



NEUMAN & ESSER GmbH Mahl- und Sichtsysteme

General Terms and Conditions for Repairs, Assemblies, Commissioning, Maintenance and Inspections

Article 1. General

1.1. The terms and conditions set out below shall form part of the Contract concluded with us. These General Conditions are intended to be applied exclusively to commercial transactions. They cover in-house repairs and on-site repairs, commissioning, assemblies, maintenance, inspections and other services with delegation of staff (hereinafter generally referred to as "Performance").

1.2. We hereby object to any counter confirmation, counter offer or other reference by the Customer to its general terms and conditions; any dissenting terms and conditions of the Customer shall only apply if we have confirmed the same in writing.

1.3. Our General Terms and Conditions shall apply to all subsequent transactions without any need of express reference thereto or agreement thereon at the conclusion of such transaction. Prices agreed on former transactions do not apply to subsequent transactions.

Article 2. Orders

2.1. The offer, order acknowledgment, order acceptance of the Performance covered herein is conditioned upon the terms contained in this instrument and will not be binding upon us unless assented in writing. No modification of the Contract is valid unless agreed or evidenced in writing. Amendments or supplements to this Contract shall be in writing. This applies equally to a waiver of the written form.

2.2. Unless otherwise expressly agreed in writing, any indicated time concerning the duration of the requested Performance or information given verbally or in a telephone conversation shall be non-binding.

2.3. Orders placed with us for Performance will be carried out by expert staff. Our staff is trained and instructed to effect works at plant/machines/spare parts supplied by us. If they are to carry out other works, especially on machines or compressors supplied by third parties, our prior written approval is required.

2.4. As the time and material needed for carrying out such works depends on specific and local conditions and on the support given by the Customer, all indications concerning the duration and costs of the requested Performance are estimates based on standard performance.

Article 3. Prices

3.1. Unless otherwise agreed in writing, our prices shall exclude any statutory VAT.

3.2. In order to guarantee to issue an accurate invoice for on-site-jobs, the Customer shall confirm the working hours, overtime hours and extra works on our forms which our personnel fills in and a copy of which is handed over to the Customer. By signing our time sheets, the Customer approves and accepts the indicated costs of material, expenses and the hours worked.

3.3. For high-quality tools, measuring instruments and appliances necessary for the execution of the Performance, we will invoice a weekly rental depending on the volume of the equipment and according to prior agreement and covering the time between the date of dispatch and the date of return. In addition, the Customer shall bear the costs relating to freight and transport etc.

3.4. Should work be postponed owing to circumstances beyond our control and/or should an interruption of the work be necessary, the resulting costs shall be borne by the Customer.

Article 4. Technical Support

4.1. For on-site jobs, the Customer has to procure at his own expense the necessary following technical support, including, but not limited to:

- assistant and expert personnel with appropriate equipment
- well-lit, sheltered working places which can be heated if the outdoor temperatures are below 0°C
- unrestricted and unhindered access to the job site for the unhindered execution of the Performance, transport and lifting appliances, dry and lockable storage facilities, electricity etc.
- appropriate, lockable and heated rest rooms for our staff with appropriate furniture, sanitary installations and „first-aid“ facilities.

4.2. If there are no appropriate living quarters near the job site, the Customer shall bear the extra costs for transportation and accommodation.

4.3. The Customer shall guarantee that the locally applicable safety regulations are complied with and that necessary special protective clothing and/or protective devices are made available.

Article 5. Payment Conditions, Set-off

5.1.

Our price claims are net cash amounts and payable free of any deduction within 30 days upon the invoice date unless other payment terms shall have been agreed in writing.

5.2.

We shall accept B/E, drafts, promissory notes and cheques only upon specific arrangement and only on account of payment. Any fees for discount bills or promissory notes shall be at the expense of the Customer and immediately payable.

5.3.

The Customer shall have no right to set off, retention or reduction unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by us. Any retention or deduction for non-conforming Performance is limited to the non-conforming Performance provided the Customer has given notice of the lack of conformity in compliance with article 7.

5.4.

