

General Terms and Condition of Installation and Erection



of Walther Trowal GmbH & Co. KG

1. Scope of application and conclusion of contract

- 1.1 The present General Terms and Condition of Installation and Erection (hereinafter also referred to as "Service Terms and Conditions") shall apply to the installation, setup, conversion, repair, overhaul of machinery, and to the performance of process-engineering work (hereinafter generally referred to as "Service Work") carried out by Walther Trowal GmbH & Co. KG (hereinafter referred to as the "Contractor") for any third party (hereinafter referred to as the "Customer").
- 1.2 These Service Terms and Conditions shall apply on an exclusive basis; no Customer terms and conditions deviating from or conflicting with these Service Terms and Conditions shall be recognised by the Contractor unless with the Contractor's express written consent. Even when the Contractor performs any Service Work without reservation while being aware of any Customer terms and conditions deviating from or conflicting with the Contractor's Service Terms and Conditions, such performance shall not be deemed agreement thereto but the present Service Terms and Conditions shall rather be effective even in such case.
- 1.3 These Service Terms and Conditions shall also apply as a master agreement to any future order or contract for the performance of Service Work for the same Customer without requiring the Contractor to make reference hereto in every single case again.
- 1.4 Any individual agreement (including any subsidiary agreement, supplement or amendment) made with a Customer on a single-case basis shall prevail over these Service Terms and Conditions. The contents of any such agreement shall be subject to a written contract or written confirmation issued by the Contractor.
- 1.5 No legally relevant representation or notification including but not limited to any notice to set a deadline, reminder, notice of rescission to be furnished by the Customer to the Contractor after the conclusion of the contract shall be effective unless made in a written form.
- 1.6 These Service Terms and Conditions shall not be applicable unless to entrepreneurs, legal entities under public law or special funds under public law as defined in section 310, subsection 1 of the German Civil Code (BGB).
- 1.7 The Contractor's service personnel shall not be entitled neither to make nor to receive any legally relevant statement.

2. Cost information, cost estimate

- 2.1 The anticipated price for Service Work shall be notified to the Customer where possible when concluding the contract, while the Customer may set a cost limit otherwise. If Service Work may not be performed at such cost or if the Contractor considers that the performance of any additional work is necessary during the

performance of Service Work, the Customer's consent shall be obtained in the event of exceeding the cost indicated by more than 20%.

- 2.2 If desired prior to the performance of any Service Work, a cost estimate with binding budget prices shall be requested expressly by the Customer. Unless as otherwise agreed, no such cost estimate shall be binding unless submitted in writing. The services performed for submitting the cost estimate shall not be invoiced to the Customer if and where such services may be used when carrying out such maintenance work.

3. Price and payment

- 3.1 The Contractor shall be entitled to request adequate advance payment at the time of signing the contract.
- 3.2 The prices applicable to the parts or materials used and to any particular services as well as the prices for work performed, and travel and transport costs shall each be posted separately when invoicing any Service Work. If Service work is performed on the basis of a binding cost estimate, reference to such cost estimate shall be deemed sufficient while any deviation from the scope of services shall be posted separately only.
- 3.3 Value-added tax shall be invoiced in the corresponding statutory amount at the expense of the Customer in addition.
- 3.4 Any correction of an invoice by the Contractor and any objection raised by the Customer must be made in writing and not later than four weeks after receiving such invoice.
- 3.5 Unless as otherwise agreed, payment shall be made net and without any cash discount.
- 3.6 No right to set-off and/or retention shall be available to the Customer unless for counterclaims which are recognized by declaratory judgment, uncontested or ready for a decision in any proceedings pending in court.

4. Participation and technical assistance by the Customer when providing Service Work outside the Contractor's factory

- 4.1 The Customer shall provide assistance to the Contractor's service personnel at the Customer's expense when Service Work is performed; the Customer shall, in particular, provide an interpreter for the service personnel at the Customer's expense.

- 4.2 The Customer shall take any specific action as required in order to protect personnel and material at the erection or service location. The Customer shall also inform the service personnel about any specific safety regulation in place where such regulations are important for the service personnel. The Customer shall notify the Contractor about any infringement of such safety instructions committed by the service personnel. In the event of any serious infringement, the Customer, acting in consultation with the Contractor, may refuse access to the erection or service site to any person committing such infringement.
- 4.3 The Customer shall be obligated to provide technical assistance at the Customer's expense including but not limited to the following:
- a) Provision of suitable auxiliary personnel in the number and for the period of time as required for Service Work; such auxiliary personnel shall follow the instructions given by the service personnel. The Contractor shall not assume any liability for such auxiliary personnel. The provisions set forth in items 9 and 10 shall apply mutatis mutandis if such auxiliary personnel has caused any defect, damage or loss due to any instruction given by the service personnel;
 - b) Performance of all construction, bedding or ballasting and scaffolding work including the procurement of any construction material as required;
 - c) Provision of jigs and heavy tools as needed and of any utensil and supply material as required;
 - d) Provision of heating, lighting, power for operation, water, including any connection as required;
 - e) Provision of dry and lockable rooms as needed for storing the tools used by the service personnel;
 - f) Protection of the erection or service location and materials against detrimental influence of any kind; cleaning of the erection or service location;
 - g) Provision of suitable and theftproof recreation rooms and work rooms (with heating, lighting, washing facility, sanitary equipment with running hot water) and first aid for the service personnel;
 - h) Provision of materials and performance of any other activities as required for adjusting the service object, and for performing any trial as provided for under the contract.
- 4.4 The technical assistance provided by the Customer must be so as to guarantee that Service Work may commence immediately after the arrival of the service personnel and may be performed without any delay until its acceptance by the Customer. Where required, any specific Customer plans and instructions shall be provided by the Customer to the Contractor in good time.

