

1 Scope of application

These General Terms and Conditions (GTCS) shall apply to the provision of services of maintenance and servicing as well as to services of any kind by JOMOS Brandschutz AG (we / us) for our clients (you / you).

The General Terms and Conditions shall apply exclusively. Any General Terms and Conditions which are in conflict with or deviate from them shall be applicable only if they have been confirmed by us in writing.

2 Offers and Conclusion of the contract

Your orders shall become binding upon mutual signature of the maintenance and servicing contract or once we confirm the order in writing (contract).

Our offers in quotes, brochures, catalogues, price lists and other performance descriptions and documents - including in electronic form - shall not be binding until the contract has been concluded.

3 Term of the Contract

Unless otherwise agreed in writing, the term of the contract shall begin upon mutual signature / our order confirmation in writing and it shall end upon the expiration of the following calendar year.

Unless otherwise agreed in writing, the term of the contract shall be renewed each time automatically for one (1) more year, unless one of the Parties gives notice of termination of the contract in writing at least three (3) months prior to the expiration of the term of the contract.

If the real estate in which the plant covered by the contract is located, or if the plant itself is sold, you shall continue to be obliged to pay the agreed compensation, unless the new owner takes over this contract with our consent.

4 Scope of performance

The content and scope of the services to be rendered by us shall be evident from the contract and the integral parts of the contract set out in the contract (e.g. performance description, specification sheet, master data list, instructions for inspection).

In the event that the contract includes repairs and corrective maintenance up to a certain budget, our General Work Contract Terms and Conditions (jomos.ch/agb) shall be applicable to any such repairs and corrective maintenance.

5 Execution of maintenance and servicing work

We will provide our services on the basis of the standards which are customary in the industry (e.g. VKF, SES, EN standards, FM Global) and the respective specifications from the manufacturers.

We will discuss any maintenance and servicing dates with you in advance. We will undertake our best efforts to keep any agreed dates. In the event that any such dates are delayed or postponed, you shall not have the right to withdraw from the contract, nor shall you be authorised to assert any other claims.

After the inspection / maintenance work has been completed, our servicing team member in charge shall confirm by means of a work report that the plant is ready for operation. If the said readiness for operation cannot be confirmed or can be confirmed only with restrictions, a note to this effect shall be added to the work report and you will be informed. The work report shall be signed by you and by us, and each Party shall receive one copy thereof.

In addition, our servicing team member in charge shall record all material information after inspections, maintenances and repairs in the relevant inspection medium (e.g. inspection leaflet, stickers on the Product, etc.) relating to your plant.

We shall be authorised to use sub-contractors for the fulfilment of the contract.

6 Your duties of cooperation

You must inform us in writing of official conditions and requirements which may be imposed e.g. in the course of permit proceedings or in an inspection report of the cantonal agency, or of changes in the conditions for operation and use.

In the event that a 24-hour on-call service has been contractually agreed, you shall be under an obligation to report to us any malfunctions and any damages to any plants covered by the contract immediately together with a useful description of the error which has occurred.

You shall make sure that no unauthorized persons may tamper with the plants covered by the contract.

You shall additionally make sure that we have unrestricted access to the plants covered by the contract during the usual business working hours after giving notice in advance.

Prior to the start of the works, you shall be under an obligation to indicate the position of all hidden heavy current, gas, water or similar lines / systems. In addition, you shall be under an obligation to inform us of all hazardous substances, including, but not limited to, asbestos and mineral wool, in the ceilings, walls and floors.

The person in charge of the plant (e.g. owner, caretaker, plant manager, or your representative) shall be present on each start of the maintenance / servicing work, and inform our servicing staff member in charge about everything that might affect the functioning of the plant.

You shall be responsible for the fact that the periodic inspections are carried out in accordance with the instructions for use of the plant or in accordance with our instructions, and are recorded in the relevant inspection medium (e.g. inspection leaflet, stickers on the Product, etc.). We shall retain the right to verify the expertise of the person in charge of the plant with regard to the duties vested in them, the regularity of the inspections and them making updates of the relevant inspection medium by means of random checks. If we discover any defects in this regard, we will make you aware of them by adding notes to the work report. You shall be exclusively responsible for any measures (if any).

