

GENERAL CONDITIONS OF BOVAG ENERGIESYSTEMEN EN REVISIE FOR PREVENTIVE AND CORRECTIVE MAINTENANCE



Article I - General

1. If these conditions are part of offers and agreements for the supply of maintenance services by the contractor, all the provisions of these conditions shall be in force insofar as otherwise has not been explicitly agreed in writing by both parties. Any reference by the client to its purchase, tendering or other conditions is not accepted by the contractor.
2. In these conditions, the following terms have the following meanings:
 - **Contractor:** any party referring in its offer to these conditions.
 - **Client:** the party to whom the aforementioned offer is directed.
 - **Contract:** the written agreement between the parties in relation to the work to be carried out by the contractor, and all appendices, including any changes and additions agreed in relation to the aforementioned documents.
 - **Installation:** the specific installation which is the object of the work under the contract.
 - **Gross negligence:** actions or negligence that either constitute a failure to pay sufficient attention to serious consequences that a contract party observing due caution would normally foresee as a probable consequence, or a deliberate disregard for the consequences of such actions or negligence.
 - **In writing:** in the form of a document or letter, fax, e-mail, or any such other form as agreed by the parties, signed by the parties.
 - **Wearing parts:** the parts of the installation that will need to be replaced in connection with the preventive maintenance. The contract shall designate the wearing parts, as well as the timelines applicable for replacement.
 - **Preventive maintenance (maintenance and reconditioning work):** is carried out on the dates or at the regular intervals as specified in the contract. Unless otherwise is agreed, preventive maintenance shall comprise:
 - the checking of the condition of installation;
 - testing for correct operation;
 - modifications;
 - the provision of spare parts
 - the replacement of wearing parts;
 - cleaning, and insofar as necessary, lubrication.
 - **Defective parts:**
 - those parts of the installation that will need to be replaced during the corrective maintenance in order for the installation to operate correctly.
 - **Corrective maintenance (maintenance and repair work):** is carried out in order to resolve operating defects in the installation. This must take place as quickly as possible, or within the period agreed in the contract. Unless otherwise is agreed, corrective maintenance shall comprise:
 - identifying the cause of the breakdown;
 - resolving the defect;
 - the provision of spare parts
 - the replacement of defective parts;
 - testing for correct operation.

Article II - Offer

1. All offers issued by the contractor are without obligation.
2. All offers are based on implementation of the agreement by the contractor under normal circumstances and during normal working hours.

Article III - Agreement

1. If the client determines the level of the services to be performed and which parts have to be renewed, and such in the opinion of the contractor offers insufficient guarantee with regard to the result of the work to be performed, the contractor may in that case refuse to carry out this maintenance without being obliged to pay any compensation and without prejudice to the further rights accorded to it.
2. The contractor shall draw up a written report, unless otherwise is agreed, with details of its findings and the action taken. The contractor will issue the client with a copy of the report for each occasion that it performs maintenance activities.
3. Unless otherwise is agreed, the contractor and the client will only use original parts, or parts of equivalent quality, for the maintenance and the daily care of the installation.
4. The client is responsible for any necessary daily care of the installation. If the contract provides for such, the client shall keep a logbook in relation to the operation and the care of the installation.
5. Notwithstanding the application of article VI, paragraph 3, the client shall not perform maintenance itself, or have such carried out by third parties, which under the contract is to be carried out by the contractor, without the permission of the contractor. If the client nonetheless does such, the responsibility of the contractor for any maintenance already carried out shall expire.
6. The client shall notify the contractor as quickly as possible in writing about any changes to the installation, in the operation of the installation, or about any other action taken by the client that might affect the obligations of the contractor under the contract. If such changes or actions have a significant effect on the obligations of the contractor, and the parties do not succeed in changing the contract in that respect, the contractor can terminate the contract in writing, such with immediate effect. In the event of such termination the contractor can moreover claim the compensation provided for under article XII.
7. Unless otherwise is agreed, the term of the contract shall be one year. This term shall be repeatedly tacitly renewed for a period of one year, unless the contract is terminated at least 2 months before the end of the ongoing contract period.

