

## General Terms and Conditions – Service & Maintenance

Johnson Controls Deutschland GmbH, Johnson Controls Systems & Service GmbH, Total Feuerschutz GmbH, ADT Sensormatic GmbH

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### 1. Scope

1.1. These terms and conditions shall apply to assembly, repair and maintenance services as well as to planning services ordered separately (hereinafter referred to as "Services"). They apply to all present and future contractual relationships.

1.2. All Services are provided exclusively on the basis of these terms and conditions. Any terms and conditions contrary to or deviating from our terms and conditions shall only apply if we have expressly agreed to them in writing. The following terms and conditions shall also apply if we perform the Services without reservation in the knowledge that the Customer's terms and conditions conflict with or deviate from these terms and conditions.

1.3. Individual agreements with the Customer always take precedence over these terms and conditions.

1.4. All agreements and ancillary agreements as well as all amendments must be made in writing. This also applies to the waiver of this written form requirement.

### 2. Scope of Services, Definitions

2.1. For the purposes of these terms and conditions, facilities are those facilities on which or in whose spatial or functional environment we are to perform the commissioned Services.

2.2. The definitions in accordance with DIN EN 31051 in the version valid at the time of conclusion of the contract shall apply.

2.3. The inspection includes measures to determine and assess the actual condition of technical means of a system. The inspection is to be carried out according to the time interval selected by the Customer or according to the specifications of the corresponding VdS/VDE at approximately equal intervals. If the facilities are VdS-certified, the time interval is based on the specifications of the VdS. The essential functions of the device and the overall function of several devices and associated software must be checked.

2.4. Maintenance is usually carried out following the inspection and comprises all measures to maintain the target condition of the technical equipment of a system. Maintenance includes the care of the facilities' components, replacement of components with a limited service life (e.g. light bulbs), adjustment, readjustment and calibration of assemblies and devices.

2.5. Repair includes measures to restore the target condition of technical means of a system. Repair services

shall be performed according to the method deemed necessary for the respective equipment. The Customer agrees to this; otherwise, he will bear any additional costs that may arise.

2.6. The Services carried out by remote access include remote inquiry, remote repair and remote control in accordance with the definitions of DIN VDE 0833 in the version valid at the time of conclusion of the contract.

### 3. Estimate / Offers

3.1. Our offers are always non-binding.

3.2. Illustrations, drawings, assembly instructions, circuit diagrams and other documents are protected by copyright and may only be used in connection with our Services. Any disclosure to third parties, e.g. for the purpose of obtaining quotations, shall require our express written consent. Such documents shall be returned to us without request if a contract is not concluded.

### 4. Services that cannot be performed

4.1. Services rendered for the purpose of submitting a quotation or cost estimate at the initiative of the Customer as well as further proven expenditure (e.g. fault-finding time) shall be remunerated by the Customer in accordance with Section 5.6. the Services cannot be performed for reasons for which we are not responsible, in particular because

- the Customer does not wish the performance of the Services,
- the error we were notified of cannot be identified,
- spare parts cannot be obtained,
- the Customer has missed an agreed deadline,
- the Customer has not provided the target of the Services,
- the Customer has not provided access to the target of the Services,
- the contract has been terminated during the performance of the Services.

4.2. We shall inform the Customer if a Service appears economically unreasonable. If the Customer consequently decides that the agreed Services are not to be performed, Section 4.1 apply accordingly.

4.3. In the cases described in Sections 4.1 and 4.2 we shall only restore the facilities to their original condition at the express request of the Customer. The required expenses shall be reimbursed by the Customer in accordance with Section 5.6.

### 5. Prices and Payment Terms

5.1. Unless agreed otherwise, 30 % of the contract price shall be payable upon signature of the contract, 30 % upon commencement of installation, 30 % as progress payments and the last 10 % after acceptance of the works.

5.2. In the case of contracts for recurring Services, we shall invoice in advance on an annual basis.

5.3. Payments are due within 30 days after receipt of the corresponding invoice without deduction.

5.4. Interest on arrears shall be charged in accordance with the statutory provisions. In the event of default of payment by the customer - under this or other contracts - we shall be entitled to refuse performance under this or the other contracts or to terminate the contract.

5.5. We are entitled to demand security in accordance with § 650f BGB. The provisions of § 650f BGB shall apply accordingly if the Services assigned to us are not a building or part thereof within the meaning of § 650f BGB or planning services. Section 321 BGB remains unaffected.

