

Framework conditions for maintenance

(Status: Oct. 2015)

1. Maintenance dates

The actual maintenance date shall be agreed between the Contractor and the Client. If no date has been agreed within two weeks following the start of the date negotiations, the Contractor is entitled to designate a maintenance date. The Client and the Contractor must confirm this date.

2. Duration of the agreement

The contract will enter into force upon confirmation of the order and will end upon expiry as described in the foregoing without the need for explicit termination. Ordinary termination during the fixed term of the contract is not permitted unless expressly stipulated otherwise in the following. Termination in accordance with § 649 of the German Civil Code (BGB) is excluded.

3. Special termination

The contract may only be terminated on the following reasons with a notice period of 3 months to the end of the month:

- 3.1 by the Client if the plant to be maintained is permanently shut down or the entire plant is replaced,
- 3.2 by the Contractor if the services of the Contractor can no longer be provided or can only be provided under difficult conditions as a result of major changes to the plant or spatial conditions (plant access).

4. Termination for cause

The right to terminate the contract for cause remains unaffected. The Contractor has cause to terminate the agreement in particular if

- 4.1 the Client is in arrears with regard to payment of amounts owed.
- 4.2 insolvency proceedings are instituted with respect to the Client's assets or if the institution of such proceedings has been rejected due to a lack of insolvency assets.
- 4.3 the Maintenance contract between the Client and its customer is cancelled.

The Client has cause to terminate the agreement in particular if insolvency proceedings are instituted with respect to the Contractor's assets or if the institution of such proceedings has been rejected due to a lack of insolvency assets.

After notice of termination has been given until the end of the agreement, the rights and obligations of the parties remain unaffected.

The termination of the contract requires the written form and must be sent to the other contractual party by registered mail or recorded delivery.

5. Annual maintenance fee

The maintenance fee is applicable if maintenance work is carried out on site on Monday to Friday, between 8 am and 6 pm. Maintenance activities outside of these times attract additional charges in accordance with the currently valid transfer prices for non-standard service deliveries.

This maintenance fee includes:

- All maintenance services that are included in the scope of maintenance of this agreement (see below).
- travel costs, unless otherwise agreed by the Client and the Contractor.
- Seals for re-sealing an exhaust gas chamber as well as a manhole and inspection port.

6. Payment terms

The annual maintenance fee set forth in the preceding Clause 5 is payable 14 days after performance of the maintenance activities and delivery of the maintenance report in the corresponding maintenance interval, on a pro rata basis according to the number of annual maintenance intervals.

The Client shall be deemed to be in default of payment if he fails to pay within 30 days of the due date and receipt of the invoice. In the event of late payment, interest on arrears shall be charged at a rate of 8 percentage points above the base interest rate applicable at the time.

All payments must be made to the following Contractor's account:

Financial institution:	Vereinigte Sparkassen Ansbach
Account number:	430 370 270
Bank sorting code:	765 500 00
IBAN:	DE 87765500000430370270

7. Scope of maintenance

The Contractor's service according to this contract covers only the technical activities stipulated in the "Technical Specifications" (Appendix 1) to the contract and urgent, essential repairs and overhaul operations, provided these can be carried out within the scope of the maintenance work without involving significant time and material costs up to a net invoice value based on the rates applicable at the time for extraordinary services and based on the prices of € 10.00 for spare parts applicable at the time.

The Technical Specifications contains the comprehensive definition of technical activities on the maintenance object to be carried out by our service personnel. The materials covered by the maintenance fee according to the order confirmation are also listed there. The Technical Specifications are an integral part of this maintenance contract.

Maintenance explicitly does *not* include:

7.1 Measures to eliminate malfunctions caused by

- operating errors,
- improper handling,
- technical interventions carried out on the listed technical plants (according to the order confirmation) by the operator or a third party,
- external influences for which neither the Client nor the Contractor is responsible.

7.2 Cleaning the plant with the exception of cleaning the exhaust gas side of heat exchangers and cleaning the air side of air-cooled chillers (if selected as a maintenance option) and if listed in the Technical Specifications.

7.3 Maintenance activities on plant parts or other technical plants which are not included in the description of the technical plant on page 1 of this agreement.

7.4 Other repair and maintenance work is not covered by this contract and shall therefore require a separate agreement and settlement.

7.5 Aids and equipment to be provided by the Client (e.g. industrial trucks, crane, lifting platform, etc.), staff for operation of the plant within the framework of maintenance as well as the media required for maintenance or cleaning (e.g. drinking water, adequately fused power connection).

7.6 Services that exceed the scope of maintenance.

7.7 Costs for service operations in addition to the agreed maintenance intervals

The obligations of the operator arising from legislation, the Technical Specifications and the Operating and Maintenance Instructions are not suspended through the conclusion of this contract.

8. Service report / Labour reports

The APROVIS service technicians must enter their working hours, travel time and completed tasks in a service report / labour report, which is confirmed by the customer's signature. Before signing the service report, the customer must ensure that all information is entered correctly.

9. Obligations of the Client to cooperate

The following applies for all plants:

The Client must inform the Contractor of all regulations applicable to the maintenance services to be rendered at the respective plant with the exception of the statutory regulations of the Federal Republic of Germany. The Client therefore also needs to inform the Contractor of the scope of the inspection imposed by a third party for the maintenance service to be rendered at the respective plant.

