

## General Terms and Conditions of Service

### 1. Scope

These General Terms and Conditions of Service shall apply with respect to all services performed by Ferrum, including the assembly, commissioning, production monitoring, and repair of equipment and facilities (hereinafter "services")

### 2. Subject Matter of the Agreement

The subject matter of the Agreement shall be the services performed by Ferrum on the equipment or facility designated in the Order Confirmation by Ferrum. Ferrum undertakes to have the services performed with diligence by qualified personnel.

### 3. Ordering and confirmation of agreed services

The agreed services shall be ordered in writing and confirmed by the Customer in accordance with the terms of the Order Confirmation, but in no case later than 15 working days prior to the agreed performance date, barring which the agreed date of performance cannot be guaranteed and the reservation of service personnel by Ferrum may be subject to cancellation. The same applies if payment of an agreed advance payment does not take place within the deadline set.

### 4. Postponement of performance date / Cancellation of services following confirmation

The Customer may postpone without charge the agreed performance date up to 15 working days before commencement of performance of the agreed services. In the event of a postponement made within less than 15 working days, the following charges shall be billed to the Customer:

i.	Postponement of less than six months	CHF 200.00
ii.	Postponement of more than six months	CHF 300.00
iii.	Incurred costs (including visa, hotel, flight, and rental vehicle costs)	effective costs and additionally a booking flat rate as per the Fee Schedule
iv.	Minimum value of the order	as per the Fee Schedule

Where the Customer cancels the agreed date of performance, Ferrum reserves the right to bill an amount equivalent to 10% of the flat-rate amount agreed upon or of the cost estimate. Costs already incurred (including visa, hotel, flight, and rental vehicle costs) shall be billed in accordance with the effective costs incurred.

Costs incurred by Ferrum in foreign currencies shall be determined in accordance with the exchange rate charged to Ferrum.

### 5. Local laws, regulations and safety rules

It shall be incumbent upon the Customer, no later than at the time of ordering services, to inform Ferrum of any local laws and regulations of relevance with regard to performance of the services, the Customer's operations, and disease and accident prevention.

### 6. Operating instructions

With the conclusion of the present Agreement, the Customer warrants that it has at all times operated the equipment or facility on which the agreed services are to be performed in full conformity with the provisions of the operating instructions. Where it is determined that the Customer did not at all times operate the equipment in full conformity with the provisions of the operating instructions and where this gives rise to a need for unforeseen additional work, the costs thereof shall be borne by the Customer. The added expense for the additional services shall be billed in accordance with the rates and guidelines set forth in the Fee Schedule and with the terms of Section 21.

### 7. Alterations to the equipment or facility

With the conclusion of the present Agreement, the Customer warrants that no such alterations have been made to the equipment or facility since the time of purchase of the equipment or facility as may be capable of affecting, delaying, or rendering impossible performance by Ferrum of its contractual obligations.

In the event that alterations have been made to the equipment or facility since the time of the purchase of the equipment or facility, Ferrum shall be notified thereof in writing by no later than the time of the ordering of the services, insofar as said changes are not already known to Ferrum by other means.

Where such notified alterations substantially impair the performance of Ferrum's duties, Ferrum shall be entitled to demand a modification and/or addition to the relevant provisions of this Agreement or to rescind the Agreement. Costs and risks resulting from temporal delays in performance of the services shall be borne by the Customer. In the event that Ferrum chooses to rescind the Agreement, costs already incurred (including visa, hotel, flight, and rental vehicle costs) shall be billed to the Customer in accordance with the costs effectively incurred. All liability on the part of Ferrum for the consequences of rescission of the Agreement is excluded.

In the event of impairment of the performance of Ferrum's duties as a result of alterations of which it was not notified, the Customer shall assume all costs and risks arising therefrom.

### 8. Authorizations

The Customer shall provide all requisite assistance to ensure that Ferrum personnel receive in good time their visas and other official entry, exit, residence and work permits as required, as well as any other necessary authorizations.

