

General Terms and Conditions of Service with respect to Maintenance/Repairs to Plants and Machinery, Siloxa Engineering AG, Essen

1. Area of validity

1.1. The following General Terms and Conditions of Service with respect to Maintenance/Repairs to Plants and Machinery ("General Terms and Conditions of Service") shall apply to all (including future) contracts, deliveries and services in which we provide maintenance and/or repair services as the contractor. By placing an order, our customers declare their acceptance of the following General Terms and Conditions of Service.

1.2. We hereby object to any orders being confirmed by our Customers on the sole basis of their own terms and conditions of purchase. Our General Terms and Conditions of Service shall be considered to have been accepted upon receipt of our services or goods at the latest.

2. Conclusion of contract, general

2.1. We reserve title and copyright to our offers, drawings, prototypes, illustrations, descriptions and all other documents, including those in electronic format. These must not be made available to third parties, especially competitor companies, and must be returned on request.

2.2. Our quotations are without obligation and non-binding. Orders from customers shall be considered binding.

2.3. Contracts shall only be valid upon our written confirmation of orders received. We may confirm orders within four weeks of receipt of an order or contract. Orders may also be confirmed in the form of an invoice, delivery note or delivery itself.

2.4. With regard to the content of agreements between us and our customers, written agreements or written confirmation from us shall be authoritative.

2.5. If the item for maintenance/repair has not been supplied by us, the customer must advise of any industrial property rights with respect to the item; insofar as we are not at fault, the customer shall exempt us from any third party claims arising from industrial property rights.

3. Provision of repair services

3.1. Repairs that cannot be carried out

3.1.1. In order to provide an estimate of costs, customers shall be invoiced for the repair services provided as well as other expenses to be substantiated (time spent searching for faults is equivalent to time spent working on repairs) if the repairs cannot be carried out on account of reasons for which we are not responsible, in particular because

- a) the fault that is the subject of complaint was not apparent during inspection,
- b) spare parts cannot be purchased,
- c) the customer has deliberately missed the agreed deadline, or
- d) the contract has been terminated whilst the repairs were being carried out.

3.1.2. The item for repair shall only need to be restored to its original state at the express request of the customer against reimbursement of the respective costs, unless the work done was unnecessary.

3.2. Cost data, estimate of costs for repairs

3.2.1. Insofar as possible, customers shall be made aware of the anticipated cost of repairs upon conclusion of contract, otherwise customers may impose cost limits.

If repairs cannot be carried out at the respective price or if the contractor considers that additional work is necessary whilst the repairs are being carried out, the agreement of the customer must be sought if the specified costs will be exceeded by more than 15%.

3.2.2. If an estimate of costs with binding price quotes is required, this must be requested expressly by the customer. Unless agreed otherwise, such an estimate of costs shall only be binding if it is provided in writing.

The services provided in relation to the provision of an estimate of costs shall not be charged to the customer insofar as they can be utilised when carrying out repair work.

4. Provision of maintenance services

4.1. Scope of service

We shall provide our maintenance services in accordance with the maintenance specifications issued by the manufacturer of the item that is the subject of maintenance as well as according to the relevant VDMA [German Engineering Association] guidelines. Maintenance work shall be carried out exclusively by us or a specialist firm commissioned by us. The following services are covered under the terms and provisions of these General Terms and Conditions of Service as well as other contractual arrangements:

- Servicing
- Maintenance

4.2. Servicing

Servicing shall be carried out at the contractually agreed times or contractually agreed intervals. Unless a different arrangement has been made, servicing shall include:

- Checking the state of the item that is the subject of maintenance
- Functional test
- Adjustments
- Drawing up quotes for the procurement and replacement of working parts, depending on their availability
- Cleaning and required lubrication

4.3. Maintenance

The customer shall be notified accordingly in the event that functional defects or specific faults are discovered with respect to the item that is the subject of maintenance during maintenance work. Additional spare parts and additional work shall then be calculated separately on a time and material basis if the value of parts to be replaced during a maintenance visit exceeds the overall value of the respective goods by € 100. This amount shall be included in the maintenance price and takes account of the replacement of seals and similar small parts.

