

Standard Maintenance Terms and Conditions of KERN Microtechnik GmbH

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1. Scope

The following Standard Maintenance Terms and Conditions (hereinafter SMTC) shall apply to all contracts between KERN Microtechnik GmbH (hereinafter "KERN") and entrepreneurs (§ 14 German Civil Code, BGB), legal entities under public law or special funds under public law (hereinafter "the Customer") for maintenance services, including contracts for one-time maintenance and contracts for regular maintenance. These SMTC shall also apply to all future business relations, even if they are not expressly agreed again. Deviating, conflicting or supplementary general terms and conditions of the Customer are hereby explicitly rejected. These SMTC shall also apply if KERN executes the order in ignorance of terms and conditions that conflict with or deviate from these SMTC. The Customer's own general terms and conditions shall only be valid if KERN has expressly agreed to them in writing.

2. Conclusion of contract

2.1 Quotations from KERN are subject to change without notice. A contract is not concluded until the respective order has been confirmed in writing.

2.2 The legal relationship between the Customer and KERN shall be governed solely by the contract concluded in writing (hereinafter "maintenance contract") including these SMTC. Amendments and changes to the concluded maintenance contract as well as to these SMTC must be made in writing in order to be effective. This shall also apply to the cancellation or amendment of this written form clause. The written form shall also be deemed to be sufficient if it is transmitted via telecommunication, in particular by e-mail.

3. Scope of services, maintenance objects

3.1 KERN shall perform maintenance work on the machines and/or plant components specified in the respective maintenance contract (hereinafter: "maintenance objects") in the sense of a preventive inspection for the purpose of early detection of possible defects due to wear and tear. This maintenance serves to maintain the operational readiness of the maintenance objects, without, however, being able to rule out any failures or disruptions to their operational readiness.

3.2 The type/scope of the maintenance to be carried out is determined by the respective maintenance contract. In particular, the maintenance contract shall also specify whether one-off individual maintenance or repeated, regular maintenance is owed.

3.3 In connection with maintenance, the replacement of consumables and wearing parts shall also be carried out unless otherwise agreed. If KERN provides the Customer with consumables and/or wear and/or spare parts, KERN's General Terms and Conditions for Deliveries and Repairs shall apply in addition, including the special provisions for manufacture and delivery in accordance with Clause XII of the General Terms and Conditions for Deliveries and Repairs. The costs for these consumables,

wear and/or spare parts (including costs for shipping, customs, etc. if applicable) shall be invoiced separately.

3.4 If repairs to the maintenance objects are also carried out as part of the maintenance in accordance with the scope agreed in the maintenance contract, KERN's General Terms and Conditions for Deliveries and Repairs shall apply in addition, including the special provisions for repair services pursuant to Clause XIII of the General Terms and Conditions for Deliveries and Repairs.

3.5 The maintenance services do not include services to remedy faults caused by improper use of the maintenance objects (e.g. non-observance of the relevant user manual), changes to the maintenance objects by the Customer or third parties engaged by the Customer, or other circumstances for which the Customer is responsible. The maintenance contract does not release the Customer from its obligation to arrange the necessary servicing work in accordance with the operating instructions for the machine, or from ensuring professional care and maintenance as well as proper operation of the machine.

3.6 Otherwise, only services expressly agreed between the parties are covered by the scope of services. Additional services are neither owed nor included in the price. These services, which go beyond the maintenance contract, shall only be performed on the basis of a separate order and invoice. This applies in particular to work on machines and plant components for which no maintenance contract has been concluded. In the event that the parties disagree as to whether certain services are part of the commissioned scope of services or whether a supplement is to be concluded, KERN shall be entitled to refuse performance.

3.7 KERN is entitled to use subcontractors for the provision of services.

Insofar as the rendering of services by the respective subcontractor requires the provision of confidential information by the Customer, the Customer agrees that this may be passed on to the subcontractor by KERN for the purpose of rendering services. Before passing confidential information to subcontractors, KERN shall oblige said subcontractors to treat the information confidentially.

