

Standard Terms and Conditions

Maintenance, Purchase and Fire Protection Seminars

of TOTAL Feuerschutz GmbH



Maintenance

1. General

The maintenance contract between the Contractor (TOTAL Feuerschutz) and the Customer is based solely on these Standard Terms and Conditions for Maintenance. Any standard terms of business of the Customer are hereby expressly rejected.

2. Scope of the maintenance services, definitions of terms

2.1. The Contractor shall carry out the maintenance, i.e. the inspection and service, as well as the repair of the Customer's fire protection appliances. The terminology of DIN EN 31051 as amended on conclusion of the contract, shall apply.

2.2. An **inspection** comprises measures to determine and evaluate the actual condition of the technical means in a system. The inspection shall be carried out at roughly the same intervals in accordance with the interval selected by the Customer or in accordance with the specifications of the appropriate DIN and VDE provisions. The essential appliance functions and the overall function of the associated software are to be checked.

2.3. The **service** is usually carried out following the inspection and comprises the totality of measures for maintaining the intended state of the technical means in a system. The service comprises the care of equipment parts, replacing spare parts with a limited service life (e.g. seals), adjusting, resetting and synchronizing subassemblies and equipment.

2.4. **Repairs** comprise measures to restore the intended state of the technical means in a system. Repair services are carried out in accordance with the method that is regarded as expedient for the respective item of equipment. The Customer states its agreement with this; otherwise it shall pay any extra costs that accrue.

3. Contractor's services

3.1. The Contractor shall provide the services described in section 2 of these Standard Terms and Conditions through a trained and authorized person/fire safety expert for fire protection products who is equipped with standard inspection, measuring and test equipment.

3.2. The Contractor's services shall be provided in principle during the Contractor's usual hours of business (Monday to Friday 08.00 to 18.00).

3.3. Interruptions to the operational readiness of the fire protection products may occur during maintenance work. The Customer shall ensure its own appropriate security for this period. Liability shall be excluded if it fails to do so.

4. Payment

4.1. Payment for inspection and service

The agreed payment covers the regular inspection and service of the fire protection products during the Contractor's usual hours of business, provided this concerns

- a check of the essential functions,
- a check of the overall function of several fire protection products,
- care of system parts,
- adjusting or resetting and synchronizing subassemblies and equipment.

4.2. Separately invoiced services

The following services will be invoiced separately on the basis of the Contractor's current price list, including in the framework of an inspection and service:

- repair services (see section 2.4. of these Standard Terms and Conditions),
- replacing batteries,
- exchanging/cleaning alarms and similar, and
- disposal pursuant to statutory provisions.

4.3. Cost of travel to and from sites

Costs for travel to and from the site of the fire protection appliances in the framework of regular inspection/service are included in the agreed payment. Costs for travel to and from the site in connection with repair services will be invoiced separately, unless these services are provided on the occasion of a regular inspection/service.

4.4. Discontinuance and relocation of the maintenance object

The Contractor may demand payment until expiry of the contract if the system or the fire protection appliances that are to be maintained no longer exist because they were sold or otherwise abandoned.

5. Terms of payment, price adjustment

5.1. **Invoices** shall be issued only by us and are to be paid exclusively to us. Invoices shall be due and payable net within 30 days.

5.2. If the Customer is in **default of payment**, without prejudice to further rights we shall demand default interest in the amount of 5% (consumers) or 6% (companies). Default shall occur after the due date of the invoice and the first reminder. A reminder shall not be required if the date for payment is determined in accordance with the calendar, payment is genuinely and definitely refused or if the immediate occurrence of default is justified for special reasons taking account of the interests of both parties. Default shall occur at the latest 30 days after the due date and receipt of the invoice or an equivalent payment schedule. We may use the late payment of a delivery or service or substantiated misgivings regarding the Customer's liquidity or creditworthiness as the occasion to make all claims against the Customer due for immediate payment and to provide additional deliveries or services solely against advance payment.

5.3. A **right of retention** may only be claimed against us insofar as it is based on the same contractual relationship. Setting off against our claims shall only be possible with uncontested or legally established claims.

5.4. If the Customer has issued the Contractor with a direct debit mandate, payment shall be carried out through the Customer's participation in the direct debit scheme.

5.5. Acceptance of bills and other securities is excluded.

5.6. The calculation of the flat-rate payment for inspections and maintenance is based on the base wage for technical employees in the metal and electrical industry in Baden-Württemberg that is valid at the time the contract is concluded. If these labour costs or nonwage labour costs are amended in a collective agreement or on the basis of statutory provisions, the Contractor may demand a corresponding amendment of the maintenance payment. This applies analogously if the labour costs or the nonwage labour costs are reduced. A price adjustment is permitted at the earliest after expiry of the sixth month after the commencement of the term of the contract. The Customer shall have the right to terminate without notice if the percentage increase of the prices by the Contractor is objectively unreasonable.

