



## General Terms and Conditions of Service SHW Werkzeugmaschinen GmbH (March 2024)

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#### I. General Terms and Conditions for Services and Works

##### 1. General - Scope

1.1 These General Terms and Conditions of Service shall apply to all mutual claims arising from and in connection with contracts for services and works between SHW Werkzeugmaschinen GmbH, Alte Schmiede 1, 73433 Aalen, Germany, (hereinafter referred to as "**SHW**") and the customer.

1.2 Terms and conditions of the customer that are contrary to, supplementary to or deviate from these General Terms and Conditions of Service shall only become part of the agreement if SHW has expressly agreed to them in writing. Performance in the knowledge of existing general terms and conditions of the customer shall not constitute consent by SHW to incorporate such into the agreement.

1.3 In the event of an ongoing business relationship between SHW and the customer, these General Terms and Conditions of Service shall also apply to all future transactions with the customer, irrespective of whether separate reference is made thereto after their incorporation into the first agreement.

##### 2. Subject Matter and Conclusion of the Agreement

2.1 Subject to these General Terms and Conditions of Service, the parties shall conclude an agreement for the performance of the contractually agreed services and works for the customer's machine tools ("**Service Object**").

2.1.1 "**Services**" is understood to mean services in accordance with Section 611 of the German Civil Code (*Bürgerliches Gesetzbuch* - "**BGB**"), such as training courses. In addition to this Section I of the General Terms and Conditions of Service, Section II of the Special Terms and Conditions of Service shall apply to such Services.

2.1.2 "**Performance of Works**" is understood to mean production of works in accordance with Section 631 BGB, such as inspection,

maintenance, remote diagnosis, repair, overhaul, and modification work on the Service Object and similar services. In addition to this Section I of the General Terms and Conditions of Service, Section III of the Special Terms and Conditions of Service shall apply to such Performance of Works.

2.2 All offers provided by SHW are subject to change without notice and are non-binding, unless they are expressly marked as binding or contain a specific acceptance period. SHW may accept orders from the customer within fourteen (14) days of receipt.

2.3 If SHW has set a time limit for acceptance upon submission of a written offer, the agreement shall be deemed concluded if the customer has sent a written declaration of acceptance before the expiry of such time limit and if the declaration of acceptance is received by SHW at the latest within one week after the expiry of the time limit.

##### 3. Customer's Obligations to Assist

3.1 The customer shall support SHW to a reasonable extent and at its own expense in the performance of the contractually agreed services. In addition to the expressly defined obligations to cooperate in the agreement, the customer shall be, particularly, but not be limited to, be obliged to undertake the following obligations:

3.1.1 Providing the Service Object at the agreed date and place.

3.1.2 Ensuring adequate working conditions, such as providing adequate working and common rooms, including adequate sanitary facilities as well as protective clothing and protective devices that are required at the assembly site. In addition, the customer shall take all measures for the benefit of SHW employees at the assembly site that it would take to protect its own employees;

3.1.3 Providing necessary work equipment and resources, such as water, energy, utility items, construction materials and tools which are required for assembly and commissioning. This also includes the provision of adequate storage space for machine parts, equipment, materials, and tools provided by SHW for assembly and commissioning;

3.1.4 Providing necessary technical documentation for the assembly site, such as documentation on electricity, gas, and water lines, and/or similar installations, as well as necessary structural and static document;

3.1.5 Ensuring the presence of the customer or a representative appointed by the customer at the assembly site.

3.2 SHW shall be entitled to engage subcontractors for rendering the services under the agreement.

##### 4. Confidentiality

4.1 The parties agree to maintain confidentiality over confidential information of the other party, not to disclose it to third parties, to protect it from third-party access through appropriate technical and organizational measures, and to use the confidential information only for the performance of the agreement. This obligation continues for a period of two (2) years after the end of the agreement.

4.2 Confidential information includes (i) all documents provided to the parties under these General Terms and Conditions of Service and during their performance, (ii) all business, operational, or technical matters disclosed in connection with the business relationship, and (iii) the terms of the agreement concluded under these General Terms and Conditions of Service, including, without limitation, prices and other pricing information.

4.3 These confidentiality obligations shall not apply to information that

4.3.1 was already known by the recipient at the time of the conclusion of the agreement or subsequently becomes known by the recipient from a third party without violating a confidentiality agreement, legal provisions, or official orders;

4.3.2 was publicly known at the time of the conclusion of the agreement or becomes publicly known thereafter, provided this is not due to a violation of the agreement;

4.3.3 needs to be disclosed due to legal obligations or by order of a court or an authority. The recipient obliged to disclose shall, to the extent permitted and possible, inform the other party in advance and provide

the opportunity to take action against the disclosure.

