

Service conditions of Palfinger Platforms GmbH

Conditions for the assignment of fitting and customer service staff for servicing, maintenance and repair work, effective as of 1st of January 2013

§ 1 General

These conditions apply to servicing, maintenance and repair work on hydraulic work platforms and parts thereof. Changes and supplements to this contract are only effective with the contractor's written confirmation. The same applies to contradictory client conditions of business without them being expressly rejected. The awarding of the repair order also counts as approval for test drives and tests under real conditions.

§ 2 Working hours, costs, quotations, termination

The normal working day consists of 8 hours a day; the working week has 40 hours. Preparation and waiting times are calculated as working hours. Travel times are from the works to the site and back and for travel between hotel and site and back. When work is carried out on several hydraulic work platforms at different sites the travel costs will be calculated proportionally. If several journeys to and from the site are absolutely necessary the client shall, by prior arrangement bear the costs incurred.

The hourly rate billed is as follows for each hour started

Customer service fitter	€ 69,00
Customer service technician	€ 75,00
Telephone supporter/ Teleservice	€ 75,00
Welder/ Welding repairs acc. to ISO 3834-2	€ 92,00
Graduate engineer	€ 100,00
Painter for painting work at the plant	€ 115,00

Travel time is billed at the above hourly rates minus 10 %.

Mileage per kilometre is billed as follows:

Service car	€ 1,20 / km
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Other means of transport such as aeroplane, train etc. are billed by actual costs incurred.

Surcharges

25 %	for the first two overtime hours
50 %	for the 3 rd and every subsequent hour of overtime in any one day and for work on Saturdays
100 %	for work on Sundays
150 %	for work on public holidays

Public holidays are those days statutorily deemed as public holidays for the region of the service branch office. For service staff we bill € 35,00 per diem expenses. In case of the diem expenses are higher than € 35,00 (depends on the country) the costs will be billed on as direct costs. Costs for overnight accommodation will be billed separately. We bill a surcharge of € 95,00 for weekends spent on site. Special costs, such as telephone charges, garage rental etc directly associated with the sending of service staff will be billed on as direct costs. Whether the repair order is made verbally or in writing, the contractor will send the client a confirmation of order. The order only counts as made when the client has signed the confirmation of order with his legally binding signature.

On conclusion of the contract the client will be given an estimated repair cost where possible, or he can set cost limits. If it is not possible to carry out the repairs for such a price, or if it proves necessary to carry out additional work or use additional parts or materials the costs may be exceeded by up to 20 %. If during execution of the work it is ascertained that more than 20% cost overshoot is necessary to complete the work properly the client will be notified and his approval for continuation of the work counts as given if he does not immediately object. Should an estimate with binding prices be desired prior to execution of the repair, it must be expressly requested by the client. Such a quotation is only binding if it is submitted in writing and expressly identified as binding. If the client terminates the contract because the quotation has been exceeded or for any other reason he must still pay for work done and costs incurred up to that point including the costs for spare parts ordered, spare parts already procured and the profit due.

§ 3 Due date and payment of the sum billed

The sum billed is due on completion or acceptance of the repair, at the very latest on the day the bill is received. The sum billed is to be paid without deductions. The contractor has the right to demand pre-payment. Complaints or objections regarding a bill must be made in writing and within 14 days of bill date. Withholding payment or the balancing off of any counterclaims disputed by the contractor is not permitted. All prices stated are without value added tax. The client will be billed separately for VAT.

§ 4 Client co-operation

During execution of the repair work the client must provide support for the repair staff at his own cost.

The client is responsible for the protection of persons and objects at the site of the repair. The client is obliged to provide suitable work conditions and security at the repair site. Where necessary the repair foreman is to be informed of any safety regulations to be observed. The client is to inform the contractor of any violations of the safety regulations by the repair staff.

§ 5 Technical support by the client

Where necessary the client is obliged to provide a suitable number of suitable help staff for the time required and at his own cost. The auxiliary staff must follow the instructions of the person appointed by the contractor to oversee the repair work. The contractor does not assume any liability for the auxiliary staff provided. The client is obliged to provide the energy needed for the execution of the repairs (e.g. light, power, water), including the necessary connections, at his own cost. If necessary the client shall provide theft-proof rooms for storing the repair staff's tools and a heated recreation room at his own cost. The client is to provide all materials and fuels at his own cost and to undertake everything else necessary for configuring the object to be repaired and for carrying out the trials. The client shall ensure that it is possible to start with the repair work as soon as the repair staff has arrived. Any delays for which the client is responsible shall be at his cost. If the client does not honour his obligations, the contractor is entitled but not bound to take action in his stead and at his costs. The client's statutory rights and claims remain otherwise unaffected.

§ 6 Deadline for carrying out the repair

1. The details of repair deadlines are based on estimates and are thus not binding.
2. In the event of unforeseeable operational hindrances, such as cessation of work, absence of skilled workers due to illness, difficulties in the procurement of replacement parts, delay of delivery from suppliers, official intervention, force majeure or labour disputes, binding deadlines will also be extended appropriately.
3. Any proven damage suffered by the client due to delays for which the contractor is responsible will be made good, but in the event of only minor negligence up to a maximum of 5 % of the repair price. Any further claims for damages in the case of minor negligence are not permitted.
4. If the client grants the contractor who is in delay a reasonable deadline extension – in the event that is not a case of a legal exception – and this deadline is not met, the client is entitled to withdraw from the contract pursuant to the legal regulations. There are no other grounds for claims – regardless of § 12 No. 3.

