

## **General Terms and Conditions for the Provision of Technical Experts (Consultancy Services rendered by Supervisors and Machine-Supervisors)**

### **Definitions**

**"Contract"** means an agreement concluded by the Parties in written form or an Order of the Principal accepted by **Order Confirmation**;

**"Contractor"** means the company of RHI Magnesita company group stated in the Contract;

**"Order"** means the written order of the Principal with regard to this Consultancy Agreement which needs to be accepted by Order Confirmation;

**"Order Confirmation"** means the written confirmation of an Order by the Contractor;

**"Party"** means the Contractor or the Principal and **"Parties"** means both;

**"Principal"** means the party that engages Contractor with the provision of technical experts

**"Products"** means refractory products or other goods, equipment and machinery as well as components for Work provided by the Contractor or any other company of RHI Magnesita group under a separate agreement

**"Services"** means the provision of work and or services performed by the Supplier as specified in Annex 1 and 2 hereto;

**"Site"** means the place where Principal's plant is located and where consultancy and supervision of installation and related works will be performed

**"Vicarious Agents"** means any third party engaged by the Principal with services or deliveries

**"Written Form"** or **"In Writing"** means any documents signed by a Party including signed documents sent by e-mail.

### **1. General**

1.1 Contractor provides the Principal with technical specialists for consulting and supervision with regard to the installation, demolition and maintenance of Products of the Contractor (hereinafter called "Supervisors") as well as specialists for consulting and supervision to the installation, commissioning, repair and maintenance of machines supplied by the Contractor (hereinafter called "Machine-Supervisors") under the conditions set forth hereunder (hereinafter "Terms and Conditions").

Any further documents or conditions the Principal intends to apply, in particular Principal's terms and conditions or other deviating terms, are – if not accepted in writing by the Contractor – hereby expressly excluded and shall be without any effect. An omission to explicitly oppose such proposed conditions shall not be deemed as an acceptance by the Contractor. The provision of Services or performance of the contract shall not be deemed as consent of the Contractor.

1.2 The Contractor reserves the right to amend the Terms and Conditions at any given time. The Terms and Conditions as amended shall apply from the time specified in the Contract or, if no time is specified in the Contract, from the time the Terms and Conditions as amended are published on the RHI Magnesita company group website [www.rhimagnesita.com](http://www.rhimagnesita.com).

1.3 Unless agreed otherwise, the Contractor retains title and copyright and all other intellectual property rights in and to its images, drawings, calculations and any other documents related to the rendered Services and/or Products. The Principal is not permitted to duplicate or pass on such documents to third parties. If the Principal delivers such documents, it shall be responsible that their use will not violate any third-party rights.

1.4. In case of contradictions between the Contract, its appendices and the Terms and Conditions the following order of priority shall apply: 1. the Contract, 2. the appendices to the Contract and 3. the Terms and Conditions. In case of contradictions between an Order or an Order Confirmation, the Order Confirmation shall prevail

## **2. Responsibility of the Supervisor and Machine Supervisor**

- 2.1 The Supervisor shall only provide advice and supervision of the installation, demolition, or maintenance which will be performed by employees, subcontractors or any other representatives hereinafter “Vicarious Agents” of the Principal.
- 2.2 The Supervisor/Machine-Supervisor is exclusively employed with or engaged by the Contractor and shall only comply with Contractor’s instructions.
- 2.3 The Supervisor is not entitled to issue instructions to Vicarious Agents of the Principal, especially with regard to the concrete execution of the installation. If the Machine-Supervisor is supported in his performance by Vicarious Agents of the Principal, the Vicarious Agents shall follow the instructions of the Machine-Supervisor in his area of responsibility.
- 2.4 The Supervisor/Machine-Supervisor shall inform the Principal’s authorized representative of detected defects, malperformance, deviation and requirements necessary for the proper performance of the Supervisor/Machine-Supervisor. The Principal’s authorized representative shall give the appropriate instructions to the Principal’s Vicarious Agents and/or personnel and adopt all necessary measures.
- 2.5 The Principal and its Vicarious Agents shall cooperate closely with the Supervisor/Machine-Supervisor and upon request provide him with all information and documents required for his performance.
- 2.6 The Supervisor/Machine-Supervisor shall inform the Principal’s authorized representative regularly about the status and progress of the installation.
- 2.7 The Parties will define the daily and weekly working hours of the Supervisor/Machine-Supervisor in the underlying Contract. In case of large-scale orders or complex installations a sufficient supervision can only be warranted if the necessary number of Supervisors/Machine-Supervisors has been ordered by the Principal.
- 2.8 The Principal shall be responsible for the execution of the preliminary measures, especially the selection and installation of scaffolding and supports, the strength of casings (sufficient statics) and the safety of transport devices as well as the compliance with all health and safety rules and accident prevention regulations.
- 2.9 Any Services not explicitly defined in ANNEX 1 hereto are not included in the contractual scope of Services. The Contractor shall not be responsible for any work performed by the Principal or others at the Site, including the installation services performed by the Principal or its Vicarious Agents. The Contractor shall not be responsible for defects or delays in the installation except to the extent such defect or delay is the direct result of following the Contractor’s advice. The Principal shall be responsible for all costs and expenses incurred as a result of defects or delays in the installation of the Products. The Contractor shall not be responsible for any damages, costs, expenses and defects resulting from Principal’s failure to follow the technical advice provided by the Contractor during the performance of the Contractor’s Services.

