

# **GENERAL TERMS AND CONDITIONS**

## *for Internal Pipeline Survey and/or Associated Services*

NDT Global GmbH & Co. KG  
Friedrich-List-Str. 1  
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Germany

### **Preamble**

The contract is based on the General Terms and Conditions for the provision of internal pipeline survey and associated services between NDT Global GmbH & Co. KG, hereinafter referred to as CONTRACTOR, and ....., hereinafter referred to as COMPANY. No change to these terms shall be valid and binding on CONTRACTOR unless made in writing and signed by an authorized representative of CONTRACTOR.

In the event that there is another agreement in writing between CONTRACTOR and COMPANY, then these terms and conditions shall act to supplement such agreement. The order for services by COMPANY hereunder shall be binding upon CONTRACTOR only by signature of its authorized representative.

### **§ 1 CONTRACTOR'S Obligations**

- (i) CONTRACTOR shall perform the services and carry out its obligation hereunder with due diligence, efficiency and economy in accordance with generally accepted techniques and practices used in the industry and shall observe sound management and technical engineering practices, and employ appropriate advanced technology.
- (ii) CONTRACTOR warrants that the equipment supplied is in a good and functional state and has a proven history of successful operations in the performance of work of a similar nature. CONTRACTOR personnel shall carry out all services necessary for the implementation of the project in a professional and workmanlike manner.
- (iii) CONTRACTOR personnel shall be assisted by COMPANY personnel in the performance of the works such as launching, running and receiving of tools, which shall be carried out in accordance with CONTRACTOR instructions to enable CONTRACTOR to provide satisfactory survey results.
- (iv) Following completion of the works, CONTRACTOR shall deliver to COMPANY an Inspection Report on the results in accordance with the contract. Subject to the continuing obligations of the parties it is agreed that delivery of the Inspection Report and acceptance by COMPANY, which shall not be later than 6 (six) weeks after delivery, shall constitute completion of CONTRACTOR'S obligations under the contract.
- (v) The Inspection Report and any other recommendations made by CONTRACTOR relating to the pipeline shall be prepared by CONTRACTOR to the best of CONTRACTOR'S knowledge and belief. All recommendations are made in good faith and are a reliable expert opinion of CONTRACTOR, according to common practice prevailing in the pipeline industry. The Inspection Report or measures based on it will not constitute a warranty of the quality, capacity, safety or fitness for purpose of the pipeline. The parties hereby agree that no decisions with regard to maintenance of the pipeline, nor decisions involving financial, investment or any other risk whatsoever for the safety of the pipeline, shall be solely based on the Inspection Report.

- (vi) In performing the work, CONTRACTOR shall observe and comply with the applicable safety rules and regulations.

## § 2 Delays and Stand-by Times

- (i) CONTRACTOR shall perform the services in accordance with the contract. If CONTRACTOR should have any cause to believe that the services cannot be carried out within the agreed time scale, a written notification shall be given to COMPANY specifying the circumstances of the delay. CONTRACTOR shall be entitled to an extension of time for the performance of the services. If the delay is not attributable to CONTRACTOR, CONTRACTOR shall be entitled to compensation according to the daily standby rates set out in the Schedule of Prices.
- (ii) If the amount of data should be unexpectedly high due to the bad condition of the pipeline, CONTRACTOR shall be entitled to postpone the date of final report delivery and receive additional compensation.
- (iii) If within the time specified in the contract, COMPANY fails to allow the additional inspection services required or if CONTRACTOR for any reason beyond its reasonable control is unable to complete any inspection service, then CONTRACTOR at its option may elect either to keep the personnel and equipment available on site on a stand-by basis until such inspection service can be completed, or to interrupt the preparation in his workshop or inspection services (additional mob./demob. to be covered by COMPANY) or to terminate the contract pursuant to Article 13 (iv) hereof.
- (iv) Should the inspection equipment be delayed in customs beyond the time normally required for customs clearance as a result of circumstances not due to any fault of CONTRACTOR, stand-by charges shall become due and payable by COMPANY to CONTRACTOR for the time of delay.

## § 3 Additional Inspection Services

- (i) If additional inspection services are required, CONTRACTOR shall seek permission from COMPANY for such a service (e.g. re-run), as is required, while the inspection equipment and CONTRACTOR personnel are still on site. If

required, CONTRACTOR shall supply a replacement equipment as soon as available.

