

Maintenance Conditions

1. Interpretation

1.1. In these Maintenance Conditions, the following definitions apply:

- Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- Contract: the contract between the Contractor and the Customer for repair and installation services in accordance with these Maintenance Conditions.
- Contractor: Boecker UK Limited (registered in England and Wales with company number 10886601).
- Customer: the person or firm who orders repair/installation services from the Contractor.
- Force Majeure Event: has the meaning given in clause 16.
- Maintenance Conditions: the terms and conditions set out in this document as amended from time to time.

1.2. Construction. In these Maintenance Conditions, the following rules apply:

- a. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- b. A reference to a party includes its personal representatives, successors or permitted assigns.
- c. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- d. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- e. A reference to writing or written includes faxes and e-mails.

2. Basis of contract

- 2.1. These Maintenance Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. No other terms or conditions of a Customer shall form part of the Contract and the Customer waives any right which it otherwise might have to rely on such terms and conditions. These Maintenance Conditions shall also apply if the Contractor carries out repair/installation services for a Customer in the knowledge of the Customer's conflicting terms and conditions. The terms and conditions of a Customer shall only apply if and to the extent that the Contractor has approved such terms in writing.

3. Formation of Contract

- 3.1. If an unquestioned written order confirmation exists, this is decisive for the content of the Contract and the scope of the repair/installation services. Subsidiary agreements and amendments to the Contract require the Contractor's written confirmation of the Contractor.

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- 3.2. If the object of repair/installation has not been supplied by the Contractor, the Customer shall notify the Contractor of any existing industrial property rights with regard to the object. Insofar as no fault can be attributed to the Contractor, the Customer shall indemnify the Contractor from any third party claims arising from industrial property rights.

4. Non feasible repair/installation

- 4.1. The services rendered for the submission of a cost estimate as well as any other incurred expenses (trouble shooting time is considered working time) which have to be documented shall be invoiced to the Customer, even if the repair/installation cannot be carried out in spite of the Customer's order for reasons beyond the Contractor's control, especially due to following:
- a. the objected defect does not occur during inspection;
 - b. spare parts cannot be procured;
 - c. the Customer culpably failed to meet the agreed date of inspection; or
 - d. the Contract has been terminated during the execution.
- 4.2. The Contractor is only obliged to restore the object of repair/installation to the original condition at the Customer's express request Customer and against reimbursement of the incurred costs, unless the work carried out by the Contractor was not necessary to restore the original condition.
- 4.3. If the repair/installation is not feasible, the Contractor shall not be liable for damages to the repair/installation object, the violation of contractual secondary obligations and for damages which have not occurred to the object of repair/installation itself. This exclusion of liability does not apply in the event of intent on the part of the Contractor or any of its executive employees as well as in the event of culpable violation of essential contractual obligations. In the event of a culpable violation of essential contractual obligations, the Contractor shall only be liable - except in cases of intent - for typical damages which can be reasonably foreseen.

5. Cost estimates

- 5.1. Insofar as it is possible, the Customer shall be informed of the expected repair/installation price at the conclusion of the Contract, otherwise the Customer is entitled to set a limit of costs. If during the repair/installation services it turns out that the repair/installation cannot be carried out at the estimated costs, or if the Contractor considers that additional services will be necessary, the Contractor shall obtain the Customer's prior consent if the additional costs exceed the agreed costs by more than 15 %.
- 5.2. If the Customer wishes to obtain a cost estimate with binding prices before the repair/installation services are carried out the Customer has to request it in writing. Such cost estimate shall only be binding if it is made in writing and designated as being binding. The services performed in order to specify the cost estimate will only not be charged to the Customer if they can be utilised during the execution of the repair/installation.

6. Price and payment

- 6.1. The Contractor shall be entitled to demand a reasonable advance payment upon conclusion of the contract.
- 6.2. When calculating the repair/installation prices, the prices for used parts, materials and special services, as well as the prices for labour, travel and transport costs (using the respectively applicable charges for domestic and foreign expenses) are to be shown separately. If the repair or installation is carried out on the basis of a binding cost estimate, a reference to the cost estimate is sufficient. Deviations in the scope of services are to be specified separately.
- 6.3. The value added tax is to be charged to the Customer at the statutory rate.
- 6.4. Any correction of an invoice by the Contractor and any complaint by the Customer with regard to an invoice must be made in writing no later than four weeks after receipt of the invoice.

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- 6.5. The payment is to be made without any deductions. Unless agreed otherwise the Customer shall pay the invoice in full and in cleared funds within 14 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Contractor. If the ability to pay of the Customer is worsened during the period between the awarding of the order and completion, the Contractor is entitled to withhold outstanding deliveries.
- 6.6. If the Customer fails to make any payment due to the Contractor under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4 % per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 6.7. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Contractor may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 6.8. The minimum order value is £75.00. If the order value is less than £75.00 the Contractor will charge a handling fee of £20.00, however, the maximum amount shall be limited to £75.00 including the order value.