5.6. We will charge for our Services on the basis of time and materials and based on the following:

a) the working time shall be remunerated in accordance with our charging rates applicable at the time of conclusion of the contract;

b) Waiting and travel times shall be deemed working time provided that we need to remunerate them as working time in accordance with the applicable labor law regulations;

c) expenses and costs (e.g. expenses for examinations and official approvals) are to be reimbursed by the Customer;

d) necessary expenses, in particular expenses for transportation, transport of luggage, tools and small materials are to be reimbursed by the Customer;

e) the material used as well as special tools, measuring and testing equipment shall be remunerated in accordance with the price list applicable at the time of conclusion of the contract, alternatively in the amount of the costs demonstrably incurred, plus reasonable surcharges.

f) Prices do not include taxes, fees, customs duties, tariffs, or other charges imposed and/or enacted by a government, however designated or imposed (collectively, "Taxes"). All Taxes are the responsibility of the Customer.

## **6. Setoff/Retention Rights**

6.1. The Customer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been acknowledged by us.

6.2. The Customer shall only be entitled to exercise a right of retention or a right to refuse performance if its counterclaim is based on the same contractual relationship.

## **7. Performance of the Services/Duties to cooperate**

7.1. Services are generally provided within our normal business hours. For Services outside business hours, we maintain an emergency service that comes to the site upon

instruction. If the emergency service is used, the additional costs incurred will be invoiced in accordance with Section 5.6.

7.2. We are entitled to commission subcontractors with the performance of services. However, we remain the sole contact partner of the Customer.

7.3. We shall be entitled to render partial services, unless a conflicting interest of the Customer is apparent.

7.4. The Customer shall provide all structural, technical and operational prerequisites for the execution of our Services as they result from our offer.

7.5. All preparatory work necessary for the performance of our Services must have progressed to such an extent that we can perform our Services unhindered and without interruptions.

7.6. The Customer shall inform us in good time of any local safety regulations.

7.7. The Customer shall provide, at its own expense, the energy and energy connections (e.g. electricity, water) required for the performance of the Services.

7.8. During the performance of Services, there may be interruptions in the operational availability of the facilities. During this period, the Customer shall provide for an appropriate replacement and, as the operator of the building, shall remain solely responsible for compliance in particular with public law requirements.

7.9. Under no circumstances are we the operator of the facilities for which we provide Services. The Customer must ensure that he or a third party remains the operator of the facilities, both legally and actually. The Customer shall indemnify us against all claims arising from a breach of this obligation.

7.10. Malfunctions in the operation of and damage to the equipment on which we are to perform services or which is connected with equipment on which we are to perform services shall be reported to us immediately with a pertinent description of the fault that has occurred.

## **8. Scope of Services - Delivery times - Delay**

8.1. The scope of Services owed is conclusively described in our offer.

8.2. Performance times stated in our offer are non-binding.

8.3. Agreed performance periods shall be binding provided that all technical questions have been clarified and the Customer has fulfilled his obligations, in particular to provide all necessary documents and approvals, releases, plans. If these requirements are not met, the performance period shall be tacitly extended by the period of the impediment plus a reasonable start-up period. Further rights remain unaffected.

8.4. Delays in performance due to force majeure or due to unforeseeable and unavoidable circumstances such as operational disruptions, strikes, lockouts, lack of means of transport, pandemics and epidemics, difficulties in procuring commodities and materials, official orders, late

delivery by our suppliers, or other circumstances which make the contractual performance impossible or unreasonably difficult for us, shall not lead to default. An agreed performance period shall be extended by the duration of the impediment. Claims for damages are excluded in this case.

## **9. Recurring Services**

9.1. Insofar as the Services ordered are recurring Services such as regular maintenance work, the following provisions shall apply.

### **9.2. Adjustment of the remuneration**

a) Our calculation is based on the wage, material and ancillary costs and conformity with statutory obligations prevailing at the time of conclusion of the contract. We are entitled to increase our prices based on the changes of our costs at our reasonable discretion, taking into account all changes in costs as reasonably appropriate, but not before 4 months after conclusion of the contract. Particularly relevant are the wages (including social charges and collectively agreed one-time payments) according to the collective agreement IG Metall. For the avoidance of doubt, this shall include price adjustments due to additional, increased or new customs duties, tariffs charges, quota or other government actions or policies or similar events outside our control. After receipt of a corresponding notification, the Customer shall be entitled within three (3) weeks to terminate the contract in writing with a notice period of one month to the end of the month, insofar as the annual increase in prices amounts to a total of more than ten (10) percent.

b) If the regular service effort changes (e.g. due to changed safety requirements or technical changes of the facilities), we shall be entitled to adjust the remuneration at our reasonable discretion with a notice period of three (3) months.

