

## General Terms and Conditions on After Sales services and Spare Parts sales and delivery of DMG MORI UK LIMITED (The Company, We Us, or Supplier) to The Customer (You, it )

### **1 General provisions and definitions**

- 1.1 The following terms and conditions including those set out in this paragraph, 1 hereof shall apply to all current and future After Sales Services undertaken by The Company in relation to the repair, maintenance and other services for machine tools ("Services") as well as the delivery of spare and replacement parts ("Parts" or "Part").
- 1.2 These terms and conditions shall apply exclusively.
- 1.3 Any contractual terms of the Customer shall not apply, unless expressly agreed upon in writing and acceptance of the Services or the request for the supply of Parts or the provision of Services by the Customer confirms by its conduct acceptance of the Terms herein.
- 1.4 A binding contract between the Company and the Customer will only become enforceable upon receipt by the Company of the Customers written order by letter, fax or email
- 1.5 **Corona:** the disease known as corona disease (COVID-19) and the virus known as severe acute respiratory syndrome corona 2 (SARS-CoV-2).
- 1.6 **Corona Event:** an event or delay caused by, or arising from or in relation to, a Corona epidemic or pandemic that prevents or delays the scheduled delivery or performance in relation to this contract or the performance of any obligations under this contract, including (but not limited to):
- a) absences or unavailability of staff at the Company, non-attendance of persons who have been scheduled to attend to carry out service or maintenance work or delay in delivering parts or equipment, and any loss of, or disruption to, any of their facilities;
  - b) any illness, quarantining, shielding or self-isolation (including, but not limited to, precautionary self-isolation) including Social Distancing of any Party( including engineering staff service personnel or salesmen or equipment,) or any other staff of DMG where the decision to quarantine or self-isolate is reasonable and or any recommended or mandatory measures introduced by the Government intended to prevent or delay the spread of Corona;
  - c) any disruption of, or interruption to, any services required for the performance of any contract including (but not limited to) connection to electricity, telecommunications and data services;
  - d) any unavailability of removal services or facilities, movers, transport ;
- 1.7 **Corona Event Cessation Notice:** a notification under **Fehler! Textmarke nicht definiert.Fehler! Verweisquelle konnte nicht gefunden werden.** that a Corona Event that was preventing or delaying the performance of booking under this contract, has ceased to have that effect.
- 1.8 **Function** The work or supply which is the subject of this contract
- 1.9 **Government:** local, regional or central government.

### **2 Customer's responsibilities**

- 2.1 The Customer agrees that it shall provide to the extent necessary at its own risk and expense and as soon as reasonably possible necessary qualified engineers or staff, and, if required, tools, lifting devices as well as all materials and equipment necessary to facilitate the due performance of the Company's Services of whatsoever nature and wheresoever arising.
- 2.2 The Customer shall provide the Company's Employees with a dry and lockable room for the storage of delivery parts, tools, clothes and the Employees personal belongings. The Customer is responsible for its staff following the Supplier's lawful instructions.
- 2.3 The Company shall not be liable for any damage caused by the Customer's Employees, unless the damage is solely due to the Company's employees following the Company's employees written instruction in which case the Customer agrees that the Company's liability other than for death is limited to the amounts set out in Clause, 18 hereof.
- 2.4 In the event that any of the Company's materials, tools or devices are damaged or destroyed at the Customer's work-site, other as a result of actions of the Company or its agents or employees the Customer agrees to be liable for the full cost of replacement to the Company payable in full and recoverable as a debt.
- 2.5 It is a term of any agreement between the Company and the Customer that The Customer is at all times required to comply with and apply all health and safety regulations within the workplace, the compliance with relevant safety regulations and provide appropriate working conditions. In particular, the Customer shall thoroughly clean machines to be repaired by the Company. The Customer shall fully instruct the Company's employees about specific safety regulations or hazards in its workplace.
- 2.6 If necessary, the Customer shall procure promptly that internal work authorizations, ID cards any other identification markings are supplied at its own expense.