7. Participation and technical assistance of the Customer in case of repair/installation outside the Contractor's premises Contractor

- 7.1. The Customer shall support the repair/installation personnel in the execution of the repair/installation services at its own expense.
- 7.2. The Customer shall take the necessary additional measures to protect persons and objects at the repair/installation site. The Customer shall also inform the person in charge of the repair/installation about existing special safety regulations, insofar as these are important for the repair/installation personnel. The Customer shall notify the Contractor of any breach of such safety instructions by the repair/installation personnel. In the event of serious infringements, the Customer is entitled to refuse access to the repair/installation site to the infringing party in consultation with the person in charge of the repair/installation.
- 7.3. The Customer shall provide technical assistance at its own expense, in particular the Customer shall:
 - a. provide the necessary and qualified auxiliary personnel in the number required for the repair/installation and for the required time. The auxiliary personnel shall follow the instructions of the person in charge of the repair/installation. The Contractor assumes no liability for auxiliary personnel. If a defect or damage has arisen due to the instructions of the person in charge of the repair/installation, the provisions of clauses 12 and 13 shall apply accordingly;
 - b. carry out all construction, underlay and scaffolding work including procurement of the necessary building materials;
 - c. provide the necessary equipment and heavy tools as well as the necessary devices and materials;
 - d. provide heating, lighting, operating power and water including the necessary connections;
 - e. provide necessary dry and lockable rooms for the storage of the tools of the repair/installation personnel;
 - f. protect the repair/installation site and materials from any harmful influences and clean the repair/installation site;
 - g. provide suitable theft proof rooms and work areas (with heating, lighting, washing facilities, sanitary facilities) and first aid for the repair/installation personnel; and
 - h. provide all necessary materials and perform all other actions necessary for the adjustment of the object of repair/installation and for the carrying out of any contractually scheduled test.
- 7.4. In providing the above mentioned technical assistance services the Customer shall ensure that the repair/installation services can commence immediately upon arrival of the repair/installation personnel and can be carried out without delays until acceptance of the repair/installation by the Customer. Insofar as special plans/instructions are required, the Contractor shall make them available to the Customer in good time.

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- 7.5. If the Customer does not fulfil its obligations, the Contractor shall be entitled but not obligated to perform the actions listed this clause 7 in place of and at the expense of the Customer. Any statutory rights and claims of the Contractor shall remain unaffected.

8. Transport and insurance in the case of repair/installation at the Contractor's premises

- 8.1. Unless agreed otherwise in writing, any removal and return transport of the repair/installation object (including packaging and loading) requested by the Customer shall be carried out at the Customer's expense. Otherwise, the object of repair/installation shall be delivered to the Contractor's premises by and at the expense of the Customer and shall be collected by the Customer after completion of the repair/installation services.
- 8.2. The Customer shall bear the risk of transport. If the parties have agreed transport, the risk shall pass to the Customer at the latest at the time of handover to the freight forwarder, freight carrier or other third party designated to execute the shipment (with the start of the loading process being decisive). This even applies if the Contractor bears the freight costs and/or carries out the shipping itself. If the shipping or handover is delayed due to circumstances which are not the responsibility of the Contractor, the risk shall be transferred to the Customer on the date on which the Contractor is ready for shipping and has notified the Customer thereof.
- 8.3. The Contractor will insure the outbound and if required the return transport against the usual transport risks like theft, breakage or fire at the Customer's request and expense
- 8.4. There is no insurance cover for the object of repair/installation while the Contractor provides repair/installation services at the Contractor's premises. The Customer shall maintain the existing insurance cover for the repair/installation object, for example fire, mains water, storm and machine breakage insurance. The Contractor will obtain such insurance cover only at the Customer's explicit request and expense.
- 8.5. If the Customer is in delay with the acceptance of the repair/installation object, the Contractor may charge storage costs for the storage of the repair/installation object on its premises. The repair/installation object may also be stored otherwise at the discretion of the Contractor. The cost and risk of storage shall be borne by the Customer.

9. Repair/installation period

- 9.1. Any information regarding repair/installation periods provided by the Contractor are based on estimates only and are not binding.
- 9.2. The Customer shall only be entitled to request a binding repair/installation period if the scope of the work is precisely defined. Any binding repair/installation period must be confirmed by the Contractor in writing.
- 9.3. The Contractor shall be deemed to have complied with the binding repair/installation period if the repair/installation object is ready for acceptance by the Customer, in the event that the parties have scheduled a test run in the Contract, if the Contractor is ready to conduct such test run before the expiry of the agreed period.
- 9.4. In the event of additional and/or extension orders by the Customer or necessary additional repair/installation services, the agreed repair/assembly period shall be extended accordingly.
- 9.5. The Contractor shall not be liable for any delay of the repair/installation period that is caused by a Force Majeure Event. If the Contractor is temporarily prevented from completing the repair/installation services due to a Force Majeure Event, the repair/installation period shall be extended by the time that the Force Majeure Event or its effects persist. This shall apply even if such circumstances occur after the Contractor has been in default. The Contractor shall notify the Customer of the beginning and end of such Force Majeure Event.
- 9.6. The Customer is entitled to demand compensation for damages due to a delay for which the Contractor is responsible. The compensation shall be limited to 0.5 % for each full week of the delay, but not more than 5 % of the repair/installation price for the part of the repair/installation object which cannot be used in due time as a result of the delay.

