

1. General

1.1 The General Service Conditions apply to services provided by us, e.g. inspections, repairs, overhauls, maintenance, commissioning. They shall apply together with our General Terms and Conditions for Deliveries and Services (hereinafter "Terms and Conditions of Delivery"), which can be consulted on Malmédie's home page at www.malmedie.com. However, these terms and conditions of support shall apply with precedence over the Terms and Conditions of Delivery. In so far as certain points to be provided for are not covered by these terms and conditions of support, the provisions of the Terms and Conditions of Delivery shall apply.

1.2 These General Conditions apply to all Services provided by Malmédie to the exclusion of any other terms, except as otherwise agreed by the parties in writing. Purchaser's payment, or receipt of the Services without reservation shall be deemed acceptance of these General Service Conditions.

1.3 Unless expressly stated otherwise, all quotations are non-binding.

2. Prices and Payment

2.1 Unless otherwise agreed in writing, for example in cases where a flat-rate price is agreed upon, we shall charge the price for our support services on the basis of time and outlay in accordance with the price list valid at the time of issuance of the quotation. The scope of our services shall ensue from the schedule of services valid at the time of issuance of the quotation.

2.2 The work record shall form the basis for calculating time and outlay. It shall be presented to you, for signing, immediately upon completion of the work. Return travelling expenses and disbursements in connection with the journey home shall be subsequently added to the work record. If neither you nor any of your authorised representatives are present at the time the work record is presented, the determinations made by our support personnel shall apply even without your signature in cases where a copy of the work record is promptly made available to you and you do not object, within one week, to the determinations made therein.

2.3 We shall charge for travelling and travel time at the hourly rates, plus overtime supplements where applicable. In the case of journeys by car, we shall charge the km rate as per our price list. We shall charge for travelling times and distances travelled from our support specialist's place of residence, or hotel where applicable, or from his previous place of assignment. Additional journeys arising in the course of rendering the services (journeys for materials, journeys on the company grounds etc.) shall be invoiced additionally. For the journey there and back, we shall invoice you for the actual costs documented in the work record. In exceptional cases, proven luggage expenses etc. shall be charged additionally.

For assignments in the proximity and in the case of distances of over 400 km or more, we shall be entitled to agree in writing upon an order-related flat rate for travelling/travel expenses.

2.4. If our performance is preceded by an appraisal for ascertaining the scope of work needed (cost estimate), the costs ensuing as a result thereof shall be reimbursed in cases where the cost estimate does not give rise to any work or any new orders on your part (i.e. - in case of doubt - within the subsequent 28 days). The cost estimate shall only be binding, if this is expressly agreed upon. Likewise, we may, in this case, demand reimbursement of the costs incurred by us as a result of any need to send back or dispose of items located on our premises. When replying to the cost estimate, you shall let us know whether such items are to be sent back or disposed of. We shall take a flat rate under the price list as a basis for calculating the cost estimate and any disposal costs, except where the outlay substantially deviates therefrom.

2.5. In so far as our ascertainment of the content of the order, or of the price, is based on incorrect information from you, you shall bear any extra costs incurred as a result of any need to adapt the contract. To avoid the outlay associated therewith, it shall be made known in enquiries, stating a product or factory number, whether the product is still in its original condition or is in re-engineered condition. Technical details in the proposals of our cost estimate shall be examined in respect thereof.

2.6 We shall charge for the service upon completion of the work. All prices shall be net prices, plus the respective valid statutory value-added tax. The payments shall fall due immediately upon receipt of the invoice and be made without any deduction.

2.7 If the Purchaser fails to pay by the due date, Malmédie shall be entitled to interest from the day on which payment was due and to compensation for recovery costs (including legal fees). The rate of interest shall be as agreed between the parties or if none has been agreed, it shall be 8 percentage points above the rate of the main refinancing facility of the European Central Bank per annum. The Supplier may in addition, after having notified the Purchaser thereof, until it receives payment, suspend its performance of the Contract and/or retain the Equipment and other property of the Purchaser, which may be in its possession. The Purchaser shall in case of such suspension compensate the Supplier for any additional costs incurred due to such suspension and resumption of the Services. If the Purchaser has not paid the amount due within three (3) months, the Supplier shall be entitled to terminate the Contract by notice in writing to the Purchaser and, in addition to the interest and recovery costs according to this Clause, to claim compensation for the loss it incurs. Moreover, the stipulations of section 2. of the Terms and Conditions of Delivery shall apply supplementarily.

3. Execution of the Support Service, Co-operation

3.1 Essential special tools and measuring equipment shall be provided by us. We shall ensure that our employees comply with the safety regulations, accident prevention regulations and works rules applicable on your company grounds, in so far as you have informed our support personnel thereof. However, you shall be responsible that the company grounds, including all plant and machinery, itself meet the statutory requirements for occupational health and safety. We shall be entitled to assign services to third parties.