- (ii) In case where the reason for such an additional service is not attributable to CONTRACTOR, COMPANY shall reimburse CONTRACTOR for all costs and expenses incurred to CONTRACTOR from such a service in accordance with the stand-by rates and the re-run rates set out in the Schedule of Prices.
- (iii) In case where the reason for such an additional service is attributable to CONTRACTOR, each party shall bear its own costs for any additional services that become necessary.

## § 4 COMPANY'S Obligations

- (i) COMPANY shall appoint a representative in charge of the project with a good command of English or an interpreter for English. This person or an authorized deputy shall represent COMPANY during the course of the project and shall be authorized to sign the Inspection Report submitted by CONTRACTOR.
- (ii) COMPANY shall not be liable for any damage to the inspection equipment which was occasioned by CONTRACTOR'S sole negligence.
- (iii) COMPANY shall ensure that there are no obstructions in and around the pipeline that would impede the performance of the inspection equipment. COMPANY warrants the completeness and accuracy of the information relative to the pipeline and its immediate surrounding area concerning the performance of the services.
- (iv) COMPANY shall arrange for the provision of suitable launching and receiving facilities for CONTRACTOR'S equipment.
- (v) The pipeline must be cleaned to the extent necessary to obtain useful data. In the event that CONTRACTOR undertakes all or part of the cleaning and/or delivers the cleaning tools, the overall responsibility of COMPANY to provide a clean pipeline remains in full force and effect.
- (vi) COMPANY shall be responsible for the operation of the pipeline and shall ensure that CONTRACTOR'S information for the respective inspection equipment such as tool velocities are met. COMPANY shall supply the necessary personnel and lifting equipment for equipment handling. In non-English speaking countries, COMPANY shall ensure the availability of personnel with a good

- command of English or of an interpreter for English. COMPANY personnel shall at all times be under the control and management of COMPANY.
- (vii) COMPANY shall be responsible for securing the site and for security measures for the equipment and ensures the safety of CONTRACTOR personnel in compliance with its statutory duties.
- (viii) COMPANY shall at its expense perform all work necessary to place the benchmarking equipment at locations to be specified by mutual agreement between CONTRACTOR and COMPANY.
- (ix) In the event that the pipeline does not conform to COMPANY representations and CONTRACTOR equipment becomes lodged or lost in the pipeline due to adverse conditions in the pipeline, such as but not limited to, maloperation of valves or similar unpredictable hazards not attributable to CONTRACTOR, the following provisions shall apply:
- (a) COMPANY shall bear any and all costs of recovering the equipment including, without limitation, excavation costs. COMPANY shall also pay all costs of repair in the event that the equipment is damaged beyond normal wear and tear. If the reasonable repair costs are likely to exceed the replacement value of such equipment, COMPANY shall be liable for the replacement cost less any amount recoverable by CONTRACTOR under its insurance policy.
- (b) In the event that the recovery is not made within two weeks from the time when the equipment becomes lodged or lost in the pipeline, COMPANY shall be liable for the replacement cost less the insurance proceeds recoverable by CONTRACTOR.
- (c) In the event that COMPANY indemnifies CONTRACTOR for any lost equipment which is subsequently recovered, COMPANY shall return the equipment to CONTRACTOR and CONTRACTOR shall refund to COMPANY the amount paid to CONTRACTOR for the loss of the equipment less the reasonable rental value of the equipment for the period it was lodged in the pipeline and any reasonable repair costs of any damage to the equipment.
- (x) COMPANY shall also reimburse CONTRACTOR for the auxiliary equipment which was made available to and not returned by COMPANY personnel.
- (xi) COMPANY shall provide suitable office space, access to communication devices and a workshop with lifting equipment as a workbase, all transportation for the inspection equipment and crew while in the country of operation, and pay for appropriate board and lodging to a standard comparable to middle class western style hotel for CONTRACTOR crew.
- (xii) COMPANY shall arrange import and re-export customs clearance formalities and settle at its expense all duties, administrative fees and similar costs, custom fees, levies and other duties imposed in connection with the project. COMPANY shall bear, discharge and indemnify CONTRACTOR for any taxes chargeable in the country of operation arising from the performance of the contract. Any value-added tax or turnover tax payable shall be added to the contract sum.
- (xiii) COMPANY shall comply with all statutory Health and Safety provisions and generally acceptable safety standards within the industry to prevent CONTRACTOR personnel and the equipment from being exposed to any safety hazards. In particular, COMPANY shall ensure that the launch and receive traps are purged with nitrogen and portable gas detectors are provided (if necessary). Any deviations from CONTRACTOR standard launching and receiving procedures shall be agreed with CONTRACTOR.