6. Credit check

6.1. The Contractor shall have the right to obtain information from the Schutzgemeinschaft für allgemeine Kreditsicherung (General Credit Protection Association - SCHUFA) that is responsible for the Customer's place of residence or business, or from another credit agency, that is intended to protect against giving credit to insolvent parties (so-called hard negative characteristics, e.g. default summons applied for in case of an uncontested claim, writ of execution issued, execution proceedings), as well as data on the acceptance and due payment of loans (so-called positive data). The Contractor shall have the right to terminate the contract without notice in the event of a negative credit check. In addition, the Contractor may transmit such data from the present contractual relationship to the SCHUFA. Data shall only be transmitted insofar as this is necessary to protect the legitimate interests of the Contractor, a contract partner of the SCHUFA or the general public and interests of the Customer that are worthy of protection are not impaired by this.

6.2. For this purpose the Contractor shall have the right to notify the SCHUFA of the data provided by the Customer in this contract. Completing the fields provided for this in the safety service contract by the Customer shall be done on a purely voluntary basis, insofar as the information goes beyond the Customer's name and address.

7. Duties of the Customer to cooperate

7.1. Breakdowns in operations and damage to fire protection equipment shall be reported to the Contractor without delay together with an adequate description of the fault that has occurred.

7.2. Changes to operating conditions and the installation location shall be notified to the Contractor in writing in good time.

7.3. The Customer shall make auxiliary equipment (e.g. ladders, scaffolding, climbing aids, etc.) that the Contractor regards as necessary, and additional personnel that are required in accordance with accident safety regulations, available to the Contractor on site without charge. Before any work at all starts, the Customer shall identify to the Contractor the position of concealed lines, pipes or systems for high voltage current, gas, water or similar. In addition, the Customer shall guarantee free access to the job sites.

8. Extension, alteration and relocation of the system

8.1. The Customer shall notify the Contractor in writing in good time of intended alterations and extensions or a relocation of the system. If the Contractor is commissioned to provide the services connected with this, they shall be settled in the framework of a contract to be concluded separately. Apart from this, the Contractor shall have the right to terminate this contract.

8.2. In case of relocation to another site in the Federal Republic of Germany organized by the Customer, support will be continued if the new installation location is within a region in which the Contractor already provides support for the same type of systems. In other cases, the Contractor's duty to provide

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support shall end on the day of relocation. This shall not affect the period of notice.

9. Technical alarms

The Customer shall indemnify the Contractor against costs and claims by third parties that arise through or in consequence of unauthorized or faulty technical alarms, insofar as the Contractor did not cause them through gross negligence or intentionally.

10. Guarantee

10.1. The Contractor shall assume a guarantee for repair work and built-in material in accordance with the following terms, if

- a. the Customer accepted these without reservation without knowledge of existing defects, or
- b. recognizable defects are notified in writing without delay but not later than two months after acceptance or delivery, and other defects without delay after detection, but not later than six months after acceptance or delivery, or
- c. the Customer or a third party has not made any attempt to repair, carry out repair work or make technical alterations.

10.2. In case of a timely, justified notice of defect the Contractor shall rework or provide a replacement to the exclusion of other guarantee claims. If the reworking or the replacement delivery is unsuccessful, the Customer may demand a reduction of the corresponding invoice or rescission of the respective contractual option. Apart from this, the Contractor may refuse the supplementary performance insofar as this is only possible with disproportionate costs.

10.3. The Customer shall grant the time and opportunity required for remedying the defect with reasonable discretion.

10.4. An obligation to remedy a defect at no cost shall not exist if appliances are damaged directly or indirectly through the fault of the Customer, e.g. through no contractual use or unauthorized extension. An obligation to remedy a defect at no cost shall also not exist in case of damage to appliances caused by

- a. interference with installed appliances by unauthorized persons/experts,
- b. an accident (tremor, fall, short-circuit, lightning, flooding, etc.),
- c. a voltage change to the electricity or telephone supply, or
- d. unusual changes to the ambient conditions (temperature, air humidity, dust).

In the above-mentioned cases the Customer shall pay the costs of remedying the defect on the basis of the valid price list, as amended from time to time, including costs of travel to and from the location, unless the damage was caused by gross neglect of the Contractor's servicing obligation and the Contractor failed to remedy the defect within a reasonable period of time in spite of a written request from the Customer.

10.5. Claims arising from defects are statute-barred for entrepreneurs as defined in s. 14 German Civil Code (BGB) within one year from the time of the acceptance of the work or, in the absence of acceptance, from the time of the renewed restart of the fire protection equipment; for consumers as defined in s. 13 BGB within two years from the time of the acceptance of the work or, in the absence of acceptance, from the time of the renewed restart of the fire protection equipment.

10.6. The Customer declares the freedom from defects with the acceptance. The Customer's declaration substantiates the assumption that the Contractor is not responsible for a subsequently occurring defect. The Customer shall bear the burden of proof that the defect existed before acceptance.

11. Liability

11.1. The Contractor shall be liable in accordance with statutory provisions in case of intention, gross negligence and claims under the Product Liability Act.

11.2. In case of other negligence the Contractor shall only be liable for typically foreseeable damage if a breach of a material contractual obligation is proved. A material contractual obligation is an obligation whose fulfillment enables the due execution of the contract in the first place and with whose compliance the contract partner regularly relies on and may rely on. The Contractor's liability shall be limited to a maximum of 1 million euros.