7 Services beyond the Maintenance or Servicing Contract

In respect of any services outside of this contract, a separate contract must be concluded, and any such services shall be invoiced at the hourly rates in force from time to time for work payable at hourly rates, or the price list in force from time to time, unless otherwise provided in the contract in writing.

You shall undertake to make sure that any repair and corrective maintenance of plants which are the subject matter of the contract shall in principle be carried out by us or by a sub-contractor hired by us. No third parties may be hired except in exceptional cases with our express prior consent in writing. We shall undertake efforts to eliminate any malfunctions which may affect the readiness for operation of plants covered by the contract as soon as possible. If the elimination of the malfunction becomes delayed, we will inform you immediately. In such a case, the Parties will take the necessary measures in mutual consultation with each other.

For all other matters, depending on the subject matter of the contract, our General Work Contract Terms and Conditions (jomos.ch/agb) or General Sales Terms and Conditions (jomos.ch/agb) shall apply.

8 Prices

The prices shall be those indicated in the contract and our price list in force upon the contract's conclusion, unless agreed otherwise in writing.

Evidence of the services rendered shall be furnished by means of the co-signed work reports. Any expense incurred for obtaining the co-signature shall also be remunerated to us.

Except as otherwise agreed in writing, our prices shall be understood to be net prices plus the value added tax applicable from time to time (VAT).

In respect of any work done at your request for operational reasons on weekends, public holidays or at night, we will, in addition to the normal hourly rates, charge the relevant surcharges as set out in our cost rates in force from time to time as well as, where appropriate, fees for permits.

If a flat rate has been contractually agreed, the same shall be owed even if the service has not been provided or not been provided completely for reasons in your control (e.g. because the maintenance or servicing work was carried out by a third party, because no date could be agreed, etc.).

Unless otherwise agreed in writing, the flat rates shall be indexed on the basis of the Swissmem wage index in force upon the contract's conclusion (ASM index / Arbeitgeberverband der Schweizer Maschinen-, Elektro- und Metallindustrie). The adjustment shall be made annually on the 1st of January, for the first time no sooner than after the expiration of the sixth month after conclusion of the contract.

If there is a change in the regular maintenance requirements as a result of other circumstances, including, but not limited to, changes in safety requirements imposed by the law or the authorities, technical changes in the plant or operational changes locally, we will retain the right to adjust flat rates by giving you three months' prior notice. Any such price adjustments shall not grant you the right to give extraordinary notice of termination of the contract.

Any additional costs incurred by operational changes locally and of which we have not been informed in advance shall be invoiced immediately and in addition to the annual flat rate.

9 Terms of payment

In the event that a flat rate has been contractually agreed, such flat rate shall be invoiced each time in advance in the 1st quarter of the calendar year. In all other regards, invoices shall be issued after the maintenance and servicing work has been effected.

Unless agreed otherwise, the payment term is thirty (30) days net from the invoice date. Payment shall be made in Swiss francs. After expiration of the payment deadline, you owe us default interest in the amount of 5% per year without reminder.

If we have to send a reminder in respect of an invoice amount due, we shall be authorised to charge a reminder fee of CHF 30.00 per reminder.

If you are in default of payment, we shall be authorised to refrain from providing our services until the outstanding amount has been paid.

No offsetting of your claims against us shall be permissible.

10 Warranty

We shall be held liable for any defect only insofar as we provide our maintenance and servicing services exceptionally as performance of work.

Our liability for defects shall be restricted to the fact that we, at our discretion, rectify the defect(s) in respect of the performance, or reimburse the price for defective performance. Any additional warranty and liability for defects, in particular for consequential damage caused by a defect (e.g. fire damage, profit loss, etc.) shall be excluded to the extent this is permissible under the law.

There shall be no warranty obligation, insofar as the defect is attributable to unsuitable or improper use, improper assembly, change or maintenance by you or by third parties, natural wear and usual tear, excessive use, unsuitable components or external influence affecting the function of the plant (e.g. extraordinary change in environmental conditions such as temperature, humidity, dust).

