

# General terms and conditions on after sales services and spare parts delivery of DMG MORI

## 1. General provisions

The following terms and conditions shall apply to all current and future after sales services of our company ("Supplier") in relation to the repair, maintenance and other services for machine tools ("Services") as well as the delivery of spare and replacement parts ("Parts" or "Part"). These terms and conditions shall apply exclusively. Differing or contrary terms of the Customer shall not apply, unless expressly agreed upon. A contract shall only come into force with the Supplier's written order confirmation by letter, fax or email, unless the contract is concluded orally through the Supplier's hotline.

## 2. Customer's responsibilities

**2.1 |** The Customer shall provide to the extent necessary at his own risk and expense assistant staff, and, if so agreed, tools, lifting devices with operating staff as well as all materials and equipment necessary for due performance of the Supplier's Services. Also, the Customer shall provide the Supplier's staff with a dry and lockable room for the storage of delivery parts, tools, clothes and the staff's personal belongings. The Customer is responsible for his assistant staff following the Supplier's instructions. The Supplier shall not be liable for any damage caused by the Customer's assistant staff, unless the respective damage is due to a Supplier's instruction; in this case, section 18 shall apply with regard to the Supplier's liability.

**2.2 |** In the event that any of the Supplier's materials, tools or devices are damaged or destroyed at the Customer's work-site, the Customer shall be liable for damages to the Supplier to the extent to which the Customer is responsible for the loss or damage occurred.

**2.3 |** The Customer shall be obliged to take reasonable care for the safety in the workplace, the compliance with relevant safety regulations and appropriate working conditions. In particular, the Customer shall thoroughly clean machines to be repaired by Supplier. The Customer shall instruct the Supplier's working staff about specific safety regulations in his workplace.

**2.4 |** If necessary, the Customer shall procure internal work authorizations, ID cards and the like at his own expense.

## 3. Prices and terms of payment

**3.1 |** Unless expressly agreed otherwise in writing, the Customer shall make payments according to the Supplier's schedule of prices and services which the Customer may request from the Supplier at any time. The Supplier shall be entitled to installments up to the amount of 90 % of the Services carried out.

**3.2 |** Used parts, materials and special services, as well as costs for travelling and accommodation of the Supplier's staff shall be charged separately in the invoice. If Services are carried out on the basis of a binding cost estimate, reference to such cost estimate in the invoice shall suffice; however, deviations from the cost estimate shall be listed separately.

**3.3 |** Unless expressly agreed otherwise in writing, prices are ex-works (Incoterms 2010), excluding costs of packaging and statutory VAT.

**3.4 |** If the Customer fails to make payment on the due date, the Supplier shall be entitled to charge the Customer interest on the amount unpaid, at the rate of 8 % p.a. above the respective base interest.

**3.5 |** Unless expressly agreed otherwise, payment for Services and deliveries of Parts is due within 10 days upon receipt of invoice without any discount and shall be transferred to the Supplier's bank account.

**3.6 |** The Customer shall be entitled to offset or to claim retainer rights only to the extent to which his counterclaim is acknowledged, undisputed or assessed in a legally binding judgment.

## 4. Unfeasibility of Services

**4.1 |** In the event that Services are unfeasible for reasons not attributable to the Supplier, any expenses, in particular such expenses for fault diagnostics, shall be borne by the Customer. This provision particularly applies to the following circumstances:

\_ if the alleged fault did not occur during the fault diagnostics,  
\_ if the Customer fails to meet the agreed service date, \_ if the Customer terminates an order in process, \_ if the Parts required cannot be obtained in due time.

**4.2 |** The Supplier shall only be obliged to put back the serviced item in its original state upon the Customer's express request and at Customer's expense. This does not apply if and to the extent to which the Supplier's Services prove not necessary.

**4.3 |** If Services are not feasible, the Supplier shall not – irrespective of the legal ground – be liable for damages of the serviced item, breach of non-fundamental contractual obligations and damages not caused to the serviced item itself. In the event of intent or gross negligence of the Supplier or his organs or executive staff or breach of fundamental contractual obligations, the Supplier shall be liable according to the provisions of applicable law. If the Supplier is in breach of fundamental contractual obligations (i.e. obligations, the fulfilment of which is essential for due performance of the contract and on the compliance of which the other party may regularly rely), his liability, except he or his organs or executive staff act intentionally or grossly negligent, shall be limited to the typically foreseeable damage.