### **9.3. Extension, modification and relocation of the facilities.**

a) The Customer must notify us in writing in good time of any intended changes or relocation of the facilities.

b) We must be notified in writing of any changes to the operating conditions in good time.

c) If we are to be commissioned with the modifications or relocation of the facilities, this must be agreed separately.

d) We are entitled to terminate an existing maintenance, inspection, servicing or repair contract, if the relevant facilities have been modified by the Customer or a third party during the term of the contract.

### **9.4. Contract term / Termination**

a) Unless another base term has been agreed, the term of the contract shall commence with its signature and end upon expiry of the second calendar year following the year in which the contract was signed. The contract shall always be extended by one additional year, if it is not terminated in writing with three (3) months' notice prior to the end of the contract term.

b) In the event of final decommissioning of the facilities, any related maintenance, inspection, servicing or repair contract shall terminate six months after we have been informed thereof in writing. Insofar as the contract relates to several facilities, it shall remain in force with regard to the remaining facilities, and the remuneration shall be adjusted accordingly.

c) If the Customer leaves the facilities to a third party, his obligation to pay the agreed remuneration shall remain in force, unless the third party enters into this contract with our consent.

d) If the Customer is in arrears with payment, we are entitled to suspend further services until the arrears have been settled. The right to terminate the contract for good cause remains unaffected.

e) Before the end of the contract period, the contract can only be terminated for good cause.

f) Any termination must be in writing.

g) In the event of extraordinary termination declared by us, the Customer shall be obliged to compensate for the damage incurred due to premature termination of the contract. We are entitled to claim 30% of the monthly fees still outstanding until the expiry of the term or until the next possible termination date as lump-sum damages or damages actually incurred. The Customer can provide evidence of lower damages.

## **10. Acceptance**

10.1. The Customer may only refuse acceptance in the event of a material defect. Acceptance shall be deemed to have taken place if the Customer fails to accept the Services within a reasonable period of time specified by us, although he is obliged to do so. Public-law releases, tests and certificates or permits for operation are not a prerequisite for acceptance.

10.2. Services on existing facilities shall be deemed to have been accepted if no complaint has been made about our performance within one (1) week after completion of the Services / notification of completion.

10.3. We may request partial acceptance for functionally completed areas of service.

## **11. Defects Liability**

11.1. We shall be liable for the Services rendered by us only if used under usual or known operating conditions at the time of conclusion of the contract. Damage and/or wear due to excessive or unintended stress as well as deviations (tolerances) that are permissible or customary according to the relevant technical standards do not constitute a defect. For performance data listed in our offers, a construction tolerance of 5% (five percent) applies in addition to the measurement tolerances according to EN 13771-1:2003 or tolerances from comparable technical regulations. Claims for defects shall not exist in the case of only insignificant deviation from the agreed quality or in the case of only insignificant adverse effect on the usability.

11.2. We shall not assume any liability for defects for components, devices or spare parts provided by the Customer or components, devices or spare parts used at the Customer's instigation or instruction. This exclusion shall also apply insofar as the components, devices or spare parts used at the instigation or instruction of the Customer cause a defect in the Services provided by us and/or existing installations.

11.3. A guarantee or agreement on the quality of an item shall only exist if this has been expressly stated by us in writing in our offer or in the contract. The documents belonging to our offer, such as catalogs, specifications, illustrations, drawings, weight and dimension specifications, assembly plans, circuit diagrams and other plans, etc., are approximately relevant only and do not constitute an agreement on quality unless they are expressly designated as binding.

11.4. In the event of a defect, we shall be given the opportunity to remedy the defect within a reasonable period of time. The rights of the Customer shall be governed by the statutory provisions; however, withdrawal from the contract shall be excluded. Clause 12 apply to claims for damages due to defects.

11.5. If it turns out that a notice of defect was unjustified, the Customer shall pay for the expenses incurred as a result in accordance with the billing rates applicable at the time of the unjustified notice of defect.

11.6. The expenses necessary for the purpose of rectification shall be borne by the Customer insofar as they are increased by the fact that the supplies or services were relocated to a place other than the Customer's registered office or place of business at the instigation or request of the Customer, unless such relocation is in accordance with its agreed or intended use.

11.7. Claims for defects shall become time-barred after the expiry of one (1) year.

## **12. Liability/claims for damages**

12.1. We shall be liable for intent, gross negligence, personal injury and damage under the Product Liability Act (ProdHaftG) in accordance with the statutory provisions.