After the signature of the work report marks the completion of the maintenance or servicing work, you shall be obliged to inspect the same immediately and inform us of any defects in writing. Unless otherwise agreed in writing, claims resulting from defects identifiable during a routine inspection shall become extinct, unless you have notified us of them within seven (7) days after completion of the work in writing.

Unless otherwise agreed in writing, your claims resulting from other defects shall become extinct, unless you notify us of them in writing after completion of the work within seven (7) days after you discovered them, but no later than within two (2) years, if you act as a consumer, or within one (1) year, if you act in a professional capacity. You shall be liable to furnish evidence that notification of the defect has been given in time.

11 Restriction of liability

To the extent permissible under the law, our liability for slight negligence as well as for the conduct of auxiliary persona and sub-agents shall be excluded. Liability for intent and gross negligence and for culpable violation of life, limb or health shall remain unaffected; this shall also apply to the mandatory liability under the Product Liability Act.

Our services may significantly reduce your exposure to damage. However, this also means that these services do not relieve you from taking out insurance against damage resulting from business interruption, fire, water, against electronic damage or vehicle damage (Kaskoschäden), etc. We shall not be liable for any damage suffered by you as a result of the fact that you have not taken out the insurance mentioned above.

12 Force Majeure

We shall retain the right to refrain from performing our work or to withdraw from the contract, if a case of force majeure occurs, e.g. directions from authorities, war, terrorism, epidemic, pandemic, strike, disturbance on the part of suppliers, supply blockages, floods, fire and shortage of raw materials.

13 Data protection

You expressly agree that we will process your data collected within the framework of the business relationship, including any personal data, for the purposes of order processing, contract management, handling of warranty cases, comprehensive support and advice, as well as for statistical analyses and for compliance with legal obligations. The data will be processed only for such a period of time as is needed to fulfil the intended purpose. If the intended purpose no longer applies, the data will be erased completely.

We shall be authorised to disclose your data to other companies of the JOMOS group and to order data processors in Switzerland who have been called in.

We will process your data on the basis of Art. 4 and 6 of the Swiss Data Protection Act.

You shall have the right at any time to receive information on your processed personal data free of charge and, if need be, to correct them, to restrict or prohibit any further use of this personal data or to revoke the consent to any further data processing, to file an objection against any further processing and to have the personal data erased, unless there is a legal retention obligation or unless the personal data are absolutely required to fulfil the contract.

In the event of a change of the contact or invoice data while the contractual relationship is still ongoing, you shall be responsible that such data is updated with us in time.

For data processing purposes, you may contact us at: info@jomos.ch.

14 Confidentiality

You are obliged to maintain confidentiality in respect of any business secrets, information and confidential documents which you have received from us, and use them only for the purpose of fulfilment of the contract. You shall undertake to impose identical confidentiality obligations on your employees and on your vicarious agents. This confidentiality obligation shall survive the termination of the contractual relationship between you and us.

15 Early termination

We shall have the right to terminate the contract with you with immediate effect and stop providing additional services, if

- a. you are late with the payments fourteen (14) days after you have been sent a reminder;
- b. bankruptcy or debt composition proceedings against you have been initiated or if you become insolvent;
- c. you have violated your contractual obligations under the present GTCS or other contracts between you and us and fail to restore the state in conformity with the contract within fourteen (14) days after our reminder in writing.

16 Modifications to the Contract

Any modifications and additions to the contract (including the present provision) shall require the written form in order to be valid.

17 Notices

All notices given by you to us shall be directed in writing to our current post address or email address, as agreed in the respective contract or later indicated.

The written form shall mean notices both by letter and by electronic mail.

18 Applicable law and place of jurisdiction

The present General Terms and Conditions as well as all other contracts between you and us which concern services of any kind shall be governed by Swiss law without any regard to the applicable conflict of laws provisions.

The place of jurisdiction for all disputes in connection with our services shall be our place of business which currently is in Balsthal. However, we reserve the right to bring action in the court of your place of residence.