If the Customer's business shall be operated beyond the ordinary course of business which shall include, without limitation, acts of seizure or a situation where a protest in relation to promissory notes or cheques has been made, payments shall be delayed or even discontinued or judicial or out of court settlement or insolvency proceedings shall have been petitioned or opened or proceedings in accordance with the German Insolvency Act shall have been petitioned, then we shall have the right to declare all our claims arising from the business relationship as immediately payable, even if we shall have accepted promissory notes or cheques. The same shall apply if the Customer shall be in payment default towards us or other incidents shall surface which give rise to doubts about its creditworthiness. Moreover, we may in such event demand prepayments or a security deposit or rescind the Contract.

Article 6. Interest in case of Delayed Payment

If the invoice amount shall not have been settled within 30 calendar days after the date of invoice or at another due date, then we shall without the need of a separate warning notice have the right to recover default interest in an amount equalling 8 full percentage points above the base rate according to § 247 BGB (German Civil Code).

Article 7. Examination and Notice of Lack of Conformity

7.1. Immediately upon notice that the requested Performance has been completed, the Customer must examine and inspect the result and in doing so check the Performance for any lack of conformity with the Contract.

7.2.

The Customer shall immediately give written notice of any lack of conformity with this Contract to us by the quickest possible means by which delivery is guaranteed, including fax or e-mail.

Article 8. Non-Conforming Performance

Where the requested Performance is non-conforming with regard to the Contract and provided the Customer, having given notice of the lack of conformity in compliance with article 7., does not elect in the notice to retain it, we shall at our option:

- (a) replace the repaired or serviced items with conforming items, without any additional expense to the Customer, or
- (b) make good the requested Performance, without any additional expense to the Customer.

Article 9. Legal Warranty

9.1.

The Performance is carried out by expert personnel to our best discretion.

9.2.

Unless otherwise agreed in writing, no action for lack of conformity can be taken by the Customer after 12 months from the completion of our Performance. It is expressly agreed that after the expiry of such term, the Customer will not plead non-conformity of the Performance, or make a counter-claim thereon, in defence to any action taken by us against the Customer for non-performance of this Contract.

Article 10. Damages

10.1.

We are only obliged to pay damages pursuant to this Contract if we deliberately or in circumstances amounting to gross negligence breach obligations owed to the Customer. This limitation of liability does not apply if we commit a fundamental breach of our obligations or in case of personal injury.

10.2.

Without prejudice to our continuing legal rights, we are not liable for a failure to perform any of our obligations if the failure is due to a force majeure event according to article 11. below.

10.3.

The Customer is required in the first instance to rely on the remedies according to article 8. and can only claim damages in the event of a continuing deficiency.

10.4.

In the event of contractual liability, we will compensate the loss of the Customer to the extent that it was foreseeable at the time of the conclusion of the Contract.

10.5.

To the extent that our liability is excluded or limited, this also applies to the personal liability of our employees, servants, members of staff, representatives and those employed by us in the performance of its obligations.

Article 11. Force Majeure

In the case of a force majeure event, we are entitled to delay our Performance for the time the force majeure event occurs and for a reasonable period of time needed to prepare our Performance or to cancel the contract as a whole or



with regard to the part not performed because of the force majeure event. Force majeure event is any inability to perform or supply as a result of force majeure or other unforeseen incidents outside our responsibility including, without limitation, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities or cease of supply from our own suppliers in spite of reservation of timely supply. However, if the force majeure event persists for more than four months after the agreed delivery date, the Customer may rescind the Contract, without being entitled to compensation.

Article 12. Choice of Law

Any questions relating to this Contract which are not expressly or implicitly settled by the provisions contained in the Contract itself (i.e. these General Conditions and any specific conditions agreed upon by the parties) shall be governed by reference to the substantial German law (German Civil and Commercial Codes - BGB and HGB).

Article 13. Jurisdiction

For our benefit, the courts of Aachen, Germany shall have jurisdiction over all disputes arising from this Contract. However, we may also select a different place of jurisdiction.

Article 14. Final Provisions

The invalidity of any provision of these General Terms and Conditions shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible. This shall apply accordingly to any lacunae in the Contract.