3.2 Before the work begins, you shall inform our support personnel in detail of the safety and works regulations existing at your works, as well as any and all health hazards. You shall support our support personnel in all measures which serve to avert danger. If our support personnel requires special protective work equipment and/or protective clothing, you shall make this available free of charge and in faultless condition. Our support personnel shall be permitted to use, free of charge, changing rooms, sanitary facilities, social rooms and the canteen (if existent). For emergencies, a trained first aid provider shall be available to our support personnel. You shall make available dry and lockable facilities for storing material and tools.

3.3 You shall make the plant available to our support personnel by the agreed date and leave it with our support personnel for the duration of the rendering of the service. If we incur unnecessary waiting periods and/or travel expenses, we shall invoice these on the basis of our price list. You shall provide our support personnel with information on the plants and make available the documents relating thereto. You shall give us the name of a responsible contact person authorised to make binding decisions. In the event of any reorganisation of the company, change of the company name, transformation of the company, cessation of the company's business, change of address etc, you shall inform us without undue delay.

3.4 You shall assume responsibility for disposing of replaced lubricants and parts and removing and reinstalling covers, linings etc. provided by the customer.

3.5 If our tools or material situated on your premises in the course of the execution of the order is damaged or lost through no fault of our own, you shall compensate for this accordingly. Losses due to normal wear and tear shall not be taken into account.

3.6 Except where otherwise agreed upon, there shall be no entitlement to the production of a certain result, particularly the elimination of malfunctions, within a certain period. An agreement on a certain response time shall, in itself, not signify any such agreement. We shall not assume any liability for delays in time which are not imputable to us (for example due to information lacking at the time of the order, road traffic disruptions or disruptions to the means of telecommunication used).

4. Services to be Provided

- 4.1 The following shall be provided by you at your expense:
- required assistants (operating personnel knowledgeable of the plant and personnel knowledgeable of the works for procuring the information, material and auxiliary equipment necessary for the work)
 - work equipment which is required to be provided by you - particularly under the accident prevention regulations - directly at the respective plant (e.g. suitable and tested work platforms and equipment)
 - electricity and other supply facilities (e.g. compressed air)
 - oil, grease, cleaning agents, material subject to wear and tear, replacement parts - where applicable - in accordance with the respective operating instructions and specifications.

4.2 If you default on providing the above, the set dates shall be postponed for the duration of the impediment caused by this and for a reasonable start-up period. If this makes it impossible or unreasonable for us to perform our obligations, we shall be entitled to rescind the contract. We shall charge you for any resulting extra costs. If you wish that we provide any of the above, you must place a corresponding order with us in due time. We shall charge for this separately.

5. Working Time Act

5.1 Our support personnel shall be obliged to perform work in accordance with the legal requirements, up to 10 hours a day if necessary. Longer working times shall be subject to the approval of the respective supervisory authority which has jurisdiction. However, the corresponding application shall be filed by you, as we shall be unable to estimate whether the work planned qualifies for an exemption. You shall observe the stipulations of the German Working Time Act.

6. Acceptance

6.1 In principle, it shall not be necessary to carry out an acceptance inspection (section 4. of the Terms and Conditions of Delivery applies supplementarily) of services rendered by us. In particular, such an acceptance inspection shall not be a prerequisite for any demand for immediate payment of the fee receivable. However, as an acceptance stipulated by contract, the Purchaser is obliged to accept services as soon as their completion has been notified to him and any contractually provided testing of the subject of service has been performed. The purchaser may not refuse acceptance if no significant defect exists. Upon unconditional acceptance, liability for all defects detectable at this point in time shall lapse.

6.2 If acceptance is delayed for reasons for which we are not responsible, acceptance is deemed to have been made after the expiry of two weeks after notification of completion of the service.

6.3 In so far as any re-commissioning of the plant is subject to an acceptance inspection by an expert under statutory provisions, this expert shall be appointed by you at your expense.

7. Liability for Defects

7.1 The Supplier warrants that (i) the Services are provided with a degree of skill and care as can be considered customary in the Supplier's industry, and that (ii) any spare parts provided by the Supplier when performing the Services are free from defects in design, material and workmanship. Any failure of the Services and any spare parts provided by the Supplier when performing the Services to conform to this warranty, subject to Clause 7.2, is hereinafter referred to as "Defect(s)".

7.2 The Supplier shall not be liable for Defects or damage arising out of:

- material provided or a design specified by the Purchaser; or
- being otherwise due to circumstances, which are not attributable to the Supplier, such as without limitation incorrect use of the Equipment, inadequate maintenance, incorrect installation, unauthorized repairs or alterations, or normal wear and tear or deterioration.

7.3 The Supplier's liability shall be limited to Defects, which appear within a warranty period of twelve (12) months from the completion of the Services.

