

General Terms and Conditions for Maintenance and Service Contracts



I. General

1. Unless agreed otherwise in writing by the contractual partners, these terms and conditions apply to all types of work that is more than a one-off activity and is instead performed within the scope of a service contract set up over a longer period of time. They apply in particular to recurring maintenance, service, inspection and repair work and to analysis and consultancy services (referred to in the following as "service work") that are to be provided by MABEG Systems GmbH (referred to in the following as "MABEG"), including the associated delivery of parts or software (referred to in the following in conjunction with the service work as "services") between MABEG and the customer (referred to in the following as the "Orderer"), insofar as the Orderer is an entrepreneur (Section 14 of the German Civil Code (BGB)), a public law entity or a special fund under public law in accordance with Section 310 (1) BGB. Work commissioned on an individual basis outside of the services covered by the service contract is subject to the General Terms and Conditions of Installation.
2. These terms and conditions shall apply exclusively. Conflicting or deviating terms and conditions of the Orderer shall not become part of the contract either due to unreserved acceptance of the order or due to failure to expressly object to them. They shall apply equally if the Orderer receives the services from MABEG or if the Orderer provides the services itself.
3. These terms and conditions shall also apply to all future transactions with the Orderer, even if they are not separately agreed again.

II. Offer and contract completion

1. All offers are non-binding.
2. Information provided by MABEG concerning the object of the delivery or service (e.g. technical documents, weights, dimensions, operating costs etc.) are merely descriptive in character and shall only be binding if this is expressly stated.
3. The legal relationships between MABEG and the Orderer shall be governed solely by the delivery contract concluded in writing, including these terms and conditions. Verbal assurances given prior to the conclusion of the contract shall not be legally binding and shall be replaced by the written contract unless expressly agreed otherwise between the contracting parties in each case.
4. Additions and amendments to the agreements concluded, including to these terms and conditions, must be made in writing in order to be valid.
5. MABEG shall retain title and the copyright to all submitted offers and quotations as well as documents and aids made available to the orderer (drawings, illustrations, calculations, models, quotations, etc.); these shall not be made accessible to third parties and shall be returned immediately on request or on failure to place the order.

III. Scope of services

1. The scope of services shall be defined by the written order confirmation from MABEG. Ancillary agreements shall require written confirmation.
2. On the basis of the contract/order confirmation and these terms and conditions, MABEG will provide the services set out in detail in the contract/order confirmation for the service object at the agreed place of performance within the time period defined in the contract/order confirmation.
3. MABEG reserves the right to make changes to technical designs insofar as such changes are regarded as standard equipment by the time of performance. Unless specified otherwise in writing, at its own discretion MABEG will decide on the manner of performance of the maintenance and service work to be carried out.
4. The regulations of the German Association for Electrical, Electronic & Information Technologies (VDE) shall apply to electrical engineering material.
5. For services provided outside of the Federal Republic of Germany, the scope of supply and services for occupational safety devices shall be based on the agreement concluded.

6. Any services above and beyond the agreed service will be invoiced separately. Such services are subject to the current, valid version of the General Terms and Conditions of Installation.
7. All Talk2MABEG services that are included in the scope of supply and services are subject solely to the "General Terms and Conditions for Talk2MABEG Contracts" from MABEG.

IV. Prices

1. The prices shall apply to the scope of supply and services listed in the offers or order confirmations. Additional or special services shall be billed separately.
2. The prices are stated in EUR plus the respective statutory amount of value added tax.
3. The prices are calculated on the cost basis of the offer. We reserve the right to adjust prices in the event of changes to wage costs, material costs or other prices that are relevant for performance of services. However, this shall only apply to services provided four months or more after contract completion and in which the price adjustment does not exceed 10% of the original price. In the case of higher rates, a new price agreement between the parties shall be required. If no such agreement is forthcoming, both parties shall have the right to withdraw from the contract in writing within 14 days.

