

# KMS

## KELLNER MASCHINEN SERVICE

### General Terms and Conditions of Service (as of 06/2018)

#### I. General, Scope of Application

1. For the carrying out of repairs, maintenance work and other corrective and general maintenance work on machines and machine parts (service provision) by us, the following Terms and Conditions of Service shall apply exclusively. Terms and Conditions of the Supplier which are contrary to, deviate from or are supplementary to our Terms and Conditions of Service, shall not be recognised unless we have expressly approved their validity in writing.
2. Our following Terms and Conditions of Service shall only apply vis-à-vis entrepreneurs, legal entities under public law and special funds under public law within the meaning of Art. 310 Par. 1 BGB (German Civil Code).

#### II. Quotations, Scope of Services

1. Our quotations are always subject to change and are not binding.
2. For the type and scope of our services, our written order confirmation shall be authoritative, or – in case there isn't one – our written quotation. Otherwise, in case of doubt, our decisions on site shall apply unless the Purchaser objects immediately.

#### III. Telephone Information

Telephone information given by us is provided by courtesy and is exclusive of any liability unless expressly agreed otherwise.

#### IV. Quotation of Price and Cost Estimate

1. A quotation with binding price information is only given on the Purchaser's request. It shall only be binding if it has been made in writing and marked as binding.
2. In case we have only given a non-binding price quotation and the service cannot be provided at this price, the Purchaser's approval needs to be obtained only if the quoted cost is going to be exceeded by more than 20%.

#### V. Pricing

1. Unless otherwise agreed upon, we invoice the prices stated in our pricelist at the time of the conclusion of the contract.
2. VAT is not included in the price and shall be charged at the applicable legal rate.

#### VI. Purchaser's Duties to Notify

1. The Purchaser must notify us of any existing industrial property rights regarding the item on which the service is going to be carried out (serviced item) if it was not delivered by us. Insofar, the Purchaser shall keep us indemnified against any third party claims unless we are at fault.
2. The Purchaser has to make us aware beforehand of any specific precautions or safety measures that need to be taken or other special features that need to be taken into account when handling the item that is to be serviced.
3. Furthermore, the Purchaser has to make available any instructions and plans pertaining to the serviced item in sufficient time before the work is carried out.

#### VII. Carrying out of Work on the Purchaser's Premises

1. The Purchaser has to facilitate the carrying out of the service at his cost and put in place the necessary safety measures at the work place if this work is carried out on his premises.
2. The Purchaser's obligation to cooperate is to be fulfilled in such a way that the service provision can be started promptly on arrival of our personnel and carried out speedily. If the Purchaser does not meet his obligation to cooperate we shall fix a time limit after which we are entitled but not obligated to carry out the necessary measures ourselves by way of replacement and at the Purchaser's cost. Our other rights shall remain unaffected.

#### VIII. Carrying out of Work on our Premises

1. If the work is carried out on our premises, the transport of the item to be serviced (serviced item) to and from our premises including its packaging and loading shall be carried out at the Purchaser's expense unless otherwise agreed in writing. Otherwise, the serviced item has to be delivered to our premises at the Purchaser's cost and picked up from there at his cost after the work has been carried out.
2. The Purchaser shall assume the risk of the transport to and from our premises unless otherwise agreed upon in writing.
3. At the Purchaser's request, the transport to and from our premises shall be insured at his cost against the insurable transport hazards such as theft, breakage, fire.
4. In case of the Purchaser's delay in picking up the item we can demand appropriate storage charges. The item shall be stored at the Purchaser's risk.

#### IX. Sub-contractors

We are entitled to have the service provisions carried out by sub-contractors.

#### X. Service Schedule

1. Information on schedules for the carrying out of services (service schedules) are non-binding unless they have been agreed upon expressly as binding. Such an agreement can only be requested by the Purchaser once the scope of the services that need to be carried out has been determined.
2. The adherence to the service schedule presupposes the fulfilment of the contractual duties, in particular the obligation to cooperate. If these are not fulfilled or not fulfilled according to the contract or if there is a lack of clarity, or if other problems which need clarification and are not our responsibility occur during the job execution, we can extend the service schedule appropriately. Our other rights shall remain unaffected.
3. The agreed service schedule shall be extended – even during a default period – in case of obstacles which are not our responsibility insofar as they have a considerable influence on the service provision. It shall be extended by the period of time during which the obstacle exists plus an appropriate start-up time. We shall inform the Purchaser as soon as possible of the beginning and the end of such obstacles. Not our responsibility are e.g. force majeure, regulatory interventions, strike, lock-outs, delays caused by traffic problems and other events that are outside our sphere of influence, which happen to us, to our pre-suppliers or in third-party companies on which the maintenance of our operating procedures depends.

#### XI. Acceptance

1. Unless otherwise agreed upon, the acceptance shall be deemed complete when the item on which the service is to be carried out (serviced item) has been surrendered to the Purchaser and the Purchaser is using it without objection or when the Purchaser has paid the agreed fee without objection or if he does not contest the service in writing as being in breach of contract within two weeks from the moment of surrendering of the serviced item. The deadline shall be deemed as adhered to if the complaint has been sent off in time and the Purchaser can substantiate this fact.
2. If the acceptance is delayed through no fault of ours, the acceptance shall be deemed completed at the end of a two week period after receipt of our communication on the execution of the repair.
3. The statutory regulations in accordance with which the acceptance can also take place in another way or can be deemed as having taken place shall remain unaffected.

