

# Service Agreement – Precision Pneumatics Terms and Conditions 2020

## 1. Customer's Obligations

The Customer shall:

- 1.1 Ensure that the routine checks of the equipment that is set out in the quotation ("Equipment") are carried out daily/weekly in accordance with the Manufacturer's instruction manual;
- 1.2 Ensure that at all times the Equipment is kept and operated in the environmental conditions recommended by the Manufacturer;
- 1.3 Ensure that the instructions relating to the operation of the Equipment, as advised by the Manufacturer are accurately followed;
- 1.4 Maintain a copy of the instruction manual for the Equipment and immediately inform Precision Pneumatics if it is no longer in its possession;
- 1.5 Provide access for Precision Pneumatics, its agents, subcontractors, consultants and employees to the Equipment at the time reasonably notified to the Customer for a planned visit by Precision Pneumatics. Where for any reason the relevant Equipment is not available for access at the planned time then Precision Pneumatics reserves the right to charge an additional amount to the Customer for any costs and/or expenses incurred by Precision Pneumatics as a result of having to await access or for having to return to the Customer's premises at another date. The Customer shall be invoiced separately by Precision Pneumatics for such amounts at the standard prevailing rates (available on request);
- 1.6 Provide all necessary assistance to Precision Pneumatics to assist it in the performance of its duties in a safe manner under this Agreement by providing (without limitation) lifting facilities, lighting and any necessary electrical source or other services. If required, reasonable notice will be provided in writing. Where a Customer's failure to assist Precision Pneumatics with its duties means that Precision Pneumatics is unable to provide the services to the Equipment at the agreed time then Precision Pneumatics reserves the right to charge an additional amount to the Customer for any costs and/or expenses incurred by Precision Pneumatics having to wait for such assistance or for having to return to the Customer's premises at another date. The Customer shall be invoiced separately by Precision Pneumatics for such amounts at the standard prevailing rates (available on request);
- 1.7 Not at any time tamper with or permit any person to tamper with the hour meters of any of the Equipment;
- 1.8 Inform Precision Pneumatics immediately in the event of:
  - 1.8.1 Any malfunctions such as abnormal noise, leakage or any other phenomenon which may result in premature failure of any of the Equipment;
  - 1.8.2 A planned transfer of the Equipment or changes in its environmental conditions.
- 1.9 Prepare and maintain the relevant premises for the supply of the Services, including but not limited to identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws and codes of practice, before and during the supply of the Services at those premises;
- 1.10 Inform Precision Pneumatics of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises; and
- 1.11 Maintain all relevant general liability insurances. At Precision Pneumatics' request, the Customer shall produce for inspection documentary evidence that such insurances are properly maintained with reputable insurers or underwriters.

## 2. Precision Pneumatics' Duties

- 2.1 In return for the Customer paying the **Annual Price**, Precision Pneumatics shall use its reasonable endeavours to provide the Services specified in this Agreement to the Customer's Equipment at sites agreed in advance with the Customer.
- 2.2 Precision Pneumatics shall provide reasonable notice to the Customer of all planned visits to inspect the Equipment.
- 2.3 Precision Pneumatics will carry out all planned maintenance and inspection during normal working hours, 8.00 am - 4.15 pm. Monday to Friday. If this is not practical, any extra cost incurred by Precision Pneumatics in carrying out maintenance or inspection outside normal working hours will be borne by the Customer and invoiced separately.
- 2.4 Precision Pneumatics shall provide the Services in a good and workmanlike manner. All warranties, conditions and other terms implied by law are, to the fullest extent permitted by law, excluded from this Agreement.

### **3. Payment Terms**

- 3.1 Subject to any other payment requirements specified in the invoice, the Customer shall pay each invoice submitted to it in full, and in cleared funds, within 30 days of receipt, unless jointly agreed otherwise.
- 3.2 Without prejudice to any other right or remedy that Precision Pneumatics may have, if the Customer fails to pay invoices on their due date Precision Pneumatics may:
  - 3.2.1 Charge interest on such sum from the due date for payment at the annual rate of 8% above the Bank of England's official base rate, accruing on a daily basis until payment is made, whether before or after any judgment. Precision Pneumatics may claim interest, reasonable costs and the fixed sum as permitted under the Late Payment of Commercial Debts (Interest) Act 1998; and
  - 3.2.2 Suspend all services until payment has been made in full.
- 3.3 Time for payment shall be of the essence of this Agreement.
- 3.4 The Customer shall pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Precision Pneumatics in order to justify withholding payment of any such amount in whole or in part

### **4. Annual Price Variations (service agreements only)**

- 4.1 100% of the Annual Price shall be varied on each anniversary of the Start Date by a percentage equal to the percentage change in the UK RPIX during the twelve months to the date to which the RPIX published most nearly preceding such date relates
- 4.2 For the purposes of this clause RPIX means the General Index of Retail Prices all items (excluding Mortgage Interest Payments) as appearing in the Monthly Digest of Statistics published in the United Kingdom by the Office for National Statistics or any other body responsible for publishing such index