V. Terms and conditions of payment

1. Payments shall be made in full and with no discounts whatsoever by bank transfer after receipt of the invoice to one of MABEG's accounts on the agreed dates. Sales tax/VAT shall be due for payment when the invoice is issued; in the case of taxable advance payments, it shall be due on a pro rata basis on the agreed payment dates. Any agreed acceptance of bills of exchange shall take place for the purpose of performance.
2. MABEG is entitled to demand that the Orderer makes an appropriate advance payment before the departure of the assigned staff, or that it opens in the Federal Republic of Germany a letter of credit for an appropriate amount that is irrevocable, recoverable in partial amounts, confirmed and free of charges.
3. Offsetting or a right of retention can only be asserted in the case of counterclaims that have been established by a court or are undisputed.
4. If the Orderer fails to pay on the due date, the outstanding amounts shall be subject to interest from the due date in accordance with the applicable legal provisions; this shall have no bearing on the assertion of higher interest and further damages in the event of default.
5. If the Orderer fails to meet its payment obligations, if its financial circumstances deteriorate significantly or if it ceases to make payments, the entire remaining debt shall become due even if bills of exchange with a later maturity date are ongoing.
6. On request from MABEG, advance payments shall be made to the assigned staff, which are then offset as payments against the accruing overall costs.

VI. Performance period

1. All information about the start, duration and end of the services is non-binding.
2. In the event that the services are delayed due to measures for which MABEG is not responsible, in particular in the event of force majeure (e.g. labour disputes, strikes etc.), then insofar as such impediments have a demonstrable impact on the completion of the services the performance period shall be extended appropriately. This also applies if any such circumstances occur after MABEG has fallen behind schedule and has defaulted on delivery.
3. If a delay in the services occurs due to measures for which MABEG cannot be held responsible, then the Orderer shall bear all resulting additional costs, in particular costs for waiting times, repeat deployment of personnel, as well as storage and contingency costs.
4. In the event that the Orderer demonstrably incurs losses due to a delay for which MABEG can be held responsible then the Orderer is entitled to claim compensation, subject to the exclusion of further default claims. The compensation amount for each full week of delay is 0.5% of the order value; however, the maximum combined compensation amount for all delays incurred is 5% of the total service cost.

VII. Services to be provided by the Orderer

1. The Orderer shall, at its own cost and in good time, create all conditions and put in place suitable preparatory measures required to enable swift and proper service provision by MABEG. This includes in particular the provision of unrestricted access to the machine for the time required for the service work, prior cleaning, the provision of support staff and qualified technicians, equipment, power supplies, water, gas and other aids as well as necessary connections and lubricants.
2. At the place of performance, the Orderer shall make available suitable rooms for storage of objects (e.g. tools) and for staff to use.
3. The Orderer shall put in place the measures required for protection of persons and objects at the place of performance and shall provide instruction on safety rules that are in place in the facility of the Orderer and are to be followed by personnel.
4. If the Orderer is unable to effect individual preparatory works and services or to make available necessary equipment, then these can – to the extent possible – be carried out and/or made available by MABEG. Any costs arising as a result will be billed to the Orderer.
5. In the case of services provided in countries outside of the Federal Republic of Germany, all visas, work permits and other authorisations shall be procured by the Orderer at its own expense.
6. All official charges and taxes (e.g. taxes, fees, customs duties, charges) arising from or in connection with the conclusion or execution of the services described here outside of the Federal Republic of Germany shall be borne by the Orderer.
7. The Orderer shall, in good time, inform MABEG and the personnel deployed to render the services about legal and other requirements that apply at the place of performance.
8. On request from MABEG the Orderer shall take care of arranging suitable accommodation for deployed personnel. If it is not possible to procure accommodation near to the place of performance, MABEG shall be entitled to bill the travel time between the place of accommodation and the place of performance as working time if the distance is more than 5 km. If the personnel use public transport, then the arising costs shall be borne by the Orderer. The same applies to the transportation of equipment.
9. If personnel are required to stay overnight in connection with the service visit, then such overnight expenses shall be billed at the choice of the personnel either as a fixed amount that is permissible for tax purposes or based on actual expenses (hotel bill). Travel times between the place of accommodation and the place of deployment will be billed in accordance with the "Terms and Conditions for the Deployment of Field Staff" of MABEG.
10. In cases where deployed staff fall ill or in the event of accidents the Orderer shall ensure that the deployed staff are properly looked after, in particular that they receive the necessary medical care and treatment.
11. Arrangements for working hours shall be agreed between the Orderer and the deployed staff, and the hours worked shall be certified at least on a weekly basis.
12. The costs for special equipment taken along are included in the basic prices. Large equipment such as cranes, lifting equipment and handling equipment for unloading and transporting the machine etc. will be offered and billed separately if the Orderer is unable to supply such equipment.
13. Outlay for phone bills as well as the time and costs of procuring visas and passports in connection with the deployment will also be billed.
14. The Orderer is obliged to communicate to MABEG the status information for the MABEG product (e.g. operating hours counter) at the stated intervals.