## 5. Travel and incidental expenses

**5.1 |** Travel and incidental expenses incurred by service personnel will be invoiced to the customer based on a flat call-out rate. The flat call-out rate will be charged per service technician for each service call. For service calls, which are interrupted by weekends or public holidays, a flat call-out rate will be billed for the journey to the customer before and after the interruption.

**5.2 |** The flat call-out rate includes all incidental service costs (travel times, kilometres, expense allowances, etc.), but not accommodation expenses. Expenses incurred for incoming or outgoing international air travel will be invoiced to the customer at cost.

## 6. Service costs

**6.1 |** The contractor calculates its service personnel's duration of attendance at site on the basis of the schedule of prices and services applicable at that time and available from the contractor at any time.

**6.2 |** Expenses incurred for any interruptions of Services or exceedance of agreed time limits for completion of Services not attributable to the Supplier shall be borne by the Customer.

**6.3 |** Upon completion of Services, but not later than upon completion of each workweek, the Customer shall approve the working hours of the Supplier's staff on the Supplier's time sheet.

## 7. Time of performance and delay of Services

**7.1 |** Time periods specified by the Supplier within which Services are to be carried out are based on estimates only and are, therefore, not binding. The Customer may only demand an agreement on a binding time period for Services if the extent of the works is precisely determined, the Supplier is able to provide necessary Parts in time, agreement on the extent of the Customer's duties of cooperation has been achieved and, if necessary, the Customer has obtained permits of competent authorities. The binding period for Services shall commence on the day the Supplier and the Customer agree that the aforementioned requirements are met, the Supplier has free access to the Customer's site and the Customer has

given written clearance for the Services to commence. The clearance protocol shall state the commencement date and be signed by the Supplier and the Customer.

7.2 | If the Customer requires an extension of the Services or additional Services become necessary, the time period shall be extended accordingly.

7.3 | If Services are ready for acceptance within the time period or, if a test run is scheduled, the test run is ready to commence, the time period shall be deemed met.

7.4 | In the event of Force Majeure, labour conflicts or other events beyond the Supplier's control, the time period shall be extended accordingly.

7.5 | If the Supplier's failure to provide Services in good time results in a damage to the Customer, the Customer shall be entitled to demand a lump sum compensation. This compensation shall be 0,5 % for each completed calendar week, but in total no more than 5 % of the Service price of this part of the item to be serviced by the Supplier that cannot be used due to the delay.

7.6 | If the Supplier does not carry out the agreed Services in good time, the Customer may withdraw from the contract, provided, if statutory exceptions (section 323 (2) BGB) do not apply, the Customer has specified after the due date, without result, an additional period for performance. Upon the Supplier's request, the Customer shall declare whether he will exercise his right to withdraw from the contract. Further claims for delay shall be subject to section 18.

## 8. Acceptance

8.1 | If the Supplier notifies the Customer on the completion of the Services, or, if so agreed, a test run has been completed, the Customer shall be obliged to accept the completed Services. If Services prove defective, the Supplier shall cure the defect, unless the defect is minor or not attributable to the Supplier. Acceptance may not be refused by reason of minor defects.

8.2 | Services shall be deemed accepted, if the Customer, for reasons not attributable to the Supplier, does not accept Services within 2 weeks upon notification of completion or puts the serviced item into operation.

8.3 | Upon acceptance of the Services, the Supplier's liability for obvious defects shall be excluded, unless the Customer has expressly reserved his rights with regard to the respective defect.

## 9. Warranty for Services

9.1 | Upon acceptance of the Services, notwithstanding sections 9.4 and 18, the Supplier shall, to the exclusion of any further claims of the Customer, be obliged to remedy the defect. The Customer shall give written notice of the defect to the Supplier without undue delay. The Customer shall not be entitled to demand cure, if the defect is minor or attributable to himself, in particular if the defect arises from any material provided by the Customer. The Customer shall allow reasonable time for the Supplier to remedy the defect. Replaced parts shall become property of the Supplier.

9.2 | The Supplier shall not be liable for any defects that arise from alterations, repairs or maintenance works of the serviced item by the Customer or third parties without the Supplier's approval. The Customer, however, shall be entitled to remedy the defect himself or by third parties and demand reimbursement of the necessary expenses from the Supplier, if there is a danger to operational safety or an imminent threat of extensive damage or, in case statutory exceptions (section 323 (2) BGB) do not apply, if a reasonable period for cure specified by the Customer has been expired without result.

