

# General Terms and Conditions of Service (Swiss law)



Effective as of May 1<sup>st</sup>, 2016

## § 1 Scope of application

The following Terms and Conditions of Service of Klingelberg AG, Binzmühlestrasse 171, CH-8050 Zürich, Switzerland ("Klingelberg") apply, as far as not expressly stipulated otherwise in writing, to all services undertaken between Klingelberg and the customer as individual orders for the provision of services, and in particular to all assembly, installation, repair, troubleshooting, maintenance or instruction 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 Klingelberg 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 Klingelberg.

## § 2 Conclusion of contract

(1) Offers made by Klingelberg 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 Klingelberg 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, once Klingelberg 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 Klingelberg 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 Klingelberg 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 Klingelberg 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 Klingelberg. The customer is obliged to return these replaced parts to Klingelberg;
- 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 Klingelberg 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 respective Klingelberg maintenance checklist;
- 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;
- in the case of oral user advice (e.g. provided by a member of the service staff on site or by telephone by the Klingelberg help desk), 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 Klingelberg or in the respective service package.

## § 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 Klingelberg, the customer must return the replaced service part to Klingelberg. If, upon its receipt, Klingelberg discovers that it is not possible to repair the part in the producer's factory using commercially reasonable efforts, Klingelberg 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, Klingelberg is only prepared to accept this provided the following conditions are met: If the service parts are received by Klingelberg, sealed in their original 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, Klingelberg will issue a credit equivalent to the purchase price of the newly delivered service part less a flat-rate charge for the return and the taking of the goods back into storage at a rate of 15% of the purchase price and a maximum of EUR 500 per service part. If the service parts are returned to Klingelberg with a broken seal but in the original Klingelberg 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, Klingelberg 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 Klingelberg and the taking back into storage at a rate of 25% of the purchase price. 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 Klingelberg's help desk is available for orders Monday to Friday from 7.00 a.m. until 5.00 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 Klingelberg in the context of individual orders for the provision of services unless Klingelberg 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 of standard cost rates as amended from time to time. Travel and waiting times count as working time. The prices quoted

by Klingelberg 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), Klingelberg 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, Klingelberg will provide evidence regarding the relevant cost factors to the customer.

(3) If the fee is to be calculated based on standard cost rates, the service report to be signed off by the customer in this regard is used as the relevant basis. Working time and performance are recorded therein. Any part of a 15-minute period worked is rounded up to a quarter of an hour. Klingelberg reserves the right to reasonably adapt the standard cost rates for working hours and travel expenses if the operating cost changes substantially. When placing an order the customer may request a schedule of standard cost rates as amended from time to time.

(4) If training is included in the price or is offered by Klingelberg 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 Klingelberg.

#### **§ 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 Klingelberg. Unless specified otherwise in the offer or order confirmation of Klingelberg or agreed in writing, all payments are due immediately upon receipt of the invoice.

(2) In case of default of payment of the customer, default interest is charged in the amount of 8 per cent per year by Klingelberg; this does not affect the right to provide proof that the loss or damage suffered was lower.

(3) 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.

#### **§ 9 Joint ownership for security reasons, lien**

(1) In order to secure claims that have arisen or arise for the benefit of Klingelberg due to services provided, the customer grants joint ownership in the machine or component that was the subject of the service to Klingelberg 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 Klingelberg free of charge.

(2) If repairs are carried out in a Klingelberg plant or a plant of another manufacturer, the customer grants a lien to Klingelberg 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 § 9 (1). In addition Klingelberg 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 Klingelberg lapses once the invoice has been paid in full.

#### **§ 10 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 render an interference with the power supply, air lines, air conditioning and/or water or wastewater pipes necessary, 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.

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

- the number of support staff deemed necessary by Klingelberg;
- devices, cranes, hoists, tools, equipment and supplies required for installation and commissioning;
- 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 Klingelberg's service engineers to start installation as soon as they arrive and without interruption.

(5) The customer shall inform Klingelberg 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 Klingelberg 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 Klingelberg or subcontractors (disruptions to operations outside of a party's control), (ii) in the case of a valid contract amendment if Klingelberg does not receive the technical or commercial documents in time or if such documents have subsequently been changed by the customer with Klingelberg's consent or (iii) if the customer is in default in complying with its obligations.

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

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

#### **§ 11 Claims for improper performance of the services**

(1) Klingelberg will execute the service with the necessary professional competence and care while taking into account the provisions of § 12 of these General Terms and Conditions of Service. In the event of a proven defect in the services performed due to a breach of duty of care, Klingelberg will repeat 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 an individual order should be legally qualified as a provision of work (Werkleistung) or if in the context of the provision of services by Klingelberg, 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 § 9 of the General Terms and Conditions of Sale and Delivery of Klingelberg. In accordance with these terms and conditions, the customer's claims for defects are subject to a limitation period of one year from delivery. Any warranty claims of the Customer beyond the above provisions are excluded to the extent permitted by law

#### **§ 12 Liability for damages**

Any liability on the part of Klingelberg is excluded to the extent permitted by law. In particular, there is no liability for direct or indirect, consequential or immediate damage related to the performance of a service by Klingelberg.

#### **§ 13 Assignment**

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

#### **§ 14 Place of jurisdiction and applicable law**

(1) Unless otherwise prescribed by mandatory law, the exclusive place of jurisdiction for all disputes arising from or in connection

with these General Terms and Conditions of Service and all contracts entered into while they are effective shall be Zurich, Switzerland.

(2) These General Terms and Conditions of Service and all contracts entered into while they are effective are subject to substantive Swiss 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).

**§ 15 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.