



KARL MAYER

WE CARE ABOUT YOUR FUTURE

KARL MAYER Textilmaschinen AG

TERMS AND CONDITIONS OF SERVICE

01.01.2009

1. Scope

- 1.1 The subsequent Terms and Conditions of Service shall be exclusively applicable to all services performed by KARL MAYER Textilmaschinen AG, Switzerland, in particular, the revision and repair of machines produced by KARL MAYER. Divergent terms and conditions of the purchaser shall only be applicable as far as we consent to them in writing.

2. Conclusion of the service contract

- 2.1 The contract shall only be concluded upon the receipt of our written order confirmation by the purchaser or upon the acceptance of our service by the purchaser.
- 2.2 Agreements deviating from our order confirmation and these Terms and Conditions of Service and other declarations of the parties hereto shall be in writing in order to be applicable. Our staff is not permitted to conclude any additional verbal agreements or make any verbal promises which deviate from the content of this written agreement or which change these Terms and Conditions of Service to our disadvantage.

3. Prices

- 3.1 If nothing has been agreed to the contrary, services shall be charged according to expenditure of time and cost of material and our pricelists valid at the time of placing the order plus value added tax. This shall also be applicable to technical records, inspection reports and expertises to be developed in connection with the order as well as analyses of measurements and tests. The cost of material shall also comprise the costs incurred for the use of special tools and equipment as well as consumable materials and incidentals. The expenditure of time shall also include travelling time from our domicile in Uzwil to the place of work where the service is to be performed and back, travelling times at the place of work as well as a time of preparation and implementation after the journey appropriate for the order. The purchaser shall confirm the expenditure of time and cost of material expended at the place of work by signing the respective work reports. If the purchaser does not sign the reports without any justification or not in time, our invoice shall be based on the records of our staff.
- 3.2 In addition to the price for services in accordance with Item 3.1 the purchaser shall pay the costs of travelling from our domicile to the place of work and back, transport at the place of work and the haulage of materials and equipment as well as accommodation and meals for our staff.
- 3.3 Prior to the commencement of repair work the purchaser shall be informed of the findings of our inspection.
- 3.4 If the purchaser dispenses with all or part of our performance of the services for reasons for which we are not responsible, we shall charge the purchaser with the services already performed in accordance with Item 3.1 as well as the costs already incurred by us in accordance with Item 3.2.

4. Terms of payment

- 4.1 If nothing has been agreed to the contrary, we shall invoice the purchaser according to Items 3.1 and 3.2 after the completion of the service work. Such invoice shall be paid without any deduction within 30 days after the date of invoice. The obligation to pay shall have been complied with as far as the invoice amount has been put at our free disposal at our bank in the currency in which we offered our service. Cheques and notes are not considered payment until they have been honoured by a bank; bank fees are for the account of

the purchaser. The retention of payments or offsetting of counterclaims is only permitted if we have accepted this in writing or after final and absolute court findings.

- 4.2 We shall be entitled to demand from the purchaser prepayment of up to 100% of the anticipated amount according to Items 3.1 and 3.2.
- 4.3 If payment periods are exceeded we shall be entitled to charge interest on arrears of 5% without any particular dunning notice and to cease the service work until payment has been effected. The payment of interest in arrears shall not cancel the obligation of payment in accordance with the contract.

5. Designs, technical records and computer programs

Each party hereto reserves all rights in designs, technical records and computer programs, particularly test and examination programs, which it delivers to the other party. The receiving party recognizes these rights and shall treat the records and their content strictly confidential, shall not make all or part of them accessible to third parties without the prior written consent of the other party or use the same for other purposes than those for which they were delivered to it.

6. Rights and duties of the purchaser

- 6.1 The purchaser shall inform us on the determined irregularities, damages or deficiencies for which service has to be performed and shall state the scope of testing to be implemented.
- 6.2 The purchaser shall ensure that our staff is not exposed to health and safety risks during service work. The purchaser shall particularly disclose all safety regulations which it has issued for its own staff.
- 6.3 The purchaser shall support us at its own expense as follows: The purchaser shall
 - a) make available to us the technical records, designs, computer programs, particularly test and examination programs, operational and check books required for the service work;
 - b) permit our use of appropriate workshops and provide our staff with washing facilities and first-aid equipment; procure and make available to us spare parts on time as far as they are not to be provided by us according to our order confirmation;
 - c) make available to us skilled and unskilled labour to the extent considered necessary by us for the performance of test and service work;
 - d) perform all of the construction, bedding and scaffolding work considered necessary by us;
 - e) provide all of the lifting gear, heavy tools and other required equipment considered necessary by us;
 - f) provide heating, illumination, supplies, energy and water including the required connections;
 - g) provide dry and lockable rooms for us to store our tools and equipment;
 - h) admit our staff in case of sickness or accident to a physician working according to modern principles or to an appropriate hospital.

7. Our duties and rights

- 7.1 We commit ourselves to perform the services by qualified staff in a professional manner or have them performed by a third party.
- 7.2 If it becomes apparent that services in addition to the agreed scope are required, we shall perform these in agreement with the purchaser.
- 7.3 We shall be entitled to cease our services if the safety of our staff is not safeguarded or if the purchaser does not comply with its contractual duties.
- 7.4 We insure our staff against sickness and accident and assume the respectively incurred costs.

8. Warning notice

Our test results as well as our verbal or written statements to the purchaser concerning the condition, usage, safety and usability of the machine to be worked on as well as reservations expressed by us in the same form about regulations, instructions or measures of the purchaser or about other actual circumstances shall be considered a warning notice and shall release us from any liability.

