

General Conditions of Service and Installation Works

Valid: April 1st, 2020

I. Application

Unless specifically agreed otherwise, AFS Group Field Service GmbH (AFS) operates exclusively on the basis of the version of these Conditions of Service and Installation Works that is valid at the time of carrying out the work.

II. Prices, Costs and Invoicing

1. In the absence of a written agreement specifying different conditions, the pricing and additional costs as set out in Appendix 1 are applicable to AFS assignments.
2. The hourly rates quoted in AFS offers are based on the set tariffs (and exchange rates in the case of overseas assignments) valid at the time of offer. If, during a period of time between conclusion of the contract and completion of the works, the tariffs or exchange rates relevant to the payment of personnel deployed by AFS change, AFS reserves the right to amend these rates.
3. AFS personnel keep a record of their working hours on timesheets. The timesheets will document the period and correctness of work. They are the basis of accounting for AFS services. Timesheets are issued in duplicate, one copy remaining with the person responsible for the purchaser after his or her signature, to facilitate checking the subsequent invoice.
4. Waiting times, down times and hindrances will also be noted on the timesheets.
5. On completion of the work and before AFS personnel leaves site, the purchaser is obliged either to approve the timesheet entries by signing off on them or to immediately notify the AFS project manager in writing by means of detailed corrections to the timesheets. Should such a correction by the purchaser cast doubt on the entries of the AFS staff member, the parties shall come to a settlement on the matter without delay.
6. If the purchaser neither approves nor contests the timesheets within realistic deadlines, despite requests from AFS, the entries will be considered approved on expiry of a set deadline.
7. If, for reasons for which AFS is not responsible, the purchaser wishes to confirm the correctness of the works at a later date, for example because of delayed commissioning, this shall be agreed between the parties in writing. If in such a case it is determined that an additional deployment to site of AFS staff is required, this visit shall be the subject of a separate invoice at the agreed hourly rates plus travel expenses.
8. AFS invoices are payable in full within 14 days from date of invoice. AFS has the right to issue interim invoices if site work is interrupted, or in the case of deployments which cover a long period of time. These invoices are also payable in full within 14 days from date of invoice.
9. If AFS has also supplied parts or equipment, other payment terms can be applicable to the supply orders.
10. All taxes and duties relating to overseas assignments carried out by AFS personnel are to be borne by the purchaser. If permitted, the purchaser is obliged to deal with the local authorities and to bear all related costs.

III. Travel and Transportation Costs

1. Travel and waiting times are subject to invoicing, as is time spent on preparation and subsequent actions, both in the offices of AFS and at the deployment location, such as procurement of authorisations, organisation of accommodation at the deployment location, packing and unpacking, preparation of invoicing documentation etc. The times in service shall be invoiced per hour or partial hour without surcharges. The hours spent shall only be entered in the timesheets according to II.3. if the actions were carried out on site by the staff member deployed.
2. Travel expenses arising from interruptions for which AFS is not responsible shall be the subject of an additional invoice to the purchaser.
3. AFS always tries to combine several deployments in order to avoid single destination trips. In cases where this can be successfully managed, all overall costs such as travel time, allowances, transportation costs, etc. are invoiced proportionately.
4. If the purchaser takes care of the transportation of AFS personnel from their accommodation to site and back, it shall also bear the costs for this. If in such cases public transport is used, the purchaser shall reimburse the transport costs.
5. AFS invoices the purchaser for all travel, transportation, taxi and hotel expenses, visa, re-booking and excess baggage fees, and all other auxiliary costs occurred, for example expenses for sending or storing baggage and tools, communication charges, fees for official authorisations etc., for each deployment, adding an admin surcharge of 15%.