4. Performance period

4.1 If regular maintenance has been agreed, the maintenance shall take place at intervals of 2000 operating hours. The Customer is obliged to inform KERN at least 4 weeks before the 2000 operating hours are reached that the maintenance time is imminent.

The intervals specified in sentence 1 above shall be deemed to have been complied with if the maintenance dates lie between one month before and one month after the scheduled date.

4.2 If one-time individual maintenance is agreed, the maintenance shall be carried out within 6 weeks after conclusion of the contract.

4.3 The exact dates for the performance of the maintenance service shall be agreed between the parties.

4.4 All services shall be provided from Monday to Friday during KERN's normal business hours (Monday to Friday, 07.00 to 17.00).

Insofar as services are provided outside these times at the Customer's request, the Customer shall bear the additional costs thus incurred (in particular overtime premiums, lump sums for emergency services, etc.).

5. Place of performance

5.1 The place of performance for the maintenance of the maintenance objects is the agreed place of business of the Customer and the installation location of the maintenance objects specified therein or, in the case of maintenance via KERN Tele-Service, the registered office of KERN.

5.2 KERN must be notified in writing of any change in the agreed place of performance, in particular due to relocation of the Customer. In this case, KERN shall be entitled to make its consent to the change of the place of performance dependent on the payment of a remuneration appropriate to the changed circumstances, if the change is associated with additional costs for KERN.

If the change of the agreed place of performance leads to additional costs which are unreasonable for KERN, KERN shall be entitled to terminate the contract pursuant to Clause 11.2.

6. Obligations of the Customer

6.1 The Customer shall provide the employees of KERN with all necessary support during their work, in particular at the Customer's premises. This includes in particular a duty to cooperate as follows:

- In preparation for the maintenance date, the Customer shall notify KERN – at the same time as the notification that the maintenance date is imminent pursuant to Clause 4.1 – of any known faults, anomalies and the like which have been discovered in the maintenance objects
- The Customer shall ensure that the maintenance objects are removed from production, cleaned and functional for the period of the maintenance
- The Customer shall ensure that a competent employee is available as contact person at the place of operation
- The Customer shall grant the employees of KERN free access to the relevant maintenance objects
- The Customer shall ensure that the work can be carried out without interruption
- The Customer shall provide KERN with the current version of the technical documentation for the maintenance objects as well as any other necessary information

6.2 The Customer shall ensure that all necessary cooperation services, also with regard to occupational safety, are provided in good time, to the extent required and free of charge for KERN.

6.3 If the Customer does not comply with its duties to cooperate – in particular also with its duty to notify KERN pursuant to Clause 4.1 – or fails to do so on time or in the agreed manner, KERN shall be

entitled to refuse performance until the necessary measures have been taken.

In addition, in the event of a breach of the Customer's duties to cooperate, KERN shall be entitled to demand compensation for any damages incurred, including any additional expenses.

If the Customer does not fulfill its duties to cooperate, even within a reasonable grace period, KERN shall furthermore be entitled to terminate the maintenance contract without notice pursuant to Clause 11.2.

7. Remuneration, due date, set-off and right of retention

7.1 The prices and payments specified in the maintenance contract apply.

7.2 All prices and payments are net amounts plus the applicable statutory value-added tax.

7.3 Services not included in the scope of services pursuant to Clause 3.6 shall be invoiced separately.

7.4 Unless otherwise agreed, in the event of services being rendered outside the registered office of KERN, travel costs, expenses and other costs arising at the place of performance shall be charged separately in accordance with the rates specified in the quotation or contract for working hours, travel time, travel costs, accommodation costs, expenses, etc.

7.5 Unless otherwise agreed, claims of KERN for the services rendered shall be due upon invoicing.

7.6 The Customer shall be in default of its payment obligation if it does not make payment within 14 days of the due date and receipt of an invoice or equivalent payment schedule.

