9.6. If we are in default and if, as a result, the purchaser incurs damage, the purchaser has the right to demand liquidated damages. Liquidated damages shall amount to 0.5% of the price of the service work on that part of the plant or machinery to be assembled or correctively maintained by us and which it was not possible to use on time due to the delay, for each week of default but not exceeding, on aggregate, 5% of such price.
- 9.7. Further claims on account of default are governed solely by Section 13 of these Terms and Conditions.
- 10. Acceptance**
- 10.1. The purchaser is obliged to accept the assembly, corrective maintenance and other service work as soon as the purchaser has been notified of completion thereof and any testing of the item forming the subject matter of the service work that was provided for by contract has been effected. If it transpires that the service work rendered is not in conformity with the contract, we are obliged to rectify the defect at our expense. This does not apply if the defect is due to a circumstance that is attributable to the purchaser or if the defect is exiguous with regard to the purchaser's interests. The purchaser may not refuse acceptance in the event of a minor defect.
- 10.2. If acceptance is delayed through no fault of our own, then acceptance shall be deemed to have been effected after expiry of a period of two weeks after notification of completion of the service work.
- 10.3. After the purchaser has conducted acceptance, a complaint is ruled out if it relates to defects which it was possible to detect at the type of acceptance agreed, except insofar as the purchaser, on acceptance, reserved the right to assert a claim on account of a specific defect.
- 11. Claims on account of defects**
- 11.1. The purchaser must notify us without delay of a defect that has been detected.
- 11.2. After acceptance of the service work we are liable for defects in the service work in that we shall rectify the defects. Only in urgent cases of jeopardy to operating safety and to avert disproportionately great damage, something which we must be notified of immediately, or if we – taking account of the exceptional cases provided for by law – have allowed a reasonable time limit set by the purchaser to expire to no avail, does the purchaser have the right, in accordance with the provisions of statute, to either rectify the defect itself or to have it rectified by third parties and to demand a refund of the necessary costs. If the complaint is justified, we shall pay the costs incurred directly through rectification of the defect, except insofar as this leads to a disproportionate burden.
- 11.3. In accordance with the provisions of statute the purchaser has the right to reduce the price [*Minderungsrecht*] if we – taking account of the exceptional cases provided for by law – have allowed a reasonable time limit set on us for rectification of the damage to expire to no avail.
- 11.4. There shall be no claims on account of defects if the defect is due to a circumstance which is attributable to the purchaser or which is only exiguous as regards the interests of the purchaser.
- 11.5. There shall similarly be no claims on account of defects if the purchaser made changes to or undertook corrective maintenance on the service item we delivered, outside the scope of customary maintenance measures, without our approval.
- 11.6. Further claims are governed solely by Section 13 of these Terms and Conditions.
- 12. Statute of Limitations**
- The limitation period for all claims by the purchaser on account of defects is 12 months. If we perform the service work on a building construction and cause its defectiveness as a result thereof, then the periods of statute shall apply.
- 13. Claims for damages (supplements Section 9 of the General Terms and Conditions for Supplies and Services by Bosch Rexroth AG)**
- 13.1. If, during performance of the service work, a (spare) part used by us is damaged due to the fault of our service personnel, we shall, at our discretion and expense, either repair it again or re-supply it.
- 13.2. If the item on which the service work is to be performed cannot be used by the purchaser in accordance with the contract as a result of suggestions or advice which we culpably failed to give or which were/was defective, whether before or after conclusion of the contract, or due to a culpable violation of other contractual ancillary obligations, the terms set out in sections 11, 13.1 and 13.3 shall apply whilst further claims by the purchaser are excluded.
- 13.3. We shall be liable for damages and for compensation of futile expenditure within the meaning of section 284 German Civil Code (BGB) (hereinafter referred to as "Damages") on account of a breach of contractual or non-contractual obligations only
- (i) in case of intent or gross negligence,
 - (ii) in the event of negligent or intentional injury to life, body or health,
 - (iii) if a guarantee has been given for the quality or durability of the item,
 - (iv) in the event of negligent or intentional breach of material contractual obligations,
 - (v) on the ground of compulsory liability under the Product Liability Act [*Produkthaftungsgesetz*], or
 - (vi) on the ground of other compulsory liability.
- 13.4. Damages for the breach of material contractual obligations shall, however, be limited to foreseeable damage typical of the type of contract, except insofar as there is liability due to intent or gross liability or on account of injury to life, body or health or of the provision of a guarantee of quality.
- 13.5. More far-reaching liability for Damages than that provided for in section 13 is excluded – regardless of the legal nature of the claim asserted. This shall apply in particular to claims for Damages due to fault when the contract was concluded [*culpa in contrahendo*], due to breach of other duties or on account of tort claims for compensation of property damage pursuant to section 823 BGB.
- 13.6. Insofar as liability for Damages is excluded in respect of us, this shall also apply with regard to personal liability for Damages of our employees, representatives and persons engaged by us in performance of an obligation [*Erfüllungsgewilfen*].
- 14. Payment terms (supplements Section 14.1 of the General Terms and Conditions for Supplies and Services by Bosch Rexroth AG)**
- Save as otherwise agreed in writing, the remuneration for our assembly, corrective maintenance and other services is payable without any deduction within 14 days after acceptance and hand-over or dispatch of the invoice. We have the right to demand a reasonable advance payment upon conclusion of the contract.
- 15. Compensation by the purchaser**
- If the equipment or tools provided by us at the place of performance are lost or damaged through no fault of our own, then the purchaser is obliged to compensate us for such damage. Damage due to normal wear and tear shall not be taken into consideration.
- 16. Service contact person:**
 Bosch Rexroth Service Hotline
 Tel.: +49 (0)9352/405060
 E-Mail: service@boschrexroth.de

Bosch Rexroth AG, as per: January 2015