

General Terms and Conditions of Maintenance of Swecon Baumaschinen GmbH

Section 1 Scope

1. All of our services and offers to entrepreneurs within the meaning § 14 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) (hereinafter referred to as **"Customer"**), which concern repairs and maintenance as well as repair and maintenance work (together referred to as **"Services"**) on construction and industrial machinery, construction equipment and their parts and accessories by us, shall be carry out exclusively on the basis of these general maintenance conditions (hereinafter referred to as **"GTCM"**). These GTCM do not apply to consumers within the meaning of § 13 BGB.
2. Our GTCM shall apply exclusively. Terms and conditions of the Customer that contradict or deviate from or supplement our GTCM shall not apply, unless we explicitly agree to their application in writing. This requirement of consent shall apply in all cases, including, if we make the delivery to the Customer without reservation, in knowledge of contradictory or deviating or supplementary terms and conditions of the Customer.
3. The legal relationship between us and the Customer shall be subject exclusively to the maintenance contract concluded in writing, including these GTCM and the calculation rates for customer services as amended from time to time. This shall reflect in full all agreements reached between the contracting parties in relation to the subject matter of the contract. Verbal commitments made by us before the conclusion of the contract shall be legally non-binding. Verbal agreements between the contracting parties shall be replaced by the written contract, unless they explicitly entail that they shall continue to apply as binding.
4. Supplements and amendments of the agreements made, including these GTCM, shall require the written form to be effective. Individual agreements made with the Customer in indivi-dual case (including collateral agreements, supplements and amendments) shall in all cases prevail over our GTCM. Subject to proof of the contrary, the content of such agreement shall be governed by a written contract or our written confirmation. Telecommunication shall be sufficient for purposes of maintaining the written form, and in particular fax or email, provided that the copy of the signed statement is transmitted.
5. Unless otherwise agreed, the GTCM shall apply in the version valid at the time of conclusion of the contract and the GTCM (in their respectively applicable version) shall apply to all future maintenance contracts with the Customer, without us having to refer to them again in each individual case and even if these are not again explicitly agreed; we shall inform the Customer immediately about any amendments of the GTCM.

Section 2 Subject Matter of Performance, Insurance

1. The Services specified in the maintenance contract are the object of performance.
2. With the commissioning of the Services we shall be deemed authorised to subcontract and to carry out test drives as well as test runs and delivery drives.
3. The items handed over by the Customer for maintenance are not insured against fire, theft, transport and storage damage, etc. These risks are to be covered by the Customer or are only covered by us at his express request and expense.

Section 3 Obligations of the Customer to cooperate

1. The Customer shall provide support to our maintenance personnel at his own expense during the performance of the Services at the Customer's place of business or at the location determined by Customer. This applies in particular to the provision of auxiliary personnel and aids to the required and customary extent when required and on demand of the maintenance personnel.
2. Customer shall be obliged to ensure appropriate working conditions and safety at the place of maintenance; he shall therefore be responsible for compliance with accident prevention regulations at the place of work and other protective obligations under labour law.
3. Customer shall inform us of any safety regulations to be observed at the place of maintenance. Pos-sible violations of these safety regulations by the maintenance personnel must be reported to us by the Customer immediately.
4. Customer is obliged to provide the necessary energy (e.g. lighting, operating power, water) for the maintenance including the necessary connections at his own expense.
5. Customer shall be responsible for the disposal of old parts and other items that can no longer be used. In the event that we are obliged by law to dispose of old parts and other items that can no longer be used, Customer shall be obliged to indemnify us against any costs incurred as a result.

Section 4 Offer

1. All our offers are subject to confirmation and non-binding, unless they are expressly marked as binding or contain a specific acceptance period.
2. We shall not be liable for the correctness on the information provided by Customer in the order, in particular not with regard to number, types, dimension and colours. Should deviations lead to price increase of the agreed price, these shall be borne by Customer.