Except if it has been agreed that the tariff for preventive maintenance shall be subject to indexation, the contractor can ask for an increase in such on the condition it notifies the client in writing of the prospective tariff for the coming contract period at least 2 months before the end of the ongoing contract period.
8. The parties may not transfer the contract to a third party. The contractor can, however, after it has notified the client in writing of such, assign the maintenance to a third party. The client shall be notified of the identity of the subcontractor. Any such subcontracting will have no effect whatsoever on the contractual obligations of the contractor.

Article IV - Price

1. Unless otherwise is agreed, the tariff for preventive maintenance covers all the activities to be carried out by the contractor, as well as:
 - costs for expertise,
 - labour,
 - travel, accommodation, and transport costs,
 - charges of subcontractors or suppliers,
 - cost of used parts and replacement of wearing parts.
- cost of auxiliary materials, including cleaning products and lubricants, fuel, etc.,
- any additional costs for operational testing.
2. If personnel of the contractor have to work outside of normal working hours, or have to wait as a result of circumstances for which the client is responsible, the relevant costs shall be charged for separately at the tariffs applied by the contractor at that time.
3. Unless otherwise is agreed, corrective maintenance shall be carried out by the contractor on the basis of subsequent calculation. The invoice of the contractor for corrective maintenance shall include the following specification:
 - costs for expertise,
 - labour,
 - travel, accommodation, and transport costs,
 - charges of subcontractors or suppliers,

- cost of used parts and spare parts,
 - cost of auxiliary materials, including cleaning products and lubricants, fuel, etc.,
 - any additional costs for operational testing.
 - waiting time and overtime due to circumstances attributable to the client. The charges for each area will be based on the tariffs and price lists applied by the contractor at the time. The specified amounts are exclusive of VAT and any other taxes or government duties.
4. If, after the effective date of the agreement, one or more of the cost price factors are subject to an increase - even if this occurs as a result of foreseeable circumstances - the contractor is entitled to raise the agreed prices and tariffs accordingly.
 5. At the request of the client, the contractor can provide a price estimate for corrective maintenance, after it has identified the defect but before it starts any other work. The estimate is not binding, but the contractor shall inform the client as soon as it becomes clear that the eventual price will exceed the estimate by more than 10%. If the client decides after receipt of the estimate or the latter information not to have the maintenance carried out, it will nonetheless have to pay the contractor for the work already carried out by it.

Article V - Technical information, documentation etc.

1. The client shall make available all technical documentation in its possession (such as up-to-date drawings, descriptions, diagrams, and instructions) which is necessary for the performance of the agreed maintenance. The client will moreover make the logbook referred to in article III, paragraph 4, available. The contractor may only use this documentation for the execution of the contract.

Article VI - Delivery time/delays

1. Unless fixed dates are specified in the contract for preventive maintenance, the contractor shall notify the client at least one week in advance of the date on which preventive maintenance shall be carried out.
 2. The client shall notify the contractor immediately if it cannot allow the maintenance to take place on the agreed, or the notified, date. Regardless of the cause of such a delay, the client shall compensate the contractor for all the extra costs incurred as a result of this postponement.
 3. If the contractor does not carry out the maintenance at the agreed or notified time, and such a delay is not attributable to the client, the following shall apply:
 - For delayed preventive maintenance, the client shall set a final deadline by which the contractor must have carried out the maintenance. If the contractor does not manage to do this, the client can perform the maintenance itself after written permission has been given by the contractor. The third party who may carry out the maintenance shall be designated by the contractor in consultation with the client.
 - For delayed corrective maintenance, the client can perform the maintenance itself after it has notified the contractor of such in writing. The third party who may carry out a necessary repair will be designated by the contractor in consultation with the principal.
- Unless the delay is a result of force majeure, as described in article XI, the contractor shall compensate the client for all extra costs incurred by the client for this maintenance, insofar as reasonable. The reasonableness of such shall be determined taking into account the prices charged for such work by the contractor. Regardless of the cause of the delay, the contractor shall repay the amount that it has already received for the maintenance in question. Notwithstanding the application of this article, the client shall not be entitled to any compensation whatsoever in connection with delays on the side of the contractor.