General Conditions of Service and Installation Works

IV. Allowances / Subsistence Expenses

1. Expenses incurred for AFS staff deployments are not included in AFS prices. Unless otherwise specifically agreed in writing the purchaser shall arrange accommodation for AFS staff and bear the related costs. Accommodation shall be in a mid-range hotel based on European standards (at least 3*), i.e. single room with shower or bath, WC, air conditioning and/or heating, depending on climatic requirements, with catering services available. Otherwise AFS has the right to find alternative accommodation for the staff member and to invoice the purchaser for accommodation according to the previously mentioned standards.
2. In addition to the hourly rates, AFS invoices lump sums for additional meal costs and, in cases where the purchaser does cover the accommodation, accommodation expenses according to Appendix 1.
3. If AFS personnel incur costs for accommodation and meals which exceed the amounts in Appendix 1, the additional costs will also be invoiced.

V. AFS Personnel – Inability to Work

1. AFS staff are also entitled to the subsistence allowance according to Appendix 1 for periods during their stay at the deployment location when they are unable to work due to illness, accident or any other reason for which neither the staff member nor AFS is responsible.
2. For deployments in countries which have a social security agreement with Germany, the rules of that agreement shall be valid for cases of illness or accident of AFS personnel. If it becomes necessary as a result of an illness or an accident that an AFS staff member return earlier from site than planned, any additional costs incurred shall be borne by the purchaser.

VI. Installation Tools and Equipment

1. Installation tools carried by AFS staff or sent to the deployment location by AFS, remain the property of AFS.
2. Costs for sending tools and equipment to and back from site shall be borne by the purchaser.

VII. Involvement of the Purchaser

1. The purchaser shall contribute to the successful execution of AFS personnel's work as necessary, at its own cost.
2. The purchaser shall take all necessary measures to secure the safety of persons and property in the workplace.
3. The purchaser shall instruct the AFS personnel in the prevailing safety regulations if these are relevant to AFS personnel and the work to be carried out. The purchaser shall notify AFS of any infringements of AFS personnel against such safety regulations.
4. The purchaser shall make sure that all measures to ensure the safety of AFS personnel are taken, so that for example AFS staff shall have no contact with hazardous or radioactive substances. Before starting work, AFS personnel shall be informed by the purchaser's responsible safety officer or works doctor about:
 - possible risks
 - required safety procedures
 - distributed special personal body protection materials
 - necessary immunisations.

VII. Duties of the Purchaser

1. The purchaser shall inform AFS in the purchase order or in an accompanying document of all information relating to the location, the company, and the equipment as well as safety and environmental regulations, which is required to carry out the services ordered.
2. AFS is responsible for adherence to national and local worker protection or environmental protection regulations and to the regulations of the end customer. If particular knowledge of and adherence to regulations of the end customer, for example plant regulation, is required, the purchaser shall inform AFS of these also in the purchase order or in an accompanying document, attaching copies of the relevant regulations.
3. AFS is obliged to become familiar with travel and deployment conditions relating to the particular country of deployment and to inform the customer of specific matters which could influence the contractual work.
4. The purchaser is obliged to meet the necessary special requirements to protect persons and property at the deployment location at its own cost, and to instruct the personnel concerned with carrying out the ordered services regarding the general and specific safety regulations and safety-related behaviour at the deployment location and to document the instruction.

General Conditions of Service and Installation Works

5. Each party shall inform the other in writing immediately of infringements against any safety or environmental regulations, and of any incident which could jeopardise the proper execution of the ordered services, the reputation of the purchaser with the end customer or the working relationship with the purchaser's staff and/or the end customer.

