

**SPECIAL TERMS & CONDITIONS**  
**D – MAINTENANCE AND REPAIR**

**Art. 1 Scope**

1.1 The present Special Terms & Conditions apply both to repairs on the Supplier’s site or to a branch of a company associated with the Supplier, and to repairs at another location (e.g. at the Client-Purchaser’s site), unless otherwise explicitly stipulated below.

**Art. 2 Definitions**

Unless otherwise stated, the following terms with capitals shall have the following meaning:

**Maintenance Agreement** The General Conditions and all applicable Special Terms & Conditions. Where, with regard to the Client-Purchaser, a Quotation is drawn up and/or a maintenance contract is agreed, either in writing or orally, these are also part of the Maintenance Agreement.

**Preventive Maintenance** The maintenance work and associated services prescribed by the manufacturer of the Equipment, which are carried out at the times or at the intervals as laid down in the Maintenance Agreement.

**Remedial Maintenance** The maintenance work and associated services which are carried out in order to rectify functional faults in the Equipment. Unless agreed otherwise, Remedial Maintenance shall include:

- Identifying the cause of the fault and/or defect;
- Rectifying the fault and/or defect;
- Potentially replacing certain parts of the Equipment;
- Testing the functionality of the Equipment with regard to the fault and/or defect to be repaired.

**Maintenance** The Preventive and/or Remedial Maintenance as appropriate.

**Equipment** The machines, equipment and other appliances of the Client-Purchaser to which the Maintenance relates as stipulated in the Maintenance Agreement.

**Quotation** The Quotation accepted by the Supplier as per Art. 2 of the General Conditions.

**Start Date** The date on which the Maintenance Agreement comes into effect.

**Art. 3 Maintenance**

3.1 The Supplier shall carry out the Maintenance in accordance with industry practices, the applicable legislation and regulations, and the demands and specifications contained in the Maintenance Agreement.

3.2 The Supplier shall make use when carrying out Maintenance of the best technologies and human resources available at the time of the Maintenance.

3.3 The employees and/or other agents of the Supplier shall at all times remain under the authority of the

Supplier and nothing in the Maintenance Agreement can detract from that authority.

3.4 Unless explicitly agreed otherwise, the Supplier shall not become the owner of the Equipment through the performance of the Maintenance Agreement.

3.5 The Client-Purchaser shall be responsible for the daily maintenance and normal care of the Equipment. The Client-Purchaser shall, unless agreed otherwise, maintain a detailed logbook in which it shall record:

3.5.1 How the Equipment is running; and

3.5.2 What daily care and maintenance the Client-Purchaser carries out on the Equipment.

**Art. 4 Place and time of the Maintenance**

4.1 The Maintenance shall be carried out at the place and time stipulated in the Maintenance Agreement. Unless explicitly agreed otherwise in writing, the Maintenance shall occur during the Supplier’s normal working hours, on normal working days, as stipulated in Art. 11.3 of the General Conditions.

**Art. 5 Estimate Costs**

5.1 Where the Client-Purchaser asks for a Quotation, the Supplier shall reserve the right to charge costs associated with producing the said Quotation (“Estimate Costs”) to the Client-Purchaser. The Supplier shall, at the Client-Purchaser’s written request, substantiate the said Estimate Costs by reference to time-sheets.

**Art. 6 Price**

6.1 The Supplier shall have the right to increase the agreed price in the meantime, if the purchase prices and/or cost prices to be paid by the Supplier have risen since the Start Date.

**Art. 7 Payment**

7.1 The Supplier shall invoice the Client-Purchaser for the Maintenance in full immediately after the completion thereof.

7.2 The Client-Purchaser shall pay invoices for Maintenance net cash/within thirty (30) days end of month.

**Art. 8 Duration**

8.1 The Maintenance Agreement is concluded for an unlimited duration, unless explicitly agreed otherwise in writing. A Maintenance Agreement for a one-off Remedial Maintenance is deemed to have been entered into only for the relevant Remedial Maintenance and is therefore not of unlimited duration.