The Customer shall provide all requisite assistance to ensure that Ferrum is granted in good time the authorizations required for the import and export of tools, equipment, and material. The fees and duties imposed in connection therewith shall be borne by the Customer.

Where the absence of a required authorization is attributable to the Customer's responsibility, and performance of the services by Ferrum is thereby rendered impossible or is delayed, all liability on the part of Ferrum shall be excluded.

### 9. Preparatory works

The Customer shall take all necessary steps to ensure that performance of the services may be commenced in a timely manner and completed without hindrance or interruption.

The Customer shall complete all owner-incumbent construction and other preparatory works in a professional manner at its own expense and under its own responsibility, and, as the case may be, in accordance with the documentation provided by Ferrum.

The Customer shall make certain that the access routes for transport to the installation site are in usable condition and that the service site is itself in such condition that performance of the services is possible; unhindered access to the service site shall be assured and all necessary rights of pedestrian and vehicular access shall be obtained by the Customer.

It shall be incumbent upon the Customer to provide heated or air-conditioned lockable rooms for the Ferrum service management team, a commons room and changing rooms for the service personnel, including appropriate sanitary facilities. It shall further make available sealable dry rooms for the storage of tools, equipment, and material. All such rooms shall be located in the immediate vicinity of the service site.

The Ferrum personnel shall be ordered only after all preparatory works have been completed or are capable of being completed prior to the arrival on site of the Ferrum personnel.

**10. Accident prevention, medical care, and withdrawal of personnel**

The Customer shall, at its own expense, take the necessary accident prevention and safety measures. Specifically, it shall expressly call to Ferrum's attention the need for showing special consideration for the Customer and/or other contractors, or for ensuring compliance with specific regulations. The requisite accident prevention and safety measures shall be taken prior to commencement of performance of the services and shall be maintained in place throughout the service performance period.

In the event of accident or illness on the part of Ferrum personnel requiring medical care or hospitalization, the Customer shall assist Ferrum in making the arrangements for the requisite medical treatment. Ferrum reserves the right to bring home its personnel at any time for medical reasons. The Customer shall provide Ferrum with reasonable assistance in making arrangements for the return home. The costs of such return shall be borne by Ferrum.

Ferrum shall be entitled to refuse or to cease performance of services where the safety of its personnel cannot be guaranteed.

Where Ferrum personnel, for reasons for which Ferrum may not be held responsible, are endangered or significantly hindered in the performance of their work, Ferrum shall be entitled to order its personnel to return home. In such case, as in cases where the personnel is retained on site following completion of their work, the waiting time, travel expenses, and a per diem allowance shall be billed to the Customer in accordance with the agreed rates as set forth in the Fee Schedule.

**11. Designs, 3-D data, and other technical documents**

The Customer shall, at Ferrum's request, provide Ferrum with all such designs and technical documents in the Customer's possession (e.g., cleaning logs, maintenance logs, maintenance schedules) as may be necessary or expedient in connection with the performance of the services.

Ferrum shall be responsible for the diligent preparation of designs, 3-D data, and other technical documents. Unless otherwise expressly promised in writing, all specifications and measurements indicated in the designs, 3-D data, and other technical documents are provided without warranty.

Where either Party provides the other Party with designs, 3-D data, or other technical documents, whether prior to or following conclusion of the agreement between them, those designs, 3-D data, and technical documents shall remain the property of the Party that provided them.

The receiving Party shall not make use of the designs, 3-D data, and technical documents for any purpose other than that for which they were provided unless so authorized in writing by the other Party. They may not be used, copied, reproduced, transmitted to third parties, or made public without the consent of the providing Party.

**12. Customer personnel, supplies, and material**

Upon the arrival on site of the Ferrum personnel, the Customer shall make available at its own expense qualified skilled workers, such as fitters, welders, electricians and assistants, outfitted with the tools (including special Ferrum tools) and equipment they require for the performance of their jobs. It shall be incumbent upon such personnel to follow the instructions concerning their work given by Ferrum personnel, with no implication of a contractual relationship between them and Ferrum.

