

Terms and Conditions of Repair and Installation Services (Domestic/International)

(on the basis of the terms and conditions recommended by Verband Deutscher Maschinen- und Anlagenbau eV. (VDMA)
(= German Machine and Plant Engineering Association)

OPTIMA

Vision: Februar 2012

To be applied to any agreement with

1. any person acting in performance of her/his commercial or independent professional business (entrepreneur) when entering into any respective agreement
 2. any public legal entity or any public separate estate.
- The following terms and conditions shall apply to any repair of machines and plants to be performed by us or on account of our order, regardless of whether the work is to be performed on any respective customer's premises (within the country or abroad), such customer being our Client, or in our works, us being our Client's Contractor. These Terms and Conditions of Repair and Installation shall also apply to all future repair and installation orders. Any incorporation of terms and conditions to the contrary is hereby expressly and finally objected to.

I. SCOPE OF PERFORMANCE

1. Contractor's written acknowledgment of any respective order shall determine the content of any respective agreement and the scope of any respective performance.
2. There are no oral ancillary agreements.
3. Any ancillary agreement and any modification of any respective agreement shall be subject to Contractor's written acknowledgment thereof.

II. COST ESTIMATE

If Client requests Contractor to make a written estimate of the cost before placing an order, Contractor may charge the expenses caused thereby to Client. Contractor's "field assembly rates" in effect at the relevant time shall be made the basis thereof.

III. DUTY TO GIVE INFORMATION

1. If any respective repair item does not originate from Contractor, Client shall point out any possibly existing industrial property rights in that item. Client shall hold Contractor harmless from any third party claims in case Contractor innocently infringes any industrial property right of any third party.
2. If any respective repair item is not owned by Client at all or if it is not solely owned by Client, Client shall inform Contractor hereof. As between Client and Contractor, however, Client shall be liable to pay the price due for services performed regardless of the ownership of any respective repair item. Client shall hold Contractor harmless from any third party claims.

IV. RESTORATION OF THE ORIGINAL STATE

If any respective repair item must be disassembled for the purpose of making a cost estimate, Contractor shall only be obligated to reassemble that item upon Client's explicit request and against payment of the reassembly costs. This shall not apply if the work performed by Contractor was unnecessary or if an order is placed on the basis of such a cost estimate.

V. COST LIMIT OVERRUN

If no request for making a written and reliable cost estimate is made prior to placing an order, and Client does, however, set a cost limit, and if subsequently the repair cannot be made within that cost limit, or if Contractor deems additional repair work necessary or desirable to be done, then Contractor shall obtain Client's prior consent for such cost limit overrun or additional repair work if the cost limit is expected to be probably overrun by more than 15 %.

VI. PRICE

The prices agreed upon or payable under law shall be in Euro, and, in the absence of any particular agreement, ex works pursuant to Incoterms 2000, inclusive of lading, exclusive, however, of packaging and customs clearance, plus the respective applicable sales tax and, if services are performed abroad or destined for an abroad location, plus any other fees and taxes, plus any necessary freight and traveling expenses. If no individual agreement has been made, Contractor's "field assembly rates" shall apply.

VII. ADVANCE PAYMENT

Contractor may demand a reasonable advance payment prior to beginning its work.

VIII. INVOICES FOR PARTIAL PERFORMANCE

Furthermore, it may make out partial invoices corresponding to the progress of its performance. Such partial invoices shall be payable immediately upon their receipt.

IX. TIME OF PAYMENT

1. Client shall accept any respective repair work or assembly upon being given notice of its completion and upon completion of a possibly stipulated test of the respective repair item or of the respective assembled ordered item. If any respective repair or assembly proves to be noncompliant with its underlying agreement, Contractor shall cure such defect. This shall not apply if such defect is irrelevant to Client's interests or if it is to be ascribed to a circumstance imputable to Client. In case of a nonsubstantial defect, Client shall not be entitled to refuse acceptance of Contractor's performance if Contractor expressly recognizes its duty to cure that defect.
2. If acceptance of its performance is delayed without Contractor's fault, such acceptance shall be deemed to have occurred two weeks after notice of completion of any respective repair or assembly has been given.
3. Contractor's liability for recognizable defects shall lapse upon acceptance of its performance unless Client priorly reserves its right to complain of a particular defect