VIII. Rights of the Orderer

1. Termination

- The orderer is entitled to extraordinary termination of this contract without notice if:
- a) it becomes completely impossible for MABEG to fulfil the contract;
 - b) MABEG has defaulted on performance of the contractually owed services and the Orderer has then set a reasonable grace period with the express threat of withdrawing from or terminating the contract after the end of the grace period and if

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MABEG has culpably failed to remedy the issues in question within this grace period.

2. Withdrawal

The Orderer can, insofar as the legal conditions are met, withdraw from the contract through a written declaration if:

- a) it has become impossible for MABEG to fulfil the contract. In the event of partial impossibility, the right of withdrawal shall only apply if the partial performance of services is verifiably of no interest to the Orderer. Otherwise, the Orderer is obliged to accept the partial performance and can demand an appropriate reduction in the price. If the impossibility is not something for which MABEG can be held responsible then MABEG shall be entitled to a portion of the remuneration corresponding to the amount of work performed.
- b) if MABEG has defaulted on performance of the agreed services and the Orderer has set MABEG an appropriate grace period after this time with the express declaration that the Orderer will withdraw from the contract if this period passes without resolution, and MABEG then culpably fails to resolve the issues within the grace period offered.

3. Price reduction

If MABEG allows an appropriate grace period for remedying a defect for which MABEG is responsible and which has been acknowledged by MABEG to expire without resolving the issues in question then the Orderer has a right to a price reduction provided the legal requirements for this are met. The right of the Orderer to a price reduction also exists in other cases of failure to provide remedy for defects as well as in cases in which withdrawal from the contract is ruled out based on statutory provisions. The Orderer can only withdraw from the contract if, despite the price reduction, the service performance is demonstrably of no interest.

X. Performance, acceptance

1. Notwithstanding any further deployment of personnel for the purpose of performing adjustments or monitoring work, the contractual performance of MABEG shall deem to have been fulfilled and accepted with completion of the service, even if commissioning cannot take place on the originally planned or agreed date for reasons for which MABEG is not responsible.
2. If the machine is used without complaint after performance of the service, then this is treated in the same way as a successful acceptance inspection.

XI. Warranty, material defects

1. For the services rendered and under exclusion of further claims, MABEG shall offer a warranty in the form that any services that are required in order to remedy any defects for which MABEG can be held responsible will be rendered again free of charge with appropriate, suitably qualified personnel. This shall also apply to defects and damage to equipment and machines of the Orderer caused by demonstrably inadequate performance of services. Any expenses arising in the process (e.g. travelling expenses) shall be borne by MABEG.
2. The warranty obligations arising from clause 1 above start with the fulfilment (clause IX) and end after 12 months.
3. In all other cases, in particular in cases of intent or fraudulent concealment, the statutory limitation periods shall apply.
4. The Orderer can only assert a warranty claim against MABEG if:
 - a) the discovery of a defect covered by the warranty is reported to MABEG immediately in writing;
 - b) no remedial work has been carried out without the consent of MABEG.
5. The Orderer only has the right to remedy the defect itself or to have such work carried out by a third party in urgent cases where operational safety is at risk or to protect itself against disproportionately high losses, whereby prior approval must be obtained from MABEG.

