

# Additional Terms and Conditions for Services



Revision 03  
November 2016

## **1. GENERAL**

1.1 For orders for the provision of services (e.g. planning, commissioning, installation, repair, maintenance or operation) the following Additional Terms and Conditions for Services (Service Conditions) shall apply.

1.2 As far as the following provisions do not expressly state anything to the contrary, these Service Conditions apply in conjunction with the Terms and Conditions for the Sale of Goods (Conditions for Sale) and complement rather than replace them.

## **2. EXECUTION OF SERVICE ORDERS**

2.1 Bentec shall execute the ordered services carefully with qualified personnel and in accordance with the current state of technology with its best efforts.

2.2 As far as nothing else has been agreed, Bentec may subcontract the performance of services to competent third parties.

2.3 Bentec reserves the right to recall employees executing the order at any time and replace them by equally qualified employees at our expense.

2.4 Regular working hours shall be determined in accordance with the legal and collective bargaining agreement regulations applicable to the employees performing the services ordered.

2.5 As far as possible under the applicable legal and collective bargaining regulations the employees performing the ordered services shall comply with the working hours regulations in force at Bentec's Customer.

2.6 In case deviations from regular working hours applicable to the personnel performing the services become necessary, then the Customer shall inform us about such requirements and, together with the Customer, Bentec shall find an agreement concerning the terms and conditions regarding work outside the regular working hours, if necessary after having obtained any required permit or consent.

2.7 The Customer shall inform us on a weekly basis about the time spent by our personnel in order to perform the ordered services and shall promptly confirm completion of installation, commissioning or any other services once they have been rendered.

2.8 It shall be the responsibility of the Customer to adhere to all safety regulations for the avoidance of accidents on its sites and to take all necessary measures for the avoidance of accidents. The Customer shall inform the personnel charged with executing the services ordered about any safety regulations and measures in operation on its sites. In case safety measures on sites are inadequate the personnel charged with the execution of the ordered services may refuse to start work until the lack of safety measures shall be remedied.

2.9 In case the execution of the ordered services is delayed for reasons not attributable to Bentec, then the customer shall bear any cost for waiting times or additional travelling of our personnel caused by the delay.

2.10 In case the Customer should ask us to perform services which do not form part of the offer, then such services shall be invoiced in accordance with the price for time and materials as set out in Section 8.2. of these Service Conditions, unless otherwise agreed.

## **3. CO-OPERATION OBLIGATIONS**

3.1 Before the execution of the order the Customer shall at its own expense complete all measures and preparations necessary for the execution of the order on his part.

3.2 In particular the Customer shall provide the following at its expense and in a timely manner:

- All civil and earth works as well as all other ancillary works not part of the scope of the order, including all skilled and unskilled labour, materials and tools required for such works;
- the ancillary materials and articles, such as scaffolding, lifting tools (e.g. hoist, crane) and consumables like, fuel and lubricants;
- energy and water at the point of usage including connections, heating and lighting;
- at the installation site, sufficiently large, suitable, dry and lockable rooms for the storage of machine parts, tools and materials and for the installation personnel appropriate working and resting rooms, including sanitation facilities appropriate to the conditions; the Customer shall also take such measures for the protection of our personnel as well as our property on the installation site as it would for its own personnel and material.
- Protective clothing and protection equipment required due to specific conditions prevailing at the installation site.

3.3 Before the start of the services the Customer shall provide to Bentec without having to be prompted any necessary information about hidden electricity and gas lines, water mains and other hidden supply lines as well as information regarding structural stability.

3.4 All of the objects which are to be made available by the Customer shall be at the installation site prior to the start of the execution of the order. Prior to the start of work by Bentec all preparatory work to be performed by the Customer must have progressed to such a stage that the ordered services may be commenced as agreed and be executed continuously. Access ways, place for setting up as well as installation site must be accessible without any obstruction (i.e. levelled and cleared).

3.5 Obtaining of official permits and consents which may potentially be required at the location to perform the services shall be at the cost and risk of the Customer.

3.6 The Customer shall inform Bentec without being prompted about any and all legal, official or other rules and regulations or any other circumstances which must be taken into account when executing the order or which may lead to additional burdens when executing the order.

3.7 In case the execution of the order should be delayed or complicated due to the Customer's non-compliance with its co-operation obligations, then the Customer shall be liable for any additional cost or expense caused by such non compliance.

## **4. DEADLINES, FORCE MAJEURE, DELAY**

The following Sections 4.1 and 4.2 shall apply to service orders instead of Section 4.1 and 4.2 of the Conditions for Sale. In addition Sections 4.3 through 4.6 of the Conditions for Sale shall also apply to service orders.

4.1 Any dates given by Bentec are indicative only and shall not be

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treated as fixed dates, unless they should be expressly identified as guaranteed fix dates.

- 4.2 Timely performance of the ordered services shall be conditional upon complete and proper fulfilment of the co-operation obligations of the Customer. In case such co-operation obligations should not have been properly fulfilled, the agreed deadlines shall be extended appropriately.