Other obligations to cooperate on the part of the Client are regulated in **Appendix 2 "Prerequisites for Maintenance"** to this contract.

The maintenance prerequisites listed in Appendix 2 must be complied with by the Client or the Operator (if different). Appendix 2 sets forth which prerequisites must be satisfied before the maintenance service is carried out. This enables us to ensure that the provision of maintenance services runs smoothly and effectively. If these maintenance prerequisites are not complied with, APROVIS cannot be held liable for the maintenance services provided. A signed copy of Appendix 2 must be received by APROVIS not later than one week before the associated planned maintenance operation. If this is not the case, APROVIS shall be entitled to refuse to carry out the maintenance operation.

If the Client himself is not the plant operator, the Client must ensure that the plant operator fulfils these obligations to cooperate. The fulfilment of these obligations is a requirement for the proper performance of the maintenance. The Contractor is entitled to change or amend these obligations of the Client to cooperate if this is necessary for the proper maintenance in accordance with statutory or official regulations or other regulations that must be fulfilled.

The Contractor shall inform the Client and, on the instructions of the Client, the plant operator of the relevant obligations to cooperate in good time and in writing (fax or e-mail is sufficient), whereby a notice period of 2 weeks is deemed reasonable by the parties.

The Client is obliged to acknowledge the obligations to cooperate by signing them and returning them to the Contractor at the latest one week before the maintenance work commences. For an agreement on the obligations to cooperate, it is also sufficient if the plant operator signs these obligations.

10. Warranty / Liability

10.1 The period of limitation for claims arising from defects in connection with the services performed by the Contractor under this contract is 12 months after the respective maintenance activity was carried out.

The Client must notify the Contractor of obvious deficiencies in the maintenance work in writing immediately, and not later than 10 business days after the maintenance work is carried out, otherwise the Contractor shall be released from its liability for deficiencies.

- 10.2 In the case of timely and justified complaints, the Contractor shall remedy the defects. The Client must give the Contractor the time and opportunity the Contractor needs to remedy all defects deemed necessary by the Client, otherwise the Contractor shall be released from its liability for defects.
- 10.3 In the event of remedy of defects, the Contractor is obliged to bear all expenses associated with such remedy of defects, notably transport, travel, labour and material costs. If the remedy of defects is unsuccessful, the Client has the right, following the unsuccessful attempt to remedy the defect, to choose either to demand a reduction or to withdraw from the agreement.
- 10.4 The Contractor shall not accept any liability for defects and damages
- caused by the Client or the Client's vicarious agents or third parties,
 - caused by force majeure or lightning, or as the result of wear, mechanical overloading or improper use,
 - caused by unusual electrical, mechanical, chemical or atmospheric influences,
 - caused by work activities that fall within the scope of functions of the Client, the Client's vicarious agents, or a third party, but which were not performed correctly, such as lubrications, water inspections, etc.,
 - caused by incorrect operation in accordance with the Technical Specifications and the Operating and Maintenance Instructions.
- 10.5 Unless otherwise explicitly agreed in the following Clause 10.6, all claims by the Client against APROVIS (Contractor) for reimbursement for loss of income, loss of production and indirect and consequential damages – irrespective of the legal reasons therefor – are excluded.

APROVIS shall be liable for damages pursuant to Clause 10.5 to the extent that such damages are covered by the liability insurance coverage taken out by APROVIS.

Otherwise, APROVIS shall be liable for damages in accordance with Clause 10.5 only in cases of intent or gross negligence on the part of APROVIS.

However, the preceding provisions shall not apply for statutory and contractual claims for damages on the part of the Client arising from culpable injury to life, body or health.

- 10.6 Other arrangements that would result in more extensive liability on the part of APROVIS for the damages cited in Clause 10.5 are and shall be explicitly waived hereby.
- 10.7 To ensure that any claims for compensation arising from this contract can be paid, the Contractor must take out an appropriate level of business liability insurance immediately. Proof of the appropriate level of insurance protection must be presented at the start of the contract and must be maintained regularly thereafter for the entire lifetime of the contract, and must be topped up in the event of a claim.

11. Other provisions, governing law

Both contractual parties shall submit to the jurisdiction of the court at the headquarters of the Contractor. The Contractor shall also be entitled to sue the Client at the Client's general place of jurisdiction.

The agreement shall be governed by German substantive law; international private law and the UN Convention on the International Sale of Goods (CISG) shall be excluded.

In the event that individual provisions of this agreement are or become ineffective, the remaining provisions shall not be affected. The parties are obliged to substitute each ineffective provision by an effective provision, which approximates the economic purpose of the ineffective provision as closely as possible. The same applies to any contractual loopholes.

Additional verbal agreements do not exist for this agreement. Any changes or amendments to this agreement must be agreed in writing.

For any work carried out by us, our General Terms and Conditions apply, although the provisions of the contract shall prevail over the General Terms and Conditions.

Any differing provisions, even if they are included in the General Terms and Conditions of the contractual partner, do not apply unless they are expressly acknowledged by the Contractor in writing or agreed verbally on an individual basis.