

Framework Agreement 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 provided by DMG Mori Seiki Middle East FZE ("Supplier") to his customers ("Customers" or "Customer") in relation to the repair, maintenance and other services ("Services") as well as to the delivery of spare and replacement parts ("Parts" or "Part") for machine tools ("Products" or "Product") of the Supplier or any of its affiliated companies. Differing or contradicting terms of the Customer shall not apply, unless expressly agreed upon in writing. A contract shall come into force only with the Supplier's written order confirmation by letter, fax or email. The Supplier and the Customer shall hereinafter be jointly referred to as the "Parties" and each a "Party".

2. Customer's responsibilities

2.1 | The Customer shall provide to the extent necessary at his own risk and expense ancillary 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 Parts, tools, clothes and the staff's personal belongings. The Customer is responsible for his ancillary staff following the Supplier's instructions. The Supplier shall not be liable for any damage caused by the Customer's ancillary staff, unless the respective damage is due to a Supplier's instruction; in this case, section 17 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 or any of his staff, ancillary staff, agents or other personnel (the "Customer's Staff") has caused the losses or damages regardless of any faulty or negligent behavior of the Customer or the Customer's Staff.

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, work and access passes and 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 provided to the Customer by the Supplier from time to time (the "Price Schedule") [and as stipulated in the Supplier's written order confirmation]. In the event that the Supplier has rendered parts of the Services already but has not yet finalized the Services he shall be entitled to installments amounting to 90% of the value of the Services already carried out.

3.2 | Used parts, materials and 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 quotation, reference to such quotation in the invoice shall suffice; however, deviations from the quotation shall be listed separately.

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

3.4 | 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 as mentioned in the respective invoice.

3.5 | The Customer shall be entitled to offset or to claim rights of retention only to the extent that his counterclaim is acknowledged, undisputed or assessed in a legally binding judgment.

4. Unfeasibility of Services

4.1 | The Customer will have to pay the costs and fees for any inspection of Products done by the Supplier and requested by the Customer in order to provide an offer to the Customer for the repair of a defect. The Customer will also be required to pay any such costs

_ if the alleged defect could not be detected during the inspection,
_ if the Customer fails to meet the agreed service appointment,
_ if the Customer cancels an order which is still in process,
_ if the Parts required for the Services cannot be obtained in due time.

4.2 | Unless the Supplier's Services prove not necessary the Supplier shall only be obliged to put back the serviced Product in its original state upon the Customer's express request and at Customer's expense.

4.3 | If the Product is beyond repair or the Services cannot be carried out for any other reason, the Supplier shall not – irrespective of the legal ground on which the Customer claim is based – be liable for damages to the Product to be serviced, breach of non-fundamental contractual obligations and damages not caused to the serviced Product itself. Only 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 fulfillment of which is essential for the due performance of the contract and on the compliance of which the other Party may regularly rely), his liability shall be limited to the typically foreseeable damage except if the Supplier or his organs or executive staff have acted intentionally or with gross negligence.

5. Travel expenses

5.1 | Travel expenses comprise train / flight costs of the Supplier's staff, costs of transport and transport insurance for staff's personal luggage, costs for transport of necessary tools, costs for visa procurement, prescribed medical and sanitary checks and further cross-border related costs. These travel expenses shall be borne by the Customer, either directly or by way of back-charging, as appropriate.

5.2 | Travel expenses also include costs for staff's journeys between home and the Customer's work-site during Service periods. If the staff's respective home is abroad, a flight to such place shall be paid for every six weeks during Service periods.

5.3 | Mileage allowances for use of vehicles shall be charged according to the Supplier's Price Schedule. The Supplier shall choose the means of travel at his sole equitable discretion. Unless agreed otherwise, the Supplier's staff may travel business class on long-haul flights (4 hours and over).

5.4 | If the Supplier's staff is accommodated more than 2 km away from the Customer's work-site, daily costs for arrival and departure will be charged as travel expenses.

6. Service expenses

6.1 | The Supplier calculates journey times and the duration of on-site Services on the basis of his Price Schedule.

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 in writing 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 additional Services or should 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 the test run is ready to commence in case that a test run has been agreed on, the time period shall be deemed met.