9.3 | In the event of justified complaint, the Supplier bears the necessary costs for the rectification of defects, unless there is a disproportionate burden on the Supplier.

9.4 | If the Supplier does not remedy the defect, then, if statutory exceptions (section 323 (2) BGB) do not apply, after a reasonable set period of time, the Customer may reduce the price or, if he has no interest in remedying the defect despite reducing the price, withdraw from the contract. Any further liability shall be subject to section 18.

9.5 | If the alleged defect does not result from the Supplier's Services, then, to the extent the defect has been remedied by the Supplier, the Customer shall reimburse the Supplier's expenses accordingly.

9.6 | The Supplier shall be under no liability in respect of any defects of the Services if the defect is (I) due to willful damage, incorrect connections or incorrect operation, (II) Force Majeure (e.g. lightning bolts), (III) tear and wear due to overuse of mechanical and / or electronic items or (IV) extraordinary mechanical, chemical or atmospheric influences.

9.7 | Subject to the provisions of section 13, any warranty claims relating to the Supplier's Services shall become statute-barred within 12 months. This limitation period shall commence after acceptance of the Services or operation of the serviced item by the Customer.

## 10. Maintenance, repair and overhaul at the

### Supplier's work-site

10.1 | Any expenses arising from transporting the serviced item for maintenance, repair or overhaul to and off the Supplier's or his subcontractor's work-site shall be borne by the Customer.

10.2 | The risk of transportation shall be borne by the Customer. At the Customer's request and costs, the Supplier shall arrange for insurance against damages in transit by reason of theft, breakage, fire and the like.

10.3 | During Services at the Supplier's or his subcontractor's work-site, there shall be no insurance coverage; the Customer shall be responsible to maintain insurance coverage for the serviced item regarding fire, mains water, storms, machine breakage and the like, unless insurance coverage for such risks is expressly requested and paid for by the Customer.

10.4 | If acceptance of the serviced item is delayed, the Supplier shall be entitled to charge the Customer for the storage of the respective item at his or his subcontractor's work-site. The Supplier shall be entitled to store the serviced item other-wise. Any storage shall be at the risk and costs of the Customer.

## 11. Delivery of spare or replacement parts with

### or without installation

The following provisions shall apply to any such delivery of Parts not being subject to a repair or service order with regard to delivery time, delay in delivery, warranties and passing of risk:

11.1 | The Customer shall be responsible for the correct specification of the Part to be delivered by the Supplier. Any advice of the Supplier on the suitability of the ordered Part shall not be binding and the Supplier's liability to that effect shall be excluded as the Supplier accepts orders for delivery of Parts without prior inspection of the machine in which the Part is to be installed.

11.2 | The parties shall agree on the delivery time. The agreed delivery time shall only be binding for the Supplier if all commercial and technical matters have been settled between him and the Customer and the Customer has fulfilled all contractual obligations; otherwise, the delivery time shall be extended accordingly, provided such delay is not attributable to the Supplier.

11.3 | The Supplier shall only be obliged to adhere to the agreed delivery time, if the Supplier's presuppliers deliver the Part in due time. Delivery time shall be deemed met by the Supplier when, prior to the expiry of the deadline, the Part has been shipped from the Supplier or directly from the presupplier to the Customer, or the Customer has been notified that the Part is ready for dispatch. In the event of Force Majeure, labour conflicts or other events beyond the Supplier's control, the delivery time shall be extended accordingly. The Supplier shall notify the Customer of the begin and the end of such circumstances as soon as possible.

11.4 | If the Supplier's failure to deliver the Parts in good time results in a damage to the Customer, the Customer shall be entitled to demand a lump sum compensation at the amount of 0,5 % for each completed calendar week, but in total no more than 5 % of the value of the Parts delivered in delay. If the Supplier does not deliver the Parts in good time, the Customer may withdraw from the contract, provided, if statutory exceptions (section 323 (2) BGB) do not apply, the Customer has specified after the due date, without result, an additional period for delivery. Upon the Supplier's request, the Customer shall declare whether he will exercise his right to withdraw from the contract. Further claims for delay shall be subject to section 18.3.