## **3. Payment terms**

- 3.1 The legally applicable value-added tax is not included in the prices.
- 3.2 If upon request of the Principal or due to circumstances outside the Contractor’s control the Supervisor/Machine-Supervisor provides additional Services beyond the agreed scope of the Contract, the Contractor is entitled to charge additional costs which shall be based on the rates applied for the agreed Services and includes at least the costs incurred thereby plus an appropriate mark-up. Furthermore, these Terms and Conditions shall also apply to such additional Services.

- 3.3 If the Principal defaults on payment, the Contractor is entitled to charge interest starting with the due date at the rate provided for under applicable law for default interest between entrepreneurs and to claim compensation for any damage caused by this delay.
- 3.4 The Contractor is entitled to offset claims it has against the Principal against claims the Principal has against the Contractor or its affiliated companies under the Contract or under any other legal transaction.
- 3.5 The Principal may offset claims only against counterclaims which have been determined without further legal recourse or with counterclaims not contested by the Contractor. The Principal may withhold due payments only if its counter-claims are acknowledged by the Contractor or if they have been legally established.

#### **4. Responsibilities of the Principal**

- 4.1 The Principal shall obtain all (official) approvals, work visas and permits, which are prerequisites for the performance of the Services by the Supervisor/Machine-Supervisor and his free movement in the country where the Services are being provided, in due time and on its own account, especially all approvals for entry and departure, residence and work visas permits.
- 4.2 The Principal shall acknowledge the working hours spent by the Supervisor/Machine-Supervisor on the respective time sheets. In case the Principal does not confirm these time sheets within four (4) weeks, the records of the Supervisor / Machine/Supervisor shall be used as the basis for invoicing. The Principal shall provide the Contractor with copies of the time sheets collected at the end of each month.
- 4.3 In case of illness, accident or death of the Supervisor/Machine-Supervisor in the course of performing the Services or otherwise while at the Site the Principal shall ensure medical treatment or transfer to a hospital and also bear the costs for the return journey of the Supervisor/Machine-Supervisor and the deployment of a substitute, if necessary and as far as reasonable. In such cases, the Principal shall also carry out all necessary formalities towards the local authorities. Principal shall have a public and product liability insurance, on an occurrence basis, for a limit of not less than EUR 5 (five) million per claim (and in the annual aggregate for product liability). Such insurance shall remain valid and in force for the duration of the Contract.

#### **5. Warranties and Liability**

- 5.1 The Contractor undertakes and warrants that the Services rendered by the Supervisor/Machine-Supervisor comply with the agreed Terms and Conditions. The Contractor will provide the Services with reasonable care and skill. The Contractor does not assume any responsibility for any works performed by the Principal or third parties in particular installation, demolition, maintenance or other works in this context.
- 5.2 The Contractor's liability shall be restricted to cases of willful misconduct or gross negligence, to the extent permitted by applicable law. In no event shall the Contractor, its employees, agents or contractors be liable to the Principal or any third party, in contract, tort or otherwise for cases of ordinary negligence, loss of actual or anticipated profits, business, production, revenue, reputation, goodwill, time, use, interest, cost of capital, third party claims, financial loss, non-realized savings incurred or suffered, in each case whether arising directly or indirectly, or for any special, data, incidental, indirect, exemplary, punitive or consequential damages relating to the Services. Contractor's liability shall be limited to the typical, foreseeable damages and without prejudice to any other limitations. The burden of proof lies in all cases with the Principal to the extent permitted by law. The aforementioned provisions shall not limit the Contractor's liability for personal injury or death, gross negligence or any other matter insofar as the liability may not be limited or excluded according to applicable law.