- 4.5 If the Customer fails to comply with the Customer's obligations, the Contractor shall be entitled but shall not have any obligation to perform any action incumbent on the Customer at the Customer's place and at the Customer's expense. The statutory rights and claims of the Contractor shall remain unaffected in other respects.

5. Transport and insurance when performing Service Work in the Contractor's factory

- 5.1 Unless as otherwise agreed in writing, any inbound and outbound transport of any service object performed upon the Customer's request shall be carried out at the Customer's expense including any packaging and loading, while the service object shall otherwise be delivered to the Contractor's location by the Customer and at the Customer's expense and be collected from the Contractor by the Customer after Service Work has been performed .
- 5.2 The Customer shall bear the risk of transport.
- 5.3 Upon the Customer's written request, inbound and return transport, if any, shall be insured against the insurable transport risks including but not limited to theft, breakage, fire at the Customer's expense.
- 5.4 No insurance cover shall be provided during the time of Service Work performance in the Customer's factory. The Customer shall provide for the maintenance of the existing insurance cover for the service object including but not limited to fire insurance, pipe water insurance, storm and tempest insurance, and machinery breakdown insurance. Insurance cover for these risks may be procured only upon the express request and at the expense of the Customer.
- 5.5 When the Customer incurs in any delay with takeover, the Contractor may invoice warehouse charges for storage in the Contractor's factory. The service object may, in the Contractor's discretion, also be held in custody otherwise. Any cost and risk involved in storage shall be at the Customer's expense.

6. Time limit for the performance of service work

- 6.1 Any information on the time needed for performing service work shall be based on estimates and shall thus not be binding.
- 6.2 The Customer may not request any agreement on a performance period which must be designated as binding unless the scope of work has been defined precisely.
- 6.3 A binding performance period shall be deemed observed if, until such period elapses, the service object is ready for takeover by the Customer, or for the performance of any trials if provided for in the contract.

- 6.4 The performance period agreed shall be extended accordingly for any extra work order or addendum to an order awarded at a later time or for any additional Service Work required.
- 6.5 If Service Work is delayed by any industrial action including, but not limited to any strike or lockout, or by the occurrence of any unforeseeable circumstance through no fault on the Contractor's side, the performance period shall be extended by a reasonable prolongation where any such obstruction is proven to exert a significant influence on the completion of such Service Work.
- 6.6 If any damage or loss arises to the Customer due to any delay caused by the Contractor, the Customer shall be entitled to claim a lump-sum compensation for default. Such compensation shall amount to 0.5% in full for every full week of delay but not to more than 5% of the service price for the part of the Service Work to be performed by the Contractor which may not be used in good time due to such delay.

If, after any due date, the Customer specifies a reasonable period for performance by the Contractor, taking account of the exceptions as provided for by law, and if such period is not observed, the Customer shall be entitled to rescind the contract subject to statutory provisions. The Customer shall agree to declare within a reasonable period of time upon the Contractor's request whether the Customer will make use of such right to claim rescission of contract.

Any other claim resulting from any delay shall be subject exclusively to section 9.3 of these Terms and Conditions.

7. Acceptance

- 7.1 The Customer shall agree to grant acceptance of the Service Work as soon as its completion has been notified to the Customer, and any trial of the service object has been performed if provided for in the contract. Unless as otherwise agreed, the Contractor's service personnel shall submit a customer service report which documents the Service Work performed to the Customer for review and signature. By signing such report, the Customer shall acknowledge that the Service Work performed has been carried out in conformance with the contract. If such signature is not executed because no authorised signatory of the Customer is present upon the completion of Service Work, the Customer shall execute such signature within a period of 10 calendar days after the completion of Service Work and return the signed customer service report to the Contractor; item 7.2 hereof shall apply in other respects. If any service work proves to be non-conforming to the contract, the Contractor shall agree to correct any such defect. The foregoing shall not apply if such non-conformance is not material to the Customer's interests, or based on any circumstance under the Customer's control. The Customer may not refuse acceptance on account of any nonessential defect.

- 7.2 If acceptance is delayed through no fault on the Contractor's side, acceptance shall be deemed granted after two weeks have elapsed since the completion of Service Work has been notified.
- 7.3 The Contractor's liability for apparent defects shall end upon acceptance unless the Customer has reserved the right for asserting any particular defect.

