
SERVICE AGREEMENT, HOURLY RATES, MATERIAL MARK-UP, RESPONSE TIME, & ACCEPTANCE

HMS COMMERCIAL SERVICE, INC AGREEMENT

HMS Commercial Service, Inc. agrees to inspect and maintain the equipment according to the terms of this agreement, including the terms of the “general provisions” which are attached to and made a part of this agreement by this reference. Customer has received and read a copy of the “general provisions.” HMS Commercial Service, Inc. agrees to give preferential service to customers over non-contract customers.

The initial term of this agreement shall be from November 15, 2024 through June 30, 2027

CUSTOMER ACCEPTANCE

Customer agrees to pay the following price, plus tax (as applicable), for the inspection and maintenance services included in the coverage designated with respect to the equipment listed in the equipment coverage section. The terms of payment are as set out under the designated coverage.

Standard Regular Time Labor Rate: \$180.00 per hour.

Overtime Labor Rate: \$270.00 per hour.

Double Time Labor Rate: \$360.00 per hour.

Material Mark-Up: List Price plus 10%.

Emergency Response Time: 2 hours. Does not include travel time to site if necessary.

Non-Emergency Response Time: 4 hours. Does not include travel time to site if necessary.

Consent to Share with Other Agencies

Yes

HMS COMMERCIAL SERVICE, INC

CLIENT

BY: Colby Lewis

BY: Michelle Jones

TITLE: Steamfitter | Account Manager

TITLE: Director of Business Services

DATE: 12/3/2024

DATE: 12/3/2024

GENERAL TERMS AND CONDITIONS FOR LIMITED MAINTENANCE AND SERVICE CONTRACTS

In these General Terms and Conditions, reference to the "Agreement" are to the agreement comprised of these General Terms and Conditions and the Service Agreement, Pricing and Acceptance executed by the Customer and HMS Commercial Service, Inc. to which these General Terms and Conditions are attached.

1. Payment and Taxes

- A. Payment due net thirty (30) days from receipt of invoice. Interest of 1% on unpaid balances may be charged by HMS Commercial Service, Inc. HMS Commercial Service, Inc. may discontinue services whenever payment is overdue.
- B. Unless otherwise agreed, Customer shall pay, in addition to the stated price; all taxes not legally required to be paid by HMS Commercial Service, Inc. or, alternatively, shall provide HMS Commercial Service, Inc. with acceptable tax exemption certificates.
- C. Customer will pay reasonable attorney fees incurred by HMS Commercial Service, Inc. in enforcing collection of any undisputed amounts due.
- D. Where this Agreement is subject to annual renewal, the price payable hereunder may be reviewed annually by HMS Commercial Service, Inc. HMS Commercial Service, Inc. shall notify the Customer in writing of any increase in the price within forty-five (45) days after each anniversary of the date of this Agreement, with the revised price to take effect from the day falling fourteen (14) days after such notification. In the event that the Customer does not agree to the price increase, it shall notify HMS Commercial Service, Inc. in writing within fourteen (14) days of being notified of the price increase. Failure to notify HMS Commercial Service, Inc. shall constitute acceptance of the price increase. In the event the Customer does not agree to the price increase and HMS Commercial Service, Inc. and the Customer do not thereafter reach agreement on the price increase within twenty-eight (28) days of the Customer notifying HMS Commercial Service, Inc. of its disagreement with the price increase, either party may terminate this Agreement on thirty (30) days' written notice to the other, without prejudice to HMS Commercial Service, Inc.'s right to be paid in full for all services performed and goods supplied under this Agreement up to the date of termination.