The Customer shall provide at its own expense, from the time of the arrival of the Ferrum personnel at the service site, operational cranes and hoisting equipment together with operating personnel, the requisite scaffolding and means of transport for the transport of personnel and material, and the appropriate workshop equipment and measuring devices.

The Customer shall provide at its own expense the requisite consumables and installation material, cleaning and lubricating products, small parts for assembly works, etc.

Materials supplied and to be assembled by Ferrum shall be stored by the Customer in such manner that they are protected from all harmful influences. Prior to commencement of performance, inspection shall be made by the Customer, in the presence of the Ferrum personnel, in order to verify that no material has been lost or damaged. Any materials that are found to have been lost or damaged while in storage shall be replaced or repaired by Ferrum at the Customer's expense.

The Customer shall supply the necessary electric power and lighting, including the requisite connections to the service site, as well as heating, compressed air, water, steam, fuel, etc.

The Customer shall make available to Ferrum at the service site, free of charge, such communications devices as telephones, fax machines, Wi-Fi connections and PC modems.

Where the Customer fails to perform these obligations, or performs them only in part, Ferrum shall be entitled to carry out these tasks itself or to engage third parties for the performance thereof. The costs arising therefrom shall be borne by the Customer. The Customer shall hold Ferrum harmless against third-party claims.

**13. Ferrum tools and equipment**

Ferrum provides its personnel with the customary tools for the performance of the works. The Customer may rent or purchase from Ferrum additional tools, equipment, and measuring and testing devices.

Upon conclusion of performance of the services, the Customer shall return, without delay, to the address indicated by Ferrum, the tools and equipment provided by Ferrum.

The tools provided by the Customer for use by Ferrum personnel shall be returned to the Customer upon conclusion of the works. In the absence of instructions to the contrary they shall be held at the Customer's disposal, and at the Customer's own risk, at the service site.

Ownership of the tools purchased from Ferrum by the Customer and used thereafter by Ferrum during performance of the services, shall pass to the Customer upon conclusion of the works. In the absence of instructions to the contrary they shall be stored, at the Customer's disposal, and at the Customer's own risk, at the service site.

**14. Risk**

During performance of the services, the Customer shall bear the risk for the material supplied by Ferrum and for the tools, equipment, and materials provided by the Customer. Ferrum shall retain its right to the agreed consideration also in the event that the services cannot be performed, or can be performed only in part, due to damage or destruction of tools, equipment, or materials.

**15. Delays and interruption of service performance**

Where delays in performance of the services occur, for which Ferrum may not be held responsible, the waiting times shall be recorded and charged to the Customer in accordance with the rates and guidelines set forth in the Fee Schedule and with the terms set forth in Section 21.

Where performance of the services is interrupted for reasons for which Ferrum may not be held responsible, the Customer shall be entitled to request of Ferrum the withdrawal of its personnel, whereby the costs of their homeward travel and subsequent return to the place of performance shall be borne by the Customer. The Customer shall further bear the additional costs incurred by Ferrum as a result of the interruption and recommencement of performance of the services.

Where a postponement or interruption of performance of the services occurs for reasons for which the Customer may be held responsible, Ferrum shall be entitled to inspect the equipment or facility before recommencing performance of the services. Where, as a result of the inspection, Ferrum reaches the conclusion that certain work is required, Ferrum shall inform the Customer thereof and shall be entitled to refuse to make performance of further services until such time as the requisite work has been completed. The cost of the inspection and of any such work as may be required shall be borne by the Customer.

**16. Additional work during performance of services**

In the event that Ferrum determines during the course of performance of the agreed services that further unforeseen services are required, Ferrum shall be entitled to perform those additional services, in addition to the agreed services, insofar as this appears to be judicious and feasible at a reasonable expense, using the personnel on hand. The added expense for the additional services shall be billed in accordance with the rates and guidelines set forth in the Fee Schedule and with the terms of Section 21.

Where it is not possible to perform the additional services immediately, at a reasonable expense, Ferrum shall prepare a new offer for the additional services.