§ 7 Acceptance of a repair, acceptance by the client

Our customer service staff only does work within the scope of the order awarded to us. The staff is not authorised to make legally binding statements regarding Palfinger Platforms access platforms. After the work has been done the client or his representative must confirm this by signing and stamping the worksheet presented by our customer service staff thus confirming the proper execution of the repair work. This receipt is an invoicing component. When the object has been returned into service a final acceptance protocol will also be issued and signed. The contractor must notify the client when the repair has been completed. Sending the bill also counts as notification. Acceptance must be granted within 2 weeks of notification. If the client has raised no objections regarding the repair during acceptance or if the acceptance has not been made in time the object of the contract counts as being properly accepted. Where the client is in delay with the acceptance the contractor is entitled to charge the client for warehouse costs or to store the object of the contract at a third location in this case.

§ 8 Transfer of risk and transport

When the client has been notified that the repair work has been completed the risk is transferred to him. Transport of the object to be repaired to and from repair is always the client's responsibility. The client is also responsible for loss or damage during transport. If it is agreed that transport is to be undertaken by the contractor this shall be at the client's cost and risk even when transported with the contractor's vehicles. The objects handed over by the client for repair are not insured against fire, theft, transport or storage damage etc. these risks are to be covered by the client or alternatively by the contractor at the client's cost if the client so expressly wishes.

§ 9 Reservation of proprietary rights, extended right of distraint

The proprietary rights for the units, replacement and extra parts installed remain, in so far as they can be reserved, the contractor's property until complete payment has been made. As a result of his claims resulting from the repair order the contractor is entitled to a right of distraint for object in his possession surrendered for repair by the client. The right of distraint can also be enforced for claims resulting from previous work done, spare parts supplied or other services rendered in so far as they are connected with the object surrendered for repair. The right of distraint only extends to cover other claims resulting from the business relationship where these claims are uncontested or have been determined by law. In the event that the client is not the owner of the repaired device or machine, the client will as a precautionary measure cede all claims to transfer of ownership or return of ownership after complete payment of any claims by a third party to the contractor and hereby also empowers him to fulfil this for the client. The contractor does not however have any obligation to fulfil instead of the client.

§ 10 Old parts

The client is responsible for the disposal of old parts and other pieces that are beyond use. In the event that new laws are made that determine otherwise the client shall make suitable agreement with the contractor regarding such disposal. It should be assumed that the parties to the contract would make use of third parties for the fulfilment of their disposal obligations.

§ 11 Non-conformance claims

The contractor is liable to the client for any possible repair faults in the manner that he is to remedy the defects in his workshop or at the site where the object is located, as he prefers. No further claims by the client – regardless of No. 3 and § 12 – are permitted. No claims for defects can be accepted after 12 months following the repair. The contractor is to be informed without delay after such a fault has been determined. If the client has carried out improper repair work himself or had this done by a third party without the contractor's approval the contractor is freed of any liability. The same applies if parts that need replacing are not replaced at the client's request. If the contractor – taking legal exceptions into account – has let a deadline for him to carry out the repair lapse without the work having been done the client is granted the legal right to reduce the charge. This right to reduce payment also applies in cases where the repair has not been done or has been unsuccessful. The client can only withdraw from the contract in accordance with statutory regulations if the repair is provably of no interest to the client despite the reduction of payment. The contractor bears the direct costs resulting from subsequent fulfilment, the cost of the replacement part including shipping and reasonable costs for removal and installation only in so far as the complaint is seen as justified.

§ 12 Contractor's additional liability and exclusion of liability

1. The contractor is liable for any property damage for which he is responsible that is not covered by the liability for defects. In the case of minor negligence the liability is limited in accordance with the cause and the amount according to the conditions and the sum of liability insurance taken out or to be taken out, so the liability in the event of minor negligence is limited to the sum of the charge for repair.
2. Beyond these conditions, the contractor will only make good any damages, also indirect damages of whatever nature and regardless of the legal reason they have been made, where gross negligence, injury to life, limb or health are concerned, or where essential contractual obligations have been culpably violated, where the achievement of the object of the contract is endangered with regard to typical contractual foreseeable damage, in the event of defects maliciously concealed or where the contractor has guaranteed they do not exist, in cases where the contractor is liable for damages to persons or privately used objects caused as a result of faults on the object of the contract according to the product liability laws, where features are missing that have been expressly assured, when the assurance had the purpose of protecting the client against any damage that has not occurred to the object of the contract itself. All other liability is excluded.

§ 13 General terms and conditions, terms of delivery conditions

In addition to these Service conditions the general terms and conditions as well as the terms of delivery of Palfinger Platforms apply. This information can be retrieved at any time from the homepage www.palfinger-platforms.com or can be submitted on request by Palfinger Platforms GmbH.

Krefeld, 2012/12/17