8. Retention of title and extended lien

- 8.1 The Contractor shall reserve title to every accessory, spare part or exchange part used until the receipt of every payment from the service contract. Further collateral agreements may be made.
- 8.2 To cover the Contractor's claim arising from the service contract, the Contractor shall be entitled to lien over the Customer's service object which has come into the Contractor's possession under the contract. Such lien may also be alleged based on any claim arising from any work, spare part delivery or any other service performed at an earlier time provided that any such work, delivery or service is related to such service object. Such lien shall not apply to any other claim arising from the business relation unless such claim is either uncontested or legally effective.
- 8.3 If a service object is combined with any other spare part, accessory part or any other component of the Customer and if such service object shall be considered the main object, the Customer shall transfer proportionate co-ownership to the Contractor until complete payment is made if and where the service object is owned by the Customer. The Customer shall safeguard such co-ownership on the Contractor's behalf. Such proportionate co-ownership of the Contractor shall become extinct automatically after complete payment.

9. Claims based on defects

- 9.1 After the acceptance of Service Work, the Contractor shall be liable for any defect in such Service Work excluding any other claim of the Customer without prejudice to item 9.4 and item 10 hereof in such a way that the Contractor shall correct any such defect. The Customer shall immediately notify any defect discovered in writing to the Contractor.
- 9.2 The Contractor's liability shall not apply if such defect is not material to the Customer's interests, or based on any circumstance under the Customer's control. In particular, the foregoing shall apply but shall not be limited to any Customer-furnished part.
- 9.3 Liability shall be cancelled for any consequence brought about by any modification or repair work which has been performed improperly by the Customer or by any third party without the Contractor's prior authorisation. The Customer shall not be

entitled, within the scope of statutory provisions, neither to correct any defect on the Customer's own nor to have any defect corrected by any third party, and claim compensation from the Contractor for any expenditure required thereby unless in urgent cases which cause a hazard to operational safety or where required to avert any disproportionately high damage or loss, in which case the Contractor shall be notified thereof with no delay, or unless, taking account of the exceptions as provided for by law, the Contractor has allowed to expire without fulfilment a reasonable time limit for defect correction, which has been set for the Contractor.

- 9.4 The Customer shall have a right of reduction within the scope of statutory provisions if, taking account of the exceptions as provided for by law, the Contractor has allowed a reasonable time limit for defect correction set for the Contractor to elapse without fulfilment. The Customer may not rescind the contract unless the Service Work is proven not to be of any interest to the Customer even after reduction.

Any further claim shall be subject exclusively to item 10.3 of these Service Terms and Conditions.

10. Contractor's liability, exclusion of liability

- 10.1 If any part of the service object becomes damaged due to any fault on the Contractor's part, the Contractor shall, at the Contractor's option, either repair or replace such part at the Contractor's expense. In terms of amount, such replacement duty shall be limited to the contractual service price. Item 10.3 hereof shall apply in other respects.
- 10.2 The provisions as set forth in sections 9 and 10.1 of these Service Terms and Conditions shall apply mutatis mutandis excluding any further claim of the Customer if the service object may not be used by the Customer as provided for in the contract through any fault of the Contractor due to any failure to perform or any defective performance of any proposal or consulting made or given either before or after contract conclusion or any other subsidiary duty under the contract, including but not limited to any instruction for the operator control and maintenance of such service object.
- 10.3 The Contractor shall not assume liability for any loss or damage which, irrespectively of its legal basis, has not been caused in the service object itself unless
- a) When caused intentionally;
 - b) When caused by gross negligence committed by the proprietor, by any executive body or by any executive employee;
 - c) In the event of any culpable injury to life, body, or health;

- d) For any defect the Contractor has fraudulently concealed;
- e) Within the scope of any promise of guarantee;
- f) If and where the German Product Liability Act provides for liability for personal injury or material damage of objects used for private purposes.

In the event of any culpable non-observance of an essential duty under the contract, the Contractor shall also be liable for any gross negligence committed by a non-executive employee and for ordinary negligence while liability for the latter shall be restricted to the foreseeable damage or loss typical of the agreement.

Any further claim shall be excluded.

11. Statute of limitations

- 11.1 Every claim made by the Customer shall be statute-barred in 12 months irrespectively of its legal basis. Any claim for damage compensation pursuant to items 10.3 a) – d) and f) shall be subject to the statutory time limits. Statutory time limits shall also apply if the Contractor performs work in a building structure and thus causes the structure's defectiveness.

12. Choice of law, place of jurisdiction

- 12.1 Any legal relationship between Contractor and Customer shall be subject exclusively to the laws of the Federal Republic of Germany governing mutual legal relationships between domestic parties, and excluding the provisions of the UN Sales Convention.
- 12.2 The place of jurisdiction shall be the court competent for the Contractor's registered office. But the Contractor shall be entitled to bring action at the Customer's principal place of business.