### **3 Prices and terms of payment**

- 3.1 Unless expressly agreed otherwise in writing, the Customer shall make payments according to the Company's schedule of prices and services in force when the Order is placed. The Customer may request a copy thereof. The Company shall be entitled to request payment in advance of up to 90 % of the cost of the services or supply to be provided. The Company may at its discretion request payment in advance when an Order is placed and will be under no liability to deliver the same or supply services until payment is made
- 3.2 Used parts, materials and special services, as well as costs for travelling and accommodation of the Company's staff shall be charged by the Company separately in the invoice and are payable in addition to any other charges.
- 3.3 If Services are carried out on the basis of an agreed cost, reference to such agreed cost estimate in the invoice shall suffice.
- 3.4 If a fixed cost is not agreed and only an estimate provided by the Company, any deviations from the cost estimate shall be listed separately but notwithstanding any dispute shall be paid promptly without set-off or deduction by the Customer.
- 3.5 Unless expressly agreed otherwise in writing, prices are ex-works (Incoterms 2010), excluding costs of packaging and statutory VAT.
- 3.6 If the Customer fails to make payment on the due date, the Company shall be entitled to charge the Customer interest on the amount unpaid, at the rate of 8 % p.a. above Bank of England base rate calculated on a daily basis with quarterly rests.
- 3.7 Unless expressly agreed in writing otherwise, payment in full for all Services and deliveries of Parts is due within 10 days following receipt of invoice without any discount and shall be transferred electronically to the Company's bank account.
- 3.8 The Customer shall not be entitled to set off against the Company any money alleged to be due to it from the Company of whatsoever nature and howsoever arising and Title to any parts or equipment supplied or installed by or on behalf of the Company shall not pass to the Customer until payment is received in full by the Company. In breach of payment being received in full the Company shall be entitled and shall be afforded access by the Customer to collect any parts supplied whether or not the same have been incorporated into a Machine or not upon demand.

### **4. Force majeure**

- 4.1 In the event that the Company cannot for whatever reason cannot undertake the Supply of parts or the provision of services for reasons outside its control (direct or indirect) all expenses, in particular without limitation such expenses for fault diagnostics, shall be borne by the Customer. This provision particularly applies (without limitation) to the following circumstances which are by way of example only and not exhaustive:
  - if the alleged fault did not occur during the fault diagnostics,
  - if the Customer fails to meet the agreed service date,
  - if the Customer terminates an order in process,
  - if the Parts required cannot be obtained in due time.
- 4.2 In the event of the above The Company shall only be obliged to re install the serviced item in its original state upon the Customer's written express request and at Customer's expense and risk.

### **5. Travel and incidental expenses**

- 5.1. Travel and incidental expenses incurred on behalf of the Company its employees agents or others in respect of the Customers Order will be invoiced to the Customer based on a flat call-out rate. The flat call-out rate will be charged per service technician for each service call. For service calls, which are interrupted by weekends or public holidays, a flat call-out rate will be billed for the journey to the customer before and after the interruption.
- 5.2. The flat call-out rate includes all incidental service costs (travel times, mileage, expense allowances, etc.), but not accommodation expenses which may be payable separately Expenses incurred for incoming or outgoing international air travel will be invoiced to the customer at cost.

### **6. Service costs**

- 6.1. The Company calculates the estimated duration of on-site Services on the basis of its schedule of prices and services which the Customer may request from the Supplier at any time.
- 6.2. Expenses incurred for any interruptions of Services or extension of agreed time limits for completion of Services not attributable to the Customer shall be borne by the Customer.
- 6.3. Upon completion of Works, or not later than upon completion of each workweek, the Customer shall approve the working hours of the Company's staff on the Company's time sheet. and in default the Service Engineer shall record that the Customer refused and or failed to sign the same and the reasons why and in the absence of fraud or manifest error the same shall be conclusive evidence of the time worked.