4.4. Costs of material, auxiliary materials and supplies, working parts and spare parts

Auxiliary materials and supplies as well as working parts and spare parts shall be charged additionally, unless they are covered by the flat rate amount of € 100 per maintenance visit. The exchange or replacement of modular parts and components which need to be exchanged or replaced on account of wear and tear or for other reasons shall not be part of maintenance work nor other required repair work. If we identify the need for such repairs and/or the replacement of such parts in the context of our maintenance work, the necessary steps shall be taken in consultation with the customer and materials and labour costs shall be charged separately.

If repairs are necessary as a result of incorrect handling or the use of unsuitable consumables or tools, the customer shall be notified of any additional costs incurred. The additional work arising as a result of this shall be charged on an actual time and material basis.

4.5. Service times

Services shall be provided during standard business hours, i.e. Monday to Friday between 8:00 and 16:00. In the case of services performed outside these times at the customer's request, the additional costs incurred (additional labour costs) shall be charged to the customer separately.

4.6. Documentation

All services performed and work carried out with respect to items that are the subject of maintenance shall be documented. The customer shall receive a detailed list of work carried out and our service engineers will explain this where necessary and discuss any irregularities with you.

4.7. Changes to items that are the subject of maintenance

The customer shall notify us immediately in writing of any changes in relation to items that are the subject of maintenance, their operation or other steps taken by the customer or a third party that may adversely affect the contractor's contractual obligations.

4.8. Responsibility of plant operator

The conclusion of a maintenance agreement shall not release customers from their maintenance liability with respect to the maintenance work to be carried out by plant operators as well as the regular inspection of plants and other work to be carried out on a regular basis.

5. Price and payment

5.1. We shall be entitled to request the payment of an appropriate deposit upon conclusion of contract.

5.2. When calculating repairs/maintenance, the prices of parts, materials and special services as well as labour, travel and transport costs shall each be shown separately. If repairs/maintenance are carried out on the basis of a binding estimate of costs, a reference to the estimate of costs shall be sufficient, in which only deviations in the scope of delivery need to be listed separately.

5.3. VAT shall be charged additionally at the respective statutory rate at the customer's expense.

5.4. Any adjustment of invoices on the part of a contractor or a complaint on the part of a customer must be made in writing no later than four weeks after receipt of the respective invoice.

5.5. Payment shall be made in full upon acceptance and delivery or upon remittance of an invoice.

5.6. A right of retention or offsetting on the part of the customer shall be excluded unless the customer is entitled to undisputed or legally binding rights.

6. Cooperation and technical assistance by the customer with repair/maintenance outside our factory

6.1. The customer shall support repair/maintenance personnel with the carrying out of repair/maintenance work at its own expense. Items that are the subject of repair/maintenance must be ready for repair/maintenance upon the arrival of repair/maintenance personnel on site.

6.2. The customer shall take the necessary special precautions to protect personnel and property at the repair/maintenance site. It shall inform the repair/maintenance manager of any special safety provisions insofar as these are relevant to the repair/maintenance personnel. The customer shall notify us of any breaches of such safety provisions by repair/maintenance personnel. In the event of serious breaches, the customer may refuse the contravening party access to the repair/maintenance site in consultation with the repair/maintenance manager.

6.3. The customer shall undertake to provide technical assistance at its own expense, in particular to:

- a) provide the necessary appropriate auxiliary personnel in the number required for repair/maintenance work and for the period required; auxiliary personnel shall follow the instructions given by the repair/maintenance manager. We shall accept no liability for auxiliary personnel. If a defect or damage is caused by auxiliary personnel on account of instructions from the repair/maintenance manager, the provisions in Clauses 10 and 11 shall apply accordingly.
- b) complete all construction, foundation and scaffolding work, including the procurement of the required building materials.
- c) provide the requisite equipment and heavy equipment as well as the requisite items and materials.
- d) provide heating, lighting, power, water, including the required connections.
- e) provide the required dry, lockable rooms for storage of tools belonging to repair/maintenance personnel.
- f) protect the repair/maintenance site and materials against damaging influences of any kind, clean the repair/maintenance site.
- g) provide suitable, theft-proof recreational areas and work rooms (with heating, lighting, washing and sanitary facilities) and first aid for repair/maintenance personnel.
- h) provide materials and take particular action necessary for the adjustment of items that are the subject of repair/maintenance and for performing tests as contractually provided.