### **5. Adjustments to Annual Price (service agreements only)**

- 5.1 The Annual Price is determined at the commencement of this Agreement based on the running hours as set out therein.
- 5.2 Following every anniversary of the Start Date Precision Pneumatics shall be entitled to review the number of running hours as set out in the quotation ("Running Hours") for which each relevant item of Equipment has been operated by the Customer in the preceding year.
- 5.3 Following each Review, where the actual number of hours for which the relevant item of Equipment has been operated has exceeded 25% of the agreed number of running Hours proportionally to the contract, Precision Pneumatics shall be entitled on notice retrospectively from the commencement of the preceding period to review and possibly increase the annual price for that item of Equipment in line with manufacturers recommended service intervals, to accord with its standard tariffs or otherwise as it may reasonably determine.
- 5.4 The relevant Running Hours figure and annual price for any such item of Equipment shall be adjusted and amended accordingly.
- 5.5 Where there has been a review and the Customer's usage of an item of Equipment is less than 25% of the agreed annual Running Hours figure then Precision Pneumatics may in its reasonable discretion taking into account all relevant factors including its standard tariffs and charging structures reduce the annual price for that item of Equipment, with a review of the running hours the following year.
- 5.6 Following any price adjustment under this clause 5 Precision Pneumatics shall issue revised invoice documentation (including any relevant credit note). Any required balancing payment shall be made by the Customer within 30 days of receipt of invoice, unless jointly agreed otherwise.

### **6. Overhauls (Service agreements only)**

The timing of all overhauls to be carried out to any item of the Equipment shall be at Precision Pneumatics' discretion and such timing shall be determined and advised to the customer.

### **7. Customer Default and Excluded Services**

In the event of:

- 7.1 Any failure by the Customer to carry out its obligations under clause 1.1 in respect of any item(s) of the Equipment; or
- 7.2 the Customer failing to comply with any of the General Conditions of Quotation (including for the avoidance of doubt any requirements set out in a manufacturer user manual) in respect of any item(s) of Equipment; and/or
- 7.3 A requirement arising for any work specifically excluded or otherwise outside the scope of the applicable Service Level (**Additional Services**), then Precision Pneumatics may in respect of the relevant item(s) of Equipment:
  - 7.3.1 Decline to carry out any of the Services: or
  - 7.3.2 In the case of 7.1 or 7.2, by agreement with the Customer continue to provide the Services but at an additional charge to the Customer; or
  - 7.3.3 where 7.3 applies, offer the Customer such Additional Services at an additional charge as may be reasonable in the circumstances.

## 8. Limitation of Liability

- 8.1 If Precision Pneumatics' performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Precision Pneumatics shall to an extent which is reasonable in all the circumstances be relieved of its obligations to perform the Services and shall not be liable for any costs, charges or losses sustained or incurred by the Customer which arise directly or indirectly from such prevention or delay.
- 8.2 The Customer shall indemnify on demand and keep Precision Pneumatics fully indemnified against all reasonable costs, liabilities or losses sustained or incurred by Precision Pneumatics (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's (or any of its employees', agents' or subcontractors') fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to Precision Pneumatics confirming such costs, charges and losses to the Customer in writing.
- 8.3 Subject to clause 8.5 below, Precision Pneumatics shall not be liable to the Customer under or in connection with this Agreement in contract, tort (including negligence and breach of statutory duty) or otherwise for any loss of production (direct or indirect), loss of profits (direct or indirect), loss of contracts, revenue, goods, use, anticipated savings, goodwill, reputation or business opportunity or for any indirect, incidental special or consequential loss arising under or in connection with this Agreement (whether or not reasonably foreseeable and even if it had been advised of the possibility of any party incurring the same).
- 8.4 Without prejudice to clauses 8.3 and 8.5 Precision Pneumatics' maximum liability in relation to damage to or destruction of any item of Equipment shall be the Annual Unit Price then payable in respect of that item.
- 8.5 Subject to clause 8.6 below, Precision Pneumatics' maximum aggregate liability howsoever arising to the Customer in contract, tort (including negligence and breach of statutory duty) or otherwise under or in connection with this Agreement shall be the Annual Price.
- 8.6 Nothing in this Agreement purports to exclude or limit Precision Pneumatics' liability for death or personal injury as a result of its negligence, fraud or fraudulent misrepresentation or any liability that cannot be excluded by law.

## 9. Termination

- 9.1 This Agreement may be terminated by either party at any time by providing not less than six months' notice in writing to: Precision Pneumatics.
- 9.2 This Agreement may be terminated immediately by notice in writing to:
- 9.2.1 by either party if the other party commits any continuing or material breach of any term of this Agreement and in the case of such breach which is capable of remedy, fails to remedy the same within 14 days after receipt of a written notice to do so from Precision Pneumatics;
- 9.2.2 By either party if the other party shall enter into and/or itself apply for, and/or call meetings of members and/or creditors with a view to one or more of a moratorium, administration, liquidation (of any kind, including provisional), or composition and/or arrangement (whether under deed or otherwise) with creditors, and/or have any of its property subjected to one or more of appointment of a receiver (of any kind), enforcement of security, distress, or execution of a judgement (in each case to include similar events under the laws of other countries).