**17. Work performed at the customer's instruction**

The Customer shall not be entitled without the written consent of Ferrum to employ Ferrum personnel for the performance of works not contractually agreed. Under all circumstances, Ferrum personnel shall be authorized to perform services solely on the equipment or facilities covered by the Service Agreement.

**18. Certification of service performance**

**18.1 Certification of working hours**

The Customer shall certify the number of hours worked by Ferrum personnel by means of working hours report forms. The working hours report forms shall be signed by the Customer at the service site upon completion of performance of the services and delivered to the Ferrum personnel prior to their departure.

The working hours report form serves as the basis for calculating the personnel costs in accordance with the terms of Section 21.2.1. Where the Customer fails to complete the working hours report form in good time, the records of their working hours maintained by the Ferrum personnel shall serve as the basis for the calculations.

**18.2 Work log**

Ferrum shall keep a log of all services, clearly indicating all services that have been performed. The log shall be countersigned by an employee of the Customer. Ferrum shall furnish the Customer with a copy of the log upon conclusion of performance of the services.

Following the performance of each service by Ferrum, the equipment or facility shall be approved for production operations jointly with the Customer. The grant of such approval shall be jointly noted in the work log or in a separate document.

**19. Working hours**

Subject to contrary mandatory provisions at the place where the services are performed, the working hours shall be determined in accordance with the terms of the Fee Schedule.

The number of working hours in a normal week shall not exceed 40, and shall be distributed, as a rule, over five working days. Where for reasons for which Ferrum may not be held responsible, a shorter working schedule must be adhered to, the normal working time of 40 hours shall be billed.

With regard to the distribution of the working hours, Ferrum personnel shall be guided by the Customer's operational circumstances and local conditions. The normal daily working time shall not, as a rule, exceed eight hours per day, between the hours of five o'clock a.m. and 10 o'clock p.m. local time.

Hours worked in excess of the daily working time between five o'clock a.m. and 10 o'clock p.m. shall be considered as overtime.

Overtime work shall be authorized only with the consent of Ferrum personnel and of the Customer. Overtime hours should not, as a rule, exceed the normal working time by more than two hours per day, and should not exceed the normal weekly working time by more than 10 hours.

As night work shall be considered the number of normal daily working hours worked between the hours of 10 o'clock p.m. and five o'clock a.m. (excepting overtime night work).

As overtime night work shall be considered the overtime hours worked between 10 o'clock p.m. and five o'clock a.m. local time.

As Sunday work shall be considered work on Sundays or on the legal days of rest in the place where the services are performed.

As holiday work shall be considered work on the official public holidays recognized in the place where Ferrum is headquartered.

**20. Travel time and other time accounted as working hours**

Travel hours and a reasonable number of hours for job preparation and processing time upon arrival shall be accounted as working hours in accordance with the terms of Section 19.

As travel time shall be considered:

- i. time required for travel to and from the service site;
- ii. time required for arrangement of accommodations at the service site and for official registration and deregistration formalities.

Where no appropriate accommodations and catering facilities are available in close proximity to the service site, the amount of time in excess of one half-hour required daily for one-way travel between the place of accommodation and catering and the service site (commuting time) shall be accounted as working hours.

All expenses incurred in this connection, as well as the costs for the required use of appropriate transport facilities or of a rental vehicle shall be borne by the Customer.

Where Ferrum personnel, for reasons for which Ferrum may not be held responsible, are prevented from performing the services or are retained on site for whatsoever reason following completion of performance of the services, Ferrum shall be entitled to bill as working hours the resultant waiting time. All other costs incurred in connection therewith shall also be borne by the Customer. This shall apply equally to other downtimes, such as holidays at the place where the services are performed, for which Ferrum may not be held responsible.

**21. Pricing policies**

**21.1 General rule**

Subject to diverging price agreements, services performed by Ferrum are charged in accordance with the pricing rates listed on the Fee Schedule, for actual work performed (on a results/time and materials basis).

The prices are indicated exclusive of VAT.