2. Liability

HMS Commercial Service, Inc.'s liability for injury to persons or damage to property (including equipment and any other property) shall be limited to that caused directly and proximately by its negligence in performing under this Agreement. HMS Commercial Service, Inc. shall not be liable for personal injury or for damages to any equipment of other property caused by reason of the negligence of others, faulty system design, misuse, abuse, or caused by conditions beyond its reasonable control, or by unknown causes. In no event will HMS Commercial Service, Inc. be liable for any damages caused by Customer's failure to perform Customer's responsibilities or for any claim by Customer based on any third-party claims. HMS Commercial Service, Inc. reserves all rights to subrogation. In no event shall HMS Commercial Service, Inc. be liable under or in connection with this Agreement or any collateral contract for:

- i) any loss of income, profit or contracts; or
- ii) any indirect or consequential loss or damage of any kind howsoever arising and whether caused by breach of contract, negligence, or other tort.

3. Performance

Services will be performed during normal daytime working hours with any overtime or emergency labor billed separately, unless otherwise agreed to in writing. HMS Commercial Service, Inc.'s duty to perform under this Agreement and the price hereof is contingent upon none of the following events delaying, preventing, or impeding such performance: strikes, lock-outs, industrial disputes, accidents, fires, floods, power failures, interruption of fuel supplies, civil disturbance, natural disasters, inability to procure materials from the usual sources of supply, or upon any other cause beyond the control of HMS Commercial Service, Inc. Upon the occurrence of any such event as aforesaid, HMS Commercial Service, Inc. may give written notice to the Customer of the occurrence of such event and delay performance or, at its option, renegotiate prices, terms, and conditions with the Customer. If HMS Commercial Service, Inc. and Customer are unable to agree on such revisions to prices, terms, and conditions within fourteen (14) days of HMS Commercial Service, Inc. notifying the Customer of the occurrence of an event which will delay, impede, or prevent performance, either party may be notified in writing to the other, terminate this Agreement, whereupon the only remaining liabilities hereunder shall be the Customer's obligation to pay for services rendered and goods delivered by HMS Commercial Service, Inc. hereunder up to the date of termination.

4. Customer Obligations

Customer shall:

- A. Provide HMS Commercial Service, Inc. reasonable and safe access to all equipment and areas as are reasonably required by HMS Commercial Service, Inc. to enable it to perform the work covered by this Agreement;
- B. Reimburse HMS Commercial Service, Inc. for repairs, replacements, and/or emergency calls occasioned by any cause beyond HMS Commercial Service, Inc.'s control. Such reimbursement shall be at current overtime/holiday rates for labor, and current price levels for materials unless otherwise agreed and may at HMS Commercial Service, Inc.'s option be subject to a separate written agreement prior to its undertaking such work;
- C. Notify HMS Commercial Service, Inc. of any unusual performance of equipment covered by this Agreement; and
- D. Permit only HMS Commercial Service, Inc. personnel to repair or adjust equipment and/or controls during the period of this Agreement.

5. Exclusions

Unless otherwise expressly provided for in the Service Agreement to which these General Terms and Conditions are attached, the following matters are excluded from the services to be provided by HMS Commercial Service, Inc. under this Agreement:

- A. The provisions of spare parts, the repair and/or replacement of non-maintainable parts of the system such as unit cabinets, shells, ductwork, electrical wiring or disconnect switches, manual isolation valves, evaporator and condenser tubes, hydronic piping, structural supports, boiler refractory material, tubes and shells, storage tanks for fuel, water or other substances, refrigerant, recording or portable instruments, gauges or thermometers, pipe coverings, insulation, fire dampers, or responsibility for maintaining the appearance of decorative casing or cabinets and similar items;