## § 5 Ownership

- (i) CONTRACTOR equipment shall remain the exclusive property of CONTRACTOR at all times. No person shall be allowed access to the equipment unless authorized by CONTRACTOR or in accordance with the provisions of the contract.
- (ii) Title to the inspection report shall not pass from CONTRACTOR to COMPANY until payment has been obtained by CONTRACTOR in full.

## § 6 Report Verification and Deficiencies

- (i) For defect verification, COMPANY shall inform CONTRACTOR prior to excavation in order to enable CONTRACTOR
- (a) to check that all information required for excavation has been submitted to COMPANY, and
- (b) to send a technician to the site at CONTRACTOR'S discretion.

If the defect verification results do not agree with the reported defect dimensions, COMPANY shall inform CONTRACTOR immediately. COMPANY shall give CONTRACTOR specialists the opportunity to verify the results, prior to the ditch being refilled. Should the defect data as reported by CONTRACTOR prove to be correct, COMPANY shall pay all costs and expenses incurred to CONTRACTOR therefrom, including travel, board and lodging and specialist day rate for CONTRACTOR specialists. Should the defect data as reported by CONTRACTOR should be incorrect, CONTRACTOR shall at its own expense re-analyze the inspection data in that part of the Inspection Report that contains the alleged deficiency to remedy the same and provide a revised Inspection Report.

- (ii) CONTRACTOR shall only rectify defects of any survey results which are notified by COMPANY within twelve (12) months after submission of the inspection results.

## § 7 Terms of Payment

- (i) Unless otherwise agreed, COMPANY shall make payment of the contract price to CONTRACTOR in the proportions and at the times specified in the contract. Overdue payments shall bear interest at a rate of 8 % above the EURIBOR rate for a period of three months. The contract shall not be effective until the down payment has been received in CONTRACTOR'S bank account. If required by CONTRACTOR, payment of the contract price shall be made by irrevocable Letter of Credit payable at sight in installments against submission of documents, as specified in the contract.
- (ii) CONTRACTOR shall not commence mobilization prior to the relevant payment having been received.

## § 8 Proprietary and Confidential Information

- (i) Both parties undertake to keep confidential all documentation and information provided by the other party in the course of performance of the contract. For a period of 10 years after they shall make the necessary arrangements, also with respect to its personnel, to ensure the confidentiality of such documentation. No such information

shall be submitted to third parties without prior written consent of the other party.

- (ii) The equipment and any related written or electronic data or other documentation which is made available to COMPANY in connection with this contract is the sole property of CONTRACTOR. COMPANY undertakes not to claim any proprietary rights related to the inspection equipment and/or CONTRACTOR know-how. Any inventions or discoveries made during the performance of the work shall be the exclusive property of CONTRACTOR.

The obligations set forth in this Article 8 shall remain in full force and effect after any termination or expiration, as the case may be, of the contract.

## § 9 Liabilities and Indemnities

- (i) CONTRACTOR shall be liable for all damage incurred by COMPANY to the extent that CONTRACTOR officers or managers caused such damage by gross negligence or willful misconduct.
- (ii) CONTRACTOR shall be liable for damage occasioned by simple negligence or gross negligence by non-management personnel only to the extent foreseeable by CONTRACTOR in consideration of all relevant circumstances known or that should reasonably have been known to CONTRACTOR at the time of conclusion of the contract. This limitation applies in relation to delay, defective performance, breach of an essential duty under the contract which would frustrate the purpose of the contract irrespective of whether such claims are based on statutory provisions, contract, tort or otherwise.
- (iii) This limitation does not apply to any injuries of life and limb nor to any claims under the Product Liability Act. In case of breach of essential duty the claim for damages is restricted to the extent typically foreseeable for that particular type of contract.
- (iv) In the circumstances set out in (ii) CONTRACTOR'S total liability shall be limited to the lower of the contract value or an aggregate amount of CONTRACTOR'S insurance cover of 5 million euro, which shall be individually agreed between the parties.
- (v) Neither COMPANY nor CONTRACTOR shall be liable to the other either hereunder or otherwise at law for any indirect or consequential losses or