## 21.2 Time and materials pricing

### 21.2.1 Personnel costs

Personnel costs are calculated on the basis of certified working hours as set forth in Section 18.1.

For working hours, overtime, night work, Sunday and holiday work time, and other time accounted as working hours, the pricing rates listed in the Fee Schedule shall apply.

For works performed under particularly dirty or difficult conditions, e.g., at great heights or depths, or where special protective suits or respiratory protection equipment must be worn, Ferrum reserves the right to bill an additional hourly wage supplement as set forth in the Fee Schedule.

### 21.2.2 Travel expenses

As travel expenses shall be considered the costs of travel to and from the service site and for travel within the country where the services are performed using the means of transport to be chosen by Ferrum, including ancillary costs, such as for insurance; freight; customs; baggage; passport and visa fees; entry, residence, and work permits; medical examinations prior to departure and following return; vaccination of Ferrum personnel.

In the absence of special circumstances requiring the use of a different class of travel, travel expenses shall be billed as follows:

- i. for air travel: economy or business class;
- ii. for rail and maritime travel: first class;
- iii. for personal vehicles: kilometer allowance at the rates indicated in the Fee Schedule or in accordance with actual rental vehicle costs.

### 21.2.3 Accommodation and subsistence costs (per diem allowance)

The Customer shall provide Ferrum personnel with suitable and sufficient meals and proper and clean, heated and air-conditioned individual accommodations at the service site or in close proximity thereto. The expense thereof shall be borne by the Customer and is not included in the Agreement price.

In order to cover subsistence and accommodation costs not directly assumed by the Customer, and for ancillary costs for beverages, laundry, etc., a per diem allowance shall be billed at the rates indicated in the Fee Schedule.

Ferrum reserves the right to adjust these rates where an increase occurs in subsistence costs prior to commencement or in the course of performance of the services, or where the stipulated per diem allowance proves to be insufficient.

### 21.2.4 Home visits

Ferrum personnel working away from home for extended periods shall be entitled to home visits.

The length of time spent away from home that entitles such personnel to a paid home visit is determined in accordance with the terms of the Fee Schedule. Travel costs from the service site to Ferrum headquarters and back shall be borne by the Customer in accordance with Section 21.2.2.

The time expended for travel back and forth and the per diem allowance shall be billed in accordance with the terms of Section 21.2.1 and Section 21.2.3.

Insofar as the conditions at the service site permit, Ferrum personnel may choose to be accompanied by their domestic partners. The travel expenses incurred in connection therewith shall be charged to the Customer in accordance with the terms of Section 21.2.2.

### 21.2.5 Tool and equipment costs in accordance with Section 13

Tools, equipment, and measuring and testing devices shall be billed to the Customer in accordance with the terms of the Fee Schedule. The period of use is calculated beginning with the date of departure from the Ferrum headquarters and up to and including the date of return to Ferrum headquarters.

Retained tools and equipment shall be billed to the Customer at their replacement value.

Transport and insurance costs, together with further expenses, duties, and fees incurred in connection with the import and export of the tools and equipment shall be borne by the Customer and are not included in the price of the Agreement.

### 21.2.6 Costs for consumables and assembly small parts

The costs of consumables and small parts for installation and assembly supplied by Ferrum shall be charged on the basis of actual expenditure.

### 21.2.7 Illness and accident costs

In the event of illness or accident, it shall be incumbent upon the Customer to continue with payment of the per diem allowance as set forth in the Fee Schedule for a period of 10 days as of the date on which treatment commences.

Where the anticipated recovery period for the ill or injured employee is greater than 10 days, it shall be incumbent upon Ferrum to provide at its own expense an adequate replacement.

## 21.3 Diverging price agreements

The Parties may agree in writing that the performance of services is not to be charged for actual work performed. In such cases, the consideration depends on the arrangements made in the Agreement or an appendix to the Agreement.

Where, following the conclusion of their Agreement, the Parties agree upon a change in the substance or scope of the agreed services entailing additional expenditures on the part of Ferrum, the additional consideration owed by the Customer as a result thereof shall be determined in accordance with the terms set forth in Section 21.2.