Article VII - Delivery of services & working conditions

1. If the services are carried out in the workplace of the contractor, in addition to all the costs associated with such, all transport and other costs incurred outside the contractor's site and all risks in relation to the transport shall be for the account of the client.
2. If the services are carried out onsite where the object is situated, the client must:
 - a. Ensure that the contractor has access to the installation on the agreed or notified date for the maintenance. Unless otherwise is agreed, the maintenance shall take place during the normal working hours of the contractor;
 - b. Ensure that the work can be carried out in a space that is sufficiently protected from the influence of the weather, which is clean and where there is sufficient light and if necessary water present; this space must be capable of being locked;
 - c. Ensure that fitters, other workers of the contractor, or its subcontractors can commence work immediately upon arrival at the site and can continue to work undisturbed;
 - d. Take responsibility for all costs which arise if workers of the contractor or its subcontractor cannot commence work immediately upon arrival or are forced, for no fault of their own, to interrupt the work or have to continue the work outside normal working hours;
 - e. Grant all help that can be reasonable required and to make available electrical energy, fuel, water, etc. as well as mounting, lifting, hoisting and transport equipment;
 - f. Make available assistance at the first request of the contractor free of charge;
 - g. Pay for all the costs of activities such as the dismantling of pipelines, discharge pipes, steps, landings, etc., which are necessary for implementing the work properly and the assembly and installation of these again after the repair;
 - h. Take all necessary safety and precautionary measures and maintain these and take measures and maintain these so as to comply with the applicable government regulations with regard to the agreed work;
 - i. Ensure that the personnel of the contractor are informed of all safety regulations applicable at the location where the maintenance is carried out;
 - j. Take out insurance to the contractor's satisfaction, and to have this insurance continue at least for the duration of the work to be carried out, against every form of damage arising as a result of accident and fire caused during the preparation and implementation of the work;
 - k. The contractor shall inform the client about all specific risks that might be involved with the maintenance work.
3. If the contractor, as a result of not being given enough time by the client to perform the work, or for other reasons for which the contractor cannot be blamed, is forced to take on employees of the client, it can reject responsibility for the result of the services performed.
4. Costs arising as a result of the non-fulfilment by the client of the conditions detailed in this article shall be paid for by the client.

Article VIII - Invoicing and payment

1. Unless otherwise is agreed, payment of the invoice amount must be made within 14 days after the invoice date.
2. Unless otherwise agreed, the payment for preventive maintenance must be made before the start of each contract period.
3. If the client does not pay within the agreed period, it shall be deemed to be legally in default and the contractor is entitled, without any notice of default, to charge interest as of the due date at a percentage of 3 points above the statutory interest rate applicable in the Netherlands, as referred to in article 6:119a and article 6:120, paragraph 2, Civil Code, and also for all judicial and extrajudicial costs associated with the collection of its claim. The contractor

can, moreover, after it has notified the client of such, suspend the performance of the contract until it has received payment, without prejudice to its other legal rights. The client shall moreover pay for all extra costs incurred by the contractor in the event the maintenance is recommended.