X. PAYMENTS

1. Contractor shall be apprized of any objection to an invoice no later than 2 weeks following Client's receipt of that invoice
2. Unless otherwise agreed upon by the parties, any payment shall be made net cash and free of charges at Contractor's place of business. In any case of its default of payment, Client shall be charged with default interest in the amount provably incurred, no less, however, than 8 % above the basic interest rate of the European Central Bank and without prejudice to Contractor's right to claim damages in excess of such amounts of interest. If Client fails to make payment subsequently to receiving a dun letter from Contractor after its claim for remuneration has become due, Client shall come into default of payment. Irrespective thereof, however, Client shall come into default of payment if it fails to make any payment at the payment time determined under any respective agreement either by reference to the calendar or by contractual stipulation. The legal provision under which any debtor, subsequently to the expiration of 30 days and following receipt of an invoice, is automatically in default of payment at the latest, shall remain applicable without prejudice to the foregoing provisions.
3. Any right to withhold payment may only be exercised if it is based on claims of Client's arising from the same transaction between the parties and if it is either acknowledged as meritorious by Contractor or declared to be meritorious by a final and unappealable judicial decision. Client shall not be entitled to set off any claims against Contractor's claims unless such claims are either acknowledged as meritorious by Contractor or declared to be meritorious by a final and unappealable judicial decision.

XI. CLIENT'S PARTICIPATION AND TECHNICAL ASSISTANCE IN CONTRACTOR'S PERFORMANCE OF REPAIR AND INSTALLATION WORK OUTSIDE OF CONTRACTOR'S WORKS

1. Client shall, at its own expense, assist Contractor's staff in performing such work.
2. Client shall take any necessary special measure for the protection of persons and items at the workplace. Furthermore, it shall also inform Contractor's repair or assembly foreman of any existing special safety regulations to the extent they are relevant for Contractor's personnel. It shall give Contractor immediate notice of any violation of such safety regulations by any of Contractor's personnel
3. Client shall, at its own cost, perform preparatory work and provide technical assistance while Contractor performs its work, including without limitation thereto:
 - a) Clarification of the combination of any respective items ordered by Contractor with accessory parts or external machinery.
 - b) Unpacking of any respective machine and machine parts as well as taking them to the place of their installation.
 - c) Provision of sufficient quantities of all the products to be processed and of the respective packaging materials prior to the installation of any respective machine.
 - d) Provision of qualified auxiliary personnel for any respective repair in the required number and for the required time. Contractor's repair foreman shall have the right to issue instructions to such auxiliary personnel without any prejudice to the rights of such auxiliary personnel's superiors of issuing instructions to them as well.
 - e) Provision of Client's future machine operating staff for the purpose of being introduced into operating the machine by Contractor's staff during the regular working hours of Contractor's staff.
 - f) Provision of any required devices and heavy tools and of any required items and any required materials.
 - g) Provision of heating, lighting, electricity, water and of the connections required respectively.
 - h) Provision of dry and lockable rooms for storage of Contractor's tools and for Contractor's staff, wherefore those rooms shall also be heatable, lightable and provided with washing and sanitary facilities.
 - i) Protection of the workplace and of the working materials from detrimental impact of any kind and cleaning of the workplace as well.
 - j) Provision of materials and performance of any act necessary for breaking in the repaired item and for performing a contractually stipulated test. Client's technical support shall warrant that repair/installation can be started immediately after arrival of staff and can be performed without delay until acceptance by Client.
4. Should Client fail to meet its obligations despite being requested to do so, then Contractor may perform Client's obligations in Client's place and at Client's expense after giving Client notice of its intent to do so.
5. Client shall make the technical data required for any respective repair or installation as well as its operating logs and control books and like documents available to Contractor.

XII. TRANSPORT, TRANSPORT RISK AND INSURANCE

1. In the absence of any written agreement to the contrary, any transport of the repair item to and from the place of its repair inclusive of its possible packaging and lading shall be carried out at Client's expense and risk.
2. No repair item will be covered by any insurance from Contractor's side during the time of its repair at Contractor's works. It shall be up to Client to ensure the preservation of an existing insurance coverage for the repair item even for the time of its transfer to Contractor's premises.
3. In any case of Client's default of taking over any respective repaired item, Contractor may charge Client 50 % of the cost that would be charged by a forwarder for storing the object at its works. Contractor may also have a forwarder warehouse the respective repair item at Client's expense and risk.

XIII. TIME OF PERFORMANCE

1. The obligatory time of performance shall be deemed to have been observed if the respective repair item or the machine or plant to be installed is ready and made available for being taken over by Client or if, in case a test has been contractually stipulated, the item is kept available for performing that test upon the expiration of that time.
2. The time of performance shall be adequately extended if any additional order or extension of an order is placed or if any additional repair or installation work is necessary.
3. The time of performance shall be adequately extended in any case of industrial action, particularly strike and lock out, and as well in any case of an occurrence of any important unforeseeable obstacles beyond Contractor's will, provided that such obstacles are proven to substantially affect the completion of Contractor's performance.
4. Should Client fail to fulfill any of its obligations and should completion of Contractor's performance be delayed thereby, then the time of performance shall be extended corresponding to the delay caused by Client's conduct.