damage howsoever caused, including but not limited to losses of use, profit, production and/or interest or business interruption or any other damage of a similar nature; they indemnify each other and hold each other harmless.

- (vi) Should the inspection tool get stuck in the pipeline for a reason CONTRACTOR is responsible for, CONTRACTOR is liable to COMPANY for the recovery costs incurred up to a maximum amount of 250,000,- €.

### **§ 10 Site Conditions, Hazardous Materials, Waste Management**

- (i) Prior to CONTRACTOR commencing any work at the site, COMPANY shall (i) provide documentation that identifies any existing contamination of site property and the presence of any hazardous materials in or about the site, and (ii) allow CONTRACTOR, at its option, access to the site to perform a site evaluation. COMPANY shall also provide a safety data sheet/hazardous substance sheet giving details of any hazardous substances, protective measures describing any required actions in dangerous situations, first aid and appropriate disposal of hazardous substances to enable CONTRACTOR to carry out the appropriate measures prior to mobilization.
- (ii) CONTRACTOR shall notify COMPANY if conditions are encountered in the course of CONTRACTOR'S work: which are substantially different from those disclosed by COMPANY or physical conditions at the site differing from those ordinarily encountered. COMPANY shall promptly investigate the conditions described above. If it is determined that any such condition causes an increase in CONTRACTOR'S cost of, or the time required for, performance of any part of the work under the contract, an equitable adjustment in price and time of performance shall be made and the contract shall be modified in writing accordingly.
- (iii) If, at the site, CONTRACTOR encounters toxic substances, hazardous substances or hazardous wastes (as defined in the European List of Notified Chemical Substances (ELINCS) in Annex 1 of EC Dangerous Substances Directive 67/548/EEC and adaptations, collectively, the "Hazardous Materials") which require special handling and/or disposal, COMPANY shall immediately take

whatever precautions are required to legally eliminate such hazardous conditions so that the work under the contract may safely proceed. If any such hazardous materials cause an increase in CONTRACTOR'S work, or cost of, or the time required for, performance of any work under the contract, an equitable adjustment in price and time of performance shall be made and the contract shall be modified in writing accordingly. COMPANY agrees to properly dispose of all hazardous materials produced or generated in the course of CONTRACTOR'S work at the site. COMPANY shall indemnify and hold CONTRACTOR harmless for any and all claims, arising out of or relating to the presence of any hazardous materials on the site and keeps him harmless. COMPANY shall also be responsible for transportation and disposal of any other waste materials which are generated by CONTRACTOR'S activities which are generated during the work under the contract.

### **§ 11 Force Majeure**

- (i) The obligations of the parties hereunder shall be suspended if their performance is rendered impossible wholly or in part due to Force Majeure. Force Majeure is defined as unforeseeable circumstances which prevent or delay the performance under the contract because of war, hostilities, revolution, civil riots, labor conflicts, contagious diseases, accident, fire, strong winds, floods, earthquake, or because of any law, order, or because of any other unforeseeable reason beyond the reasonable control of the party affecting the party's ability to perform its obligations. Information concerning such circumstances is to be given within the shortest possible period. The parties undertake to keep the costs arising therefrom as low as possible.
- (ii) Provided such suspension continues for more than three (3) days, the parties shall endeavor to reach a mutually satisfactory solution. Should such a solution not be achieved after 15 days, each party hereto may terminate the contract at 48 hours' notice. The provisions set forth in Article 13 (iv) apply accordingly.