## 10. Early Termination

- 10.1 The Customer acknowledges that, as a result of the payment of the Annual Price in equal instalments over the Agreement Term and the occasionally uneven workflow requirements of the Services, at certain points during the Agreement Term Precision Pneumatics may have incurred higher costs for providing the Services to items of Equipment than it has charged to the Customer.
- 10.2 Where the Customer terminates this Agreement upon notice under clause 11.1 and such notice expires before the end of the Agreement Term:
- 10.2.1 The Customer shall be liable to pay to Precision Pneumatics an additional amount to reflect the difference between the amount actually paid or due to be paid by the Customer prior to termination and proper charges (including Precision Pneumatics' margin) for provision by Precision Pneumatics of the Services specified under this Agreement up to and including expiry of the notice period (the **Termination Costs**). Precision Pneumatics may invoice the Customer for any such Termination Costs at any time after receipt by it of the relevant termination notice. For the avoidance of doubt, such Termination Costs shall include Precision Pneumatics' charges in respect of service levels delivered to any item of Equipment prior to expiry of the notice period; and
- 10.2.2 Precision Pneumatics may, but shall not during the notice period be obliged to, perform any Equipment overhauls or breakdown services that would normally be included in the Annual Price. Where such overhauls or breakdown services are required then they shall be charged either under clause 11.2.1 above or at Precision Pneumatics' standard rates at the time they are requested as Precision Pneumatics may determine.

## 11. Force Majeure

Immediately on becoming aware of a Force Majeure Event the affected party shall give written notice setting out full details of its inability to perform any obligations under this Agreement. The Agreement, insofar as it is affected shall be suspended during that period save that the entire performance shall be suspended if the

only parts capable of continuing are not commercially viable or sensible having regard to the overall purpose. Notwithstanding any other provision of this Agreement, Precision Pneumatics shall not be liable for any delay or failure in performing its obligations under this Agreement due to a Force Majeure Event. Either party may terminate this Agreement by written notice if a Force Majeure Event affecting the other party continues and has continued for more than three months. For the purpose of this clause a Force Majeure Event means any cause beyond the reasonable control of the party affected which shall for these purposes be deemed to include accident, fire, explosion, storm, tempest, flood, breakdown, Act of God, government action, failure of power supply, inability to procure materials and industrial action.

## **12. General**

- 12.1 In this Agreement where appropriate, words denoting the masculine gender include the feminine and neuter genders and vice versa; words denoting a singular number include the plural and vice versa; references to the definite article shall include the indefinite article and vice versa; references to persons shall include firms, companies and other organisations and vice versa; reference to a statutory provision includes a reference to the same as modified, re-enacted or both from time to time before or after the date of this Agreement and any subordinate legislation made under the same before or after the date of this Agreement; headings shall not affect interpretation and words such as "include" or "including" are to be construed without limiting the generality of the preceding words.
- 12.2 This Agreement supersedes all previous agreements or representations and shall prevail over any inconsistent terms implied by law or by trade custom, practice or course of dealing and any such inconsistent terms are hereby expressly excluded. Neither party will have any remedy in respect of any untrue statement, unless made fraudulently, upon which it relied in entering into this Agreement.
- 12.3 No variation of this Agreement shall be binding unless agreed in writing between the parties.
- 12.4 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement but this clause 13.4 does not affect a right or remedy of a third party which exists or is available apart from that Act.
- 12.5 Nothing in this Agreement shall be deemed to create or imply the existence of any partnership or joint venture between the parties nor any arrangement which would impose liability on one party for the acts or omissions of the other.
- 12.6 Each party acknowledges that it does not have authority to, and agrees that it will not, at any time without the other's prior written consent act as agent for the other in any way, represent the other, pledge the credit of or make any representation or give any warranty on behalf of or contract any rights and liabilities on the other's behalf.
- 12.7 Neither party shall be entitled to assign, subcontract or otherwise transfer any of its obligations under this
- 12.8 No waiver by either party of any breach of this Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision. The rights and remedies under this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 12.9 Any notice given under this Agreement must be given in writing either personally or by first class post or facsimile addressed to the other party at the address set out in the Contract Form (or as notified to the other party pursuant to this clause). A notice given by first class post shall be deemed to be served two business days after posting and proof that the envelope containing the notice was properly addressed and sent prepaid shall be sufficient evidence of service. A notice given in person shall be deemed to be served immediately.
- 12.10 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected thereby and shall remain in full force and effect.
- 12.11 Given the nature of the services being provided, these Precision Pneumatics terms and conditions shall apply irrespective of the wording of any Customer purchase order.

## **13. Governing Law and Jurisdiction**

- 13.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and claims) shall be governed by and construed in accordance with the laws of England.
- 13.2 Should any dispute arise out of this Agreement, a director or senior executive of the parties shall use all reasonable endeavours to negotiate promptly in good faith and amicably settle the dispute.
- 13.3 Each party agrees to submit to the exclusive jurisdiction of the English courts over any claim or matter arising under or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).