8.2 Either party may terminate the Maintenance Agreement at any time without being required to pay any compensation, subject to giving the other party two (2) months’ written notice of termination.

**Art. 9 Force Majeure**

9.1 In the event of Force Majeure, as defined in Art. 8 of the General Conditions, the party affected by it shall immediately notify the other party of the nature and

scale of the circumstances in question. After such notification, the obligations of the party concerned are suspended. That party shall not be liable for the performance of the Agreement, so long as the Force Majeure continues, up to a maximum of sixty (60) successive calendar days. Under no circumstances does a situation under this Art. 9.1 suspend the Client-Purchaser's obligation to pay for Maintenance already carried out. If the Force Majeure lasts longer than sixty (60) successive calendar days, each party shall be entitled to terminate the Maintenance Agreement in writing with immediate effect, without being required to pay any compensation.

#### **Art. 10 Liability**

- 10.1 Where any fault is detected in the Maintenance carried out, the Client-Purchaser shall notify the Supplier in detail, in writing and within twenty-four hours of the fault's being detected. The Client-Purchaser may report only those faults which manifest themselves within fifty (50) working hours of (part of) the Equipment after the Maintenance, and no later than three (3) months after signature of the work contract or after the receipt of the repaired Equipment.
- 10.2 Once the Supplier has received notice as per Art. 10.1 of the present Special Terms & Conditions, the Supplier shall endeavour to rectify any such fault in a way to be agreed by the parties. Under no circumstances shall notification as per Art. 10.1 of the present Special Terms & Conditions suspend the Client-Purchaser's payment obligation.
- 10.3 The Supplier is liable only for damage to properties of the Client-Purchaser which occurs through serious negligence or deliberate fault of the Supplier in the conduct of the Maintenance in accordance with the Maintenance Agreement. The Supplier is in no case liable for damage or faults which are the result of circumstances referred to in Art. 9 of the present Special Terms & Conditions or circumstances for which the Supplier is not responsible, such as (although not limited to) improper use or repair of the Equipment by the Client-Purchaser or a third party, inadequate daily care by the Client-Purchaser in contravention of Art. 3.5 of the present Special Terms & Conditions or incorrect measures in the application of Art. 12.3 of the present Special Terms & Conditions. Neither does the Supplier's liability apply in the case of normal wear and tear.
- 10.4 Advice, instructions or indications provided in connection with the use of the Equipment are purely informal and imply no acceptance of liability.
- 10.5 The Supplier shall not be liable for any form of consequential damage, such as (although not limited to) loss of production, loss of use, loss of profit, additional costs and any fines that the Client-Purchaser may have to pay.
- 10.6 The client-Purchaser shall be liable for all damage caused by it or its agents to the equipment, tools and all other apparatus belonging to the Supplier. The Supplier shall likewise have the right to claim against the Client-Purchaser for all direct and indirect

damage suffered by it if the latter is clearly caused by the Client-Purchaser or its agents.

#### **Art. 11 Guarantee**

- 11.1 The Supplier guarantees that the Maintenance is carried out as stipulated in Art. 3.1 and 3.2 of the present Special Terms & Conditions.
- 11.2 The Maintenance offered under the Maintenance Agreement does not guarantee any uninterrupted fault-free operation of the Equipment.

**The provisions below supplement the provisions above and are solely for application to travelling Maintenance or Maintenance on the Supplier's site, as appropriate.**