- B. Any damage or malfunction resulting from freezing, corrosion or erosion on the water side of the equipment or caused by scale or sludge on internal tubes, except where water treatment protection services are provided by HMS Commercial Service, Inc. as part of this Agreement;
- C. Problems caused by utility service needed for operations of the equipment or damage sustained by equipment or systems not specifically covered by this Agreement;
- D. Furnishing any items of equipment, material or labor, or performing special tests recommended or required by insurance companies or federal, state or local governments (including inspection of fire dampers and filters for the issuance of ventilation certification) unless specifically included in the services to be provided under this Agreement;
- E. Failure or inadequacy of any structure or foundation supporting or surrounding the unit(s) or any portion thereof;
- F. Building access, alterations or structural support which might be necessary to service, maintain, repair, or replace Customer's equipment;
- G. If HMS Commercial Service, Inc. is required to make emergency calls to respond to or repair damage caused by extrinsic forces such as floods, fire, elements, lightning, riots, strikes, labor troubles, civil commotion of any kind, or any reason or event beyond HMS Commercial Service, Inc.'s reasonable control, Customer shall be separately billed for such time and expense;
- H. The normal function of starting and stopping and logging the performance of the equipment to be provided or serviced pursuant this Agreement. This includes among other things the opening and closing of valves, dampers, or regulators normally installed to protect the equipment against damage, or for obtaining proper operation;
- I. The furnishing of water treatment or cleaning to protect the equipment or to provide satisfactory operation is not included, and if found necessary Customer agrees to have it furnished by HMS Commercial Service, Inc. or someone approved by HMS Commercial Service, Inc. at Customer's expense;
- J. System design performance, including any design changes attributable to tenancy variations;
- K. The removal of waste products including sludge, sewerage, oil, and grease; or
- L. The removal of asbestos.

6. Hazardous Materials

If, during, or prior to the performance of its functions hereunder, HMS Commercial Service, Inc. discovers the existence of any hazardous materials such as, but not limited to, asbestos, it will stop work immediately and notify Customer of its existence. Customer agrees to take such steps as may be required by HMS Commercial Service, Inc. in relation to the hazardous materials as will permit HMS Commercial Service, Inc. to safely resume its work hereunder.

7. Warranties

- A. HMS Commercial Service, Inc. warrants that:
 - 1. All manufactured material supplied by HMS Commercial Service, Inc. is warranted to be free from defect in material and manufacture for a period of twelve (12) months from date of start-up or replacement. HMS Commercial Service, Inc.'s obligation under this warranty is limited to repairing or replacing the defective part at its option.
 - 2. Labor is warranted (to have been properly performed) for a period of 90 days from completion. HMS Commercial Service, Inc.'s obligation under this warranty is limited to correcting any improperly performed labor.
 - 3. Non-HMS Commercial Service, Inc. equipment and/or parts are not warranted by HMS Commercial Service, Inc. Warranties for such equipment and parts are those extended to HMS Commercial Service, Inc. by the respective manufacturer.

There are absolutely no other warranties extended, including any implied warranties of fitness for particular purpose or merchantability.

8. Indemnification

HMS Commercial Service, Inc. shall indemnify, defend, and hold harmless Customer and its affiliates, and the directors, shareholders, agents, and employees of each of them from and against any fine, penalty, loss, cost, damage, injury, claim, expense or liability (individually and collectively "Liabilities"), where and to the extent such Liabilities arise out of or result from the negligence of HMS Commercial Service, Inc. as described in "Liability" above.

9. Insurance

HMS Commercial Service, Inc. agrees to maintain insurance in the following minimum amounts during the terms of this Agreement:

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| A. | Commercial General Liability | US \$1,000,000 per occurrence |
| B. | Automobile Liability | US \$1,000,000 CSL |
| C. | Workers Compensation | Statutory Limits |

10. Termination

Either party shall have the right to terminate this Agreement at any time by giving not less than 30 days' prior notice in writing to other party.

11. Legal Compliance

HMS Commercial Service, Inc. will comply with applicable federal, state and local laws applicable to the performance of services contemplated under this Agreement and will obtain any requisite temporary licenses or permits required for HMS Commercial Service, Inc. to perform the work. The Customer will at its own cost obtain all necessary permanent licenses, permits or approvals required arising out of the performance of work.

12. Entire Agreement

These general terms and conditions and the specific conditions to which they are attached embody the entire agreement between Customer and HMS Commercial Service, Inc. pertaining to the subject matter described herein. Any modifications or amendments must be in writing and signed by both parties.