## 21.4 Taxes, duties, fees, social insurance contributions

Taxes, duties, fees, social insurance contributions, and the like, payment of which is incumbent upon Ferrum or its personnel in connection with the conclusion of the Agreement or with performance of the services outside of Swiss territory, shall be billed to the Customer.

Taxes (e.g. VAT), duties and fees applicable in the country where the services are performed, that are charged directly to the Customer in connection with the conclusion of the Agreement and performance of the services, are not included in the price as set forth in Sections 21.2 and 21.3 and may not be deducted by the Customer. These taxes, duties and fees are to be paid by the Customer to the competent authorities.

## 22. Payment terms

Unless otherwise agreed in writing, Ferrum shall bill for its services and costs upon conclusion of performance of the services. Where performance of the services requires more than one month, Ferrum reserves the right to bill on a monthly basis for services performed. Unless otherwise agreed in writing, all bills shall be payable within 30 days of delivery of the bill. Ferrum reserves the right to demand advance payment in an amount up to that of the cost estimate or that of the contractually agreed consideration.

Payment shall be made by the Customer in the full amount stated on the bill, without deduction of any kind (cash discount, expenses, taxes, fees, etc.).

The Customer waves all rights of set-off. In particular, the Customer shall under no circumstances be entitled to hold off payment or to reduce the amount thereof, including in cases where defects have been notified or counterclaims asserted. Payment shall also be required in cases where performance of the services has been delayed, interrupted, or rendered impossible, for reasons for which Ferrum may not be held responsible.

In the event of failure to make payment within the agreed time limits, Ferrum shall assert, without separate notice, its right to default interest at a rate of 5%, subject to the assertion of further claims to which it is entitled. Payment of default interest shall not result in a release from the obligation to make payment in conformity with the contractually agreed terms.

### **23. Service performance period**

A fixed period for performance of the services shall be binding on Ferrum only where it has been confirmed in writing by Ferrum. The performance period shall commence upon completion by the Customer of the preparatory works as set forth in Section 8, 9, 10, 12 and 13. Performance shall be deemed to have been made in a timely manner where the equipment or facilities are ready for acceptance upon expiry of the performance period. Performance shall also be deemed to have been made in conformity with an agreed performance period where, despite the absence of spare parts or the need for further works, operation of the equipment or facility for its intended purpose remains possible or is not impaired.

An agreed performance period shall be extended by a reasonable amount of time in the following cases:

- i. where the information required by Ferrum for performance of the works, as set forth in Section 5, is not received by Ferrum in a timely manner;
- ii. at the Customer's request;
- iii. where the Customer fails to perform its obligations under the Agreement or where the Customer's suppliers are late in the performance of their work;
- iv. in the presence of circumstances for which Ferrum may not be held responsible, in particular, delays or interruptions in performance of the services or unforeseen additional works, or in cases of force majeure.

Where Ferrum fails to conform with an agreed performance period for reasons for which Ferrum bears sole responsibility, the Customer, subject to demonstration that it has suffered a loss as a result thereof, shall be entitled to demand an indemnification for late performance in the amount of 0.5% per complete week of late performance, limited, however, to a maximum total amount of 5%. The percentage amount of the indemnification for late performance shall be calculated on the basis of the price of the services performed by Ferrum on that part of the equipment or facility that cannot be put into operation in a timely manner as a result of the delay in performance. Further claims, in particular, claims for damages, are excluded.

Where the performance period is greater than three months and performance is not made in conformity therewith, the right to indemnification for late performance shall be waived for the first two weeks of the delay in performance.

### **24. Liability and limitation of liability**

#### **24.1 Acceptance of service performance**

Performance of the services is complete for acceptance once the equipment or facility has been assembled. This shall apply even in cases where the assembled equipment or facility cannot be put into operation for reasons for which Ferrum may not be held responsible.

