

General Terms and Conditions of Service of Hyfra Industriekühlanlagen GmbH

1. Preamble

1.1 The following General Terms and Conditions of Service ("**Terms**") of Hyfra Kühlanlagen GmbH ("**Hyfra**") shall apply exclusively to the deployment of Hyfra personnel ("**Hyfra Personnel**") for all types of service work ("**Service**") rendered by Hyfra to the customer ("**Customer**") (Hyfra and the Customer together the "**Parties**").

1.2 Customer's additional or deviating terms and conditions shall not apply, irrespective of whether or not such terms have been expressly rejected by Hyfra or if Hyfra, having knowledge of other terms of the Customer, effects contractual performance without reservation.

1.3 No change or modification of the Terms shall be valid unless made in writing. This also applies to the cancellation of this written form requirement.

1.4 These Terms in their then current version shall also apply to any Services rendered by Hyfra to the Customer in the future.

2. Scope of Service Order

2.1 Offers made by Hyfra shall always be deemed non-binding unless they are expressly marked as binding ("**Offer**").

2.2 Orders issued by the Customer shall become binding for Hyfra by acceptance in writing or in text form (including fax and email) ("**Approved Service Orders**") or performance of the Service. The Approved Service Order is decisive for the scope of Service (if there is no Approved Service Order the Offer shall be decisive).

2.3 Hyfra's Personnel may only perform the Service on machines, plants and systems supplied by Hyfra and only within the scope of the Approved Service Order. Work that is not covered by the agreed scope of the Approved Service Order requires Hyfra's prior approval in writing or in text form (including fax and email).

3. Performance of Service

3.1 Unless otherwise agreed in writing or in text form (including fax and email), performance dates and periods stated by Hyfra are non-binding. The performance period starts with the sending of the Approved Service Order, but not before the Customer properly performed all its obligations, such as provision of documents, authorization and releases which are required, or before receipt of an agreed pre-payment.

3.2 Where Hyfra is prevented from performing the Service due to circumstances Hyfra is not responsible for, the agreed performance date or period shall be reasonably extended. The same applies if such circumstances first occur after Hyfra is in default of compliance with the agreed performance date or period.

3.3 In the case of Hyfra's default, the Customer is only entitled to rescind the respective service contract if Hyfra is responsible for the delay, does not comply with its contractual obligations within a reasonable period set by the Customer and the Customer expressly states that it will refuse the acceptance of the Service after the expiry of such period.

3.4 If the performance of the Service involves a risk to life, body or health of Hyfra Personnel due to circumstances Hyfra is not responsible for, Hyfra may extend the agreed performance dates or periods until acceptable circumstances occur.

3.5 Hyfra may recall Hyfra Personnel if the Service has to be interrupted for an unreasonable period. If the Customer is responsible for the respective interruption, Hyfra will be entitled to demand reimbursement of its costs resulting from the interruption. Hyfra's right to claim further damages shall remain unaffected.

4. Acceptance of Service

4.1 The Customer shall inform Hyfra without undue delay of potential delays or hindrances with regard to the performance and/or acceptance of the Service.

4.2 The Customer shall accept the Service without undue delay after notification by Hyfra. The Customer shall confirm the acceptance in writing on the acceptance certificate. Acceptance of Service shall not be refused on grounds of minor defects or due to circumstances Hyfra is not responsible

for.

4.3 The Service shall be deemed to be accepted, if the Customer fails to accept it within a period of two weeks from notification.

4.4 If the Customer is responsible for the respective delay of acceptance, Hyfra will be entitled to demand reimbursement of extra costs resulting from the delay (e.g. additional travel costs and waiting times). Hyfra's right to claim further damages shall remain unaffected.

5. Training Courses

5.1 The names of the Customer's employees who participate in the training courses offered by Hyfra shall be confirmed in writing by the Customer without undue delay, but at the latest 12 weeks before the start of the training. If the Customer fails to confirm the names of its employees within a reasonable period set by Hyfra, Hyfra may otherwise dispose of the scheduled training period. In the case of short-term Offers, Hyfra will specify the confirmation date accordingly.

5.2 The cancellation of training courses must be made in writing. Hyfra will charge the following fees if a training course is cancelled: (i) up to 6 weeks before the start of the training course: 25% of the total course price (ii) up to 2 weeks before the start of the training course: 50% of the total course price.

5.3 The total course price will be charged in the case of a later cancellation than up to 2 weeks before the start of the training, non-participation, or belated appearance of course participants. In these cases, the Customer is not entitled to any compensation for absence times.