XIV. RETENTION OF TITLE, EXTENDED SERVICE OR WORK CONTRACTOR'S LIEN

1. To the extent possible under law, Contractor shall retain its title to all accessory parts, replacement parts and replacement units until it has received all payments due under any respective agreement.
2. If property rights cannot be validly retained in a foreign country or state, provided that the laws of such country or state are applicable, then Client shall be bound to cooperate in taking all measures, including without limitation to give any declaration required from its side, for providing Contractor with securities equivalent to retention of property rights.
3. Contractor shall have a work contractor's lien for its claims arising from any respective agreement between the parties on any repair item it has acquired possession of under any such agreement. This work contractor's lien may also be enforced for claims of Contractor's arisen from contracts the parties have priorly entered into, or from prior deliveries of replacement parts, or from prior other performances, provided that such claims are related to the respective repair item. Any other claims of Contractor's arising from the business connection with Client shall only be secured by that work contractor's lien if they are uncontested or declared to be meritorious by a final and unappealable judicial decision

XV. DEFECTIVE PERFORMANCE

For any defect of its performance, including but not limited to any lack of warranted qualities, Contractor shall be liable as follows:

1. It shall cure any defect. This shall not apply if the defect is irrelevant to Client under an objective point of view or if it is to be ascribed to a circumstance imputable to Client. Particularly, Contractor shall not be obligated to cure defects of parts supplied by Client itself or to cure defects of the repair item caused by such parts.

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2. Contractor may take up to three attempts at curing a defect, or replace a part up to two times, or make two replacement deliveries for a defective part.
3. If Client again complains of defects of the rework performed or of the replacement of parts or of the replacement delivery, then it may at its choice either demand that the repair price be reduced or the repair order be rescinded as to the defective part of Contractor's performance.
4. Client may only cure a defect itself and at Contractor's expense if Contractor defaults in doing any rework owed under a repair order and if excessive damage is imminent to be incurred by Client.
5. The warranty period (period of limitation for all defect related claims) shall be one year as of the date on which the limitation period commences to run under law. The statutory period of limitation shall apply, however, to structures or to any item that, according to its ordinary use, has been used for a structure and has caused the defectiveness of that structure.
6. The statutory periods shall also apply in any case of intentional misconduct and in any case of intentional misrepresentation.
7. Provided that Client's complaint proves to be meritorious, the share of the immediate cost resulting from any rework, replacement delivery, and installation of replacement parts under a warranty to be borne by Contractor shall be limited to the cost of the replacement item inclusive of its shipment and to such cost of its removal and installation as the parties shall stipulate in advance.
8. Should the necessity arise that a mechanic of Contractor's is made available, the cost hereof shall be borne by Contractor to the extent to which this does not result in a burden to Contractor which is unreasonable.
9. In any case of timely notice of a defect, Client's right to assert claims arising from defective repair work shall expire 6 months after such notice has been given, no sooner, however, than upon the expiration of the warranty period. The warranty period shall commence upon completion of the repair work in case of a repair made at Client's place of business and upon the dispatch of a repaired item in case of a repair made at Contractor's works.
In any case of rework to remedy a defect being required to be performed by Contractor, the warranty period shall be extended by the down time of the respective repair item caused by such rework.

