

Service Terms and Conditions of Borgwaldt KC GmbH

September 2014

1. Preamble

The following Terms and Conditions govern the deployment of personnel for all kinds of services to be performed (subsequently referred to as 'Service') of Borgwaldt KC GmbH and are constituent to the Service Agreement. Your deviating terms and conditions do not become part of the Service Agreement even upon acceptance of an order.

These Service Terms and Conditions do not apply to the extent that we have entered into a separate agreement with you.

2. Scope of contract

Generally, our personnel are only permitted to be deployed for work on machinery and/or equipment supplied by us and within the scope of the Service Agreement awarded in writing.

Activities that go beyond the agreed scope of work require our prior written consent.

3. Personnel

For the performance of Service Agreements, we commit ourselves to deploying only appropriately qualified technical personnel, capable of performing the work properly and in an appropriate manner.

4. Implementation of the Service

4.1 Deadlines

Dates specified by us for the start and/or end of the Service are only approximate, unless we explicitly promise these dates in individual cases. The observance of firmly agreed dates requires that you meet all the obligations you are responsible for.

The attendance of your staff members at our operator training courses offered has to be confirmed by you in writing twelve weeks prior to the start of the installation. Should we not have received a confirmation by this date, we will re-allocate the scheduled period of time. In case an operator training course can be carried out during the installation we will determine a shorter date of confirmation accordingly.

We commit ourselves to implementing the Service swiftly. A firmly agreed deadline is deemed to have been kept if the Service has been completed by the end of this period. The same applies if, depending on the status of the Service, an acceptance test by yourself or a contractually agreed trial run is possible. If the performance of the Service Agreement is delayed due to circumstances beyond our control, an appropriate extension of the deadline will always come into effect.

This also applies if such circumstances arise only after we have fallen behind schedule. However, no extension of the deadline comes into effect if the obstacles have only a negligible impact on the progress of the work.

Should you incur verifiable damages, caused by us falling behind schedule, we grant – to the exclusion

of further claims for damages – liquidated damages for such delays. These liquidated damages, which are restricted to 0.2% for each full week of the delay, will, however, not exceed a maximum of 5% of the Service costs for the part of the machinery or equipment to which the Service relates and which, as a result of the delay, cannot be used either on time and/or as stipulated in the Service Agreement.

In the event of a delay, you shall only be entitled to withdraw from the Service Agreement if the delay is solely attributable to us and if you set a reasonable extension of the deadline for us, associated with the explicit declaration that you refuse to accept the Service rendered at the end of this period, should we still fail to perform the Service within the set period.

Subject to Clause 13, no further rights exist.

4.2 Default of acceptance

You shall notify us immediately of an impending delay or hindrance relating to the Service, regardless of the reason for this.

If the agreed performance of the Service is postponed for reasons that lie within your control, we shall be entitled to request that any additional costs (e.g. additional travel costs and waiting periods) we incur as a result of such postponement be reimbursed by you.

4.3 Start of work

If the implementation of the Service should pose a threat to the health and safety of our personnel, we are entitled to postpone the start of work until acceptable circumstances prevail.

4.4 Interruptions

If the Service has to be interrupted for an unacceptable period of time, we are entitled to recall our personnel.

Any costs arising from such action will only be borne by us if we are responsible for the interruption.

4.5 Cessation of the Service

If the Service has to be discontinued due to Force Majeure, we are entitled to invoice all costs incurred to this point in time, including those for return travel.

4.6 Exchanging personnel

We are entitled to exchange any personnel we send out during the Service at our own costs with equally qualified personnel.

5. Termination of the Service

5.1 Acceptance

As soon as we announce the completion of our activities, you shall inspect the Service rendered immediately in the agreed form. The acceptance is to be confirmed in writing on the acceptance document. If the Service proves not to comply with the Service Agreement, we are obliged to remedy any deficiency(ies) at our own expense. You cannot refuse the acceptance test if the deficiency is

negligible or is due to circumstances not attributable to us.

5.2 Imputed acceptance

If the acceptance test is delayed through no fault of our own, it shall be deemed as having been performed at the end of the two weeks after announcing the completion of the Service.

5.3 Upon acceptance, we are discharged from liability for discernible deficiencies in as far as you have not reserved the right to raise a warranty claim arising from a certain deficiency.

6. Clients Responsibilities

6.1 Preparation for the Service

You shall inform us in good time and in advance of the intended date for the Service to commence. You are to complete any preparatory work in good time prior to the commencement of the Service, such that the Service can commence immediately and can be performed swiftly without interruption.

In particular, you also supply any necessary Service materials and energy (such as electricity, water, compressed air, digital data lines), including the associated connection at the place of Service, such that we can commence the Service without delay. The rooms in which the Service is performed must be protected from the elements, be well lit, air-conditioned and allow the work to be performed without disruption. At the place of Service, we require cleaning agents, washing and sanitary facilities as well as the provision of first-aid in case of an emergency.

You will provide our personnel with a dry storage room (lockable) for the Service equipment, should we deem such to be necessary. In the event of extended service work, you will provide appropriate rest rooms.