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10. Acceptance

- 10.1. The Customer shall accept the repair/installation services as soon as the Contractor has notified the Customer of the completion of the repair/installation services and – if applicable - a contractually agreed test run of the repair/installation object has been carried out. Should the repair/installation prove to be not in accordance with the Contract, the Contractor shall remedy the defect. This shall not apply if the defect does not affect the Customer's interests or results from circumstances attributable to the Customer. The Customer is not entitled to refuse acceptance if the defect is not significant and the Contractor expressly acknowledges its duty to remedy the defect.
- 10.2. If acceptance by the Customer is delayed without a fault on the part of the Contractor, acceptance shall be deemed to have taken place two weeks after the completion of the repair/installation services.
- 10.3. Once the Customer has accepted the repair/installation services, the Contractor shall not be liable for any obvious defects of the repair/installation object, unless the Customer has reserved the right to claim for a specific defect.

11. Retention of title

The Contractor reserves the right of ownership of all accessories, spare parts and replacement units used until the receipt of all payments from the repair/installation contract. The parties may agree more extensive security provisions.

12. Warranty, claims for defects

- 12.1. The Contractor is liable for defects of the repair/installation, including the absence of expressly assured characteristics, which occur within 12 months after the date of acceptance. The Contractor shall remedy such defects. The Customer shall immediately notify the Contractor as soon as a defect has been discovered. Subject to clauses 8 and 13, any further liability is excluded.
- 12.2. The warranty period shall be extended by any downtime of the repair/installation object caused by the repair works.
- 12.3. The Contractor shall not be liable if the defect is irrelevant to the Customer's interests or results from circumstances attributable to the Customer. This applies in particular to any parts provided by the Customer.
- 12.4. The Contractor shall not be liable for the consequences arising from any improper modifications or repairs made by the Customer or third parties without the Contractor's prior consent. Only in urgent cases of endangerment of the operational safety or to prevent disproportionate damages, whereby the Contractor has to be informed immediately, or if the Contractor is in default with the remedy of the defect, is the Customer entitled to remedy this defect itself or by third parties and to demand reimbursement of the necessary costs from the Contractor.
- 12.5. If the complaint proves to be justified, the Contractor shall bear of the costs arising directly from the repair the costs of the replacement part (including shipping) as well as the reasonable costs of removal and installation and, if this can be reasonably required in the individual case, the costs of any necessary provision of installation and auxiliary personnel. The Customer shall bear all other costs.
- 12.6. If the Contractor culpably fails to meet a reasonable period of time for the remedy of the defect, the Customer is entitled to a reduction of the agreed price. Only if the repair/installation is proven to not be of interest to the Customer despite a reduction of the agreed price, the Customer is entitled to cancel the Contract after notifying the Contractor.

13. Liability

- 13.1. If parts of the repair/installation object are damaged due to the Contractor's fault, the Contractor shall, at its discretion, repair or replace the parts at its expense. The liability for damages shall be limited to the contractual repair/installation price. Otherwise, clause 11.3 shall apply accordingly.

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- 13.2. If the repair/installation object cannot be used in accordance with the Contract as a result of the Contractor's failed or faulty execution of proposals and deliberations before or after the conclusion of the Contract as well as other contractual subsidiary agreements – in particular any instructions with regard to the operation and maintenance of the repair/installation object - clauses 12, 13.1 and 13.3 shall apply. All other claims are excluded.
- 13.3. Nothing in these Maintenance Conditions shall limit or exclude the Contractor's liability for:
- a. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - b. fraud or fraudulent misrepresentation; or
 - c. any matter in respect of which it would be unlawful for the Contractor to exclude or restrict liability.
- 13.4. Subject to clause 13.3:
- a. The Contractor shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - b. The Contractor's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the repair/installation services.

14. Compensation

In the event that repair or installation services are not provided at the Contractor's premises, the Customer shall reimburse the Contractor for any equipment or tools that the Contractor provided at the repair/installation site and that has been damaged or lost without any fault on the Contractor's part. Damages due to normal wear and tear are excluded.

15. Used parts

The disposal of used parts and other objects which are no longer usable is the Customer's responsibility unless otherwise agreed between the parties. To the extent that statutory provisions are enacted which determine otherwise, the Customer undertakes to enter into an appropriate agreement with the Contractor regarding the disposal of the used parts. It is to be assumed that the parties will use a third party to fulfil any disposal obligation.

16. Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

17. National safety regulations

It is the duty of a foreign Customer to ensure that the repair/installation object is used in accordance with the applicable national safety regulations.

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18. General

- 18.1. Assignment and other dealings.
- The Contractor may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
 - The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Contractor.
- 18.2. Notices.
- Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
 - A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
 - The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 18.3. Severance.
- If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
 - If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 18.4. Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.5. Third party rights. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 18.6. Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Contractor.
- 18.7. Governing law. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 18.8. Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

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