9. Completion date

- 9.1 Binding completion terms and dates shall be agreed upon the dispatch of the order confirmation at the earliest and not prior to the clarification of all details of the services to be performed and technical issues as well as the receipt of an agreed prepayment.
- 9.2 Services shall be considered performed within the time limit if the machine on which our services were performed has been delivered or – if the delivery is delayed without our fault – has been notified by us as being ready for delivery prior to the completion date.
- 9.3 The term for completion shall be appropriately extended if
 - the purchaser does not comply with its obligation either on time or properly or
 - the purchaser places additional service orders or an extension of the scope of services is agreed or
 - a case of relief occurs (force majeure) according to Item 14.
- 9.4 If a binding term or extended term is not observed and it has been established that we are at fault, the purchaser is entitled to a compensation for the delay – as far as the purchaser has provably suffered a loss. In such cases, our liability shall be limited to a lump sum compensation of 0.5% per completed week, maximum however 5%, if ordinary negligence is involved. This percentage is calculated from the price of the delayed services. Further claims and rights because of delayed performance, particularly for compensation in damages, shall be excluded.

10. Ownership, assumption of risks and insurance

- 10.1 If nothing has been agreed to the contrary, replaced parts shall remain the property of the purchaser.
- 10.2 The purchaser shall carry the risk of damage or loss of the machine to be worked on or part of the same during the implementation of service work or during transport or storage which might have become necessary.

- 10.3 The purchaser shall insure the machine to be worked on against damage of any kind.
- 10.4 The purchaser shall be responsible for the possibly required environmentally friendly disposal of replaced parts or consumable spares (oils, gases, dust, etc.) used in the service work.

11. Delivery of services

- 11.1 We shall inform the purchaser of the completion of the services and the availability of the machine for its intended use. This shall also apply if the machine cannot be restarted for reasons outside of our responsibility.
- 11.2 The purchaser shall then immediately check the services performed and conduct the inspections determined in the service contract. After the performance of these checks and/or inspections the purchaser shall approve the services in writing. The purchaser shall not be entitled to refuse this approval due to insignificant deficiencies which do not impair the use of the machine.
- 11.3 If the purchaser does not grant the approval without our fault or delays it, the approval shall be deemed to have been given by the purchaser after the expiry of 5 working days from the date of our delivery.

12. Warranty

- 12.1 The purchaser shall inform us immediately of every discovered deficiency of our service work.
- 12.2 If the purchaser informs us of a deficiency in our service work within 12 months after delivery and if the purchaser can prove that we have caused this deficiency, we shall rectify it at our expense through rework or replacement at our discretion. Should the rework be unsuccessful or the replacement also be deficient, refused or delayed in an unjustified manner, the purchaser shall be entitled to effect a deduction from the price corresponding to the reduced value of the service or demand compensation in damages within the framework of Item 13.
- 12.3 The warranty period shall be extended by the downtime of the machine caused by the deficiency. Our warranty becomes, however, statute-barred after the expiry of one year from the delivery date according to Item 11.
- 12.4 We shall not have any obligation under the warranty for deficiencies which are not our fault e.g. in case of improper operational conditions or improper use as well as deficiencies caused by faulty maintenance, faulty assembly or installation by the purchaser or which are due to changes to our service works without our prior written consent, repair performed by the purchaser or third parties or normal wear and tear.
- 12.5 Further claims and rights from deficiencies than those stated in Items 12.1 to 12.4 shall be excluded.

13. Limitation of liability

- 13.1 We shall only be liable if the purchaser proves that we have caused damage by gross negligence or intention. As far as this is legally permissible, our liability for indirect damage, e.g. loss in production, utilization loss, losses of orders, lost profits or other consequential damage, shall be excluded. We shall not be liable for any misconduct of our auxiliary personnel at all.
- 13.2 With the exception of claims resulting from product defects according to legally compulsory product liability regulations, all claims for damages of the purchaser shall become statutebarred one year after the purchaser became aware or should have become aware without gross negligence of the presence of the damage and the liable party.

14. Reasons for relief (force majeure)

- 14.1 The following circumstances shall be considered reasons for relief if they occur after the conclusion of the contract and cause an impairment or the impossibility of performing the contract: All unforeseen, unavoidable events for which the affected party is not responsible, e.g. acts of God, strikes and lockouts, plant interruptions, lack of labour, difficulties in material and energy procurement, measures of authorities and transport delays.
These circumstances shall extend the term for the completion of services by the duration of the interruption and its effects. This shall also be applicable to circumstances experienced by our suppliers or during an existing delay.
- 14.2 The party claiming one of the circumstances mentioned above shall inform the other party immediately and in writing of its occurrence and cessation.
- 14.3 If such circumstances render the performance of the contract impossible within an appropriate period of time, each party shall have the right of terminating the contract by a simple written notice. In case of such a notice we shall be entitled to the payment of already performed services according to Item 3.1 as well as the expenditure incurred in accordance with Item 3.2.

15. Applicable law and place of jurisdiction

- 15.1 This contract shall be governed by Swiss law.
- 15.2 The place of jurisdiction shall be the domicile of the supplier. We shall, however, be entitled to bring a matter before the competent court at the purchaser's domicile.

16. Partial invalidity

Should a provision of these Terms and Conditions of Service prove to be completely or partially ineffective, this shall not affect the effectiveness of the remaining provisions of the contract. The ineffective provision shall be replaced by a new, effective provision which comes as close as possible to the legal and economic result of the ineffective provision.