Section 5 Conditions, Dates, Deadlines, Default

1. Deadlines and dates for services promised by us are always only approximate, unless a fix deadline or a fix date has been expressly promised or agreed. The commencement of these maintenance periods stated by us as well as compliance with the obligation to perform presupposes the clarification and transmission by the Customer of all technical requirements which originate from the sphere of the Customer and are necessary for the proper execution of the contract (e.g. compatibility of the ordered device with the Customers own devices, provisions of documents to be procured by Customer, provi-sion of information necessary for the execution of the contract and clarification of technical questions).
2. In case of any unforeseeable operational obstacles through no fault of their own, e.g. stoppages of work, absence from work due to illness of skilled workers and official interventions, as well as the effects of force majeure and industrial disputes, binding deadlines shall also be extended by the duration of the obstacles plus an appropriate start up period. In addition, compliance with our performance obligation are subjected to timely and correct self-delivery. Should we not receive spare parts or not receive them on time through no fault of our own despite congruent cover transactions concluded previously, the deadline for the due date of the Services shall be extended for this period. In the aforementioned cases, in which punctual delivery is not possible for a certain period of time due to continuous operational obstacles, Customer shall be entitled to withdrawal from the contract.

Section 6 Acceptance and Transport

1. The Customer shall be obliged to accept the object of performance manufactured in accordance with the contract without delay, unless acceptance is excluded by the nature of the work. The Customer may not refuse acceptance due to minor defects. Acceptance shall be deemed equivalent if the Customer does not refuse acceptance within a reasonable period determined by us, stating a defect, although he is obliged to do so.
2. Acceptance by the Customer shall take place at our respective branch office (service location) or at the Customer's place of business or at the place designated by the Customer where performance is to take place in accordance with the agreement, unless otherwise agreed.
3. The risk of an accidental loss or accidental damage shall pass to the Customer upon acceptance of the Service. If the Customer defaults on acceptance, the risk shall also pass to him. We are not responsible for an accidental deterioration of the maintenance item delivered by the Customer.
4. The Customer is obliged to collect the maintenance item within one week of receipt of the notice of completion and handing over or sending the invoice if the Service is provided at one of our branches (service location). In the case of Services performed within 1 working day, the period shall be reduced to 2 working days. If the Customer does not collect the work within the aforementioned periods, we shall be entitled to charge the customary local storage fee from the end of the period or to store the maintenance item elsewhere and to charge the Customer the associated costs. The obligation to accept the goods according to para. 1 remains unaffected.
5. If, at Customer's request, the maintenance item is dispatched to a place other than the agreed place of performance, the risk shall pass to the Customer as soon as the maintenance item is handed over to the freight forwarder, the carrier or any other person or institution designated to carry out the dispatch.

Section 7 Invoices, prices, payments, right of retention, offsetting

1. Cost estimates shall only be binding if they have been expressly designated as binding by us in writing. We are bound to our binding cost estimate until the end of 3 weeks after its submission. The cost estimate itself is free of charge, unless an obligation to pay costs has been agreed in individual cases.
2. If it turns out during the execution of the Service that supplementary activities must be carried out in the interest of the proper execution of the Services specified in the order, we shall inform the Customer. If the Customer does not immediately place the order for the necessary extension, we shall inform the Customer whether we will discontinue the further execution and invoice the Services rendered according to the progress of performance, or whether the work will be completed without the necessary extension. In the event of discontinuation, a cost estimate issued loses any binding effect.
3. The invoice amount and prices for ancillary services are due for payment upon acceptance of the object of maintenance and handing over or sending of the invoice, but at the latest within 10 days after notification of completion and handing over or sending of the invoice, unless otherwise agreed. The date of receipt on our business account shall be decisive for the date of payment. The deduction of discount requires a written agreement.
4. If agreed, we may demand partial payment for the contractual Services rendered. Furthermore, we may demand partial payments in the amount of the value accrued to the Customer; the services must be proven by a list which enables a quick and reliable assessment of the Services. Due to insignificant defects, the advance payment cannot be refused by the Customer.
5. All prices stated are subject to statutory value added tax; the applicable value-added tax is shown in the invoice separately.
6. The Customer shall only be entitled to offset against our claim for payment where its opposing claim is undisputed or legally established as final, or recognised by us. The Customer shall have rights of retention, provided that the underlying claims are undisputed, legally established as final, or based on the same contractual relationship. In the event of defects with the delivery, the opposing rights of the Customer shall be unaffected.

