

# Service Terms and Conditions (Abroad) of Hauni Maschinenbau GmbH

**April 2021**

## 1. Preamble

The following Terms and Conditions govern the deployment of personnel for all kinds of services to be performed including support service via Technical Remote Support (subsequently referred to as 'Service') of Hauni Maschinenbau 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 in writing or in text form 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 or in text form.

Activities that go beyond the agreed scope of work require our prior consent in writing or in text form.

Technical Remote Support ("TRS") will either be provided by us as Digital TRS without the physical intervention of your employees or as Physical TRS requiring the physical intervention of your employees.

## 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 on the date of our training courses offered has to be confirmed by you in writing 12 weeks prior to the start of the training course. Should we not have received a confirmation by this date, we will re-allocate the scheduled period of time. In case of course offers at a shorter notice we will determine the 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 are restricted to 0.2% for each full week of the delay, and 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 14, 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 2 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, steam, 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. Cleaning agents, washing and sanitary facilities as well as the provision of first-aid in case of an emergency have to be provided by you at the place of Service.

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, the last section of Clause 5.1 of the latest version of our Terms and Conditions of Sale (export orders) 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 to enable them to determine the process parameters.

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 of our personnel and our property**

You will take the necessary precautions for accident prevention and otherwise ensure the protection of our personnel and any property 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 Safety/Data Security**

To ensure the safety of your employees and your property and to protect the security of your data during the performance of Technical Remote Support you must expressly approve our access to the machinery and/or equipment each time prior to the provision of Technical Remote Support.

## **6.11 Costs**

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

## **6.12 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 organising their return transport.

## **8. Charges for the Service**

### **8.1 Normal hourly rate**

For the deployment of our personnel, we shall invoice you for each hour worked within a weekly working period of 40 hours at our prevailing hourly rate.

For Service Agreements performed at a fixed price, any additional services that go beyond the agreed arrangement shall be invoiced on the basis of the expenses actually incurred.

### **8.2 Overtime**

Any hours worked beyond the daily working duration of 8 hours are regarded as overtime and will be calculated with a surcharge of 25%.

Due to labour legislation rules, our staff are not allowed to work more than 10 hours per day.

### **8.3 Work on Saturdays, Sundays, public holidays and night shifts**

For activities on Saturdays a surcharge of 25% shall be levied.

For activities on Sundays and public holidays, plus any night-shift hours worked (8.00 p.m. to 6.00 a.m.), a surcharge of 50% shall be levied.

In the event of overtime, a further surcharge of 25% shall be levied, in accordance with Clause 8.2.

## **8.4 Special permission**

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

## **8.5 Other**

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

If, for reasons beyond our control, the weekly working period of 40 hours is not achieved, the downtime shall be charged at the hourly rate agreed under Clauses 8.1 – 8.3. Working hours that are not worked or spent waiting due to statutory and special public holidays will also be charged at the same hourly rate.

## **8.6 Service records**

Our personnel are obliged to keep weekly timesheets categorised into normal hours, overtime hours and night shifts worked. These records constitute the basis for our Service charges and will be provided to you in digital form by e-mail. You should check such record within 14 days after its receipt and either accept or reject it via email. If we do not receive a response within these 14 days, your approval is deemed to be granted.

## **8.7 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.

## **8.8 Travelling times**

The travelling time of our personnel counts as working time. For each half-day travelling time commenced (4 hours), the prevailing travelling time rate shall be charged as a lump sum. If the places of departure and destination are in your country, the normal hourly rate for each hour travelled will be charged.

## **8.9 Cancellation/postponement of training courses**

A cancellation or postponement of training courses initiated by you must be made in writing. If you cancel or postpone a training course, we charge the following: up to 6 weeks prior to start of the training 20% of the course price, up to 2 weeks prior to start of the training 60% of the course price.

In the event of a later cancellation, postponement, non-attendance, absence or late arrival of the participants, we will charge 80% of the course price unless such event is attributable to us. You are not entitled to compensation for absence.

## **9. Daily living allowance**

To compensate the costs incurred to our personnel whilst stationed abroad and travelling, you will pay the prevailing daily allowance for each day of their absence from our company headquarters.

In the event of an incapacity for work due to illness, the daily allowance must still be paid for a maximum period of 14 calendar days. If the incapacity for work is connected with a hospital stay, only 30% of the daily

allowance is to be paid.

#### **10. 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. These include the fares, the travel cost rate as defined in Clause 8.8 applicable during the journey and the daily allowance rates.

Following an uninterrupted stay of 3 months at the place of Service, our personnel are entitled to a statutory period of leave, including the necessary return journey.

You bear the travel costs incurred for this.

#### **11. Taxes and duties**

**11.1** 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. If the place of performance of the Service is within the Federal Republic of Germany value added tax ("VAT") shall be charged at the prevailing statutory rate.