7.4 The Purchaser shall promptly notify the Supplier in writing of any Defect, which appears, including a description of such defect. If the Purchaser fails to notify the Supplier in writing of a Defect promptly, the Supplier shall not be liable for the Defect. Where the Defect may cause damage, the Purchaser shall immediately inform the Supplier in writing. The Purchaser shall bear the risk of damage to Purchaser's or third parties' property, including the Equipment, resulting from its failure so to notify. The Purchaser shall take reasonable measures to minimize damage and shall comply with any related Supplier instructions.

7.5 On receipt of the notice under Clause 7.4, the Supplier shall at its own cost remedy the Defect without undue delay, as applicable and in the reasonable discretion of the Supplier, by re-performing the defective Service and/or repairing or replacing any defective spare parts provided by the Supplier when performing the Services. The time for the remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities.

7.6 Remedial works performed under warranty shall be carried out at the place where the Equipment is located, unless the Supplier deems it more appropriate that the Equipment is sent to a destination specified by it. If the remedial works can be performed by replacement or repair of a defective part and if dismantling and re-installation of the part do not require special knowledge, the Supplier may require that the defective part is sent to a destination specified by it. In such case, the Supplier shall have fulfilled its obligations in respect of the Services when it delivers a duly repaired part or a replacement part to the Purchaser.

7.7 The Purchaser shall at its own expense provide access to the Equipment and arrange for any intervention on components except for the Equipment, to the extent necessary for the Supplier to perform the remedial works.

7.8 Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for remedying the Defect caused by the Equipment being located in a place other than the place of performance of the Services.

7.9 If the Purchaser has given such notice as mentioned in Clause 7.4 and no Defect is found for which the Supplier is liable, the Purchaser shall reimburse the Supplier for its costs resulting from the notice.

7.10. If the Supplier does not fulfil its obligations under Clause 7.5 within a reasonable time, the Purchaser may by notice in writing fix a final reasonable period for completion of the Supplier's obligations, which shall not be less than one week.

7.11 If the Defects have not been successfully remedied after at least three attempts:

- the Purchaser shall be entitled to a reduction of the Contract price in proportion to the reduced value of the Service, or
- where the Defect is so substantial as to deprive the Purchaser of the benefit of the Contract as regards the Service, the Purchaser may terminate the Contract by notice in writing by a document signed by Purchaser to the Supplier. The Purchaser shall then be entitled to compensation for its loss, costs and damages within the limitations provided for in Clause 11.

7.12. Except as provided in Clauses 7.1 -7.11, the Supplier shall not be liable for Defects.

8. Industrial Property Rights

8.1 If support services are ordered for plants or plant parts which we have not delivered, you shall point out to us beforehand any and all existing third-party property rights which could be infringed in the course of the support services. You shall always indemnify us against any thirdparty claims in this connection, except where we are at fault.

9. Impossibility, Failure, Termination

9.1 If the support service agreed upon is impossible to perform or fails due to circumstances not imputable to us, we shall be entitled to reimbursement of our outlay incurred until then. The item under repair need not be restored to its original condition, unless the work carried out was unnecessary.

9.2 Such circumstances include in particular any failure or cessation of the work in cases where the fault complained of cannot be found, replacement parts cannot be procured, you fail to carry out necessary acts of co-operation or notice of termination is given.

10. Retention of Title, Contractor's Lien

10.1 We reserve the right of ownership to all accessories, spare parts and replacement units until receipt of all payments resulting from the service contract. Further collateral agreements may be concluded.

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10.2 We are entitled to a right of lien for our claims arising from the service contract on the subject of the service which comes into our possession due to the contract. The right of lien can also be claimed for claims from previously supplied deliveries and services if these are in association with the subject of the service. The right of lien only applies to other claims from the business relationship if these are undisputed or legally binding.

11. Liability limitation, exclusion of liability

11.1. Notwithstanding any other provision in these General Conditions or the Contract, whether by way of indemnity or by breach of contract, statutory duty, tort, negligence, or otherwise, and whatever the cause thereof: a) Supplier shall not be liable for loss of production, loss of profit, loss of use, loss of contracts, loss of data, or for any special, consequential or indirect loss or damage of any nature whatsoever in connection with the Contract, and (b) the total overall liability of the Supplier shall not exceed 100% of the Contract price.

11.2. The limitations or exclusions of liability provided in Clause 11.1 shall however only apply to the extent permitted by applicable mandatory laws and shall not apply in case of gross negligence or willful misconduct.

12. Place of jurisdiction and applicable law

12.1 The place of jurisdiction for traders, legal entities under public law or special funds under public law is Solingen.

12.2 The laws of the Federal Republic of Germany shall apply with the exception of all international and supranational contract laws, especially the United Nations Convention on Contracts for the International Sale of Goods (CISG).