6.4. Technical assistance provided by the customer must ensure that repair/maintenance work commences immediately following the arrival of repair/maintenance personnel and can be completed without delay until acceptance by the customer. Insofar as particular plans or guidance are required from us, we shall make these available promptly to the customer.

6.5. If the customer fails to meet its obligations, we shall be entitled, but not obliged, to proceed with the action for which the customer is responsible in place of the latter and at its expense following the respective deadline. If repair/maintenance work is delayed as a result of circumstances for which the customer is responsible, the customer shall bear the costs to an

appropriate extent for any journeys made in vain, waiting time and, where applicable, additionally required overnight accommodation costs incurred by service personnel. Moreover, our statutory rights and claims shall remain unaffected.

7. Transport and insurance in the event of repairs/maintenance at our factory

7.1. Unless agreed otherwise in writing, transport to and from the item that is the subject of repair/maintenance at the customer's request, including any packaging and loading, shall be performed at the latter's expense, otherwise items that are the subject of repair/maintenance shall be delivered to us by the customer at its expense and collected from us again after the repair/maintenance work has been completed.

7.2. Customers shall bear the transport risk.

7.3. At the customer's request, transport to and from our factory shall be insured against insurable transport risks, for example, theft, breakage and fire.

7.4. There shall be no insurance cover during the period of repair/maintenance at our factory. The customer shall ensure that existing insurance cover is maintained for items that are the subject of repair/maintenance, for example with respect to fire, mains water, storms and machine breakage. Insurance cover for these risks can only be obtained at the express request and expense of the customer.

7.5. In the event of delay with acceptance, we may impose warehousing charges for storage on our factory premises. Items that are the subject of repair/maintenance may also be kept elsewhere at our discretion. The costs and risk of storage shall be at the customer's expense.

8. Acceptance

8.1. The customer shall undertake to accept repair/maintenance work as soon the end of such work has been notified and any contractual testing of items that are the subject of repair/maintenance has taken place. If repair/maintenance work proves to be contrary to the terms of contract, we undertake to eliminate the respective defect. This shall not apply if the defect is insignificant for the customer or is based on circumstances attributable to the customer. If a slight defect is present, the customer may not refuse acceptance.

8.2. If acceptance is delayed and we are not at fault, acceptance shall be considered to have been given two weeks after the end of repair/maintenance work has been announced.

8.3. Our liability for identifiable defects shall cease upon acceptance unless the customer has reserved the right to claim a specific defect.

9. Retention of title, extended lien

9.1. We shall retain ownership of all accessories, spare parts and replacement parts used until receipt of all payments arising from the repair-/maintenance agreement. Further collateral agreements may be reached.

9.2. We shall be entitled to a right of lien on account of our claim arising from the repair/maintenance agreement with respect to a customer's item that is the subject of repair/maintenance which is in the customer's possession on the basis of the agreement. The right of lien can also be exercised on account of claims arising from previous work, deliveries of spare parts and other services insofar as these are connected to the item that is the subject of repair/maintenance. The right of lien shall only apply to other claims arising from the business relationship insofar as these are undisputed or legally binding.

10. Warranty claims

10.1. Following acceptance of repair/maintenance work, we shall be liable for defects in repair/maintenance work to the exclusion of all other claims by the customer notwithstanding Clause 10.5 and Clause 11 in that we shall eliminate the respective defects. Customers shall notify us in writing immediately of any defects found.

10.2. We shall not be liable if the defect is insignificant for the respective customer or is based on circumstances attributable to the customer. This shall apply in particular with regard to parts supplied by the customer.

