

General Terms and Conditions of Service for assembly/repair/inspection (GTCS assembly/repair) (As of December 2019)



1. Scope

- 1.1. These General Terms and Conditions of Service for assembly/repair/inspection (GTCS assembly/repair/inspection) apply exclusively to all contracts we conclude with a customer for assembly, repair and inspection and for related pre-contractual obligations, unless otherwise expressly agreed in writing. Other business or purchase conditions are not part of the contract, even if we do not expressly object to them. This also applies if we provide our services to the customer without reservation, despite having knowledge of conflicting or deviating conditions or if we refer to them in individual correspondence.
- 1.2. Even if not expressly referred to when similar contracts are concluded in ongoing business relationships, our GTCS shall solely apply in the same version as that which can be downloaded by the customer at https://mall-herlan.wifag-polytype.com/fileadmin/user_upload/metal_packaging/data/Data_Protection/MH.CS_GTCS_assembly_repair.pdf upon placement of an order, unless the contractual parties agree otherwise in writing. The current version of the GTCS will also be sent to the customer on request in printed form, free of charge.
- 1.3. These GTCS do not apply to consumers according to Section 13 German Civil Code (Bundesgesetzbuch - BGB).

2. Conclusion of contract, offer documents

- 2.1. Our offers are subject to change and are non-binding, unless the offer is described in writing as binding.
- 2.2. An offer only becomes legally binding through a contractual agreement signed by both parties or by written order confirmation, and when the contractually agreed upon service commences. We can request written confirmation of verbal contractual declarations of the customer. Our written acceptance of the binding purchase offer (order confirmation) can also be given by email (electronically).
- 2.3. Unless otherwise stated or agreed, all information provided by us is limited to the time of the customer's request.
- 2.4. We reserve property rights and copyrights to illustrations, drawings, calculations, tools and other documents. This also applies to written documents that are designated as "confidential". The customer requires our express written consent before these documents can be passed on to third parties or used for third parties.

3. Object of the contract, warranties, changes to service

- 3.1. The scope, type and quality of our services shall be determined by the agreement signed by both parties or our order confirmation; otherwise by our offer. Other details or requirements will only become part of the contract if the contractual parties agree to these in writing or if we have confirmed them in writing. Subsequent changes to the scope of services require agreement in writing or our express confirmation in writing.
- 3.2. Unless expressly stated otherwise, we are not obliged to guarantee that all of our work will be successful. In these cases, our work is carried out based on a service contract and not on a manufacturing contract. We shall accept no liability for the intended goals of the customer actually being achieved.
- 3.3. Product descriptions, illustrations and technical data are specifications of services, but do not constitute warranties. A warranty requires an explicit declaration in writing. Drawings, illustrations, dimensions, weights or other performance data are only binding if this is expressly agreed in writing.
- 3.4. We reserve the right to make minor changes to services, provided these are minor changes to services that are reasonable for the customer.

4. Assembly or repair periods, delays, destruction and impossibility

- 4.1. The duration of assembly or repair and/or the start of assembly or repair are guidelines and are only approximate. We do not guarantee compliance with the estimated assembly or repair time, unless this has been expressly agreed in writing.
- 4.2. Service periods begin with the order confirmation being sent by us, but not before all commercial and technical queries have been cleared up between the customer and ourselves and the customer has fulfilled all of its duties (e.g. by providing the required regulatory approvals or making the agreed down payments).
- 4.3. Subsequent requests for changes made by the customer shall extend the service time until we have checked their feasibility and for the period necessary to implement the new requirements.
- 4.4. All temporary obstacles to performance caused by force majeure release us from the obligation to perform for the period of existence of the force majeure and for a reasonable restart period, in particular from the timely dispatch of our employees and subcontractors and the provision of sufficient numbers of the aforementioned personnel. The customer bears the costs resulting from the delay.
- 4.5. The assembly or repair service period is met if the assembly or repair is ready for acceptance by the customer (if acceptance is required by terms in the contract), or in the case of a contractually agreed test, is ready to be carried out.
- 4.6. If, before acceptance, the assembly or repair work has been destroyed or has deteriorated through no fault of our own, we are entitled to demand the assembly or repair price minus the saved expenses. The same applies if assembly or repair is impossible, through no fault of our own. The customer can request that the service be repeated, if and to the extent that we can be expected to do so, taking into account our other contractual obligations.
- 4.7. If the customer requests that our services be repeated, another payment must be made to us based on the contractually agreed prices.

