

General Terms and Conditions of Service of Winkler+Dünnebier GmbH

Effective as of May 1st, 2017

§ 1 Scope of application

The following Terms and Conditions of Service of Winkler + Dünnebier GmbH, Sohler Weg 65, 56564 Neuwied, Germany (in the following “W+D”) apply, as far as not expressly stipulated otherwise in writing, to all services undertaken between W+D and the customer as individual orders for the provision of services or Framework-Service-Agreements, in particular to all assembly, installation, repair, troubleshooting, maintenance or instruction services as well as remote support (Expert Online) services. They also apply to any future business relationships even if they are not expressly agreed again. Any deviating general terms and conditions of the customer are not accepted, even if W+D does not expressly object to them. These Terms and Conditions of Service do not apply to any services provided in the context of the fulfilment of the customer's claims for defects due to deliveries provided by W+D.

§ 2 Conclusion of contract

(1) Offers made by W+D are non-binding provided they have not expressly been specified as binding in the wording of the offer. The contract only enters into force once it has been signed by both parties or once W+D has confirmed the order to the customer in writing (by letter, fax or e-mail) or, in particular where the customer places his order by telephone or orally e.g. in urgent cases, if W+D has accepted the order by starting to provide the service.

(2) Side agreements and amendments require mutual written confirmation (by letter, fax or e-mail) in order to be effective.

(3) The General Terms and Conditions of Sale and Delivery of W+D apply in relation to all deliveries of products, spare parts, wear parts, consumables, tools and software in the context of the provision of services. Under these terms and conditions, claims for defects asserted by the customer are subject to a limitation period of one year from delivery as well as a retention of title on the part of W+D for all delivery items until full payment of the agreed price.

§ 3 Assembly and installation as an individual order for the provision of services

The individual order for the provision of assembly and installation services comprises the assembly and installation of a machine or component that has been supplied fully assembled or that has been dismantled for transport purposes as well as its functional test in the agreed scope. The installation and start-up of software are also part of a machine installation.

§ 4 Repair and troubleshooting as an individual order for the provision of services

The services provided by W+D in the context of an individual order for the provision of repair or troubleshooting services regularly depends on the technical requirements. Unless expressly agreed otherwise, an individual order for the provision of services placed by a customer includes:

- carrying out all the work necessary, based on professional expertise and accepted engineering standards, to restore the machine or component to its proper working order;
- the delivery of all service parts required for this purpose pursuant to § 2 (3). Insofar as the service parts are included in the replacement procedure pursuant to § 6, the replaced service parts become the property of W+D. The customer is obliged to return these replaced parts to W+D;
- the installation of the service parts;
- functional testing of parts of plants in relation to which repair or troubleshooting services have been commissioned; this does not, however, include functional testing of the whole plant.

Given that the time required for repair and troubleshooting of a machine or component depends, among other things, on its age and condition as well as the existing facilities available at the customer's business premises, it is not possible to make any binding statements regarding estimated duration and costs.

Prior to the execution of more extensive work or the installation of service parts W+D will obtain the customer's consent if and to the extent

- a cost limit expressly set by the customer would have to be exceeded;
- the estimated repair cost would be distinctively disproportionate compared to the utility value of the plant to be repaired.

§ 5 Other individual orders for the provision of services (machine maintenance, instruction etc.)

The individual order for the provision of services includes

- in the case of machine maintenance the provision of maintenance services in accordance with the agreed upon scope or the applicable maintenance-check-list;
- in the case of instruction or training services, instructing a person designated by the customer as to the operation and functioning of the machines, components or software – possibly via online training (E-learning);
- in the case of oral user advice (e.g. provided by a member of the service staff on site or by telephone by the W+D Remote Service), providing or conveying available user knowledge; in relation to software, however, this is restricted to the latest and the preceding version only. In the case of more extensive consultancy projects or other services (e.g. the relocation of machinery or similar) the scope of services and the fee are set out in the offer submitted by W+D or in the respective service package;
- in the case of Expert Online orders, error analysis and potential error correction via VPN-connection at the customer's equipment.

§ 6 Supply of service parts in the replacement procedure

(1) Participation in the replacement procedure

If a service part is included in the replacement procedure provided by W+D, the customer must return the replaced service part to W+D. If, upon its receipt, W+D discovers that it is not possible to repair the part in the producer's factory using commercially reasonable efforts, W+D invoices the customer for the difference in cost compared to that of the new part.

(2) Returning unused spare parts

If the customer wishes to return service parts that had been acquired but not used in return for a refund of the purchase price, W+D is only prepared to accept this provided the following conditions are met: If the service parts are returned to W+D in the original W+D packaging within 5 days from delivery of the new service part in Germany and within 10 days from delivery of the new service part abroad, W+D will issue a credit note for the purchase price of the newly delivered service part less a charge for the return, the quality review required to be carried out at W+D and the taking back into storage at a rate of 25% of the purchase price but at least in the amount of EUR 85. No credit note will be issued for consumables and software or if the aforementioned conditions are not complied with.