6. Cooperation Obligations and Work Environment

6.1 The Customer shall notify Hyfra of the intended date for the start of the Service.

6.2 The Customer shall complete all preparation work (including construction work and finishing work) before the agreed start of the Service so that the Service can start immediately and be performed quickly without interruption. In particular, the Customer shall ensure that concrete structures and brickwork are completely dried and cured.

6.3 The Customer shall provide the necessary consumables and energy such as

electricity, water, compressed air, digital data interfaces including the associated connections at the place of performance of the Service ("**Working Place**").

6.4 The Customer shall ensure that the Working Place (if it is not an outdoor installation) is protected against weather impacts, well-lit, well-tempered and allows performance of the Service without disturbances.

6.5 The Customer shall ensure that the Working Place is cleaned regularly which includes the disposal of packaging material. The Working Place shall provide for washing and toilet facilities, emergency kits, dry and lockable storage rooms for Hyfra's service equipment as well as adequate common/rest rooms in the case of extensive Service performance by Hyfra's Personnel.

6.6 The Customer shall ensure that all parts to be installed are stored properly and protected against weather impacts. The parts shall be stored at, or in immediate proximity to, the Working Place.

6.7 The Customer shall provide state of the art aids, equipment and tools for the Service as provided for in the Approved Service Order or the Offer. They shall in particular be in a technically and operationally safe condition.

6.8 The Customer shall bear all costs for the actions taken pursuant to Sec. 6 of these Terms. If the Customer fails to comply with its cooperation obligations pursuant to Sec.6 of these Terms, Hyfra may after prior notification of the Customer perform necessary actions itself at the Customer's costs. Hyfra Personnel may also return from the Working Place back to Hyfra's seat at the Customer's costs. Hyfra's right to claim further damages shall remain unaffected.

7. Hyfra Personnel

7.1 For the fulfilment of the service contracts Hyfra only employs qualified technical personnel.

7.2 The Customer shall instruct Hyfra Personnel without undue delay about all obligations towards local authorities and relevant laws and regulations that must be complied with. The Customer shall take over the representation of the interests of Hyfra Personnel and the completion of necessary formalities.

7.3 The Customer shall take necessary measures for the prevention of accidents as well as the protection of Hyfra property used for the performance of the Service at the Working Place. The Customer shall in particular instruct Hyfra Personnel about hazards and safety laws and

regulations.

7.4 If service work by another company and Service by Hyfra Personnel is performed simultaneously, the Customer shall appoint a responsible who will coordinate the work in order to prevent mutually caused danger.

7.5 If the Customer agreed by separate agreement in writing to provide Hyfra Personnel with free-of-charge accommodation, the Customer shall provide a single bedroom with WC and bath or shower in a hotel conforming to Western-European standards. Hyfra may demand in advance proof of suitable accommodation of its personnel.

7.6 The Customer shall inform Hyfra without undue delay if Hyfra Personnel becomes incapacitated for work during the stay. In this case, the Customer shall ensure proper local medical treatment, including free choice of doctor, proper medication and all other measures necessary for restoration of health and disburse the resulting costs to a reasonable extent. In the case of hospitalisation of Hyfra Personnel, the Customer shall arrange admission to Western-European standard hospitals and ensure accommodation in the highest category. Secure storage of the luggage of Hyfra Personnel during the absence shall be ensured.

7.7 Hyfra may, at its option, subcontract the performance of Service to sub-contractors.

8. Assisting Employees of Customer

8.1 The Customer shall provide an adequate number of suitable assisting employees in order to ensure quick performance of the Service ("**Assisting Employees**").

8.2 Hyfra Personnel is authorised, to the extent necessary for due Service performance, to give orders to the Assisting Employees.

8.3 Upon Hyfra's request, the Customer shall provide adequate interpreters for securing proper communication between Hyfra Personnel and the Assisting Employees.

8.4 The Assisting Employees remain under the Customer's supervision, responsibility and insurance obligation. The Customer shall be responsible for damage caused by the Assisting Employees, unless it proves that Hyfra is responsible for the damage.

8.5 Sec. 6.8 of these Terms shall apply correspondingly.

9. Test Runs and Commissioning, Retention of Title

9.1 Unless otherwise agreed in writing or in text form (including fax and email), the Customer shall provide free of charge all necessary aids, equipment and tools and shall perform any actions necessary for the set-up and testing of the object to be worked upon ("**Service Object**").

9.2 The Customer shall ensure that Hyfra Personnel is immediately provided with the examination results and any samples of the laboratory for quality control in order to determine technical process parameters.

9.3 The Customer shall ensure that the Service Object is cleaned upon request by Hyfra Personnel which includes the disposal of packaging material.