5. Remuneration, terms of payment, offsetting

- 5.1. The contractually agreed remuneration is payable. Unless an express remuneration agreement has been made for assembly and repairs, our terms of assembly apply, which are part of every offer and every order confirmation.
- 5.2. Our time estimates are non-binding unless they are expressly agreed as binding.
- 5.3. We document the time spent on order processing. We will send the customer a statement based on this documentation, which they can view at any time.
- 5.4. We are entitled at any time to invoice for working hours already performed and to make them payable by issuing an invoice.
- 5.5. For assembly and repairs, unless otherwise agreed in writing, all payments are due without deductions immediately upon receipt of the invoice and must be made to the paying agent specified by us. Bank charges are borne by the customer. All payments are to be made in euros.
- 5.6. If the customer is in arrears with an agreed payment, we can, without prejudice to our other rights
 - a) postpone the fulfilment of our other obligations towards the customer until payment has been received or other services have been rendered
 - b) declare outstanding debts due for payment and charge interest on arrears in the amount of 9 percentage points above the base rate per month from the due date. The benchmark for the base rate is the rate for the most recent major refinancing operation

by the European Central Bank before the first calendar day of the relevant half-year. The assertion of additional damage caused by delay remains unaffected.

- 5.7. The customer can only offset claims that are undisputed or legally established by us. The customer can only assign claims from this contract to third parties with our prior consent. The customer is only entitled to a right of retention or an objection to the non-fulfilled contract within the respective contractual relationship.
- 5.8. Circumstances that occur after the conclusion of the contract and that significantly influence the calculation basis in an unforeseeable manner and are beyond our sphere of influence entitle us to adjust the agreed price to an amount that only takes these circumstances into account. This applies in particular to changes in the law, official measures, price increases by our upstream suppliers and currency fluctuations. This price adjustment is based on the same calculation as originally agreed and is not used to increase profits.
- 5.9. If we receive unfavourable information about the customer's financial situation or creditworthiness after the contract has been concluded, we can make processing and delivery conditional upon a reasonable advance payment by the customer or on a security deposit or bank guarantee - unless prepayment is required anyway.

6. Customer's obligations to cooperate

- 6.1. The customer acknowledges that we depend on their full cooperation to successfully and punctually perform our services. The customer therefore undertakes to provide all the information required for performing the delivery and service in a timely and complete manner.
- 6.2. The customer must support our personnel at its own expense, in particular in carrying out the assembly or repair. The customer must provide us with detailed information about accessibility at the operating site in advance. It must take the special measures necessary to protect people and property at the place of use and is responsible for complying with the legal regulations for occupational safety, if and insofar as the personnel are on their premises or in their facilities as intended. It must also inform the personnel about any existing, special safety regulations, insofar as these are of importance to the personnel. We are entitled to suspend the contractual work until the above requirements are met. The additional costs incurred by this are borne by the customer.
- 6.3. The customer must provide at its own risk and expense:
 - a) Assistants, and if necessary electricians, bricklayers and any other craftsmen that may be required
 - b) The equipment required for disassembly and assembly, such as hoists, forklift trucks, etc., as well as the necessary commodities and materials, such as scaffolding, wedges, supports and sealing, cleaning, lubricating and manufacturing materials
 - c) Heating, lighting, ventilation, compressed air and water as well as operating media, including the necessary materials and their connections
 - d) Rooms for covering and storing tools and valuable delivery parts, especially dry and lockable rooms.
- 6.4. The customer undertakes to test our services thoroughly for usability in the specific application before commencing with productive use, and to carry out sufficient product tests before delivering its products to its customers.
- 6.5. The customer takes reasonable precautions in the event that we fail to provide all or part of our services properly (e.g. through fault diagnosis, regular checking of results, emergency planning).

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7. Defects, limitation period