12.2. In case of other (non gross) negligence, the following shall apply:

- a) We shall only be liable in the event of a breach of a cardinal obligation and only for the foreseeable damage typical for the contract. A cardinal obligation is an obligation the fulfillment of which makes the proper execution of the contract possible in the first place and the observance of which the contractual partner regularly relies on and may rely on.
- b) Our liability is limited to 1 million euros.
- c) We are not liable for indirect or consequential damages such as loss of profit, business interruption, business interruption, loss of use, loss of production or damages resulting from loss of data.

12.3. The above stipulations do not constitute a change of the burden of proof to the detriment of the Customer.

## **13. Retention of Title**

Title to all delivered items shall remain vested in us until receipt of all payments under the business relationship with the Customer. If a current account relationship exists in the context of the business relationship, title to all items delivered by us shall remain vested in us until receipt of all payments from such current account relationship with the Customer until the recognized balance is settled.

## **14. Compliance with export control regulations**

14.1. The Customer has to comply with the applicable international export and/or embargo regulations, in particular the applicable German, EU and US regulations. We reserve the right to terminate or withdraw from the contract if it becomes apparent that the Customer or the end user of our services is a person or entity listed under German, US, European, and/or international export or embargo regulations or that the delivery is intended for a country to which delivery is prohibited under these regulations. The Customer undertakes to inform us in due time if our deliveries are to be passed on to an end user or transferred to such country and if this could violate the afore mentioned regulations.

14.2. The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation, any goods supplied under or in connection with the Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014. The same obligations apply in relation to Belarus under Article 8g of Council Regulation (EU) 765/2006. The Customer shall undertake its best efforts to ensure that the purpose of this clause is not frustrated by any third parties further down the commercial chain, including by possible resellers. Any violation of this clause shall constitute a material breach of an essential element of this Agreement, and we shall be entitled to all appropriate remedies, including, but not limited to, termination of the Agreement. The Customer shall immediately inform us about any problems in applying the requirements of this clause, including any relevant activities by third parties that could frustrate the purpose of this clause. Upon request, the Customer shall make available to us any and all requested information concerning compliance with the obligations under this clause within two weeks of such request.

## **15. Software Digital Solutions and Digital Enabled Services**

15.1. Installed Software. Subject to the terms and conditions of the Agreement, and the end user license agreement that accompanies the software or, if none, the terms and conditions of the end user license agreement set forth at <https://www.johnsoncontrols.com/legal/digital/general-eula>, JCI hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license to use the software

installed on premises solely for purposes of using, operating, and maintaining the JCI Product in which the software is installed, or using the software solely for Customer's internal business purposes.

15.2. Digital Enabled Services. If JCI provides Digital Enabled Services under this Agreement, these Digital Enabled Services require the collection, transfer and ingestion of building, equipment, system time series, and other data to JCI's cloud-hosted software applications. Customer consents to the collection, transfer and ingestion and use of such data by JCI to enable JCI to provide, maintain, protect and improve the Digital Enabled Services and its products and services. Customer acknowledges that, while Digital Enabled Services generally improve equipment performance and services, Digital Enabled Services do not prevent all potential malfunction, insure against all loss, or guarantee a certain level of performance. Customer will be solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network"), will appropriately protect hardware and products connected to the Network and will supply JCI secure Network access for providing its services. Notwithstanding any other provisions herein, JCI shall not be liable or responsible for a Non-JCI Data Failure and Customer shall be responsible for JCI service work to repair or correct a Non-JCI Data Failure, if necessary.

15.3. As used herein, (i) "Digital Enabled Services" mean services provided hereunder that employ JCI software and cloud-hosted software offerings and tools to improve and enable such services. Digital Enabled Service may include, but are not limited to, remote inspection, advanced equipment fault detection and diagnostics, and (c) data dashboarding and equipment health reporting, and (ii) "Non-JCI Data Failure" means the inability or failure of the applicable Digital Enabled Services to obtain data which is not caused by the acts or omission of JCI (e.g., data collection gateway unplugged by Customer or subsystem integration modified by subsystem manufacturer, etc.).

15.4. JCI Digital Solutions. Use, implementation, and deployment of the software and hosted software products ("Software") offered under these terms shall be subject to, and governed by, JCI's standard terms for such Software and Software related professional services in effect from time to time ("Software Terms") that can be found at: <https://www.johnsoncontrols.com/legal/digital/general-tos/english-for-germany>.