4.4 The parties shall only grant access to confidential information to persons who are subject to professional secrecy or have been previously bound to obligations corresponding to those as provided under these General Terms and Conditions of Service. Furthermore, the parties shall only disclose confidential information to those employees who have a need to know for the purpose of performing the agreement and shall bind those employees to confidentiality even after their departure to the extent permitted by labour law.

#### **5. Dates, Deadlines, and Delay in Performance**

5.1 Dates and deadlines are merely estimates and do not constitute a contractual obligation. SHW shall, however, make commercially reasonable efforts to comply with dates and deadlines. Dates and deadlines are only binding if agreed upon between the parties.

5.2 If performance deadlines are binding and the customer is obliged to assist SHW, SHW shall only be bound to the binding performance deadlines if the customer has fulfilled its obligation to assist in due time. If the customer does not fulfil its obligation to assist in due time, the performance deadlines shall be extended by the duration of the customer's delay.

5.3 If SHW is unable to meet binding performance deadlines for reasons beyond its control (non-availability of the service), SHW shall inform the customer without undue delay and shall at the same time notify the customer of the anticipated new performance deadline. If the service is also not available within the new performance deadline, SHW shall be entitled to withdraw from the agreement in whole or in part; in such case SHW shall immediately reimburse any payment already made by the customer. Non-availability of the service includes, but is not limited to, non-timely or incomplete supply by SHW's suppliers or if SHW is not obliged to procure in individual cases. In cases of Force Majeure, Section 1.6 applies.

5.4 Statutory regulations apply to deliveries that have been expressly agreed for a fixed date (*absolute Fixgeschäft*). In case the parties have agreed on a relative fixed-date (*relatives Fixgeschäft*), the customer, however, shall be required to issue a warning

before claims for damages or rights of withdrawal can be exercised.

#### **6. Force Majeure**

6.1 Force Majeure is an external, unforeseeable event that cannot be avoided by exercising reasonable care and using technically and economically reasonable means. This includes particularly, but is not limited to, natural disasters, pandemics, terrorist attacks, indirect and direct consequences of warlike events, regardless of whether these were known at the time of conclusion of the agreement or not, power failure, power and nitrogen shortages, failure of telecommunications connections, interruption of data or telecommunications networks, cyber-attacks, strikes, or legal determinations or actions by government or courts or authorities (regardless of their legality), decisions and sanctions of national or international authorities, malfunctions, or accidents at a plant resulting in interruptions of production, reduction of power or heat supply, floods, or impassable roads.

6.2 To the extent, SHW is prevented from fulfilling its obligations as result of Force Majeure, SHW shall be released from these obligations for the duration of such Force Majeure event. If it is foreseeable that the event of Force Majeure and/or its effects will exceed a period of six (6) months, the parties shall engage in amicable efforts to find a mutual acceptable solution. If the parties fail to do so, either party shall have the right to withdraw from the agreement with immediate effect.

#### **7. Limitation of Liability**

7.1 SHW shall be fully liable for damages in the event of (i) intent and gross negligence, (ii) for damages resulting from injury to life, body, or health, (iii) in accordance with the provisions of the German Product Liability Act (*ProdHaftG*), (iv) to the extent that SHW has fraudulently concealed a defect, and (v) in case of a guarantee.

7.2 In the event of a slight negligent (*einfache Fahrlässigkeit*) breach of an essential contractual obligation, i.e. an obligation the fulfilment of which is essential for the proper performance of the agreement and the observance of which the Buyer may regularly rely on (*Kardinalspflicht*), SHW's liability shall be limited to the foreseeable, typically occurring damages.

7.3 Liability shall be excluded otherwise.

7.4 The limitation of liability set forth herein also applies to damages resulting from a breach of duty by SHW's vicarious agents, legal representatives, or suppliers.

#### **8. Trade Control**

The customer acknowledges that the contractual services or parts thereof may be subject to trade sanctions and export control laws. The customer guarantees compliance with all applicable laws concerning trade or economic sanctions, embargoes, trade controls for the import, export, re-export, transfer, or other trading of goods, services, software, or technologies, including the regulations of the European Union, the United Kingdom, and the United States of America. In particular, but not limited to, the customer shall not export, re-export, transfer, or otherwise make available the contractual services or parts thereof directly or indirectly to third parties, use them in a way, or participate in actions that result in a violation of the applicable trade sanctions and export control laws or cause any adverse consequences for SHW.

#### **9. Jurisdiction and Applicable Law**

9.1 The exclusive place of jurisdiction for all legal disputes arising from or in connection with agreements based on these General Terms and Conditions of Service shall be the court having jurisdiction for SHW's place of business in Aalen. However, SHW is also entitled to sue the customer at the customer's general place of jurisdiction.

9.2 The law of the Federal Republic of Germany shall apply exclusively, without reference to international private law and the UN Convention on Contracts for the International Sale of Goods.

