

General Contractual Terms and Conditions for the Business Area Construction Machinery and Equipment, Streif Baulogistik GmbH – Maintenance Conditions

As at: 01.11.2008

1. Ambit and Conclusion of Contract

- 1.1 The present Maintenance Conditions shall apply to all contracts relating to the provision of maintenance and servicing work on construction machinery and equipment. All of these contracts are solely governed by these Maintenance Conditions. These Conditions shall, without express declaration of such, be recognised as definitive and binding for the entire duration of the business relationship.
- 1.2 The Client's own Terms & Conditions shall not be binding on the Contractor except where the Contractor has expressly agreed to such terms.
- 1.3 Amendments, alterations or other supplementary agreements must be recorded in writing. This does not exclude the possibility of oral supplementary agreements. The written form may not be replaced by the electronic form.
- 1.4 Permission for test driving and test use shall be deemed granted with transmission of the maintenance order.
- 1.5 The present Maintenance Conditions shall apply to business people, legal entities under public law and to public assets pursuant to Art. 310, para. 1 German Civil Code.
- 1.6 Unless otherwise agreed, all of the Contractor's offers are subject to change.

2. Estimate of Cost, Quotations, Termination by the Client

- 2.1 Wherever possible the Contractor shall provide an estimated maintenance quotation on conclusion of the contract. The Client may set maximum limits for the costs.
- 2.2 Where it is necessary to exceed the estimated costs in order to properly carry out the work, the Client must be notified accordingly. His permission shall be deemed to have been granted when, after he has been informed by the Contractor that failure to object shall be taken as tacit approval and after an appropriate period set by the Contractor has elapsed, he has raised no objection to the extended work.
- 2.3 In the event that the Client undertakes to bear the costs for the estimate, such costs shall be added to the maintenance invoice when the maintenance order is given.
- 2.4 Where the Client terminates the contract, either because the estimate costs have been exceeded or for other reasons, he shall bear the costs for work carried out to date and the associated expenses, as well as those costs already agreed and no longer avoidable, including costs for spare parts ordered or already acquired, where the Contractor is not in a position to use such spare parts elsewhere or return them free of charge.

3. Price and Payment Terms

- 3.1 Unless otherwise agreed in writing, payment for the maintenance work including any other expenses shall be due in full immediately after acceptance of the maintenance, or at the latest the day the maintenance invoice is received. All prices stated are net and subject to VAT at the rate valid on the invoice issue date. This shall be separately invoiced at the respective valid rate in accordance with the respective valid fiscal regulations
- 3.2 The Client shall bear the costs of wrongly ordered parts (e.g. storage).
- 3.3 The Contractor is entitled to demand advance part payments for parts of contractual work completed. This shall also apply to any necessary materials or parts which have been specially manufactured or delivered. This right shall only apply where title to the parts of the work, the materials or the parts has been transferred to the Client or security for such has been paid. Where the Client is more than four weeks in arrears with part payments, the Contractor is entitled to suspend the work, provided that the Client fails to make the due part payment or provide an advance payment or security amounting to the sum of the next due part payment.
- 3.4 The Client shall be entitled to withhold or offset payments only where he has counterclaims which are undisputed by the Contractor or which are legally binding

4. Client's Obligation to Cooperate

- 4.1 With regard to the performance of maintenance work, the Client shall provide support to the maintenance personnel at his own expense (e.g. necessary energy and connections).
- 4.2 The Client is responsible for the protection of personnel and material at the place of maintenance.
- 4.3 The maintenance manager is to be informed of any security precautions to be observed.
- 4.4 The Client shall bear the costs of any delays for which he is responsible.

5. Deadline for Completion of Maintenance

- 5.1 The Contractor is obliged to meet a binding completion date. Where the extent of the maintenance work differs from or is greater than that which was originally agreed, resulting in a delay, the Contractor shall immediately advise the Client of the new completion date and state the reasons.
- 5.2 Where the Contractor fails to provide a due service or does not fulfil it as specified in the contract, the Client may - with due regard for legal exceptions - withdraw from the contract where the Contractor fails to provide the service or supplementary service within an appropriate period of time.
- 5.3 Where the Contractor has provided partial service, the Client may withdraw from the contract only if he has no interest in this partial service. Where the Contractor has not provided the service in keeping with the terms of the contract, the Client may not withdraw from the contract where such contractual breach is only minor. Withdrawal is also excluded where the Client is solely or largely responsible for the circumstance which would entitle him to withdraw or where a circumstance beyond the control of the Contractor occurs at a time when the Client is in delay with regard to acceptance.
- 5.4 In the event of labour disputes or the occurrence of unforeseen obstacles beyond the control of the Contractor, the maintenance period shall be extended by an appropriate period, whereby the Client shall not derive any right to claim.
- 5.5 Where, through the Contractor's delay, the Client suffers a provable loss, this shall be compensated although in the event of minor negligence, such compensation shall be limited to a maximum of 5% of the net maintenance price. Other claims are governed exclusively by No. 10 of these Maintenance Conditions.