9.4 Sec. 6.8 of these Terms shall apply correspondingly.

9.5 Hyfra shall retain ownership for all own aids, equipment and tools used for the performance of Service.

10. Working Time and Rates

10.1 For the deployment of Hyfra Personnel Hyfra will charge the currently applicable standard hourly rate ("**Standard Hourly Rate**") for each working hour ("**Standard Working Hours**") with a standard daily working time of 8 hours ("**Standard Daily Working Time**") and a standard weekly working time of 40 hours ("**Standard Weekly Working Time**"). The daily working time must not exceed 10 hours.

10.2 If the Parties agreed on a fixed price for the Service, additional services not comprised by the agreed scope of Service will be invoiced separately.

10.3 Working hours exceeding the Standard Daily Working Time and hours worked on Saturdays are deemed to be overtime hours and will be charged with a 25% surcharge ("**Overtime Hours**").

10.4 Hours worked on Sundays, public holidays or during night hours (20.00-06.00 hrs.) will be charged with a 50% surcharge ("**Extraordinary Hours**").

10.5 Overtime Hours and Extraordinary Hours worked simultaneously will be uniformly charged with the higher of both surcharge rates of 50%.

10.6 Extraordinary Hours require Hyfra's prior approval in writing or in text form (including fax and email).

10.7 If Hyfra Personnel does not comply with the Standard Weekly Working Time due to circumstances Hyfra is not responsible for, the hours not worked will

be charged with the hourly rates pursuant to Sec. 10.1 - 10.6 of these Terms. The same applies to hours not worked due to foreign public or special holidays which were not communicated to Hyfra in due course and waiting times due to circumstances Hyfra is not responsible for.

10.8 Hyfra Personnel will keep a record with the daily hours worked which separately lists Standard Working Hours, Overtime Hours and Extraordinary Hours. This record is the basis of Hyfra's invoicing and shall be checked and signed by the Customer without undue delay.

11. Daily Allowance and Travel Costs

11.1 Travel time of Hyfra Personnel is deemed to be working time.

11.2 If the place of departure and the place of arrival of Hyfra Personnel for the performance of Service are both in the Customer's country, each travel hour will be charged with the Standard Hourly Rate pursuant to Sec. 10.1 of these Terms.

11.3 The Customer shall compensate the costs incurred by Hyfra Personnel during travels based on the currently applicable daily allowance rates per day of absence from Hyfra's seat. Upon the Customer's request, Hyfra will make the currently applicable daily allowance rates available.

11.4 Depending on the travel distance and based on Hyfra's company regulations, the Customer shall bear the travel costs for Hyfra Personnel for a premium-economy/economy class flight or for a 1st class train ticket. The Customer shall bear further travel costs for outward and return journeys as well as other travels in connection with the performance of the Service.

11.5 The Customer shall bear ancillary travel costs such as passport and visa fees, tools and luggage costs, costs for customs clearance, tropical travel medical examination and vaccination costs as well as other costs incurred in connection with the performance of the Service such as fees for business communication and local travel including costs for rental cars.

11.6 The Customer shall bear travel costs for home visits of Hyfra Personnel for Christmas and New Year, or at Hyfra Personnel's option either Easter or Whitsun. These travel costs include possible rates pursuant to Sec. 11.1 and Sec. 10 of these Terms as well as the daily allowance rates pursuant to Sec. 11.3 of these Terms. After three months of uninterrupted stay for the performance of the Service, Hyfra Personnel will be entitled to statutory holidays and reimbursement of the respective outward and return travel costs.

The Customer shall bear the respective costs.

12. Transportation Costs

12.1 The Customer shall bear the transportation costs for Hyfra Personnel to a reasonable extent if no adequate accommodation or catering facilities are available near the Working Place.

12.2 The Customer shall provide, if necessary, free-of-charge transport for the local transportation of Hyfra Personnel from/to the accommodation to/from the Working Place.

13. Payment Terms

13.1 Payment shall be made in accordance with the terms and conditions of payment being part of the Offer or the Approved Service Order ("**Payment Terms**").

13.2 Unless otherwise agreed, invoices shall be paid immediately after the receipt of the invoice. Receipt of payment on Hyfra's account is decisive for payment in time.

14. Taxes and Fees

The Customer shall bear all taxes, duties and other fees incurred outside of the Federal Republic of Germany in connection with the Service.

15. Claims for Defects

15.1 In the case of a defect of the Service Hyfra will, at its choice, either render subsequent performance by rectifying the defect (*Nachbesserung*) or by re-performing the Service (*Neuherstellung*). Subsequent performance will be made without acknowledgment of a legal obligation. The Customer shall not have claims for defects in the case of minor defects. In the case of rectification or re-performance the remainder of the original limitation period shall run from the re-commissioning of the Service Object.