(3) Acceptance of service part orders

W+D is available for orders via telephone Monday to Friday from 7.00 a.m. until 6.00 p.m. Shipping costs in relation to the delivery of service parts are not included in the price. If the customer requires faster delivery (e.g. early delivery, courier, intercity express), this will be charged for separately.

§ 7 Fees

(1) As a rule, a fee is chargeable for all services offered and provided by W+D in the context of individual orders for the provision of services unless W+D expressly offers them free of charge as a gesture of goodwill. All fees are quoted in addition to statutory value-added tax, excise duties, withholding taxes, duties or taxes on import and export, customs duties or similar taxes in force from time to time.

(2) The fee for individual orders for the provision of services as well as travel costs to be borne by customers are laid down in the schedule "W+D Service Rates" as amended from time to time. Travel and waiting times count as working time. The prices quoted by W+D for the services are based on cost factors at the time the offer is made. If the relevant cost factors change after the individual order for the provision of services has been placed (in particular salaries and wages or changes in price of materials), W+D reserves the right to make reasonable adjustments to the fees provided there is a period of at least 3 months between conclusion of the contract and performance of the service; in this case, the prices applicable at the time when the performance of the service has started are deemed agreed. At the customer's request, W+D will provide evidence regarding the relevant cost factors to the customer.

(3) If the fee is to be calculated based on the schedule "W+D Service Rates", the service and time report to be signed off by the customer in this regard is used as the relevant basis. Working time and performance are recorded therein. W+D reserves the right to reasonably adapt the rates for working hours and travel expenses if the operating cost changes substantially. When placing an order the customer may request a schedule of "W+D Service Rates" as amended from time to time.

(4) If training is included in the price or is offered by W+D in return for an additional fee, this does not include any travel, accommodation or subsistence costs of the customer and the participants nominated by the customer. These costs shall be borne by the customer itself.

(5) The prices for the sale of delivery items will be shown separately and their delivery is determined in accordance with the General Terms and Conditions of Sale and Delivery of W+D.

§ 8 Payment

(1) Payments shall be made by the customer in cash without any deductions and free of any transaction charges to the designated account of W+D. Unless specified otherwise in the offer or order confirmation of W+D or agreed in writing, all payments are due immediately upon receipt of the invoice.

(2) In case of default of payment by the customer, W+D shall be entitled to default interest in the amount of 8 % per year. The customer may demonstrate and prove that only a lesser damage occurred.

§ 9 Offset and retention

Any set-off or exercise of a right of retention by the customer is only permitted with regard to undisputed, acknowledged claims or claims that have been upheld and declared unappealable by a court of law.

§ 10 Joint ownership for security reasons, lien

(1) In order to secure claims that have arisen or arise for the benefit of W+D due to services provided, the customer grants joint ownership in the machine or component that was the subject of the service to W+D in an amount equivalent to the invoice value of the service provided. Until the claim has been fulfilled, the customer holds the machine or component on behalf of W+D free of charge.

(2) If repairs are carried out in a W+D plant or a plant of another manufacturer, the customer grants a lien to W+D with regard to the machine or component handed over in order to secure all claims that have arisen or will arise, provided such claims are not already secured in accordance with § 10 (1). In addition W+D has the right to retain the machine or component until the claims have been paid in full.

(3) The joint ownership and lien for the benefit of W+D expires once the invoice has been paid in full.

§ 11 Cooperation obligations of the customer, deadlines

(1) The customer undertakes to ensure that all structural requirements are met at the site at which the machine or component are to be installed – in particular with regard to the stability and evenness of the supporting surface, the footprint and height, access to the premises and electrical supply. If a fault report with subsequent repair order is submitted, the customer shall provide an exact description of the error.

(2) In case of installation, maintenance and repair work that may implicate an interference with the power supply, air lines, air conditioning water or wastewater pipes, the customer shall ensure compliance with the relevant health and safety regulations, e.g. by calling in a qualified and licensed technician at the customer's expense. In case the customer has overridden mandatory safety features of the machine, W+D may decline to conduct the agreed services.

(3) Apart from that, in the case of services provided by W+D the customer shall provide in a timely manner and at its own expense:

- the number of support staff deemed necessary by W+D;
- devices, cranes, hoists, tools, equipment and supplies required for installation and commissioning;
- electrical power, lighting, heating / air conditioning, water, compressed air;
- suitable and in particular dry and lockable rooms or lockers to store tools and supplied parts;

(4) The customer shall ensure that, before the start of the installation of a machine or component all required parts are available on the spot and that all preparatory work has been carried out so as to allow W+D's service engineers to start installation as soon as they arrive and without interruption.