7.4 | In the event of Force Majeure, i.e. any circumstance beyond the reasonable control of the Supplier including but not limited to war, warlike conditions, acts of terrorism, freight embargoes, storms, acts of God, equipment break down, riots, civil commotion, floods, earthquakes, any strike, lock-out or other form of industrial action, governmental orders or restrictions, hostilities, mobilisation, blockade, revolution, looting, fire, leakage or bursting of tanks or pipes, the time period shall be extended accordingly.

7.5 | If a binding time period has been agreed on and the Supplier fails to provide the Services within this time period the only remedy for the Customer for any damages resulting from this delay shall be liquidated damages in the amount of 0,5% of the price for the Services with regard to the serviced Product for each entire calendar week of delay, without exceeding in total 5% of the price for such Services. For the avoidance of doubt the above mentioned percentages to be paid as liquidated damages shall only be calculated on the basis of the price for the Services for the single Product or part of a Product which cannot be used by the Customer due to the delay. The above-mentioned indemnity shall be in lieu of all other damages available to the Customer at law or by contract and the Customer shall not be entitled to any further delay damages from the Supplier whatsoever.

7.6 | If the Supplier does not carry out the agreed Services within the binding time period, the Customer may notify an additional adequate period of time for performance in writing to the Supplier. Only in case that this additional period of time has expired without the Supplier having performed the respective Services may the Customer rescind the Service contract. Upon the Supplier's request, the Customer shall declare whether he will exercise his right to rescind the contract.

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 rectify the defect, unless the defect is neglectable in relation to the overall interest of the Customer in the Services or not attributable to the Supplier. Only in the event of a major defect may the Customer refuse acceptance.

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

8.3 | Upon acceptance of the Services, the Supplier's liability for any defects shall be excluded save for hidden defects or unless the Customer has expressly reserved his rights with regard to the respective defect and has duly notified the Supplier in writing.

9. Warranty for Services

9.1 | Upon acceptance of the Services, notwithstanding sections 9.6 and 17, the Supplier shall, to the exclusion of any further claims of the Customer, only be obliged to remedy any hidden defects in the Services. The Customer shall give

written notice of such defect to the Supplier within 48 hours after detection of the defect but at the latest six (6) months after acceptance of the Services. The Customer shall not be entitled to demand rectification if the defect is neglectable in relation to the overall interest of the Customer in the Services or caused by the Customer or if the defect arises from any material provided by the Customer. The Customer shall allow reasonable time for the Supplier to remedy the defect. Parts of the serviced Products which have been replaced by new or functional used Parts shall become the property of the Supplier upon installation of the replacement Part. The Customer hereby gives his express consent to the transfer of title to the replaced part and the Supplier hereby expressly accepts such transfer.

9.2 | The Supplier shall not be liable for any defects that arise from alterations, repairs or maintenance works of the serviced Product by the Customer or third parties that have been undertaken without the Supplier's prior written consent.

9.3 | Only in case of a threat to operational safety, in case of an imminent threat of extensive damage or if a reasonable period for rectification of a defect agreed upon in writing by the Supplier and the Customer has expired without the defect having been rectified shall the Customer be entitled to remedy the defect himself or by use of third parties and demand reimbursement of the necessary expenses from the Supplier.

9.4 | In the event that the repair of a defect as part of the Services requires installation and / or removal of (non-defective) parts of the Product the respective expenses shall be borne by the Customer, unless the Supplier is liable for such expenses pursuant to the provisions of section 17 hereof.

9.5 | If the Supplier does not remedy a defect which has been claimed by the Customer according to clause 9.1 within a reasonable period of time agreed upon in writing by the Supplier and the Customer, the Customer may request a reduction of the price for the Services. Only if the rectification of the defect is not of any use for the Customer despite the reduction of the price the Customer may withdraw from the Service contract. Any further liability shall be subject to section 17.

9.6 | If the alleged defect does not result from the Supplier's Services the Customer shall be liable to reimburse the Supplier's expenses.

9.7 | The Supplier shall be under no liability in respect of any defects which are caused by (I) willful damage, incorrect connections or incorrect operation, (II) Force Majeure (e.g. lighting), (III) wear and tear due to overuse of mechanical and / or electronic items or (IV) extraordinary mechanical, chemical or atmospheric influences.