- 5.3 Notwithstanding the aforementioned any claims of the Principal against the Contractor, its employees, agents or (sub)contractors, arising out of or in connection with the Contract and its appendices or these Terms and Conditions, whether based on tort, breach of contract, breach of warranty, strict liability, breach of statutory duty, misrepresentation, negligence or other act, default or omission (except for personal injury or gross negligence) shall, to the extent permitted by applicable law, be generally limited to the price agreed for the respective Service or to an amount of EUR 500.000 (five hundred thousand Euro) whichever is lower.
- 5.4 If the Principal hands over planning and design documents, in particular structural steel drawings, the Contractor has no responsibility to review or to examine them. If these documents prove to be incorrect or incomplete, the Principal shall bear full liability for all resulting damages and shall indemnify the Contractor for and against any and all direct or indirect costs, losses and damages which in each case arise directly or indirectly from, as a consequence of or in connection with such documents or their use.
- 5.5 If the Contract includes preparing and delivery of design documents by the Contractor and if the Principal proves that these documents are incorrect, then the Contractor shall be liable for a warranty period of six (6) months starting with the acceptance of these documents only for the correction of these documents. The Contractor shall not be liable for verbal advice and information. If the incorrect planning or design is attributable to inaccurate preparatory information given by Principal, any liability on the Contractor 's part shall be excluded.
- 5.6 Further warranty and indemnity claims on the part of the Principal on whatever legal grounds shall be excluded to the extent permitted by law.
- 5.7 If the Services of the Supervisor/Machine-Supervisor are provided free of charge and without any legal obligation by the Contractor, any liability of the Contractor shall be excluded to the extent permitted by law. The Principal shall examine all calculations, advice, information and the like received by the Contractor or the Supervisor/Machine-Supervisor, and ensure their applicability in the specific situation, based on its relevant expert knowledge.

## **6. Termination**

- 6.1 The Contractor may terminate the Contract or any part thereof without giving any reason and without liability by giving four (4) weeks written notice. Furthermore, the Contractor may terminate or suspend all or any part of the Contract by written notice with immediate effect, (i) if performance is impossible or unreasonable as determined by the Contractor in its sole discretion,(ii) if the Principal is in material breach of any of its obligations stated in the Contract and such failure is not cured within ten (10) days after delivery of such written request, (iii) if insolvency or bankruptcy proceedings are initiated against the Principal or (iv) if the Contractor has notified the Principal of its failure to pay any amount due and payable to the Contractor under and in accordance with this Contract and such failure to pay has not been cured within 30 days from the date of the Contractor's notification or (v) if the financial solvency of the Principal deteriorates substantially.
- 6.2 In case of a termination of the Contract for whatever reason the Principal shall immediately pay (i) the price for any performance (or part thereof) effected prior to the termination at the Principal's request, (ii) reasonable overhead and profit and (iii) any payments due to subcontractors for any materials, components or Products ordered which cannot be cancelled, refunded, or redirected for other beneficial use.
- 6.3 The Principal shall reimburse the Contractor for any damage, loss and/or costs resulting thereof. All clauses in the Contract which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding any termination of the Contract.

## **7. Law and Jurisdiction**

- 7.1 These Terms and Conditions and all legal relations between the Contractor and the Principal shall be subject to the law of the country in which the Contractor's registered office is located. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflict of law provisions under the law agreed upon are explicitly excluded.
- 7.2 The place of jurisdiction for all disputes or claims arising out of or in connection with the Contract shall be the competent court in which the registered office of the Contractor is located. However, the Contractor is entitled to bring proceedings before any other court e.g. before the Principal's court of general jurisdiction.

## **8. Force Majeure**

- 8.1 If the Contractor's performance is delayed by any cause beyond its reasonable control regardless of whether the cause was foreseeable, (hereinafter "Force Majeure Event") including without limitation (i) acts of God (ii) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilization; (iii) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, cyberattacks, sabotage or piracy; (iv) currency and trade restriction, embargo, sanction; (v) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalization; (vi) plague, epidemic, pandemic, natural disaster or extreme natural event; (vii) explosion, fire, destruction of equipment, prolonged break-down of transport, difficulties with or shortage of utility supply including but not limited to supply of power, gas or water, telecommunication or information system or ; (viii) general labor disturbance such as boycott, strike and lock-out, go-slow, occupation of factories; (ix) delays of carriers, shortage of (raw) material or labor, breakdown (of machinery or equipment), default of subcontractors, the Contractor's time of performance will be extended by a period equal to the length of the impediment plus any consequences of the impediment.
- 8.2 The Contractor will notify the Principal within a reasonable time after becoming aware of any such impediment. In such case the Contractor is relieved from its duty to perform its obligations under the Contract and from any liability in damages or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform. The contract may be terminated by either party by giving 14 (fourteen) days written notice, if the duration of the impediment exceeds 90 (ninety) days.

## **9. Hardship**

The Parties shall negotiate in good faith modifications to the Contract, if the performance of the Contract becomes excessively onerous for the Contractor due to an event beyond the Contractor's reasonable control such as major changes in production, labor, raw material, energy or transport costs, general price list increases, exchange rate fluctuations, changes in law or applicable engineering standards, necessary suspensions or modifications of the Supply as well as any further changes beyond the Contractor's sphere of influence. If an agreement on such modification is not achieved within four weeks after Contractor's notification, the Contractor may terminate the Contract with immediate effect.