11.3. Claims for compensation for indirect and consequential damage are excluded.

11.4. The Contractor shall not be liable for any other damage.

11.5. The Customer shall notify the Contractor in writing and without delay of damaging events that could lead to liability claims against the Contractor but at the latest within two weeks after acquiring knowledge of the damaging event. If the Customer fails to comply with this obligation, it shall pay for the damage that occurs itself. Apart from this, liability claims shall expire unless legal action is taken to enforce them within six months after rejection by the Contractor or its liability insurer.

11.6. The Contractor's service reduces the Customer's risk of loss considerably. However, the Contractor cannot assume a guarantee that cases of loss will be

prevented. The service is therefore not in any way a substitute for taking out relevant insurance policies (covering damage or loss from break-ins, theft, interruptions to operations, fire, water, electronics, or comprehensive damage or loss, etc.). The Contractor shall therefore not be liable for damage that the Customer suffers because it failed to take out the above-mentioned policies.

12. Term, notice of termination, default of payment

12.1. Unless otherwise agreed, the term of the contract shall be two years from the date of signing. The contract shall be extended automatically by a further year unless one of the contract parties gives written notice of termination not less than three months before the end of the contract term or the contract extension term.

12.2. The Maintenance Contract may be terminated before expiry of the term or the extension term by either party for good cause only. The notice of termination must be in writing. The Contractor points out that the Maintenance Contract shall not be affected by resale or pledging of appliances that have been transferred to the Customer's ownership.

12.3. If the Customer is in default with two or more monthly payments or with the payment of an amount that corresponds to at least two monthly payments, the Contractor shall be entitled to suspend services until the payment arrears have been settled. In addition, the Contractor shall be entitled to claim reasonable default charges, but at least EUR 15.00. The Contractor shall also have the right to terminate the contract without notice. The Contractor shall also have the right to terminate the contract without notice if the Customer is in breach of another material contractual obligation, or judicial or extra-judicial proceedings are instituted with regard to the Customer's assets with the intention of settling the Customer's debts, or if there is another good cause.

12.4. In the event of termination without notice by the Contractor the Customer shall be obliged to reimburse the loss caused by the premature end of the contract. The claim for compensation shall be due and payable immediately.

13. Setting-off by the Customer

13.1. The Customer may only set off against claims by the Contractor with claims that are not disputed or have been determined without further legal recourse.

13.2. The Customer shall only have a right of retention in the case of claims arising from the same contractual relationship and, in transactions between merchants, only because of claims that are not disputed or have been determined without further legal recourse.

14. Transfer of rights and obligations, subcontractors

14.1. The Contractor shall have the right to make use of subcontractors for the fulfilment of this contract insofar as they have adequate technical qualifications.

14.2. The Contractor shall be entitled to transfer the contract or individual rights and obligations under this contract to companies in the Tyco Group. The Customer hereby consents to such transfer. In this case, the Contractor agrees to transfer the contract or individual rights and obligations under this contract only to company divisions that fulfil the appropriate preconditions.

14.3. Unless otherwise determined in sections 13.1. and 13.2. of these Standard Terms and Conditions this contract or rights arising from it may not be assigned without the written consent of the contract parties.

15. Data Protection

15.1. The Contractor points out that personal data are stored in the framework of contract implementation under compliance with the provisions of the German Data Protection Act (BDSG).

15.2. The Contractor shall have the right to process and use its customers' inventory data insofar as this is necessary to advise the Customer, for advertising and for market research for its own purposes and for the demand oriented organization of its services.

15.3. The Contractor shall provide the Customer on demand at any time with complete information on the stored inventory data at no charge, insofar as this concerns the Customer. The Contractor shall also have the right to transmit these data to companies that were entrusted permissibly with the implementation of this contract or parts thereof, insofar as the interest of the party concerned that is worthy of protection does not outweigh this. Entrusted companies are: emergency call and service control centers, credit institutions, collection agencies, data processing centers, letter shops, SCHUFA. Transfer of these data is carried out strictly subject to instructions pursuant to the BDSG.

15.4. The Customer shall have the right to object to its data being used for advertising purposes.

16. Other agreement

16.1. Evidence of services provided is to be kept on the Contractor's forms and countersigned by the Customer; the cost of obtaining the countersignature is to be reimbursed.

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17. Legal venue, applicable law, side agreements, written form, severability clause

17.1. If the Customer is a merchant, Mannheim is agreed to be the exclusive legal venue.

17.2. The legal relationships between the contract parties shall be governed solely by the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention.

17.3. There are no amendments and supplements to this contract.

17.4. Amendments, in particular termination of this contract, require the written form. Unless otherwise expressly agreed, transmission by fax shall be sufficient for compliance with the written form.

17.5. If one of the provisions of this contract is or becomes invalid, this shall not affect the validity of the remainder of the contract. The invalid provision shall be replaced by a valid provision that most closely approaches the intention of the contract parties and the financial purpose of the contract.