9.8 | Any warranty claims relating to the Supplier's Services shall not be heard after the lapse of six (6) months starting from the date of acceptance of the Services or from the start of operation of the serviced Product by the Customer, whichever event occurs earlier.

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.

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

10.4 | If acceptance of the serviced Product is delayed, the Supplier shall be entitled to charge the Customer for the storage of the respective Product at his or his subcontractor's work-site. The Supplier shall be entitled to store the serviced Product otherwise. In such case hand-over of the serviced Product shall be deemed completed and 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 Product in which the Part is to be installed.

11.2 | The Parties shall agree on the delivery time (in writing). The agreed delivery time shall only be binding on the Supplier [if agreed so in writing and] 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 that 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 whenever, prior to the expiry of the deadline, the Customer has been notified that the Part is ready for dispatch. In case that the Parties have agreed in writing that a particular delivery shall be based on an Incoterm other than ex-works (as per the ICC Incoterms 2010) and if as per this Incoterm the Supplier shall arrange the carriage, delivery time shall be deemed met by the Supplier if the Part has been dispatched from the Supplier's premises or, in case that the respective Incoterm requires a direct delivery from the presupplier's premises to the Customer, if the Part has been dispatched from the presupplier's premises for shipment to the Customer. In the event of Force Majeure, as defined in section 7.4 above, the delivery time shall be extended accordingly. The Supplier shall notify the Customer of the beginning and the end of such circumstances as soon as possible.

11.4 | If the Supplier's failure to deliver the Parts within the agreed delivery time results in a damage to the Customer, the only remedy for the Customer for any damages resulting from this delay shall be to demand liquidated damages in the amount of 0,5% of the value of the delayed Parts for each completed calendar week of delay, but in total no more than 5% of the value of the delayed Parts. The Customer shall not be entitled to any further damages from the Supplier resulting from the delay whatsoever. If the Supplier does not deliver the Parts within the agreed delivery time, the Customer may set an additional adequate period of time for delivery. Only in case that this additional period of time has expired without the delivery of the Parts to the Customer may the Customer rescind the contract. Upon the Supplier's request, the Customer shall declare whether he will exercise his right to rescind the contract.

12. Warranty for Parts

12.1 | If new Parts are found defective and such defect was caused prior to dispatch the Supplier – at his discretion – shall be obliged to remedy the defect or deliver a new Part free of defect. If used Parts are found defective and such defect was caused prior to the transfer of risk the Supplier – at his discretion – shall be obliged to remedy the defect or deliver another used Part free of defect. The Customer shall be obliged to give written notice of any defect to the Supplier within 48 hours after receiving the respective Parts. The Customer shall notify the Supplier in writing of any hidden defect within 48 hours after detection of the defect but no later than 6 months after delivery. Any claim of the Customer against the Supplier resulting from a defect of a delivered Part shall not be heard after the lapse of the respective notice periods. Replaced parts shall become the property of the Supplier upon installation of the replacement Part. The Customer hereby gives his express consent to the transfer of title to the replaced parts and the Supplier hereby expressly accepts such transfer.

12.2 | The Customer shall allow reasonable time for the Supplier to remedy the defect or to deliver a Part free of defects; the Supplier's liability for any further defect, damage or loss whatsoever shall be excluded if the Customer urges the Supplier to conduct such remedying works within an unreasonably short period of time and does not allow reasonable time for the Supplier to remedy the defect or to deliver a Part free of defects.

12.3 | Any expenses for installation and removal of the Part shall be borne by the Customer, unless the Supplier is liable for such expenses pursuant to section 17.

12.4 | In case of any defect of the Parts delivered the Customer shall have the right to rescind the contract provided that the Supplier has failed to either remedy the defect or deliver a new (non-defective) Part within a reasonable time period set by the Customer. In case that the defect is not major the Customer may only reduce the price for the respective Part. Apart from that, the right to reduce the price shall be excluded. Any further liability shall be subject to section 17.3.

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 prior written consent.

12.7 | Any warranty claims relating to the delivery of new and used Parts shall not be heard after the lapse of 6 months from acceptance or operation of the Part by the Customer, but not later than 1 month after delivery.