### **§ 12 Rescheduling**

If the performance of the services or part thereof has been delayed due to any reason including Force

Majeure for an aggregate period exceeding one (1) week, then COMPANY and CONTRACTOR shall agree to extend the contract period or to reschedule that part of the services so affected to a mutually acceptable future date being not later than three (3) months after the date of notification of delay. In the event of such rescheduling, COMPANY shall pay all sums due in connection with that part of the services performed together with a rescheduling fee of 1% of the value of the contract or part thereof to be rescheduled. If the parties fail to agree, then either party shall be entitled to terminate the contract and Article 13 (iv) shall apply.

### § 13 Termination

- (i) Each party to the contract shall be entitled to terminate the contract, if the other party is in breach of any of its essential obligations under the contract and the other party has been advised of the breach and been given a two (2) week period to remedy the breach and the breach has not been remedied.
- (ii) If the contract is terminated by COMPANY for a reason not attributable to CONTRACTOR, COMPANY shall be liable for costs incurred to CONTRACTOR as a result of the termination.
- (iii) Either party shall be entitled to terminate the contract in the event that the other becomes bankrupt or makes a composition or arrangement with its creditors or has a winding up order made or a resolution for voluntary winding up has been passed, or a provisional liquidator or administrator has been appointed.
- (iv) In the event of any termination of the contract during the services, CONTRACTOR shall be entitled to a pro-rata payment for all parts of the work or services performed up to the date of termination.
- (v) Should COMPANY decide to terminate the contract prior to mobilization, a termination fee as listed in the quotation shall be payable. Should CONTRACTOR'S costs exceed this amount, CONTRACTOR shall be entitled to recover the excess costs in addition.

### § 14 Notices

All notices and communications hereunder shall be in writing. Notices or communications made by personal service shall be deemed to have been given when so served if by mail, ten (10) days after mailing, in each

case excluding Saturdays, Sundays and statutory holidays.

### § 15 Insurance

During the course of the contract CONTRACTOR shall provide comprehensive General Liability Insurance, Property Insurance, Accident Insurance, Workmen's Compensation Insurance. CONTRACTOR shall supply copies of the relevant insurance certificates upon request of COMPANY.

### § 16 Suspension

- (i) COMPANY may at any time suspend the performance of the services by giving written notice to CONTRACTOR. Upon receipt of such notice, CONTRACTOR shall cease further performance of the services. COMPANY shall take all necessary measures to safeguard the equipment on site.
- (ii) CONTRACTOR shall resume performance of the services as soon as is reasonably practicable upon COMPANY notification that services are to be resumed and shall be compensated for at the daily rates set out in the Schedule of Prices for each day of suspension.

### § 17 Data Protection

Any personal information on NDT employees or subcontractors which is required for the purposes of the contract shall be treated in confidence, shall not be passed to third parties and shall not be copied or processed, conform to the requirements of the German Federal Data Protection Act. COMPANY undertakes to destroy or delete the information when no longer required but at the latest at the completion of the contract.

### § 18 Miscellaneous

- (i) In the event of a breach of any obligations hereunder, the other party may waive its rights and remedies arising out of such breach. Such waiver may be done in writing only. Moreover, such waiver does not constitute a waiver of any subsequent similar or other breach of any obligations hereunder.
- (ii) The contract shall be governed and construed in accordance with the laws of the Federal Republic of Germany (under exception of the Vienna

- Convention for the International Sale of Goods - CISG).
- (iii) Except for matters which are properly made the subject of a request for an injunction or temporary restraining order, all disputes arising in connection with the contract and all transactions resulting therefrom which are in excess of a value of € 150,000,- or its equivalent value of the contract currency, shall be finally settled by arbitration. The venue shall be Karlsruhe, Federal Republic of Germany. Arbitration shall be conducted in accordance with in the Rules of DIS German International Institute of arbitration, Cologne by one arbitrator appointed jointly by the parties. The award or awards in such Arbitration shall be binding upon the parties hereto and may be enforced by any court of competent jurisdiction.
- Any disputes concerning matters or transactions which are below a value of € 150.000 or its equivalent value of the contract currency shall be subject to the jurisdiction of the competent court in Karlsruhe.
- (iv) Should any provision herein be held to be invalid or unenforceable, this shall not affect the validity of the remaining provisions. To the extent admissible under applicable law, the parties shall endeavor to replace the invalid provision with an economically equivalent provision.
- (v) CONTRACTOR acts solely as an independent contractor in the performance of the Services or in the supply of equipment.