(5) The customer shall inform W+D without delay of any legal or factual changes affecting the individual order for the provision of services or its implementation.

(6) Deadlines that have not been expressly agreed upon in writing as binding shall be non-binding.

(7) A deadline is deemed to have been met if the service has been performed by the agreed upon deadline.

(8) Agreed upon Deadlines do not begin to run or are extended – if not newly agreed upon - if circumstances occur for which W+D is not responsible and which affect the performance of the service by such period for which the circumstances in question subsist in particular (i) force majeure events, natural disasters and labour disputes which affect W+D or sub-contractors (disruptions to operations outside of a party's control), (ii) in the case of a valid contract amendment if W+D does not receive the technical or commercial documents in time or if such documents have subsequently been changed by the customer with W+D's consent or (iii) if the customer is in default in complying with its obligations.

(19) If, owing to the occurrence of such circumstances, it is impossible to amend the contract despite all reasonable efforts, W+D is released from its performance obligations.

(10) If deadlines are extended due to the aforementioned circumstances or if W+D is released from its performance obligations, the customer does not have any liability claims whatsoever against W+D. W+D is not liable for any disruptions to operations outside of its control even if they occur during a delay in delivery. W+D is obliged to notify the customer in the event that such circumstances occur.

§ 12 Claims for improper performance of the services

(1) W+D will execute the service with the necessary professional competence and care. In the event of a proven defect in the services performed due to a breach of duty of care, W+D will repeat the faulty part of the service once more free of charge. There are no further or other claims of the customer such as e.g. warranty claims based on improper performance of the services.

(2) If, in the context of the provision of services by W+D, deliveries are made or, by way of exception, the provision of a work (*Werkleistung*) or a work with materials supplied (*Werklieferungsleistung*) was expressly agreed upon, the customer may only raise claims for defects in accordance with section VIII of the General Terms and Conditions of Sale and Delivery of W+D. In accordance with these terms and conditions, the customer's claims for defects are subject to a limitation period of one year from delivery or acceptance.

§ 13 Liability for damages

(1) W+D is liable for claims:

- due to a culpable injury to life, limb or health of individuals,
- under the German Product Liability Act (Produkthaftungsgesetz),
- as a result of non-compliance with a guarantee,
- due to the fraudulent concealment of a defect or
- as a result of an intentional or grossly negligent breach of duty

without limitation in accordance with statutory provisions.

(2) Apart from that, W+D's liability shall be limited or excluded as follows:

- a) In the case of a breach of fundamental contractual obligations caused by simple negligence, liability is limited to the typical damage foreseeable at the time the contract is entered into. A fundamental contractual obligation is an obligation that the contract is meant to impose on W+D in accordance with its content and purpose, or the performance of which is necessary to make the implementation of the contract possible and on the compliance of which the Customer regularly relies and is entitled to rely.
- b) In case of a breach of non-fundamental contractual obligations caused by simple negligence and in case of any other breaches of duty caused by simple negligence, a liability of W+D is excluded.

(3) Contractual damages claims of the customer against W+D become time-barred in 12 months from the time the circumstances giving rise to the claim have become known. This does not apply to the claims referred to in paragraph 1.

(4) The aforementioned provisions in paragraphs 1 – 3 do not entail any change of the burden of proof to the customer's detriment.

(5) W+D does not accept liability for any advice provided to the customer by W+D's experts as a courtesy outside of the contractually agreed scope; this applies accordingly with regard to the provision of free assistance.

§ 14 Liability for indirect losses or damages

Except in cases where W+D has engaged in wilful conduct or gross negligence, W+D shall not be liable for indirect loss or damage caused by a defective delivery item such as production downtime, lost profits or increased materials consumption.

§ 15 Assignment

The customer is not entitled to assign its rights under this contract without written consent of W+D. W+D reserves the right to have certain individual services carried out by the staff of the manufacturers used by suppliers or by other authorised partners.

§ 16 Statute of Limitation

All contractual claims of the customer shall fall under the statute of limitations after 12 months.

§ 17 Severability clause

If a provision in this contract is or becomes ineffective in whole or in part, this does not affect the validity of the remaining provisions. The contracting parties shall work together to agree a valid provision that reflects the invalid provision as closely as possible in commercial terms.

§ 18 Applicable law and place of jurisdiction

(1) These General Terms and Conditions of Service and all contracts entered into while they are effective are subject to substantive German law to the exclusion of the UN Sales Convention (CISG - United Nations Convention on contracts for the International Sale of Goods, entered into in Vienna on 11 April 1980).

(2) Place of jurisdiction for all disputes arising out of or in connection with these General Terms and Conditions of Service shall be the court responsible for the place of the registered seat of W+D. W+D shall also be entitled to file a claim at the court responsible for the place of the registered seat of the customer.

Winkler+Dünnebier

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