6. Acceptance of the Maintenance and Taking Over by the Client

- 6.1 Notification of the completion of maintenance work shall be deemed to have been given at latest with despatch of the maintenance invoice. Acceptance shall be made immediately after receipt of such notification. Where acceptance is delayed for reasons beyond the Contractor's control, acceptance shall be deemed to have been given after 2 weeks from receipt of notification of completion of the maintenance work have elapsed.
- 6.2 Where despite his obligation to do so, the Client fails to accept the maintenance work within an appropriate period set by the Contractor, this shall be deemed as acceptance. The Client is obliged to accept the maintenance work carried out in accordance with contract provided that acceptance is not possible on the basis of the quality of the maintenance work. Acceptance may not be refused on the basis of negligible defects.
- 6.3 Where the Client is delayed with regard to acceptance or collection of the serviced item, the Contractor is entitled to demand compensation for any costs thus incurred including any additional expenses (e.g. warehousing costs) and may store the serviced item on premises other than his own.

7. Transfer of Risk

- 7.1 The costs for the incoming and return transport of the item to be serviced, and thus the risk of loss or damage, shall be borne by the Client, even where vehicles of the Contractor are used.
- 7.2 Handed over items for servicing are not insured by the Contractor against any risks. Risks are to be covered by the Client himself or cover may be arranged at his expense on foot of an express written request.

8. Retention of Title, Right to Withhold and Seizure

- 8.1 The Contractor retains title to all installed units, spare parts and accessories, insofar as they may be retained, until all payments out of the maintenance contract have been received.
- 8.2 Alongside his claims arising out of the maintenance contract the Contractor retains a contractual right to seizure with regard to serviced items given into his possession on the basis of an order. The Contractor may avail of this right to seizure in connection with claims from work previously undertaken, spare part deliveries and other services, provided that these are associated with the object of the order.
- 8.3 The Contractor may exercise his right to withhold a contractual object until such time as full payment has been made.
- 8.4 In the event that the Client is not the owner of the serviced equipment or part, as a precaution the Client shall assign his claim to transfer of title or reversion of title to the Contractor

General Contractual Terms and Conditions for the Business Area Construction Machinery and Equipment, Streif Baulogistik GmbH – Maintenance Conditions

As at: 01.11.2008

after full settlement of any third party claims and authorises the latter to immediately and irrevocably fulfil such claim for the Contractor. The Contractor accepts this assignment.

- 8.5 The Client may neither mortgage nor use as security those items over which the Contractor retains the right of pledge. In the event of seizure, confiscation or other acts of disposal by third parties, the Client shall immediately notify the Contractor of such in writing. Where the third party is not in a position to reimburse the Contractor for the legal and out of court costs of an action pursuant to Art. 771 Code of Civil Procedure, the Client shall be liable to the Contractor for the resulting costs.
- 8.6 Where the serviced item is associated with spare parts or other components of the Contractor, and where the serviced item is deemed as the main item, the Client shall confer pro rata shared title on the Contractor, where the serviced item belongs to him. The Client shall protect the Contractor's shared title.

9. Old Parts

Where the Contractor takes back old parts, he is entitled to charge the Client separately for any costs incurred through their disposal.

10. Defect Liability

- 10.1 The Contractor shall be liable to the Client for any maintenance defects insofar as he must remedy the defects in his own workshop or in the place where the item to be serviced is located at his own discretion. Irrespective of Nos. 10.3 and 11 of these Maintenance Conditions, all other claims by the Client are excluded.
- 10.2 Defect claims shall expire 12 months after acceptance of the maintenance work. Any defects identified must be notified to the Contractor immediately in writing. Where the Client has improperly carried out maintenance work or had such work carried out by third parties without the approval of the Contractor, the Contractor's liability shall lapse. The same shall apply where at the request of the Client, the exchange of parts requiring replacement is not undertaken. Otherwise, no warranty shall exist in the following cases: inappropriate or improper use, incorrect operation by the Client or third parties, natural wear and tear, incorrect or negligent handling particularly with regard to the applicable operating instructions, improper maintenance or the use of unsuitable operating materials.
- 10.3 Where the Contractor - with due consideration for the legal exceptions - fails to meet a deadline for supplementary performance, the Client shall be entitled to reduce payment. This right to reduce payment shall also apply in other cases of failure to provide supplementary performance. Only where the maintenance is provably of no interest to the Client, despite the reduction, may the Client withdraw from the contract in accordance with legislation.
- 10.4 Provided that the complaint may be seen as justified, of the costs incurred directly by supplementary performance the Contractor shall bear the costs for the replacement part and its despatch as well as the appropriate costs for removal and installation.

11. Other Liability

With regard to material losses separate to the defect liability specified at No. 10, the Contractor shall be liable in accordance with the terms and sum of a concluded liability insurance policy or one yet to be concluded. Where no liability insurance has been taken out, liability shall be limited to the sum required to remedy the damage. These liability limitations shall not apply in the following cases:

- deliberate action,
- gross negligence on the part of the Owner, organs or executives of the Contractor,
- culpable injury to life, limb and health,
- for defects which were deliberately concealed by the Contractor or where he has guaranteed that they do not exist,
- insofar as liability shall apply pursuant to the Product Liability Act for personal or material losses with regard to privately used objects.

In the event of culpable breach of major contractual obligations the Contractor shall also be liable for the gross negligence of non-executive employees and for minor negligence, the latter case being however limited to losses which are contract typical and may be reasonably anticipated.

12. Place of Jurisdiction

Where the Client is a businessman, a legal entity under public law or a public asset, the place of performance and sole place

of jurisdiction, summary procedures included, for both parties and for all current and future claims arising out of the business relationship shall at the discretion of the Contractor be either the place of the Contractor's head office, Essen, or the place at which the Contractor has a branch at the time the contract was concluded.

13. Other Provisions

German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.