6.2 Concrete and brickwork

All construction work and installations must be completed prior to commencing the Service. It is necessary for concrete and brickwork to be fully dry and set.

6.3 Storage

You shall store the parts to be installed properly and protected against the elements. Prior to the Service commencing, the parts should be located at the place of Service and/or in its immediate vicinity. The packaging shall be removed by your staff at the place of Service.

For the packaging of our delivery, Clause 5.1 of our Terms and Conditions of Sale (export orders), January 2014 also applies. We assume no liability for the consequences of improper storage and improper transport.

6.4 Auxiliary personnel

You shall provide suitable auxiliary personnel in sufficient numbers to ensure the swift performance of the Service.

Our personnel are authorized to give any necessary technical instructions to these auxiliary personnel. At the request of our personnel, you shall provide suitable interpreters.

Your auxiliary personnel remain under your supervision, responsibility and obligation to insure. If

the auxiliary personnel cause any damages, we are only liable if it is our fault.

6.5 Resources and devices

You will provide the resources, devices and any tools required for rendering the Service. These must be in perfect working order.

6.6 Test runs and commissioning

Unless otherwise agreed, you will provide the required materials and implement all the other actions that are necessary to set and test the machine/equipment concerned free of charge. Consumed materials and products produced are to be removed by you regularly so as to ensure trouble-free commissioning of the machine/equipment.

You will ensure that our personnel are provided with the test results and samples from the quality control laboratory immediately.

At your request, we commit ourselves and our personnel to maintain secrecy in this regard.

The machinery/equipment being serviced is to be cleaned by your personnel should our personnel so request.

6.7 Public regulations

You will inform our personnel in good time about all obligations towards the public authorities and about the relevant legal regulations that are to be observed. Insofar, you represent the interests of our personnel and assume charge of dealing with the necessary formalities.

6.8 Safety

You will take the necessary precautions for accident prevention and otherwise ensure the protection of our personnel and any effects we bring along. You will also notify our personnel of particular hazards and inform them of the relevant safety regulations.

If, whilst our personnel are working, other work is being performed by other companies, you shall – to rule out the possibility of these endangering each other – nominate a person, who is responsible for coordinating the work assignments between the different parties.

6.9 Accommodation

If you have made a commitment on the basis of a separate agreement to provide our personnel with free accommodation, you are obliged to provide a hotel single-room with WC and a bath or shower that corresponds to Western European standards.

We are entitled to have suitable accommodation arranged for our personnel in advance.

6.10 Costs

You will fulfill all the above-mentioned obligations free of charge to us.

6.11 Breach of clients responsibilities

If you fail to perform your responsibilities, we are entitled, but not obliged, after giving notification, to perform the actions you are responsible for at your expense.

Furthermore, this does not affect our other legal and contractual rights and entitlements. In particular, our personnel are entitled to travel back if you fail to perform your responsibilities. Any costs arising from such are to be borne by you.

7. Sickness of our personnel

You will notify us immediately if one of our employees becomes unfit for work during his/her stay.

You will ensure the proper local treatment of our employee with the free choice of doctor, all remedies and all the other measures to be initiated by yourself that are necessary to restore our employee to health and insofar outlay the costs incurred. If hospital admission becomes necessary, you ensure our employee is admitted and stays in a first-class hospital. The hospital should correspond to Western European standards. In the event of an employee of ours having to stay in hospital, you ensure the safe storage of his/her personal effects (e.g. luggage).

Should it become necessary to substitute our personnel as a result of sickness, you will assist in organizing their return transport.

8. Charges for the Service

8.1 Normal daily rate

For Service performed by our technicians we will charge an hourly price for each hour of work within a weekly working period of 40 hours at our prevailing hourly rate plus a fee to cover the full local accommodation and international / local transportation of our technicians. This price is applicable for a working duration from Monday to Friday and a maximum duration of 8 hours per day/40 hours per week.

8.2 Work on Saturdays, Sundays, public holidays, night shifts and Overtime

For activities on Saturdays, Sundays and public holidays, a surcharge of 25% based on the hourly rate as per Clause 8.1 shall be levied. For any night-shift hours worked (8.00 p.m. to 6.00 p.m. a surcharge of 50% of the hourly rate as per Clause 8.1 shall be levied.

In the event of overtime, a surcharge of 25% of the applicable working hour (based on the applicable hourly rate) shall be levied for each hour.

8.3 Special permission

The working of overtime and activities on Saturdays, Sundays, public holidays and during night shifts is subject to our prior written consent.

8.4 Other

In the event of an incapacity for work, the Service costs will be waived from the time of this incapacity arising.

8.5 Service records

Our personnel are obliged to keep weekly timesheets categorised into normal hours, overtime hours and night shifts worked. These records should be checked and signed by you.

8.6 Travel to/from site

If no suitable accommodation and/or catering facilities are available for our personnel in the vicinity of the place of Service, you bear all the associated costs, in particular the costs for using suitable means of transportation.

Journey times count as working time. If necessary, you will provide free means of transportation for the local transport of our personnel between their

accommodation and the place of Service.