XVI. DAMAGES CLAIMS AGAINST CONTRACTORS, EXEMPTIONS FROM LIABILITY

1. Should any parts of the repair item or, during an installation, any installed parts delivered by Contractor be damaged through Contractor's fault, then Contractor shall at its choice either repair such parts or deliver new parts. As to its amount, this liability to pay compensation shall be limited to the price of the repair or installation contractually agreed upon between the parties. Otherwise, section XVI. Subsection 3 shall apply by way of analogy.
2. If, without any fault on Contractor's side, the repair item or the installed item is not used by Client as provided under any respective agreement between the parties, or if Client culpably fails to observe any operating instructions or maintenance instructions thus causing any defect or damage, then Client shall have no right to have any defects cured (section XV). Section XVI. subsection 3 shall apply by way of analogy.
3. Regardless of the legal basis invoked, Client shall neither assert any compensation claims against Contractor in excess of the rights conceded under these provisions, including without limitation any claim for damages, even if based on noncontractual liability, nor any other rights because of other possible detriments in connection with any respective repair or installation. This nonliability clause shall, however, neither apply in any case of intentional or grossly negligent misconduct by Contractor's owner or Contractor's officers, nor in any case of a culpable breach of essential contractual duties. Nor shall it apply to any case of injury to life, body and / or health.
4. Except for cases of intentional or grossly negligent misconduct by Contractor's owner or Contractor's managers, Contractor's liability in any case of a culpable breach of essential contractual duties shall be limited to such damages which are typical for the agreement in question and which were reasonably foreseeable.
5. The damages typical for any respective agreement and reasonably foreseeable shall be assessed as follows:
 - a) The maximum amount for damages to any respective repair item or installation item or inspection item shall be EURO 10,000.00.
 - b) The maximum amount for damages to any item not being the item of any respective order or to any series-connected machinery or to any other plant and equipment or to any building shall be EURO 1.25 million in each case of a damage event.
 - c) Client's right to compensation of damages to any machinery series-connected to any respective repair item or installation item or to any connected machinery and equipment caused by any service or work in the course of any repair or installation shall be limited to EURO 25,000.00 in each case of a damage event.
 - d) The maximum amount for damages to any plant and equipment or to any building under product liability shall be EURO 1.25 million in each case of a damage event.
 - e) In any case of a delay Contractor is at fault for, and for each week of such delay, Contractor shall be liable to pay 0.5 % of the part of the stipulated repair price apportionable to that part of the machinery to be installed by Contractor which cannot be timely put to use (delay compensation), the total of such compensation payments, however, not to exceed 5 % of the aforementioned part of the stipulated repair price.
6. If Client fixes the defaulting Contractor a reasonable additional period of time and if Contractor fails to perform its obligations within such additional period of time, then Client shall be entitled to rescind the respective agreement.
7. In any case of a delay of Contractor's performance, Client's rights shall be limited to those set forth under subsections 5 and 6 hereof.
8. The nonliability clause shall not apply to cases of liability under the German Product Liability Act (Produkthaftungsgesetz) relating to injuries to persons or damages to items destined for personal use caused by defective repair or installation work. Neither shall it apply to any case of lack of a quality which has been explicitly warranted, provided such warranty was given with the intent of keeping Client harmless from such damages which did not materialize in the repaired or installed item itself. Furthermore, the nonliability clause shall not apply to any injury to life, body, and / or health.

9. Client's right to claim damages incurred through any repair or installation work shall be limited to EURO 25,000.00 for each particular damage event.

XVII. CLIENT'S LIABILITY

If, during any repair work done outside of Contractor's works, any of the machinery, tools or vehicles provided by Contractor is damaged either at the location of the repair or at the site made available or if any of such machinery, tools or vehicles are lost through no fault of Contractor's, then Client shall compensate Contractor for any such damage.

XVIII. PLACE OF PERFORMANCE, PLACE OF JURISDICTION, APPLICABLE LAW, FINAL PROVISIONS

1. The place of Contractor's performance shall be where the repair item is located according to the terms of any respective agreement or where the installation work is to be performed. Schwäbisch Hall shall be the place of any respective payment.
2. The exclusive place of jurisdiction, even for summary draft enforcement proceedings, summary check enforcement proceedings and summary proceedings restricted to documentary evidence, shall be at the respective court of general jurisdiction over Schwäbisch Hall without prejudice, however, to Contractor's right to resort to the court of general jurisdiction over the place of Client's domicile.
3. The contractual relationship between Contractor and Client shall be solely governed by the laws of Germany, to the exclusion of the United Nations Convention on the International hereabove also referred to as Contractor hereabove also referred to as Contractor Sale of Goods (CISG) and the provisions of German Private International Law (deutsches Internationales Privatrecht).
4. If any particular provision of these Terms and Conditions of Repair and Installation Work is or becomes invalid, this invalidity shall not affect the validity of the other provisions. The parties to any respective agreement shall agree upon a new provision serving the purpose pursued by the provision having become invalid at best.
5. These Terms and Conditions shall only apply to repair and installation work. Deliveries shall be governed by our "General Terms and Conditions of Sale and Delivery (Domestic/International)".
The above terms and conditions are the Terms and Conditions of Repair and Installation Services (Domestic/International) of

- OPTIMA Maschinenfabrik Dr. Bühler GmbH & Co. KG, Steinbeisweg 20, 74523 Schwäbisch Hall
- OPTIMA packaging group GmbH, Steinbeisweg 20, 74523 Schwäbisch Hall
- OPTIMA filling and packaging machines GmbH, Steinbeisweg 20, 74523 Schwäbisch Hall
- OPTIMA GROUP manufacturing GmbH, Steinbeisweg 20, 74523 Schwäbisch Hall
- OPTIMA Auslandsbeteiligungen GmbH, Steinbeisweg 20, 74523 Schwäbisch Hall
- OPTIMA GROUP pharma GmbH:
 - Facility: Otto-Hahn-Str. 1, 74523 Schwäbisch Hall
 - Facility: Vor dem langen Loh 8, 35075 Gladenbach - Mornshausen
- Kugler GmbH, Geschwister-Scholl-Str. 89, 74523 Schwäbisch Hall
- medicon GmbH, Steinbeisweg 20, 74523 Schwäbisch Hall
- Stern Fördertechnik GmbH, Raiffeisenstraße 27, 74523 Schwäbisch Hall

- hereabove also referred to as Contractor -