#### **I. TRAVELLING MAINTENANCE**

##### **Art. 12 Maintenance**

- 12.1 The Client-Purchaser shall ensure that the Maintenance is not carried out under dangerous or insalubrious conditions, or conditions which fail to comply with the law or applicable regulations. It shall take all necessary measures to this end, and shall ensure that the supplier's employees and/or agents are formally briefed about all safety provisions applicable in the location where the Maintenance is carried out and about the specific risks associated with the Maintenance. Where the Maintenance cannot proceed because of a conflict with the present Art. 12.1, the Client-Purchaser is required to reimburse all costs incurred by the Supplier, without prejudice to the Supplier's right to demand higher compensation.
- 12.2 Unless otherwise agreed, the Supplier shall take all waste and replaced parts with it. The Supplier itself shall be required to ensure the recycling and/or processing thereof. The Supplier shall charge the Client-Purchaser an amount for this purpose that is equivalent to the legally set amount, or equivalent to a reasonable amount in relation to the quantity and condition of the processed waste and/or the processed parts.
- 12.3 During the Maintenance, and until the Client-Purchaser receives the work contract issued by the Supplier stating "*works completed*", the Client-Purchaser shall make no use whatsoever of the Equipment or the Goods delivered by the Supplier. Should the Client-Purchaser establish that faults in the Supplier's Maintenance or in Goods delivered by the Supplier can cause damage, it shall immediately take all appropriate measures necessary to prevent or limit such damage.
- 12.4 The Client-Purchaser shall under no circumstances carry out the Maintenance on the Equipment itself, or have the Maintenance carried out by a third party, without first having secured the Supplier's prior written consent. If the Client-Purchaser does do this, the Supplier's liability for the Maintenance already carried out shall lapse and the Client-Purchaser shall relinquish any claim against the Supplier.

**Art. 13 Location and time of the Maintenance**

- 13.1 For the purposes of the Maintenance, the Client-Purchaser shall make available, free of charge, a closed, heated location, including the necessary utilities such as lighting, water, electricity and compressed air.
- 13.2 The Client-Purchaser shall ensure that the Supplier's employees and agents have access to the Equipment at the time agreed for the Maintenance. If, because of external circumstances or circumstances attributable to the Client-Purchaser, access to the equipment becomes difficult or is rendered impossible, the Client-Purchaser shall notify the Supplier in good time. If the Client-Purchaser fails to do so, all costs shall be charged in full to the Client-Purchaser as set out in Art. 14.2 of the present Special Terms & Conditions.
- 13.3 The Client-Purchaser shall grant the Supplier a deviation on the intervals stipulated in the Maintenance Agreement or fixed period for Preventive Maintenance, such deviation not to exceed two (2) months.
- 13.4 If Remedial Maintenance needs to be carried out shortly before Preventive Maintenance is planned, the Supplier may, with the Client-Purchaser's agreement, also use that same opportunity to carry out the Preventive Maintenance. If fixed intervals are stipulated for the Preventive Maintenance, these shall continue to apply except for the present deviation.

**Art. 14 Delay**

- 14.1 Each party shall notify the other as quickly as possible if the Maintenance cannot be carried out at the time agreed.
- 14.2 If the Client-Purchaser breaches the provision in Art. 14.1 of the present Special Terms & Conditions, it shall reimburse the Supplier for all costs incurred by the Supplier as a function of the performance of the Maintenance that cannot be carried out at the time agreed.
- 14.3 If the Supplier cannot carry out the Maintenance at the time agreed and the delay is attributable to the Client-Purchaser, the Client-Purchaser shall, in the event of
- 14.3.1 Delayed Preventive Maintenance, not be entitled to carry out the Maintenance itself or have it carried out by a third party. The parties shall agree together on a new deadline for the Preventive Maintenance.
- 14.3.2 Delayed Remedial Maintenance, be able to conduct the intended Maintenance itself or have it carried out by a third party, after having notified the Supplier in writing, unless the Supplier can carry out the said remedial Maintenance within 48 hours of receiving the notification from the Client-Purchaser.
- 14.4 If the Supplier cannot carry out the Maintenance at the time agreed and the delay is not attributable to the Client-Purchaser, the Client-Purchaser shall, in the event of
- 14.4.1 Delayed Preventive Maintenance, propose a reasonable new deadline to the Supplier

within which the Supplier must carry out the Preventive Maintenance. If the Supplier cannot carry out the Preventive Maintenance within the said reasonable deadline, the Client-Purchaser shall be entitled to carry out the intended Maintenance itself or have it carried out by a third party.