15.5. JCI and its licensors reserve all right, title, and interest (including all intellectual property rights) in and to the Software and improvements to the Software. The Software that is licensed hereunder is licensed subject to the Software Terms and not sold. If there is a conflict between the other terms herein and the Software Terms, the Software Terms shall take precedence and govern with respect to rights and responsibilities relating to the Software, its implementation and deployment and any improvements thereto.

15.6. Notwithstanding any other provisions of this Agreement, unless otherwise set forth in the applicable order, the following terms apply to Software that is provided to Customer on a subscription basis (i.e., a time limited license or use right), (each a "Software Subscription"): Each Software Subscription provided hereunder will commence on the date the initial credentials for the Software are made available (the "Subscription Start Date") and will continue in effect until the expiration of the subscription term noted in the applicable Order. At the expiration of the Software Subscription, such Software Subscription will automatically renew for consecutive one (1) year terms (each a "Renewal Subscription Term"), unless either party provides the other party with a notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term. To the extent permitted by applicable law, Software Subscriptions purchases are non-cancellable and the sums paid nonrefundable. Fees for Software Subscriptions shall be paid annually in advance, invoiced on the Subscription Start Date and each subsequent anniversary thereof. Unless otherwise agreed by the parties in writing, the subscription fee for each Renewal Subscription Term will be priced at Johnson Controls' then-applicable list price for that Software offering. Any use of Software that exceeds the scope, metrics or volume set forth in this Agreement and applicable Order will be subject to additional fees based on the date such excess use began

## **16. Confidentiality, Intellectual Property Rights**

16.1. Drawings, technical descriptions, operating instructions, cost estimates and other documents are recognized by the Customer as our trade secret and are treated confidentially. They must not be copied, reproduced, or made available to third parties without our express written consent, in particular for the purpose of requesting a quotation.

16.2. The Customer shall notify us without undue delay of any alleged infringement of intellectual property rights and shall - at our discretion and upon our express request, allow us to conduct any litigation. If this is not possible, the Customer shall at least involve us in any litigation in such a way that we are fully informed and have a say in all decisions affecting us even indirectly.

16.3. In the event of an infringement of intellectual property rights, we shall be entitled, at our own discretion, to obtain a right of use for the product concerned, to modify it in such a way that the intellectual property right is no longer infringed or to replace the product with a similar product. If this is not possible for us under reasonable conditions or within a reasonable period of time, the Customer shall be entitled to the statutory rights of rescission or reduction of the purchase price, provided that he has enabled us to carry out a modification. Under the afore mentioned conditions, we may also withdraw from the contract.

16.4. Claims of the Customer shall be excluded insofar as he is (jointly) responsible for the infringement of intellectual property rights or he has not informed us in a reasonable manner of impending or known infringements of intellectual property rights and/or has not supported us in a reasonable manner in the defense against claims of third parties.

16.5. Claims of the Customer shall also be excluded if the (alleged) infringement of the intellectual property right results from use in conjunction with other goods not originating from us or if the product is used in a manner which we could not foresee.

16.6. Our obligation to pay damages in the event of culpable infringement of industrial property rights or copyrights shall be governed by Section 12.

16.7. Further or other claims of the Customer for infringement of intellectual property rights that are not set out herein, are excluded.

## **17. Data Privacy**

17.1. Johnson Controls as controller: We collect, process and transfer certain personal data of the Customer and its personnel in connection with the business relationship between the Customer and us (e.g., names, email addresses, telephone numbers) as controller and in accordance with Johnson Controls' Privacy Policy <https://www.johnsoncontrols.com/privacy-center/global-privacy-notice>. The Customer acknowledges Johnson Controls' Privacy Policy and consents to the collection, processing and transfer as may be mandatorily required by applicable law. To the extent consent by the Customer's personnel to such collection, processing and transfer by Johnson Controls is mandatorily required by applicable law, the Customer warrants that it has obtained such consent.

17.2. Johnson Controls as processor: If we are in fact acting as a processor of Personal Data (as defined therein) on behalf of the Customer, the terms at [www.johnsoncontrols.com/dpa](http://www.johnsoncontrols.com/dpa) will apply.

## **18. Miscellaneous**

18.1. We are entitled to obtain information from information institutes (e.g. Creditreform, Schufa) and to provide them with the usual information.

18.2. The contract shall remain binding in its remaining parts even if individual points are legally invalid. The invalid provision shall be deemed to be replaced by a valid provision that is economically as equivalent as possible.

18.3. The exclusive place of performance and jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall, at our option, be the place of the branch office which received the order, or Ratingen.

18.4. The contractual relations shall be governed by German law to the exclusion of the conflict of laws regulations. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.