15.2 The place of fulfilment for the subsequent performance shall be the agreed Working Place. Claims of the Customer for costs required for the

purpose of subsequent performance, notably the costs of transport, journeys, labor and material, are excluded to the extent that the costs are increased as a result of the Service Object being brought to a place other than the agreed Working Place.

15.3 If subsequent performance fails, the Customer may rescind the affected service contract or claim a reasonable price reduction. Subsequent performance is considered as having failed after the third attempt.

15.4 The limitation period for claims for defects shall be one year from acceptance of the Service. However, this limitation shall not apply, if (i) a defect was fraudulently concealed or (ii) if a guarantee for the quality of the Service was provided, in which case the guarantee provision or limitation period as set out in the guarantee shall apply. As for claims for damages, this limitation shall also not apply in the following cases: (i) damage to life, body or health, (ii) intent and (iii) gross negligence on the part of Hyfra's management or executive staff.

15.5 Subject to claims for damages pursuant to Sec. 15 of these Terms, any further claims for defects shall be excluded.

16. Liability

16.1 In the case of ordinary negligence, Hyfra shall be liable only for damages resulting from the violation of essential contractual duties the performance of which is required for the due execution of the contract and the observance of which the contracting partner regularly relies on and may rely on (*vertragswesentliche Pflichten*); in this case liability shall be limited to the typical foreseeable damage. This limitation of liability shall also apply to damages caused by gross negligence by Hyfra's employees or representatives who are not part of its management or executive staff.

16.2 In the cases of Sec. 16.1 of these Terms liability shall exclude lost profits and any indirect or consequential damages.

16.3 In the cases of Sec. 16.1 of these Terms, Hyfra's liability is limited to the sum insured under Hyfra's business liability insurance policy; Hyfra will provide the Customer with proof of the scope of such insurance policy on request.

16.4 In the cases of Sec. 16.1 of these Terms the limitation period shall be two years after the date on which the claim arose and the Customer gained knowledge of the circumstances substantiating the claim. Irrespective of the

Customer's knowledge, the limitation period shall be three years after the event that triggered the damage. The statute of limitation for damage claims due to defects shall be determined in accordance with Sec. 15.4 of these Terms.

16.5 The above-mentioned limitations of liability shall not apply (i) in the case of damage to life, body or health, (ii) intent and (iii) gross negligence on the part of Hyfra's management or executive staff, (iv) if a defect was fraudulently concealed, (v) if a guarantee for the quality of Service was provided, in which case the guarantee provision or limitation period as set out in the guarantee shall apply or (vi) in the case of liability under the German Product Liability Act (*Produkthaftungsgesetz*).

16.6 The above limitations of liability shall also apply in the case of Customer's claims for damages against Hyfra's legal representatives, executives, employees or agents.

17. Force Majeure

17.1 Where Hyfra is prevented from performing its contractual obligations, due to force majeure such as troop mobilization, war, terrorism, civil unrest, natural catastrophes, fire or other unforeseeable circumstances for which Hyfra does not bear responsibility such as strikes and legal lock-outs, business or transport disruptions, energy shortages, difficulties in procuring raw materials or inability to deliver by Hyfra's suppliers or specific travel warning by the competent authority, i.e. Foreign Office, to leave or not to travel to a country or region of the travel destination, the agreed delivery dates and periods shall be extended by the duration of the impediment plus a reasonable preparatory period.

17.2 Hyfra shall likewise be deemed to bear no responsibility for the above referenced circumstances where they arise during a previously existing default. Hyfra will provide notice to the Customer of the commencement and the anticipated end of any such circumstances at the earliest possible date. Where the impediment continues for two months or longer, the Parties may rescind the affected service contract.

17.3 If the Service has to be prematurely stopped due to force majeure, Hyfra may charge the Customer all costs (including return journey costs) incurred up to this time.

18. Final Provisions

18.1 All legal relations between the Customer and Hyfra shall be subject to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

18.2 Exclusive jurisdiction and legal venue for all disputes resulting from or in connection with the Service shall be Altenkirchen, Germany. Hyfra shall also be entitled to institute proceedings against the Customer at its place of business.

18.3 The Customer may only assign its rights, claims for defects and obligations in whole or in part with the prior approval of Hyfra in writing. Hyfra may assign its rights and obligations in whole or in part.

18.4 Should individual provisions of these Terms be or become invalid or unenforceable, the validity of the remaining provisions shall remain unaffected.

18.5 In the event of any conflict or inconsistency between the English and the German version of these Terms, the German version shall be decisive.

18.6 In the event of any conflict or inconsistency between these Terms and the Payment Terms pursuant to Sec. 13, these Terms shall prevail to the extent of such conflict or inconsistency.

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