13. Infringement of intellectual property rights of third parties

If the use of the Parts constitutes a breach of domestic intellectual property rights of third parties in the country of the Supplier's registered office or in the country of residence of the Customer, 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 rescind 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 17, 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 right to all defensive measures in and out of court is reserved for the Supplier and 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.

14. Title of ownership

14.1 | Notwithstanding anything to the contrary herein, the Supplier retains title to all accessories and Parts until hand-over of the repaired or serviced Products to the Customer has been effected by the Supplier.

14.2 | Before the title of ownership has passed, the Supplier shall be entitled at any time to take possession of the Part and the Customer shall be obliged to surrender the Part. Neither the enforcement of this rule nor the attachment of the Part by the Supplier shall be deemed a rescission of the contract.

14.3 | The Customer may resell the Part subject to the above provisions only in the course of his regular business.

15. Processing of replacement parts

15.1 | Prices for 'replacement parts' are subject to the Customer transferring to the Supplier the property title 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' as per the Price Schedule to the Customer. The used part shall be shipped to the Supplier's work-site "Carriage Insurance Paid" (CIP Incoterms 2010 of the International Chamber of Commerce) if delivered from inside the country or, if delivered from abroad, "Delivered Duty Paid" (DDP Incoterms 2010 of the International Chamber of Commerce).

15.2 | If a used part is shipped to the Supplier as per clause 15.1 above and the shipment is made without a respective return delivery note, the used part will be returned unidentified to the Customer. If the Customer has failed to specify the defect of the returned part, an additional inspection fee of 50.00 EUR shall be charged to the Customer.

16. Return of unused spare Parts

16.1 | If the Customer orders several spare Parts and, upon placing of the 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 of the International Chamber of Commerce) within 2 weeks upon completion of the repairs but latest within 6 weeks after receipt of the respective Parts by the Customer.

16.2 | The Supplier may charge to the Customer a fee of 10 % on the agreed sales price for inspection and restocking of returned spare Parts, but not more than 175.00 EUR per returned spare Part. Redemption of spare Parts with a value of less than 65.00 EUR shall be excluded and no credit notes will be issued for such spare Parts.

17. Supplier’s liability and limitation of liability

17.1 | If the Supplier has negligently caused a damage to parts of the serviced Product, the Supplier, at his discretion and own costs, shall repair the part or deliver a new part. The Supplier’s overall liability for such damage shall be limited to the price agreed for the Services. Apart from that, section 17.3 shall apply.

17.2 | In the event that the Parts or Services delivered by the Supplier cannot be used by the Customer as agreed upon in the contract due to

- _ faulty advice provided by the Supplier before or after conclusion of the contract, or
- _ breach of any other secondary contractual obligations, in particular instructions for operation and maintenance of the serviced Product or of the Parts provided by the Supplier,

only the following provisions of clause 17.3, to the exclusion of any further claims of the Customer, shall apply.

17.3 | For damages caused to parts other than to the delivered Parts or the serviced Product, the Supplier – irrespective of the legal ground – shall only be liable in the event of

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

The Supplier shall be liable in case that non-executive staff has caused a breach of fundamental contractual obligations (i.e. obligations, the fulfillment of which is essential for due performance of the contract and on the compliance of which the other Party may regularly rely) due to gross negligence. In case of negligence the Supplier shall only be liable for the typically foreseeable damage. Any further liability shall be excluded.

17.4 | On no account shall the Supplier be liable for any consequential or indirect damages or losses which the Customer, its employees, directors or agents may incur including without limitation any loss of use, loss of profit and loss of any contract subject to clause 17.3.

18. Statute of limitations

Any claims of the Customer – irrespective of the legal ground – shall not be heard after the lapse of 6 months after the claim coming into existence unless stipulated otherwise in this Agreement.

19. Applicable law and jurisdiction; personal data

19.1 | The legal relationship between the Supplier and the Customer shall be governed and construed in accordance with the laws and regulations applicable in the Kingdom of Saudi Arabia.

19.2 | Each Party agrees to submit to the jurisdiction of the courts having jurisdiction at the Supplier’s registered office. However, the Supplier shall also be entitled to take legal action at the Customer’s registered office.

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