Article IX - Claims and liability

1. The contractor only accepts responsibility for the soundness of the maintenance work carried out if:
 - a. the maintenance has been carried out with all the activities, replacements, adjustments and supplies deemed necessary by the contractor;
 - b. the contractor determines the method of carrying out the activities, the supervision of such, and the number of fitters and assistants to be deployed;
 - c. the client refrains from any form of intervention in the nature and/or implementation of the activities.
2. The contractor is liable for the maintenance work carried out for a period of six months after the performance of the relevant work. Liability for the parts supplied by it under the contract will only apply insofar as defects occur within six months after the fitting of the relevant parts, or - if the contractor has not fitted the part - 6 months after the supply to the client.
3. The client will notify the contractor immediately in writing about any defect that arises in the work carried out or in the parts supplied by the contractor. If the client fails to do so, all claims in relation to the defect shall become null and void.
4. This liability referred to in paragraph 2 only comprises the obligation of the contractor to carry out the relevant work again, insofar as such is deficient, in the event of any deficiency. Defects in parts will be remedied by the contractor by repair or replacement of the defective part, on the contractor's premises or elsewhere, or by supply of a replacement part, this in all cases at the discretion of the contractor. All costs exceeding the sole obligation as described in the preceding sentences, including, but not limited to, transport costs, travel and accommodation expenses, costs of investigation by an expert, as well as costs for dismantling and assembly, are to be paid by the client. The client will provide the contractor assistance with any disassembly and assembly work at the first request of the contractor.
5. The claims shall become null and void in the event of:
 - injudicious use of the installation or a part of the installation;
 - failure by the client to observe the operating and maintenance guidelines, and other instructions and/or directions of the contractor;
 - repair of the defects has been carried out by third parties or the client;
 - normal wear and tear.
6. The period as set in paragraph 2 will not be extended after the defects have been remedied.
7. No liability is accepted for parts that have been supplied but not fitted by the contractor should they prove to have been wrongly fitted.
8. Notwithstanding that provided for in article VI, paragraph 3, the liability of the contractor is limited to the fulfillment of the obligations described in this article IX. Except in the event of gross negligence on the part of the contractor, and notwithstanding that provided for in paragraph 1, all liability of the contractor, such as liability for consequential losses, other indirect damages, and damages as a result of liability towards third parties, is excluded. All liability based on rights described in 7: 17 BW and further ('non conformity') is explicitly excluded.
9. The client is obliged to indemnify and compensate the contractor in relation to all claims of third parties for compensation of damages, the liability of the contractor for which is excluded in these conditions with respect to the client

Article X - Force Majeure

1. For the application of these General Conditions, force majeure means any circumstance beyond the control of the contractor - even if it was already foreseeable at the time the agreement was concluded - which impedes the performance of the agreement permanently or temporarily, as well as, insofar as not already covered by such, war, threat of war, civil war, civil unrest, strikes, lockouts, transport difficulties, fire and other serious disruptions of the business of the contractor or its suppliers.

Article XI - Suspension and dissolution

1. In the event of an impediment to the implementation of the agreement arising as a result of force majeure, the contractor shall be entitled, without judicial intervention, to either suspend the implementation of the agreement for a maximum of 6 months, or to dissolve the agreement in full or in part, without being obligated to pay any compensation. During the suspension the contractor is entitled, and at the end of such it is obliged, to either opt for implementation or full or partial dissolution of the agreement. Both in the case of suspension and of dissolution, the contractor is entitled to demand immediate payment for all that which it has already carried out in connection with the implementation of the agreement.
2. If the client fails to comply with any obligation arising for it under the agreement concluded with the contractor, or an agreement associated with such, or fails to do so properly or in good time, or if there valid grounds for fearing that the client is unable or will be unable to comply with its contractual commitments towards the contractor, as well as in the case of bankruptcy, suspension of payments, closure, liquidation or partial transfer - for collateral or otherwise - of the client's business, including the transfer of a major portion of its receivables, the contractor is entitled, without notice of default and without judicial intervention, to suspend the implementation of each of these agreements for a maximum of 6 months, or to dissolve them in full or in part, without it being held to any compensation or guarantee, and without prejudice to the further rights accorded to it. During the suspension the contractor is entitled, and at the end of such it is obliged, to either opt for implementation or full or partial dissolution of the suspended agreements).
3. In the event of suspension and/or dissolution pursuant to paragraph 2, the agreed price shall become immediately payable, after deduction of the instalments already paid and the costs saved by the contractor as a result of the suspension or dissolution.
4. The client is not entitled to claim dissolution of the agreement with retroactive force.
5. Notwithstanding that provided for above, in the event of cancellation of the agreement, the client shall immediately owe 10% of the agreed contract price to the contractor, without prejudice to the right of the contractor to claim - in addition to this payment - full compensation for the damages suffered by the contractor due to the cancellation.

Article XII - Disputes and applicable law

1. Unless a dispute is within the competence of the sub-district court, all disputes arising as a result of an offer, an agreement, or further agreements arising from such an agreement to which these general conditions are applicable will be submitted to the district court in the district where the contractor has its registered office.
2. Dutch law will be applicable to all agreements to which these conditions are applicable in full or in part, unless otherwise is agreed in a written agreement signed by both parties.