VIII. Assistance of the purchaser

1. The purchaser shall provide assistance free of charge in particular in relation to:
 - a. Provision of the required amount of suitable auxiliary and skilled workers for the time necessary to carry out the service. The qualifications of the skilled trades workers such as bricklayers, fitters, electricians, electronics technicians etc. is dependent on the type and extent of the work to be carried out during the execution of AFS service. The auxiliary and skilled workers shall follow the instructions of the AFS site supervisor or AFS staff. AFS does not accept any liability for the work of these auxiliary and skilled workers. If a fault or defect arises as a result of an instruction by the site supervisor, articles VII. and VIII. apply.
 - b. Carrying out of all earthworks, building and ballast works, scaffolding and safety measures, including procurement of the necessary construction materials and preparation of the site area as well as provision of suitable storage spaces on solid ground adjacent to the installation site.
 - c. Provision of the necessary plant and heavy tools, for example hoists, compressors, welding and burning equipment etc., assembly equipment and assembly jigs (these must be safe to use and comply with accident prevention regulations, they are to be provided, maintained and replaced by the purchaser), materials, such as scaffolding timbers, wedges, underlays, cement, plaster and sealing compound, lubrication, fuel, ropes, winches, etc. as well as the required measuring instruments and devices, if these are not included in the basic set of AFS personnel tools (for example spirit level).
 - d. Provision of heating, operating power, water, electrical power, compressed air and lighting to the workplaces and the necessary connections (e.g. internet) adjacent to site as well as workshops to carry out small jobs.
 - e. Provision of the necessary dry, lockable and possibly air-conditioned rooms for storage of the AFS personnel tools and the parts required to be installed or to carry out the service.
 - f. Provision of suitable lockable and possibly air-conditioned rest and work rooms with heating, lighting, washing and sanitary facilities.
 - g. Transportation of the parts to be installed or maintained or other parts or pieces required to carry out the service from store or loading area to place of work at its own risk; protection of workplace and materials from damaging influences of all kinds; securing of construction pits and openings which do not belong to AFS scope of service according to accident prevention regulations; procurement of burning and welding approvals including continuous precautions for protection and extinguishing if the work is carried out in areas at risk of fire and explosion, as well as ventilation as may be required.
 - h. Provision of the materials and carrying out all other actions necessary for the installation and commissioning of the equipment supplied, and in order to carry out the contractually agreed services.
 - i. Not making changes to the specification of axes and heights before the work starts.
 - j. Cleaning of the work area before repair, installation and other work commences, prior to arrival of AFS personnel on site.
2. The assistance of the purchaser must fully guarantee that work can commence immediately after the arrival of AFS personnel on site and can be continued without delay until acceptance.
3. Down times of AFS personnel because of missing equipment that should have been provided, lack of materials or auxiliary or skilled workers shall be paid for to AFS by the purchaser.
4. If the purchaser does not fulfil its obligations as stated above, AFS has the right, however not the obligation, to carry out the duties of the purchaser on its behalf and at its cost, without prejudice to our other rights and entitlements.

IX. Force Majeure

1. The parties to the contract are not responsible for failure to fulfil their contractual obligations if the failure is due to an obstacle beyond their control or in particular to one of the following causes:

Fire, natural catastrophe, war, sequestration, export ban, embargo or other authoritative measure, general shortage of raw materials, rationing of energy consumption, employment disputes, or if contraventions of contract on the part of suppliers result from one of these causes.