- 7.1. In the absence of an express additional agreement, it is solely guaranteed that our services are free from defects according to the current state of the art. A minor reduction in quality is not taken into account. Unsuccessful repair does not constitute a defect if, despite proper and professional execution of the repair, we were unable to find the cause of the defect and/or a repair cannot be carried out because spare parts are not available or cannot be procured by us and the above circumstances were not recognisable to us when we accepted the repair order.
- 7.2. The warranty is excluded:
- a) if our products are not properly stored, installed, commissioned or used by the customer or third parties,
 - b) where there is natural wear and tear,
 - c) in the event of improper maintenance by the customer or third parties,
 - d) if unsuitable equipment is used,
 - e) in the event of damage caused by repairs or other work carried out by the customer or third parties that we have not expressly approved.
- 7.3. The burden of proof regarding the absence of these grounds for exclusion lies with the customer.
- 7.4. In the event of material defects, we initially carry out subsequent performance. Subsequent performance is carried out at our discretion by eliminating the defect, by delivering goods or rendering services that do not have the defect, or by showing ways to avoid the effects of the defect. The customer must accept at least two attempts by us to remedy the situation.
- 7.5. The customer shall support us in the analysis of errors and elimination of defects, in particular by specifically describing any problems that arise, providing us with comprehensive information and granting us the time and opportunity necessary for eliminating the defects.
- 7.6. If we incur additional costs as a result of our services being changed or incorrectly operated, we can request that they be reimbursed. We can demand reimbursement of expenses if no defect is found. The burden of proof lies with the customer.
- 7.7. The warranty period is one year from acceptance of the service, unless there is a case of mandatory legal warranty, in particular a guarantee of quality has been assumed or there has been malice on our part.
- 7.8. Claims for defects become barred within twelve months from the transfer of risk, unless we have breached our obligations with intention or gross negligence.

8. Liability; limitation of liability

- 8.1. We only pay compensation or reimburse wasted expenses, regardless of the legal reason (e.g. from legal or similar legal obligations, material and legal defects, delay, breach of duty and unlawful act) if we are at fault and, unless the relevant individual contract stipulates otherwise, to the following extent:
- a) Liability for intent and warranty is unlimited.
 - b) In the event of gross negligence, we are liable in the amount of typical and foreseeable damage.
 - c) In other cases, we shall only be liable for breach of an essential contractual obligation, for claims for defects and for delay, and only in the amount of typical and foreseeable damage.
- We are liable within the context of our existing business liability.
- 8.2. According to case law, essential contractual obligations (cardinal obligations) are obligations, the fulfilment of which enables the contract to be properly executed in the first place and on the observance of which the contractual partner can regularly rely.

- 8.3. We are not liable for loss of profit, loss of production, loss of earnings, loss of orders and other indirect damage and/or consequential damage, regardless of the legal reason.
- 8.4. The statutory regulations apply to injuries to life, limb and health and to claims arising from the Product Liability Act.
- 8.5. Our right to contest the charge of contributory negligence on the part of the customer remains open.

9. Social clause

In determining the amount of any claims for compensation to be fulfilled by us from or in connection with a contractual service, our economic situation, the type, scope and duration of the business relationship, any contributory causation and/or fault on the part of the customer and any particularly unfavourable installation location of the item that is subject to our service, must be taken reasonably into account to our benefit. In particular, the replacement services, costs and expenses that we are to bear must be in a reasonable proportion to the remuneration for the service we provide.

10. Export controls

- 10.1. The services mentioned in the order confirmation are subject to sanctions under export law. Offered services that are subject to the regulations on export control under German or international law due to their nature, their final destination or their intended use can be subsequently cancelled by us. The same applies to sanctions against people, groups and financial resources. If necessary, official approvals must be obtained from us.
- 10.2. When passing on the services we provide to third parties, the customer is obliged to observe and comply with the applicable national and international regulations on export control law.
- 10.3. Before passing on our services to third parties, the customer is obliged to ensure, by means of suitable checks and measures, that such passing on or provision does not violate embargo regulations, in particular those of the European Union and the United States of America, also taking into account possible prohibitions of circumvention.
- 10.4. The customer indemnifies us completely from all claims, which are asserted from the recipient's failure to observe the aforementioned export control obligations, and undertakes to compensate us for the damage and expenses resulting therefrom.

11. Place of fulfilment; choice of law; place of jurisdiction

- 11.1. Unless otherwise agreed, the place of performance for all services from the contract is our registered office (Wöschbacher Straße 33, 76327 Pfinztal, Germany).
- 11.2. German law applies.
- 11.3. The place of jurisdiction for all disputes arising from and in connection with this contract is Karlsruhe (Karlsruhe-Durlach District Court or Karlsruhe District Court), insofar as the customer is a business person, a legal entity under public law or a special fund under public law or similar or if its registered office or place of business is outside Germany. We are also entitled to bring legal action at the customer's registered office and at any other permissible place of jurisdiction.

12. Severability clause

Should a provision of these GTCS be or become ineffective or should these GTCS be incomplete, the validity of the remaining provisions shall remain unaffected. The contractual partners will replace the ineffective provision with a provision that comes as

close as possible to the meaning and purpose of the ineffective provision. The same shall apply to any contractual loopholes.

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