## **5. ACCEPTANCE**

- 5.1 Bentec's services shall not be subject to an acceptance procedure unless the customer and Bentec have agreed in writing that a formal acceptance is required. In this event the following Sub- Sections 5.2 - 5.7 shall apply. Should law prescribe a formal acceptance, delivery or handover of the result of the services, as the case may be, shall replace the acceptance.
- 5.2 In case a (partial) acceptance for Bentec's services has been agreed upon Bentec shall inform the customer in writing about the readiness for acceptance. Acceptance shall then occur within (seven) days from the declaration of readiness for acceptance.
- 5.3 Acceptance must not be withheld for minor defects.
- 5.4 In case the Customer should refuse to accept the services the Customer shall provide reasons for refusal of acceptance within 14 (fourteen) days of declaration of readiness for acceptance in writing. In case of a justified refusal Bentec shall remedy any defects in the performed services in an appropriate time and shall render the services in an acceptable manner.
- 5.5 Acceptance shall be deemed to have occurred within 14 (fourteen) days from the declaration of readiness for acceptance unless the Customer grants the acceptance within that timeframe or provides a written justification of its refusal to accept the services.
- 5.6 Should the Customer start to use the services (or the resulting product of the services) without making any reservations, then the services shall be deemed to be accepted.
- 5.7 The Customer shall bear any cost of acceptance.

## **6. TRANSFER OF RISK**

This Section 6 shall replace Section 7 of the Conditions for Sale for all Service Orders.

- 6.1 The risk of accidental destruction or degradation shall pass to the Customer immediately upon performance of the service by Bentec, unless the service is subject to an acceptance (refer to Section 5). In case of services subject to acceptance the risk shall pass to the Customer upon acceptance (cf. Section 5).
- 6.2 In case the start or the performance of the service (e.g. installation), the taking into operation or any other operation is delayed for reasons not attributable to Bentec, or the Customer is in delay of acceptance for any other reason, then the risk shall pass to the Customer upon the start of the delay of acceptance.
- 6.3 The risk of loss, accidental destruction or degradation of material provided by the Customer shall be borne by the Customer at all times, except in the event of wilful misconduct or gross negligence on the side of Bentec.

## **7. DEFECTS**

For service orders in general the provisions of Section 10 of the Conditions for Sale shall not apply. In the event of service orders where Bentec is responsible to achieve a certain result (e.g. repair services) and such is fixed in the service order, or the law predicts that a warranty has to be granted for the services, the regulations of Section 10 of the Conditions for Sale shall apply with the provision that the term „Products“ shall be replaced by the term „ordered service“ and the term „Delivery“ shall be replaced by the term „performance of the services“.

## **8. FEES, PRICES**

### **8.1 General**

Bentec's services are priced either with package prices or by quantities (time, material, etc.). For all pricing variants the following general rules apply:

- a) For invoices and payments the contractual conditions apply. Commissioning shall be priced separately unless specific other arrangements have been agreed.
- b) Prices are exclusive of the Value Added Tax applicable at the time of invoicing.
- c) Unless otherwise agreed the Customer shall besides the agreed fee be liable for all incidental cost, such as travel cost, cost for transport of necessary tools and personal baggage as well as release fees.
- d) Any payments made by the Customer to our personnel at the job site shall not reduce the debt the customer has against Bentec.
- e) Provision of goods and materials, as well as performance of services at the job site shall be documented by written receipts.
- f) Should our personnel not be able to reach the amount of work time required by the applicable collective bargaining agreement due to shortened work hours at the Customers site or due to other circumstances attributable to the sphere of influence of the Customer, then the shortfall of work hours shall be invoiced in accordance with the rules for pricing for time and materials as set out in Section 8.2.
- g) In case Bentec performs services at the request of the Customer which were not in the scope of the ordered services then these shall be invoiced in accordance with the rules for pricing for time and materials as set out in Section 8.2.
- h) In case the services are performed with the Customer's consent at times which are outside the scope of what was foreseen for reasons which are not attributable to Bentec, then the Customer shall reimburse Bentec for any additional cost this may cause to Bentec.

### **8.2 Invoicing for time and materials:**

- a) The following items shall be invoiced:
  - The working time employed to perform the service in accordance with Bentec's hourly rates applicable at the time the service was performed; waiting times are invoiced as working time; travel time shall be invoiced as working time in accordance with the rules stipulated in the collective bargaining agreements;
  - Costs incurred by Bentec for travel related incidental charges
  - Necessary expenses (e.g. travel costs, transportation of baggage, tools and other incidental materials, etc.);
  - The material used to perform the services at the

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- agreed prices
- b) In case the Customer demands services to be performed during times for which supplements are applicable under the collective bargaining agreements then Bentec shall invoice such supplements in addition to the applicable hourly rates.
- c) Working hours performed by Bentec shall be certified to Bentec at least every half month by the Customer. Such working hour certifications shall form the basis for the invoices.

## 8.3 Invoicing for package prices

- a) A package price shall include the agreed services under the working and other conditions disclosed to us at the time the contract was signed. It is based upon the weekly working time applicable to us, unless something else has been agreed upon.
- b) At our request the Customer shall certify, according to its best knowledge and without any binding effect, after each half month the time employed by our personnel to perform the agreed services.

## **9. PAYMENT TERMS**

The following payment terms shall apply in addition to Section 14 of the Conditions for Sale.

- 9.1 Bentec's services shall be invoiced immediately after the performance of the services, unless the services are subject to a (partial) acceptance (cf. Section 5). Services which are subject to a (partial) acceptance (cf. Section 5), shall be invoiced after having obtained the (partial) acceptance.
- 9.2 Under contracts with duration of more than one month Bentec may invoice all services which are not subject to an acceptance (cf. Section 5) at the end of each calendar month throughout the duration of the contract. In the event that an acceptance is agreed, Bentec may require that a monthly partial acceptance is performed.