#### XII. Terms of Payment

1. The agreed price shall be due for payment according to the statutory regulations unless otherwise agreed upon.
2. A discount shall be given only if it has been agreed upon in writing or if it is specified in our invoice.
3. Queries with regards to our invoices by the Purchaser have to be made within 4 weeks. After that, queries shall not be considered any more.
4. The Purchaser can only offset such claims or assert such rights of retention as have been legally established and recognized by us.

#### XIII. Liability for Shortcomings in the Performance of Services

1. A guarantee in the sense of a tightening of the liability or the acceptance of special obligations to meet claims shall not be assumed by us.
2. The Purchaser must notify us of any fault he has discovered immediately and in writing.
3. We shall assume liability for any shortcomings of the service performance initially by accepting responsibility for the removal of the defect.
4. We shall not be liable if the defect is irrelevant for the Purchaser's interests or originates from a factor that is the Purchaser's responsibility or is caused by normal wear and tear.
5. Only in urgent cases of a danger to the operational safety and to avoid disproportionately serious damage or if we have let the legally appropriate deadline for the removal of defects lapse, has the Purchaser the right to rectify the defect himself or have it rectified by third parties and demand compensation for the necessary expenses. However, we have to be informed of this immediately and in writing.
6. If we allow an appropriate period of time given to us for the removal of defects to elapse unused – taking into consideration any legal exceptions – or if the removal of the defects fails in any other way, the Purchaser can reduce the price within the scope of the legal regulations. Only if the repair is verifiably without any interest to the Purchaser (despite the reduction), he can withdraw from the contract.
7. If we are liable for damages because of shortcomings of the repair, subparagraph 14 below shall apply. The same shall apply for the compensation for wasted expenditure.
8. The period of limitation for claims and other rights of the Purchaser for shortcomings in the service provisions is 12 months from the moment of acceptance. However, this shall not apply if we are responsible for the shortcoming based on a guarantee we have assumed or for reasons of intent or gross negligence or if it was fraudulently concealed by us.

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### **XIV. Other Liability**

1. If the delivery item is damaged through our fault, we shall have to repair the damaged parts at our expense or replace them at our option. The liability to pay damages shall be limited to the contractual service price if no other liability results from the regulations of this subparagraph 14 below.
2. We shall be liable for damages irrespective of legal grounds (in particular for the breach of duties resulting from breach of duties resulting from obligations or for unlawful act) only
  - 2.1 in case of intent or gross negligence,
  - 2.2 in case of culpable breach of a fundamental contractual obligation (cardinal duty)
  - 2.3 the assuming of a guarantee, if the damage is caused by a breach of this guarantee and the risk of damage is covered by it
  - 2.4 in case of a damage that we have fraudulently concealed
  - 2.5 in case of a product defect for which we are liable in accordance with the product liability law.
- Apart from that our liability for damages shall be excluded.
3. Insofar as our liability for defects is excluded, we shall not be made liable for damages caused by shortcomings of the service provision.
4. Insofar as we are liable for slight negligence, our liability shall be limited to damages that are typical for the contract and reasonably predictable. This shall, however, not apply insofar as we are liable for injury to life, body or health or according to the product liability law or if any further liability follows from a guarantee we have assumed. This limitation of liability shall apply accordingly if we are liable for gross negligence of our non-executive employees or other simple vicarious agents.
5. The limitation period for claims for damages of the Purchaser is 18 months. The statutory limitation periods shall apply, however, insofar as we are liable for injury to life, body or health, intent or gross negligence, fraudulent concealment of a defect, violation of a guarantee we have assumed or in accordance with the product liability law. For any claims for damages for shortcomings of the service provision, the limitation period regulated in subparagraph 13 h shall, however, remain in place.
6. The above obligation shall not lead to a change of the burden of proof to the disadvantage the Purchaser.
7. The above regulation shall apply accordingly for claims for compensation for wasted expenditure. Furthermore, they shall apply to the benefit of our legal representatives and our proxies and vicarious agents with regards to their potential personal liability.

### **XV. Reservation of Title, Extended Right of Lien**

1. We reserve the property rights to all accessory parts and spare parts as well as exchange parts until receipt of all payments from the service agreement. In addition, we can demand further securities from the Purchaser.
2. Based on the service agreement, we obtain a contractual right of lien for the Purchaser's serviced item that has come into our possession because of our claims from the service agreement and the other claims from the business connection in place at this point in time against the Purchaser. Our statutory right of retention of securities shall remain unaffected.

### **XVI. Impossibility to Carry out Repairs**

1. If the service cannot be carried out for reasons for which we are not responsible, we can invoice the Purchaser for the expense incurred by us. The time spent diagnosing the fault shall count as working hours.
2. The serviced item only needs to be put back to its original state by us on the express request by the Purchaser and against reimbursement of expenses, unless the work we have carried out was not necessary.
3. In case of the impossibility to carry out the service we shall be liable for damages to the serviced item, for the violation of contractual accessory obligations and for damages that did not occur on the serviced item only in accordance with subparagraph 14.

### **XVII. Place of Jurisdictions and Applicable Law**

1. Place of jurisdiction for all legal disputes from or in connection with the service agreement is Göppingen if the Purchaser is a merchant, a corporate body under public law or a special fund under public law or if the Purchaser does not have a general place of jurisdiction in Germany. We are, however, also entitled to file a suit at the registered office of the Purchaser.
2. For foreign transactions, only the law of the Federal Republic of Germany shall apply. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.