

**Explanatory Notes**

1. **Standard Service.** A typical number of prescheduled visits is three annually, though this can vary based on the type of machine and wishes of the Buyer. This provision also assumes that the Seller will provide a Check List of items that will be covered in a preventive service call..
2. **Emergency Service.** Responsiveness may vary depending on the size and resources of the Seller. An alternative provision which is less specific is as follows:

Seller will also provide necessary emergency service between prescheduled maintenance visits. Seller will use commercially reasonable efforts to dispatch a technician in a timely fashion, subject to availability of staff and prior commitments to other Buyers.

A Seller may also provide that while a technician is in the close vicinity of a Buyer in connection with a service call, the technician will be available 24 hours per day.

3. **Training.** Training may be an attractive feature, as well as a benefit to the Seller since it will help ensure that the equipment is operated properly. It may also be helpful to prepare documentation, such as a checklist, to record that training was in fact performed.
4. **Fees and Expenses.** The annual fee typically covers only the prescheduled maintenance visits (except expenses), with service provided on an emergency or remedial basis (including telephone support) for an additional charge, usually on a per hour or per day basis. Expenses are typically not included. Of course, fee and expense policies may vary as determined in the business judgement of each Seller.
5. **Term.** Most service contracts are one year.
6. **Parts.** Alternative provision:

All replacement parts that are supplied during a standard service or emergency maintenance visit will be charged together with any other charges made under the terms of this Agreement and will be paid by Buyer on a strictly net monthly account basis.

It is also possible for the Seller to include the cost for parts in the annual fee, though often there is a premium charge for this feature.

7. **Insurance**. This is most logically provided by the Seller. Also, for workers compensation coverage, Sellers should consider using an insurance carrier that is licensed in all States in which the Seller has employees, and perhaps even in all 50 States.”

8. **Exclusions**. Alternative provision:

This Agreement does not cover repairs and replacement resulting from abuse, accident, fire, water, unauthorized handling, and use of materials detrimental to proper operation of the machine, or failure to follow instructions provided in the machine manual.

9. **Working Conditions**. Alternative provision:

Buyer shall provide adequate storage space for spare parts and adequate working space including heat, light, ventilation, electric current and outlets for the use of Seller’s technicians. These facilities shall be within a reasonable distance of the equipment to be serviced and shall be provided at no charge to Seller.

10. **Warranties**. Alternative provisions:

(a) Seller warrants to Buyer that the Maintenance Services will be performed in a first-class, workmanlike manner and that the Systems will function in good operating condition during the term of the Order for Maintenance Service. In addition, if the part or component bears one or more manufacturer’s warranties, Seller hereby assigns such warranties to Buyer. All warranties shall survive inspection, acceptance, and payment.

(b) Seller shall be required to furnish all services necessary to perform contractual requirements. Workmanship in the performance of this contract shall conform to all codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials shall be manufactured in accordance with the best commercial practices and standards for this type of equipment.

Regarding parts, it is usual to simply pass along the warranty of the original manufacturer, as stated in the model agreement. Of course, a Seller may provide a broader warranty if it wishes.

11. **Remedies**. A Seller may provide any warranties it wishes, but if the Seller wants to limit the warranty coverage, it will need to expressly do so in the agreement. A Seller may also want to limit the recourse a Buyer has in the event the Buyer is displeased with the performance of the Seller. In most instances, it would not be reasonable for the Seller to be responsible for all possible losses suffered by the Buyer in the event the equipment is not functional. In addition, the provision in

the model agreement actually limits the total liability of the Seller to the Buyer to the amount of the annual fee for the agreement.

12. **Cancellation**. Typically there is a requirement of cause for termination, and a notice and cure period may be considered as well.
13. **Dispute Resolution**. The model agreement provides for arbitration of disputes, but a Seller may prefer the courts. Regardless, the Seller may want to specify the location of any arbitration or court proceeding so that it is convenient to the Seller. Like all of these provisions, the process for dispute resolution is negotiable.
14. **Force Majeure**. This simply forgives performance in the event a party is prevented from performing due to circumstances beyond its reasonable control.
15. **General Terms and Conditions**. These provisions are important, but the wording is fairly standard.