## **10. Health and Safety**

The Principal shall provide the Contractor in advance with all necessary information as to risks, contingencies and other circumstances concerning the Site, which may influence the manner in which the Services are performed. Principal must inform the Contractor in advance for extraordinary personal protective equipment (PPE) due to the conditions on Principal's premises. Principal shall indemnify Contractor for any claims, costs, expenses and fines which result from Principal's breach

of this Clause 10 and shall compensate all claims, costs, expenses and fines incurred by Contractor in relation thereto.

**11. Confidentiality**

Each Party shall keep any information (oral or written) provided or disclosed by or on behalf of the other Party confidential, use such information only for the purpose of the Contract and shall refrain from disclosing such information to any third party (other than its employees and sub-contractors who need to know such information for the purpose of performing its obligations under the Contract) without the other Party's consent. This clause shall not apply to information which, at the time of disclosure, is or subsequently becomes available to the public (other than as a breach of the receiving Party's obligation under this clause), which at the time of disclosure was already in the possession or subsequently comes legally into the possession of the receiving Party or which was independently developed by the receiving Party. Each Party shall be entitled to disclose such information to the extent it is required to do so in order to comply with an applicable legal requirement, court order, ruling of a public authority or stock exchange regulation. This clause shall remain effective for a period of five (5) years after termination of the Contract.

**12. Miscellaneous**

The Principal may not assign the Contract or any part thereof without the prior written consent of the Contractor. The Contractor may assign the Contract or any part thereof to any third party and will inform the Principal thereof and may deliver Goods or perform Services through any third parties.

If a provision of these Terms and Conditions or a provision in other agreements between the parties is or becomes invalid, this invalidity will not affect the validity of any other provisions or agreements. The invalid provision shall be replaced, and the gap be filled by a legally valid arrangement which corresponds as closely as possible to the intention of the Parties or what would have been the intention of the Parties according to the aim and purpose of the Contract and/or the Terms and Conditions if they had recognized the gap.

## ANNEXES

### ANNEX 1 – Description of Services

#### Services of the Supervisor

##### 1. Before installation

- Collectively with the Principal's authorized representative:
  - Inspection of the material supplied by the Contractor with regard to transport damage or warehousing damage as well as completeness;
  - Consultancy regarding the planning of the continuous transport of materials supplied by the Contractor from the warehouse to the installation site;
- Inspection of the aggregates to be lined before, during or after the preliminary measures taken by the Principal, such as cleaning the steel case, correct mounting of consoles and anchoring elements in accordance with the underlying drawings;
- Examination if the necessary tools and machinery are available and operational.

##### 2. During installation

- Consultancy of the Principal's vicarious agents concerning the regulations regarding the preparation of the Contractor's Products and inspection of the compliance with these regulations during installation;
- Consultancy of the Principal's vicarious agents at the erection of – solely the Contractor's Products-related – formwork, supports and at the handling and maintenance of machines and tools supplied by the Contractor.
- Inspection of the correct and professional installation of Contractor's Products, especially the compliance with the required width of gouging, the accurate execution of brickwork support and mounting of anchoring elements according to the underlying drawings;
- Support for vicarious agents of the Principal, insofar as this is feasible in the scope of installation.
- The Machine-Supervisor provides Services respectively performs work at the assembling and installation of the machines supplied by the Contractor.

##### 3. After installation

- Acceptance of the installation as well as documentation of possible deviations by means of an Acceptance certificate to be signed jointly with the Principal's authorized representative;
- Inspection of the drying and heating-up process in accordance with the respective guidelines, insofar as the supervision of these activities has been agreed upon contractually.

The Machine-Supervisor performs Services in supervising the operation of the machines for the purpose of troubleshooting, at demonstrations and training, at installing, dismantling and assembling individual machine parts, at training in the maintenance of the machines, at troubleshooting, servicing and repairing of machines and, if necessary, at performance tests and for measures to improve the durability of the refractory lining.

#### 4. Remote Assistance

Subject to a separate agreement to be concluded (“**Remote Assistance Agreement**”)

The Contractor offers devices and mobile apps with its corresponding accessories (the “**Devices**”) for an initial test phase through proof of concept, a new generation of service solutions to enable the conduct of remote inspections, remote support for technical service and/or remote quality acceptance of goods (“**Remote Assistance**”), either inside the Principal’s premises or inside the Contractor’s premises. The Devices will be worn and/or handled by an employee of the Contractor or Principal, depending on each use case, and shall provide a live call with remote experts from the Contractor for assistance or inspection, that could be recorded. Devices might be lent by the Contractor to the Principal to use it within its premises as described in an Annex to the Remote Assistance Agreement.