- 14.4.2 Delayed Remedial Maintenance, be able to conduct the intended Maintenance itself or have it carried out by a third party, after having notified the Supplier in writing, unless the Supplier can carry out the said Remedial Maintenance within 48 hours of receiving the notification from the Client-Purchaser.

**Art. 15 Documentation and amendment of the Equipment**

- 15.1 After every Maintenance, the Client-Purchaser shall receive a work contract and/or a checklist giving the necessary comments and any faults found on the Equipment, which require(s) to be signed by the Client-Purchaser.
- 15.2 The Client-Purchaser shall notify the Supplier immediately in writing of any amendment of the Equipment, the operation of the equipment or any other event or activity which might have a bearing on the Supplier's obligations under the Maintenance Agreement.
- 15.3 The Client-Purchaser shall make available to the Supplier all technical documentation (including, but not limited to, user manual, maintenance manual, parts list, software, in any form whatsoever) which is necessary for the performance of the Maintenance Agreement. The Client-Purchaser shall likewise make available the logbook referred to in Art. 3.5 of the present Special Terms & Conditions.

**Art. 16 Price**

- 16.1 The price for the Maintenance is established in accordance with the Supplier's rates list. This rates list includes rates for the working time, the travel time and the transport costs and is valid for a maximum of one (1) year.
- 16.2 If employees or other agents of the Supplier have to work outside the normal working hours, or have to wait as a result of circumstances for which the Client-Purchaser is responsible, or because the Client-Purchaser has failed to report external circumstances, the associated costs shall be charged separately in accordance with the Supplier's valid rates list.
- 16.3 The Client-Purchaser may have additional services carried out by the Supplier, either on a periodic basis or otherwise. Such additional work on the Maintenance shall be billed as set out in the rates list.
- 16.4 The Client-Purchaser may request the rates list referred to above by writing to the Supplier, and may consult it at any time at [www.tvh.com/avv](http://www.tvh.com/avv).

**II. MAINTENANCE ON THE SUPPLIER'S SITE**

**Art. 17 Reception of the Equipment**

- 17.1 The Client-Purchaser may send the Equipment to the Supplier or deliver it to the relevant service locally, or have it picked up by the Supplier. When Equipment is entrusted to the Supplier, the Client-Purchaser shall always accompany it with two (2) correctly completed copies of the "Request for Repair" form. If the "Request for Repair" form is missing or not correctly completed, the Supplier cannot be called upon if the Maintenance is not carried out, or is carried out incorrectly.
- 17.2 In the event that the Supplier agrees with the Client-Purchaser to provide transport of the Equipment to the Supplier's site, the costs of such transport shall be charged separately to the Client-Purchaser by a company associated with the Supplier.
- 17.3 In the event that the Client-Purchaser has the Equipment picked up by the Supplier and the Equipment (the machine) cannot travel autonomously on the lorry, the Supplier shall be required to make available an auxiliary unit and charge the costs of the said auxiliary unit to the Client-Purchaser.

**Art. 18 Storage costs**

- 18.1 The Client-Purchaser shall notify the Supplier clearly in writing of the acceptance or rejection of the Quotation within the period of its validity. Should it fail to do so, the Supplier reserves the right to charge the Client a storage cost in respect of the Equipment in an amount of 100 EUR per month or part thereof, and to apply a (possible) favourable rate for the Rental of a replacement appliance according to the regular Rental rate.
- 18.2 The Client-Purchaser shall have to pay the said storage cost and the said regular Rental rate as from the expiry of the period of validity of the Quotation, until the time of its written acceptance.
- 18.3 The Client-Purchaser shall likewise have to pay the said storage cost and the said regular Rental rate as from one week after the date on which the Supplier notifies the Client-Purchaser of the termination of the Maintenance of the Client-Purchaser's Equipment.
- 18.4 In the event of written rejection of the Supplier's Quotation, the Client-Purchaser shall be required to pay the storage cost until the time that the Equipment delivered is picked up by the Client-Purchaser, and the regular Rental rate until the time that the appliance Rented is returned.