Performance of the services shall be considered to have been accepted upon signature, by an employee of the Customer, of the work log as provided for in Section 18.2. Where the Customer puts the equipment or facility into operation only after the signing of the work log as provided for in Clause 18.2, the defect risk attaching to the agreed services shall be borne by the Customer. In such case the defect warranty and defect liability provided for in Sections 24.2 and 24.3 are excluded. The costs for performance of further services shall be borne by the Customer.

#### **24.2 Warranty**

The Customer shall make written notification to Ferrum concerning any defects in the performance of the agreed services within 10 days from the date of receipt of a copy of the work log provided for in Section 18.2 and request remediation thereof. Where the Customer fails to make notification of a defect within this time limit, the right to remediation shall be forfeited.

Where the Customer notifies a defect, it shall be incumbent upon the Customer to initiate all measures required for the mitigation of damage without delay, so that no further damage occurs. Ferrum shall indemnify the Customer for the necessary costs of such measures, to the extent that Ferrum may be held liable therefor under the terms of Section 24.3.

Upon receipt of defect notification, it shall be incumbent upon Ferrum to remedy the defect at its own expense following consultation with the Customer. All further defect rights on the part of the Customer, in particular, the rights of rescission and price reduction, are hereby expressly excluded insofar as permitted by law. The right to compensatory damages is limited in accordance with the terms of Section 24.3. Unless otherwise agreed in writing, the limitation period for remediation claims on the part of the Customer shall expire after a period of 12 months from the date of acceptance of the service performance in accordance with Section 24.1.

For the performance of remediation work under the terms of the warranty, Ferrum makes warranty of the same scope as that made for the agreed services, but for a period not to extend beyond that applicable to the services warranty.

Where the work is interrupted for the reasons set forth in Section 23, the warranty period for work completed prior to the interruption shall commence no later than three months following the commencement of the interruption. The warranty period shall expire in all cases after a period of three years following the agreed date of commencement of the services.

#### **24.3 Limitation of liability**

For damage to equipment or a facility resulting from a defect for which Ferrum may be held responsible, the maximum liability incurred by Ferrum shall be in the amount of the cost estimate or of the flat-rate amount for the service in question per liability event. This limitation of liability shall apply to all liability borne by Ferrum on any grounds (specifically, contract, tort), insofar as permitted by law.

All liability and warranties on the part of Ferrum are excluded in cases where the Customer itself performs services on the facility or equipment, or has such services performed by a third party.

All liability and warranties on the part of Ferrum and its employees are excluded, insofar as permitted by law, in the following cases:

- i. pre-existing defects to the machine or facility;
- ii. defects or damage to equipment or facilities not discernible to Ferrum despite the exercise of all due care in the performance of the services;
- iii. defects or damage to equipment or facilities resulting from circumstances for which Ferrum may not be held responsible, such as, e.g., improper use or handling of the equipment or facility by the Customer (e.g., operation contrary to the instructions in the operating instructions, incorrect maintenance by the Customer, improper servicing by the Customer), operation in the absence of approval by Ferrum as set forth in Section 18.2, force majeure, refusal of consent by the Customer to unforeseen additional work in accordance with Section 16;
- iv. normal wear and tear;
- v. defects or damage caused by defects to spare parts, tools, equipment, and materials supplied by the Customer;
- vi. all forms of consequential damage, such as, e.g., personal injury, property damage to surrounding facilities, loss of production, loss of use, loss of profit, or any other consequential damage of an economic nature.



#### **24.4 Late performance**

In the event that Ferrum fails to make performance of the agreed services or the remediation of defects, or fails to do so in a timely manner, for reasons for which the Customer may not be held responsible, the Customer shall be entitled, subject to the grant of a reasonable grace period and service of appropriate written notice on Ferrum, to order performance of the services in question by a third party. All liability and warranties on the part of Ferrum for services performed by third parties are excluded. It shall be incumbent upon Ferrum to indemnify the Customer for all costs incurred by the Customer through performance of the services or remediation of the defects by third parties, in an amount not to exceed the fees applied by Ferrum for the performance of equivalent services.