11.5 | The risk of loss or damage will pass to the Customer upon dispatch of the Part. That shall also apply in case of partial delivery or if the Supplier transports the Part to the Customer or bears the costs for the transport.

## 12. Warranty for new Parts

12.1 | If new Parts, upon passing of risk, are defective, the Supplier – at his discretion – shall be obliged to remedy the defect or deliver a new Part free of defect. The Customer shall give written notice of the defect to the Supplier without undue delay. Replaced parts shall become property of the Supplier.

12.2 | The Customer shall allow reasonable time for the Supplier to remedy the defect or to deliver a Part free of defects; otherwise, the Supplier's liability shall be excluded.

12.3 | In the event of a justified complaint, the Supplier bears the costs necessary to rectify the defect, unless the contractor is disproportionately charged.

12.4 | If the Supplier does not remedy the defect or deliver a new Part free of defect, then, if statutory exceptions (section 323 (2) BGB) do not apply, after a reasonable set period of time, the Customer may reduce the price or, if the defect is not minor, withdraw from the contract. Apart from that, the right to reduce the price shall be disclaimed. Any further liability shall be subject to section 18.3.

12.5 | The Supplier shall not be liable for unsuitable or improper use, defective assembly, installation or operation of the Customer or third parties, fair wear and tear, negligent handling, improper maintenance, unsuitable operating material, defective structural work, improper foundation, chemical, electro-chemical or electronic influences, provided, these circumstances are not attributable to the Supplier.

12.6 | The Supplier shall not be liable if the Customer or a third party modifies or repairs the Part without the Supplier's approval.

12.7 | Any warranty claims relating to the delivery of new Parts shall become statute-barred within 12 months. This limitation period shall commence after acceptance or operation of the Part by the Customer, but not later than 1 month after delivery.

## 13. Warranty for used Parts

Unless agreed otherwise, any warranty claims relating to the delivery of used Parts shall become statute-barred within 6 months. This limitation period shall commence after acceptance or operation of the used Part by the Customer, but not later than 1 month after delivery. The foregoing provisions shall not apply in the event of fraudulent concealment of a defect or if an explicit guarantee has been given. Apart from that, the provisions on defective Parts shall remain unaffected.

## 14. Infringement of intellectual property rights of third parties

If the use of the Parts is in breach of domestic intellectual property rights of third parties, the Supplier, at his own expense, shall either provide the Customer with the right to use the respective Part or modify the Part to the effect that the infringement of intellectual property rights no longer persists. If that is not possible under reasonable economical conditions or within a reasonable time period, both the Customer and the Supplier shall be entitled to withdraw from the contract. Also, the Supplier shall indemnify and hold the Customer harmless against intellectual property right claims of third parties being acknowledged, undisputed or assessed in a legally binding judgment. Subject to the provisions of section 18, the Supplier's foregoing obligations in the event of an infringement of intellectual property rights shall be conclusive and conditional on the following requirements: that the Customer shall notify the Supplier without undue delay on any intellectual property right claim made, support the Supplier in defending such claims to the extent reasonable and / or enable the Supplier to modify the delivered part to the effect that an infringement of intellectual property rights no longer persists; that the Supplier shall reserve the right to all defence measures in and out of court; that the alleged infringement of third parties' intellectual property rights is not due to an instruction, unauthorized modification or use of the Part contrary to the contract by the Customer.

## 15. Retention of title

15.1 | The Supplier retains title to all accessories and Parts until receipt of all payments being due to the respective service or delivery contract.

15.2 | In case of breach of contract by the Customer including, but not limited to, delay in payment, the Supplier shall be entitled to take possession of the item and the Customer shall be obliged to surrender the item. Neither the enforcement

of the retention of title nor the attachment of the item by the Supplier shall be deemed as withdrawal from the contract.

15.3 | The Customer may resale the Part subject to the above retention of title only in the cause of his regular business. For this case, the Customer hereby assigns all claims arising out of such resale or use for services, irrespective of whether the goods have been processed or not, to the Supplier. Notwithstanding the Supplier's right to claim direct payment, the Customer shall be entitled to receive the payment on the assigned claims. To this end, the Supplier agrees not to demand payment on the assigned claims to the extent the Customer complies with all his obligations for payment and does not become subject to an application for insolvency or to any stay of payment; in these events, however, the Customer shall disclose to the Supplier the assigned claims and the respective debtor and provide the Supplier with all information and documents necessary for debt collection and notify the debtors (third parties) of the assignment.