XII. Liability

1. MABEG shall be liable:
 - a) in the event of intent and gross negligence on the part of its bodies, legal representatives, employees or other vicarious agents,
 - b) in the event of culpable breach of cardinal contractual duties;
 - c) in the event of culpable injury to life, limb and health;
 - d) in the event of defects that have been fraudulently concealed;
 - e) on assumption of a guarantee for the characteristics or condition of an item; if and insofar as liability is borne in accordance with the German Product Liability Act for personal injury or material damage to privately used items.
 - f) if and insofar as liability is borne in accordance with the German Product Liability Act for personal injury or property damage to privately used items.
2. A characteristic/property shall only be regarded as guaranteed within the meaning of the law if it is explicitly referred to as such in the contractual text.
3. Irrespective of this, MABEG shall always be liable to the extent to which MABEG's existing manufacturer's liability insurance provides compensation.

XIII. Non-transferability of contractual rights

The Orderer is not permitted to transfer its contractual rights to third parties without the express consent of MABEG.

XIV. Rights of MABEG

1. Withdrawal
Notwithstanding any other legal claims or rights, MABEG can withdraw from the contract in full or in part if the Orderer fails to meet an essential obligation, or if unforeseeable events substantially change the commercial significance or the content of the service or if such unforeseen events substantially impair business operations of MABEG and the contract cannot be appropriately adjusted in good faith or if there is a significant deterioration in the economic situation of the Orderer.
2. Termination
Notwithstanding any other legal claims or rights arising from this contract, MABEG is entitled to extraordinary termination of this contract without notice if:
 - a) the Orderer fails to communicate in good time the intervals at which service work is due to be carried out;
 - b) the machine is relocated to a different location to the one stated in the order;
 - c) the Orderer fails to meet obligations arising from this contract, in particular with regard to the provision of equipment and performance of preparatory works after being asked to do so and after the passing of a reasonable deadline;
 - d) if the Orderer is threatened with insolvency, or if payments owed under the contract are not made despite a reminder being sent and a threat of withdrawal from the contract being issued.

XV. Offset clause

1. MABEG shall be entitled to set off claims, whether due or not, including future claims, to which MABEG is entitled from a company in which it has a direct or indirect holding of at least 50% against the Orderer or which the Orderer has against one of the designated companies (if necessary, the Orderer shall be informed of the status of such holdings upon request).
2. The Orderer agrees that all securities provided to MABEG also serve as securities for claims against the Orderer to which the companies stated in the previous paragraph are entitled. Conversely, all securities that the Orderer has provided for these companies also serve as securities for claims directed by MABEG against the Orderer – regardless of the legal grounds on which they have arisen.

XVI. Data protection

1. In cases where MABEG is required to process personal data when working on the contractual object, it will comply with data protection legislation and only use personal data for purposes directly required in relation to this contract.
2. The personnel deployed for contractual performance shall also be obliged to comply with data protection legislation and to maintain data secrecy.

XVII. Concluding provisions

1. Any additions or supplementary clauses to the rulings set out here must be made in writing in order to be effective. This also applies to the requirement for the written form itself.
2. The place of jurisdiction for all disputes arising from this contractual relationship is Darmstadt. MABEG can also file a lawsuit at the Orderer's registered office.
3. If court of arbitration proceedings are agreed with an Orderer with a registered office outside of the Federal Republic of Germany, all disputes arising from the contract or concerning its validity or the validity of the arbitration agreement shall be finally decided on by a court of arbitration formed in accordance with the rules of conciliation and arbitration of the Paris International Chamber of Commerce by three arbitrators in accordance with these rules subject to the exclusion of ordinary legal recourse. As long as the court of arbitration has not been called upon, the contracting parties shall be free to file a lawsuit at the ordinary court with jurisdiction for the registered office of the defending party.
4. The relationships between MABEG and the Orderer shall be exclusively subject to the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) of 11/04/1980 shall not apply.
5. If any part of the contract or of these terms and conditions is found to be invalid or if the rulings contain gaps, then the legally valid rulings that would have been agreed on (if the contracting parties had been aware of the lack of validity or of the gaps in the rulings) by the contracting parties in order to meet the economic objectives of the contract and the purpose of these terms and conditions shall deem to have been agreed upon. This shall have no bearing on the validity of the other provisions.

MABEG Systems GmbH
Opelstrasse 17-19
D-64546 Mörfelden-Walldorf