8.7 Travelling times

The travelling time of our personnel counts as working time.

9. Travelling and transport costs

We charge airfares for business/economy class air travel or the fare for 1st class rail travel in addition to all the other costs for the return journey and other journeys undertaken in connection with our Service, dependent on the length of the journey and in accordance with our internal regulations.

Furthermore, we also invoice all the necessary incidental travel costs (passport and visa charges, customs clearance for tool and luggage transportation, tropical medical examinations, vaccination costs, etc.), plus the expenses incurred in connection with the Service (e.g. charges for business communication and local trips incl. hire cars).

For journeys home by our personnel at Christmas/turn of the year, and also either at Easter or Whitsun, we also invoice the travel costs.

10. Taxes and duties

All taxes, fees and other duties pertaining to the Service and which are incurred outside the Federal Republic of Germany will be borne by you.

11. Warranty

Subject to the further warranty provisions as set out in our Terms and Conditions of Sale (export orders) we only warrant that spare parts exchanged during the performance of the Service will a) be of merchantable quality and fit for the agreed purpose, b) be free from defects in design, material and workmanship and c) correspond to the agreed specifications. The warranty period will be 12 months upon delivery of the respective spare part. Any defects occurring and reported to us without delay in writing during this period shall be corrected by providing substitute performance at our choice. This warranty shall not apply where the defects have been caused by improper operation or treatment of the delivered spare parts, by failure to comply with our written operating instructions, operating conditions or service and maintenance intervals, by natural wear and tear, or if without our written consent modifications or repairs are made to the spare parts.

12. Force Majeure

12.1 Each contracting party is entitled to refuse to fulfill its contractual obligations, provided that this is either prevented or rendered economically untenable by the following circumstances: strikes and lockouts and other circumstances that are not within the control of the contracting parties, such as natural disasters, fire, earthquake, war (whether declared or not), terroristic or political acts of force, contagious diseases/epidemics, mobilization, insurrection, confiscation, seizure, embargo, restrictions in the energy supply, concrete travel warnings of the competent authorities, i.e. of the Department of Foreign Affairs, to leave countries or regions at the respective place of destination or not to enter these in addition to faults and delays amongst subcontractors arising from one of these reasons.

12.2 If one such circumstance as mentioned in this

Clause has arisen prior to concluding the Service Agreement, this only entitles the contracting party to refuse to perform his contractual obligations if the effects of this on performing the Service Agreement have been proven and were not foreseeable at the time of concluding the Service Agreement.

12.3 The party citing an event of Force Majeure notifies the other party immediately about the onset and cessation of these circumstances.

12.4 If an event of Force Majeure prevents you from performing the Service Agreement, you shall compensate us for the costs that we have incurred as a result of safeguarding the delivered machinery/equipment/spare parts.

12.5 Irrespective of other provisions set out in these Service Terms and Conditions, each party is entitled to withdraw from the Service Agreement in writing if the performance of the Service Agreement is hindered in accordance with this regulation for longer than six months.

13. Liability

13.1 Scope of liability

If, during the Service, a part we have supplied becomes damaged through our own fault, we are entitled, at our discretion and at our own expense, to repair it or to supply a replacement. The same applies if, through our own fault, the object of our Service cannot be used as stipulated in the contract due to a failure to perform or as a result of incorrect execution. Subject to Clause 11 and this Clause 13 further rights on your part are excluded.

The same applies for incorrect advice and infringement of the associated contractual obligations.

13.2 Exemption from liability

We are only liable within the scope of these Service Terms and Conditions. In particular, you have no rights to claim for damages for indirect or consequential damage not arising to the object of the Service itself (e.g. loss of production or loss of profit). This exemption from liability does not apply in the case of willfulness and gross negligence on the part of the corporate management or senior executives.

13.3 Limitation of liability

Subject to binding statutory requirements, we shall be liable for personal injury and damage to property in so far as damages are paid by our liability insurer within the limits of the sums insured and the terms of our insurance policy. We shall supply you with evidence of the extent of our liability insurance on request.

14. Terms of payment

We draft the final account immediately after completing the Service. If the Service extends over a longer period of time, we issue interim invoices.

For maintenance contracts the respective agreed payment intervals shall apply.

Your payments are due thirty days after the date of invoice (or date of the interim invoice) unless otherwise stipulated in our order confirmation.

All payments are only effective when we can dispose of them without reservation.

If you are in payment default vis-à-vis ourselves, we

will be entitled to defer performance of our own contractual obligations until we have received the overdue payments.

We will charge interest at five percent points per annum above the prevailing European Central Bank base rate for failure to observe agreed payment dates.

If you default on due payments and fail to make payment even after a grace period has been set, or if you are otherwise in serious breach of contract, we shall be entitled to rescind the Service Agreement and demand compensation.

15. General provisions

15.1 You may only assign claims or other rights from the Service Agreement with our prior written approval.

15.2 Any disputes arising out of and in connection with our contractual relationship shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The court of Arbitration will be in Zurich, Switzerland. The language of arbitration shall be English.

15.3 The Service Agreement shall be subject to Swiss law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Borgwaldt KC GmbH