15.4 | The Customer shall also assign to the Supplier such claims which arise against third parties from the incorporation or combination of the item into or with real estate or moveables.

15.5 | If the foregoing securities exceed the secured claims by more than 20 %, the Supplier, at his own discretion, shall return to the Customer such securities upon the Customer's request.

15.6 | Upon the opening of insolvency proceedings, the Supplier shall be entitled to withdraw from the contract and take possession of the item.

## 16. Processing of replacement parts

16.1 | Prices for replacement parts are subject to the Customer transferring to the Supplier the property of an according, repairable used part as replacement. If the used part is not received by the Supplier within 2 weeks after the Customer has received the replacement part from the Supplier, the Supplier shall be entitled to charge the price for a new part. The used part shall be shipped to the Supplier's work-site "Carriage Insurance Paid" (CIP Incoterms 2010) or, from abroad, "Delivered Duty Paid" (DDP Incoterms 2010).

16.2 | If a return delivery note is missing, the used part will be returned unidentified to the Customer. If the Customer refrains from specifying the defect of the returned part, an inspection fee of 50.00 EUR shall be charged.

## 17. Return of unused spare parts

17.1 | If the Customer orders several spare parts and, upon placing of order, he is not certain as to which spare part is suitable, the Customer shall, at his own risk and expenses, return the spare parts not required to the Supplier's work-site "Carriage Insurance Paid" (CIP Incoterms 2010) within 2 weeks upon completion of the repairs.

17.2 | The Supplier may charge the Customer with a 10 % fee for inspection and restocking of returned spare parts, but not more than 175.00 EUR per position. Redemption of spare parts with a value of below 65.00 EUR shall be excluded; these spare parts shall not be credited.

## 18. Supplier's liability and limitation of liability

18.1 | If the Supplier is responsible for a damage to parts of the serviced item, the Supplier, at his discretion and own costs, shall repair the part or deliver a new part. The Supplier's liability shall be limited to the price agreed for the Services. Apart from that, section 18.3 shall apply.

18.2 | In the event that – due to the Supplier's responsibility for omitted or faulty execution of advice given before or after the contract, or breach of other non-fundamental contractual obligations, in particular instructions on the operation and maintenance of the serviced item or delivered Parts – the Customer cannot use the Services or delivered Parts as agreed upon, the following provisions, to the exclusion of any further claims of the Customer, shall apply.

18.3 | For damages other than to the delivered Parts or the Services themselves, the Supplier – irrespective of the legal ground – shall only be liable in the event of

- a) intent,
- b) gross negligence of the Supplier or his organs or executive staff,
- c) damages to life, body or health,
- d) fraudulent concealment of damages,
- e) an explicit guarantee,

f) liability according to the Product Liability Act ("Produkthaftungsgesetz").

If the Supplier is in breach of fundamental contractual obligations (i.e. obligations, the fulfilment of which is essential for due performance of the contract and on the compliance of which the other party may regularly rely) the Supplier shall also be liable in the event of gross negligence of non-executive staff and slight negligence. In case of slight negligence, the Supplier's liability shall be limited to the typically foreseeable damage. Any further liability shall be disclaimed.

## 19. Statute of limitations

Except for section 13, any claims of the Customer – irrespective of the legal ground – shall become statute-barred within 12 months. This also applies to the limitation period of recourse claims in the supply chain according to § 445b para 1 German Civil Code (*BGB*), provided that the last contract in this supply chain is not a consumer goods purchase. The expiry suspension according to § 445b para 2 German Civil Code (*BGB*) remains unaffected. With regard to claims for damages pursuant to section 18.3 a) – d) and f), the statutory periods of limitation shall apply. The statutory periods of limitation shall also apply in relation to defects of a building or if the delivered item has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building.

## 20. Applicable law and jurisdiction; personal data

20.1 | The legal relationship between the Supplier and the Customer shall be governed by the laws of the Federal Republic of Germany as applicable between domestic parties.

20.2 | The venue shall be the court with jurisdiction at the Supplier's registered office. However, the Supplier shall also be entitled to take legal action at the Customer's registered office.

20.3 | The Supplier shall be entitled to save and process the Customer's personal data by means of electronic data processing