Section 8 Warranty

1. We warrant that our services are free from material defects or defects of title within the scope of the following conditions. The warranty for new and used, delivered or installed spare and replacement parts shall be governed by our General Terms and Conditions of Sale and Delivery.
2. Customer shall notify us immediately of any defects in the services rendered within the scope of acceptance. If Customer accepts the object of maintenance even though he is aware of the defect, he shall only be entitled to material defect claims pursuant to § 634 No. 1 – 3 BGB if and to the extent that he reserved the right to do so at the time of acceptance.
3. Claims of the Customer due to defects in performance shall become time-barred – with the exception of the cases of § 634a para. 1 No. 2 BGB – one year after acceptance. This regulation shall not apply to claims due to culpable injury to life, limb or health, fraudulent concealment of a defect on our part, claims due to intentional or grossly negligent actions on our part, claims arising from the assumption of a guarantee and in accordance with the Product Liability Act as well as claims due to damages arising from the culpable breach of an essential contractual obligation. In this respect, the statutory limitation provisions shall apply.

Section 9 Liability for damages

1. We shall be liable for damages without limitation – for whatever legal reason – in the event of intent and gross negligence as well as for claims under the protect liability act or insofar as we have fraudulently concealed the defect or have assumed a guaranty for the quality of the Goods or for damages resulting from culpable injury of life, limb or health.
2. In the event of simple negligence, we shall only be liable – unless one of the aforementioned excep-tional cases (para. 1) exists – for damages arising from the culpable breach of material contractual obligation (an obligation their fulfilment of which is essential for the proper performance of the contract and the observance of which the contractual partner regularly relies on and may rely on); in this case, however, our liability shall be limited to a compensation for the foreseeable, typically occurring damage.
3. Indirect damages and consequential damages of Lessee resulting from defects of the Goods shall only be eligible for compensation if such damages are typically to be expected when the Goods are used as intended.

Section 10 Reservation of title, lien

1. Insofar as installed accessories, spare parts and aggregates have not become essential components of the object of maintenance, we reserve the right of ownership until full payment has been made.
2. Due to our claims from the maintenance contract, we are entitled to a contractual lien on the objects of the customer which have come into our possession as a result of the contract. The contractual lien may also be asserted on the basis of claims arising from work carried out earlier, deliveries of spare parts and other services, insofar as they are connected with the maintenance item. The lien shall only apply to other claims arising from the business relationship to the extent that these claims are undisputed or have been legally established.

Section 11 Property rights, copyrights, secrecy

We reserve ownership rights and copyrights to illustrations, drawings, calculations and other documents. This shall also apply to such written documents which are designated as "confidential". The Customer requires our express written consent before passing them on to third parties.

Section 12 Closing Provisions

1. Place of jurisdiction for any and all disputes arising from or in relation to the business relationship between us and the Customer shall be our registered office. We shall however be entitled to file a case against the Customer at the domicile of the latter. Mandatory statutory provisions regarding exclusive jurisdictions shall remain unaffected.
1. The law of the Federal Republic of Germany shall apply exclusively excluding its Conflict of Law rules.
2. This English version of the GTCM is only a translation of the German General Terms and Conditions of Maintenance (Allgemeine Instandhaltungsbedingungen). In case of any deviations from or discrepancies with the German version, the German version shall prevail.

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