**11.2** For the application of VAT we will use the VAT number made known to us during the initial contact, unless you provide us with a different VAT number for the individual case. You are obliged to indemnify us from any and all claims and damages resulting from your provision of any incorrect VAT number.

**11.3** You shall inform us in writing and in due time prior to the expiration of the statutory registration period about your notifications to the tax authorities based on the Directive 2018/822/EU ("DAC 6") and its domestic implementation, including the applicable registration number, to the extent they relate to the contractual relationship with us.

#### **12. Warranty**

Once the Service has been completed and made ready for acceptance, we are liable for any deficiencies in our work for a period of 6 months. You are obliged to notify us in writing immediately of any deficiencies found. Your right to raise a warranty claim arising from a certain deficiency expires by limitation within 12 months beginning with the immediate notification of the deficiency.

Our warranty is restricted exclusively to the obligation to rectify any such deficiencies at the contractual place of Service. If repeated attempts to rectify such deficiencies fail to provide a remedy, you are entitled to a corresponding reduction after the expiry of a reasonable extension without a remedy.

If the Service is verifiably of no interest to you in spite of a reduction, you are entitled to withdraw from the Service Agreement after notifying us in writing.

Your rights do not extend beyond this, irrespective of any rights as defined in Clause 14.

This obligation to provide warranty does not apply if a deficiency is negligible or is due to a circumstance for which we cannot be held responsible. In case of Technical Remote Support this also includes the incorrect implementation of our advices and instructions by your employees.

#### **13. Force Majeure**

**13.1** Each contracting party is entitled to suspend or refuse to fulfill its contractual obligations including potential warranty obligations where and for as long as this is prevented or is not economically viable as a result of force majeure circumstances. Force majeure means circumstances beyond the control of the affected party and which cannot reasonably be foreseen, avoided or surmounted by the affected party, including without limitations the following events: strikes and lockouts, natural disasters, fire, earthquake, war (whether declared or not), terroristic or political acts of force, contagious diseases, epidemics/pandemics, mobilization, insurrection, confiscation, unjustified seizure or distraint, 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.

**13.2** A circumstance referred to in Clause 13.1 and occurring prior to conclusion of the Service Agreement will entitle a party to refuse to perform the Service Agreement only (i) if the circumstances has proven repercussions for performance and (ii) if that party neither knew nor should have known about this circumstance at the time the Service Agreement was concluded.

**13.3** The party citing an event of Force Majeure notifies the other party immediately about the start and end of such force majeure circumstances.

**13.4** If a delay in our performance of the Service is caused by force majeure circumstances, the time for performance shall be extended by a period which is reasonable having regard to all circumstances of the case, including the time required by us for demobilization and remobilization.

**13.5** 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.

**13.6** 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 6 months.

#### **14. Liability**

##### **14.1 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. 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, Clauses 12 and 14 apply accordingly to the exclusion of further rights on your part.

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

#### **14.2 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). Further, in case of Technical Remote Support, we are not liable where your employees fail to follow our advice and instructions. These exemptions from liability do not apply in the case of willfulness and gross negligence on the part of the corporate management or senior executives.

#### **14.3 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.

#### **15. 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 14 days after the date of invoice.

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 5 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.

#### **16. Export Control**

**16.1** You acknowledge that the performance of the Service may be subject to domestic and/or foreign statutory provisions and regulations regarding export control including economic sanctions and embargos (hereinafter collectively referred to as "Export Control Regulations"). These Export Control Regulations may change from time to time and are applicable according to the wording valid at the relevant time. Both parties will adhere to all such Export Control Regulations and cooperate with the competent authorities accordingly. The parties shall not take any action which would be in breach of the Export Control Regulations.

**16.2** Our offers are non-binding and subject to an assessment of the final configuration of Service to be

performed with respect to the applicable Export Control Regulations as well as the feasibility of the related banking and financial services.

**16.3** If applicable, the Service may not be performed without the necessary permit from the competent authorities. We will use our best efforts to receive the required permits and provide you with a copy of the permit for your information on request.

**16.4** We have the right at any time to revoke our offers or to withdraw from the Service Agreement, exempt from any charges and without incurring any liability for us, if

**16.4.1** the required permits cannot be obtained or cannot be obtained within a reasonable time or, if once granted, are/is thereafter revoked or modified by the competent authorities;

**16.4.2** we obtain knowledge of an unintended end use or of any previously unknown person involved in the business and thereafter cannot perform the Service Agreement due to any Export Control Regulations; or

**16.4.3** a possibly illegal or unlicensed infringement of applicable Export Control Regulations cannot be fully ruled out or a fundamental change in the appraisal of the commercial risks attached to the business occurs due to any listing of yourself, your affiliates, your owners or other persons involved on your part in the business on either the consolidated EU or US screening list.

#### **17. General provisions**

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

**17.2** 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.

**17.3** 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).

Hauni Maschinenbau GmbH