Where the delay occurs for reasons for which the Customer may be held responsible, it shall be incumbent upon the Customer to indemnify Ferrum for all additional costs, in accordance with the terms and guidelines of the Fee Schedule and with the provisions of Section 21.

#### **25 Non-performance, defective performance and their consequences**

In all cases of defective performance or non-performance not expressly provided for contractually, in particular, where Ferrum, without cause, delays performance of the services to such extent that the timely completion of performance of the services can no longer be anticipated, or where, due to fault on the part of Ferrum, it is foreseeable that performance will not be made in conformity with the contractually agreed terms, the Customer shall be entitled to grant a reasonable grace period for performance of the services in question on pain of rescission of the agreement.

Where the grace period, as a result of fault on the part of Ferrum, expires without performance having been made, the Customer shall be entitled to rescind the agreement with regard to the services performed contrary to the contractually agreed terms, or whose performance contrary to the contractually agreed terms may be foreseen with certainty, and to demand a refund of the respective portion of payments already made. In such case, the provisions on liability as set forth in Section 24 shall apply, mutatis mutandis. The liability of Ferrum shall, however, be limited to 10% of the cost estimate or 10% of the agreed consideration for performance of the services in question.

#### **26. Force majeure**

No Party shall be held liable to the respective other Party for damage by non-fulfillment or delay in performance of the agreed services, or by failure to perform its contractual obligations, in cases where this is the result of force majeure. Force majeure shall be defined as the occurrence of any unforeseeable circumstance that was not within the control of the Parties, and which would have been unavoidable even where all due care had been exercised, including, in particular: epidemics, natural disasters, fire, rioting, military mobilization, war, civil war, terrorist acts, disturbances, or government measures (e.g. visa denial and visa delay).

Each of the Parties undertakes to inform the respective other Party in writing and without delay upon the occurrence of any such circumstance and to indicate the anticipated period of time during which its ability to perform its contractual obligations will be impaired.

Where the cessation of performance of contractual obligations as a result of a force majeure event continues for a period of three months, each party shall be entitled, subject to service of written notice on the other Party, to terminate the present Agreement with immediate effect. A compensation already paid by the Customer is to be refunded to the Customer by Ferrum after deducting costs which already arose up to the time of termination.

#### **27. Rescission of the agreement by Ferrum**

In the event of the occurrence of unforeseeable events subsequent to conclusion of the Service Agreement, which substantially alter the economic consequences or the nature of the services to be performed, or have a significant effect on Ferrum's operations, Ferrum shall be entitled to demand renegotiation of the terms of the Service Agreement. Where such renegotiation is not economically feasible, Ferrum shall be entitled to rescind in part or in full the Agreement.

Claims for damages on the part of the Customer as a result of such rescission are excluded. In the event that Ferrum intends to rescind the Agreement, Ferrum shall inform the Customer thereof without delay upon obtaining knowledge of the full ramifications of the unforeseen event; this shall apply also where an extension of the performance period had initially been agreed with the Customer.

#### **28. Final provisions**

Any amendments or additions to the Agreement shall be valid only if made in writing. This shall also apply to amendment of this written form requirement clause.

Unless otherwise agreed in writing, communication between the Parties shall take place in writing, by letter, e-mail, or telefax.

In the event that any individual provision is found to be ineffective, this shall not affect the validity of the remaining provisions. The Parties undertake to replace any ineffective provision with a new provision whose effects most closely approximate the economic intent of the invalid or unenforceable provision. This same procedure shall be followed in the event of an omission in the contractual terms.

#### **29. Applicable law / Place of Jurisdiction**

##### **29.1 Applicable law**

This Agreement and all rights and duties thereunder shall be subject to Swiss law, to the exclusion of private international law and the UN Sales Convention (CISG).

##### **29.2 Arbitration**

Any dispute, controversy or claim arising out of, or in relation to, this Agreement including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules.

The number of arbitrators shall be one. The seat of the arbitration shall be Zurich. The arbitral proceedings shall be conducted in English.