#### **10. Miscellaneous**

10.1 All declarations of legal relevance, including deviations from these General Terms and Conditions of Service or other ancillary agreements, reservations, amendments or supplements to an agreement based on these General Terms and Conditions of Service, must be made in writing or confirmed in writing by SHW in order to be effective. This shall also apply to any amendment of this written form requirement.

10.2 If any provision of these General Terms and Conditions of Service is invalid or

unenforceable, the legal validity of the remaining General Terms and Conditions of Service shall not be affected. The parties agree to replace the invalid or unenforceable provision with a provision that comes closest to the intention of these General Terms and Conditions of Service. The same shall apply to loophole in the agreement.

10.3 The assignment of any claims established under the contractual relationship to third parties shall be invalid.

## II. Special Terms and Conditions for Services

### 1. Scope of Services

These Special Terms and Conditions shall apply to all Services agreed upon between SHW and the customer in accordance with Sections 611 et seq. BGB.

### 2. Performance of Services

2.1 SHW performs the contractual Services according to the recognized rules of technology, considering the guidelines of the manufacturer of the Service Object known to SHW. If the parties agree on a specific method of performance, particularly by referencing technical guidelines (e.g., DIN, EN, VDI, VDMA, etc.), these performance descriptions shall determine the recognized rules of technology between the parties. Accordingly, SHW is not obliged to inform the customer of deviations from the agreed rules of technology.

2.2 The conclusion of the agreement does not release the customer from controls and measures imposed by laws or other regulations unless this is expressly made the subject of the Services to be provided by SHW with reference to the relevant laws and other regulations.

### 3. Term and Termination

The term of the agreement and the termination rights of the parties are governed by the contractual provisions.

### 4. Prices and Payment Terms

4.1 The customer owes SHW the remuneration agreed upon in the agreement for the Services.

4.2 Unless otherwise stipulated in the agreement, all payments are due immediately upon receipt of the invoice without deductions and, in particular, in advance for the term. In case of non-payment when due, the customer shall be in default without the need for a

reminder from SHW. SHW reserves the right to claim default interest of nine (9) percentage points above the applicable base interest rate from the due date.

4.3 The agreed prices are stated as net prices, excluding VAT.

## III. Special Terms and Conditions for the Performance of Work

### 1. Scope of Works

1.1 These Special Terms and Conditions apply to the Performance of Works in accordance with Sections 631 et seq. BGB.

### 2. Cost Estimate, Prices, and Payment Terms

2.1 Upon the customer's request, SHW shall provide a non-binding and, unless otherwise agreed, cost-free cost estimate.

2.2 The customer owes SHW the remuneration specified in the agreement or the remuneration according to the price list referred to in the agreement. Subsequently agreed additional or special works may be invoiced separately.

2.2.1 If delays occur due to reasons attributable to the customer, which increase the working hours, SHW shall invoice the customer for these additional hours.

2.3 The agreed prices are stated as net prices, excluding VAT.

2.4 Unless otherwise stipulated in the agreement, all payments are due immediately after acceptance and receipt of the invoice without deductions. In case of non-payment when due, the customer shall be in default without the need for a reminder from SHW. SHW reserves the right to claim default interest of nine (9) percentage points above the applicable base interest rate from the due date.

2.5 The customer is only entitled to set-off rights if the customer's counterclaims are legally established, undisputed, or acknowledged by SHW. Furthermore, the customer is only entitled to exercise a right of retention to the extent that the customer's counterclaim is based on the same contractual relationship.

### 3. Acceptance

3.1 The legal requirements and, if applicable, the provisions specified in the agreement

apply to acceptance. If necessary, SHW shall inform the customer at the beginning of the period stipulated in Section 640 para. 2 sentence 1 BGB about the intended significance of its behaviour.

3.2 The customer cannot refuse acceptance due to insignificant defects.

## 4. Retention of Title and Lien

4.1.1 SHW retains title to the items delivered and installed in the Service Object (spare parts, exchange parts, filters, accessories, etc.) until full payment of all claims arising from the agreement, provided these items have not become integral parts of the Service Object.

4.1.2 SHW and the customer agree that SHW has a lien on items owned by the customer and in SHW's possession for the performance of the contractual services. The lien can also be asserted for claims arising from previously performed work, spare part deliveries, and other services, insofar as they are related to the Service Object. The lien applies to other claims from the business relationship only if they are undisputed or legally established.

## 5. Warranty

5.1 The customer's rights in the event of defects of quality and title are governed by the statutory provisions, unless otherwise stipulated below.

5.2 The customer's rights for defects expire one year after acceptance or its legal fiction. This limitation period does not apply if SHW has fraudulently concealed the defect, as well as in cases of Section 1.7.

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