General Conditions of Service and Installation Works

2. The cause of the obstacle and its removal shall be notified to the other contractual partner immediately.
 3. Each party is entitled to terminate the contract by notice in writing if its fulfilment is prevented for more than six months.
- X. Deadlines, Delays**
1. A deadline is met if the service is ready for acceptance by the purchaser before the deadline elapses, in the case of a contractually agreed trial to carry it out.
 2. If AFS work is delayed by measures related to employment disputes, in particular strikes and lockouts, or for circumstances arising for which AFS is not responsible, and if such hindrances are proven to have considerable influence on the completion of the works, there shall be a reasonable extension to the agreed deadline.
 3. If the purchaser suffers damages due to a delay for which AFS is responsible, it shall have the right, without prejudice to other claims, to demand a lump sum delay penalty. After a grace period of one week, the penalty that can be claimed for each full week of delay amounts to 0.5% as a whole but not more than 5% of the price of that part of the service to be carried out by AFS which cannot be used in time because of the delay.
 4. If the purchaser, with just cause, gives AFS a reasonable extension of deadline to complete the service, and if the deadline is not met, the purchaser has the right to withdraw from the contract within the scope of statutory provisions. At the demand of AFS the purchaser is obliged, within a reasonable deadline, to declare whether it will be making use of its right to withdraw.
 5. Further claims in respect to delay can only be made in accordance with article XIV.2 of these conditions.
- XI. Acceptance**
1. The purchaser is obliged to accept the service immediately after AFS has given notification of readiness to the purchaser and, if contractually agreed, a test of the installed item has taken place.
 2. If the service is found not to comply with the contract, AFS is obliged to rectify the defect, unless the defect is immaterial to the interests of the purchaser or results from a circumstance for which the purchaser is responsible. The purchaser has no right to refuse acceptance because of an insignificant defect.
 3. If acceptance is delayed for reasons for which AFS is not responsible, acceptance is deemed to be given after two weeks from the date of the notification of readiness.
 4. Upon acceptance AFS is no longer liable for recognisable defects as long as the purchaser has not reserved the right to claim for a particular defect.
- XII. Claims for Defects**
1. After acceptance AFS is liable for defects without prejudice to any other claim of the purchaser, irrespective of paragraphs 5 and 6 below and article XIV., if AFS has to remedy the defects.
 2. The purchaser shall notify AFS immediately in writing of any defect found.
 3. AFS is not liable if the defect is immaterial to the interests of the purchaser or results from a circumstance for which the purchaser is responsible.
 4. If the purchaser or a third party makes changes to or carries out maintenance work on the installation without the prior permission of AFS, the liability of AFS for any consequences is null and void.
 5. Only in urgent cases where the safety of the plant is at risk, or to defend against disproportionately large damage, in which case AFS shall be informed immediately, or if AFS has without just cause let a deadline expire without having remedied the defect, the purchaser has the right within the scope of the statutory provisions to remedy the defect itself or have it remedied by a third party and to demand from AFS the reimbursement of the costs incurred.
 6. In case of justified complaint AFS shall bear the costs of remedying the defect as long as this does not cause a disproportionate burden on AFS.
 7. If AFS fails, without just cause, to meet a reasonable deadline for remedying a defect, the purchaser has the right within the scope of the statutory provisions to reduce the price. Only if the service is proven to be immaterial for the purchaser despite the reduction in price, can the purchaser terminate the contract.
 8. Further claims can only be made in accordance with article XIV. 3 of these conditions.

General Conditions of Service and Installation Works

XIII. Liability of AFS, Exclusion of Liability

1. If the installed item cannot be used by the purchaser as contractually stipulated because of culpably omitted or incorrect suggestions or advice by AFS, whether before or after conclusion of the contract, or by the culpable violation of other contractual ancillary obligations, the provisions of articles XIII. und XIV. 2 shall apply without prejudice to further claims of the purchaser.
2. For damage other than to the installation item itself AFS is only liable, for whatever legal reasons:
 - a. in case of intent and gross negligence,
 - b. in the event of culpable injury to life, body or health,
 - c. for defects which AFS has maliciously concealed,
 - d. insofar as liability is assumed under the Product Liability Act for personal injury or damage to objects used privately,
 - e. in the case of having given a guarantee.
3. In the event of culpable breach of significant contractual obligations, AFS shall also be liable for simple negligence, but limited to reasonably foreseeable damage typical of the contract.
4. Further claims are excluded.

XIV. Statute of Limitations

1. All claims from the purchaser for whatever legal reason expire after 12 months.
2. For claims for damages under article XVI. 3 a-d the legal deadlines apply. If AFS carries out installation services on a building structure and causes a defect to it, the legal deadlines also apply in this case.

XV. Replacement by Purchaser

If for reasons for which AFS is not responsible the tools or equipment provided by AFS are damaged or lost on the installation site, the purchaser is obliged to replace these losses. Damage which is found to be the result of normal wear and tear is irrelevant.

XVI. Applicable Law, Place of Jurisdiction

1. For all legal relations between AFS and the purchaser, the law of the Federal Republic of Germany applicable to the legal relations between domestic parties shall apply exclusively.
2. Place of jurisdiction is the court responsible for the registered office of AFS. AFS, however, has the right to take legal action in the main place of business of the purchaser.

Note.

AFS will handle all personal data of purchaser exclusively in compliance with the German Federal Data Protection Act and the EU GDPR.