7.7 If a due claim of KERN is not settled even after a payment reminder and expiry of a further period of two weeks, all claims of KERN arising from the business relationship with the Customer shall become due immediately. KERN shall subsequently be entitled to only perform further services against advance payment or adequate security.

7.8 The Customer may only offset its own claims against claims of KERN if the Customer's claims are undisputed or have been legally established, or in the case of a claim of the Customer that is based on the same contractual relationship. The Customer may only assert a right of retention on the basis of its own claims arising from the same contractual relationship.

8. Changes to maintenance charges and ancillary costs

KERN is entitled to change prices and fees in accordance with actual changes in costs – in particular to compensate for personnel costs – following written notification and subject to a notice period of two months. Such a change shall be permissible for the first time after the expiry of a contract period of 12 months. If a price increase amounts to more than 10% of the agreed rate, the Customer shall be entitled to a right of termination pursuant to Clause 11.2, which the Customer may exercise within four weeks of receiving notification of the changes.

9. Liability

9.1 Claims of the Customer for expenses or damages, regardless of the legal basis, shall be limited to damages caused by KERN or one of its vicarious agents or contractors

- a) intentionally
- b) due to gross negligence or
- c) in the case of essential contractual obligations, due to ordinary negligence

Essential contractual obligations in this sense are those obligations of KERN which are supposed to fulfill the rights of the Customer in accordance with the contents and purpose of the maintenance contract concluded with KERN, as well as those obligations whose fulfillment makes the proper execution of the maintenance contract concluded with KERN possible in the first place, and on whose observance the Customer has regularly relied and depended.

9.2 Liability shall be limited to the amount of damages that were foreseeable at the time the contract was concluded or at the latest at the time the breach of duty was committed, and to the typical damages for comparable transactions of this type, unless KERN is liable due to intent or gross negligence on the part of its legal representatives or executive employees.

9.3 The limitations of liability pursuant to Clauses 9.1 and 9.2 shall not apply in the case of injury to life, limb or health, in the case of liability under the German Product Liability Act (Produkthaftungsgesetz) or in the case of other, more extensive mandatory statutory liability of any kind.

10. Statute of limitations

10.1 Claims for damages, insofar as they are not connected with a defect, shall become statute-barred within one year of the end of the year in which the claim arose and the Customer became aware of the circumstances giving rise to the claim, or ought reasonably to have become aware of them unless the oversight was due to gross negligence.

10.2 The provisions in the above section 10.1 shall not apply if the claims are based on an intentional or grossly negligent breach of duty by KERN, or in the case of injury to life, body or health, or in the case of liability under the Product Liability Act, or in the case

of other, more extensive mandatory statutory liability; § 444 BGB shall otherwise remain unaffected.

11. Contract term and termination

11.1 The maintenance contract is concluded for an indefinite period unless otherwise agreed, in particular if one-time maintenance was agreed. It may be terminated with one month's notice to the end of the year.

11.2 The parties' right to termination for good cause remains unaffected.

11.3 Any notice of termination must be issued in writing.

12. Place of jurisdiction, applicable law

12.1 The place of jurisdiction for all disputes arising from or in connection with the contractual relationship shall be the registered office of KERN. However, KERN is also entitled to sue the Customer at any other legally competent court.

12.2 The maintenance contract including these SMTC – including the manner of its conclusion and its interpretation – shall be governed exclusively by substantive German law, to the exclusion of international conventions (including CISG).

12.3 Insofar as a version of these SMTC in a language other than German exists, only the German language version shall be legally binding. This shall also apply to amendments and supplements to these SMTC, insofar as a German language version exists.

13. Miscellaneous

13.1 Transfers of rights and obligations of the Customer arising from the maintenance contract concluded with KERN, including these SMTC, shall require the written consent of KERN in order to be effective.

13.2 Should any of the above provisions be or become invalid in whole or in part, this shall not affect the validity of the other provisions. In the event of the invalidity of a provision, a provision that comes as close as possible to the sense and purpose and economic significance of the invalid provision shall be deemed to have been agreed.