10.3. If any changes are made or servicing work is carried out by the customer or a third party incorrectly or without our prior agreement, we shall not be liable for the resulting consequences. Only in urgent cases of a risk to operating safety and to protect against disproportionately significant damage, where we must be notified immediately, or if we have allowed an appropriate period given to us in which to eliminate defects to elapse, the customer shall be entitled to arrange elimination of defects itself or by a third party and request the reimbursement of the necessary costs from us.

10.4. Of the costs directly incurred as a result of eliminating defects, we shall bear the costs of replacement parts, including shipping, provided the complaint proves justified. We shall also bear the costs of dismantling and installing as well as the costs of any necessary provision of the required fitters and auxiliary personnel including travel expenses, unless this results in disproportionate costs for us.

10.5. If we allow (taking account of statutory exceptions) an appropriate period given to us in which to eliminate defects to elapse without doing so, the customer shall be entitled to a reduction in accordance with statutory provisions. The customer shall also be entitled to a reduction in other cases of failure to eliminate defects. The customer may only withdraw from the contract if repair/maintenance is verifiably not of interest to the customer in spite of the reduction.

11. Our liability, exemption from liability

11.1. Unless specified otherwise in Clauses 10, 11.3 and 11.4, customers may not make claims on account of material defects or defects in title, regardless of the reasons. We shall not be liable in this respect for damage that is not incurred by an item that is the subject of repair/maintenance itself. We shall not be liable in this respect in particular for lost profit or other financial loss incurred by the customer.

11.2. Unless specified otherwise in Clauses 11.3 and 11.4, customers may not make claims on account of a breach of obligation arising from the contractual relationship.

11.3. The preceding exemptions from liability (Clauses 11.1 and 11.2) shall not apply insofar as we are liable under law, for example (1) in accordance with the German Product Liability Act (Produkthaftungsgesetz), (2) on account of injury to life, limb or health, which is due to a negligent or deliberate breach of obligation by us or one of our legal representatives or vicarious agents, (3) insofar as the cause of the damage is due to deliberate intent or gross negligence by us or one of our legal representatives or vicarious agents, (4) if the customer exercises rights on account of a defect arising from a quality guarantee or a guarantee of the specific duration of quality, (5) if we deliberately breach a significant contractual obligation, the fulfilment of

which enables correct execution of the contract and upon compliance with which the contracting parties may generally depend (cardinal obligation) or (6) if claims under a right of recourse in the purchase and supply chain of consumer goods (Article 478 of the BGB [German Civil Code]) are involved.

11.4. Insofar as we negligently breach a cardinal obligation, our liability for damages shall be limited to typical, foreseeable contractual damage unless there has been deliberate intent or gross negligence or we are liable on account of injury to life, limb or health.

12. Expiry by limitation

All claims made against us on account of material defects or defects in title shall expire by limitation 12 months after statutory commencement of warranty, unless the Product Liability Act or other legislation, in particular Article 438 (1) (2) of the BGB (buildings and items for buildings), Article 479 (1) of the BGB (rights of recourse in the purchase and supply chain for consumer goods) or Article 634a (1) (2) of the BGB (building defects) prescribe longer periods. The expiry by limitation of claims on account of liability for damages arising from injury to life, limb or health, which are due to a negligent or deliberate breach of obligations by us, our legal representatives or vicarious agents, shall be based on statutory provisions.

13. Compensation for the customer

In the event that, during repair/maintenance conducted outside of our factory premise, equipment or tools provided by us are damaged at the repair/maintenance site for reasons for which we are not at fault or if they are lost for reasons for which the customer is not at fault, the customer shall undertake to compensate for these damages. Consideration shall not be given to damage that is attributable to normal wear and tear.

14. Applicable law, legal venue

14.1. The law of the Federal Republic of Germany relevant to legal relationships between domestic parties shall apply exclusively to all legal relations between us and the customer.

14.2. The legal venue for any disputes arising from the commercial relationship with our customers, including complaints regarding cheques and bills of exchange, shall be solely the Court in Essen.

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