## **7. Time of performance and delay of Services**

- 7.1. Time periods specified by the Company within which Services are to be carried out are based on estimates only and it is agreed that time for delivery or undertaking Service is not of the essence. The Company will however use reasonable endeavors to carry out the works in a timely manner using reasonable care and skill but shall not be liable for delays in the supply of Parts, labour or if the Customer restricts access to its premises
- 7.2. The Customer may only request an agreement on a binding time period for Services if the extent of the works is precisely determined, and no variations occur and the Supplier is able to provide necessary Parts in time and agreement on the extent of the Customer's duties of cooperation has been achieved and, if necessary, the Customer has obtained permits of competent authorities. Subject to the above if the extent of the works is precisely determined and recorded in writing signed by Us and You ,and the Company is able to provide necessary Parts, agreement on the extent of the Customer's duties of co-operation has been achieved and, if necessary, the Customer has obtained permits of competent authorities. a binding time period may be agreed in writing and signed by the Company and the Customer.
- 7.3. The Services shall commence on the day the Company and the Customer agree, and the Company's employees has free access to the Customer's site and the Customer has given written authority for the Services to commence. The clearance protocol shall state the commencement date and be signed by the Company's engineer and the Customer.
- 7.4. If the Customer requires an extension of the Services or additional Services become necessary as a result of the Company's experience on site, the time period shall be extended accordingly and no previous time for completion shall apply.
- 7.5. If the works are complete and ready for acceptance within the time period or, if a test run is scheduled, the test run is ready to commence, the time period shall be deemed met.
- 7.6. In the event of Force Majeure, labour conflicts or other events beyond the Supplier's control, the time period shall be extended accordingly and if necessary on more than one occasion.
- 7.7. If, due to a Corona Event, we are prevented from, or delayed in:
- Supplying goods equipment or services which is the subject of this contract or in accordance with this contract; or
  - carrying out any of our other obligations in relation to the supply of goods or services which is the subject of this contract i.e; a Corona Event leading to cancellation due to the non-attendance of service personnel or others employed by us our servants or agents or the failure to supply equipment or machinery due to Government restriction;
- neither party shall be in breach of this contract or liable for any failure to perform, or any delay in performing, any of their respective obligations under this contract that are prevented or delayed by the Corona Event. In particular (but not limited to) neither party shall be liable to pay compensation to the other in respect of the cancellation
- 7.8. Each party agrees with the other party that it shall:
- notify the other party in writing by issuing a "Corona Event Notice" as soon as reasonably practicable (and in any event no later than 10 working days) after becoming aware of a Corona Event that will or may prevent or delay the supply of goods or services; or
  - that will stop the Affected Party from performing any of its other obligations under this contract in relation to the Event;  
and that notice shall include details of that Corona Event;
  - use all reasonable endeavours to mitigate the effect of any Corona Events on the performance of its obligations.
  - As soon as practicable after the Corona Event is over contact the other party to make fresh arrangements for the supply of goods or services

## **8. Acceptance**

- 8.1. The Company will notify the Customer on the completion of the Services, or, if so agreed, a test run has been completed and the Customer agrees that it shall be obliged to accept and pay any balance due for the completed Services thereafter . If works or parts prove defective, the Company shall use reasonable endeavours to cure the defect, unless the defect is minor and does not affect the operation of the equipment or is not attributable to the Company. The Parties agree that Acceptance of the works being complete may not be refused by reason of minor defects.
- 8.2. The parties agree that Services shall be deemed to have been accepted by the Customer. if the Customer does not reject the Services within 2 weeks upon notification of completion by the Company or uses the Machine after the date the Services have been supplied there will be deemed acceptance of the works

## **9. Warranty for Services**

- 9.1. Upon acceptance of the works howsoever arising, notwithstanding sections 9.4 and 18, the Company shall, to the exclusion of any further claims of the Customer, be obliged to remedy the defect provided that:

- 9.2. The Customer shall give written notice of the defect to the Supplier without undue delay when it should reasonably have become aware of the same.
- 9.3. The Customer shall not be entitled to request rectification, if the defect is minor or attributable to the Customer or its employees, and in particular the Company shall not be liable if the defect arises from any material provided by the Customer. The Customer shall allow reasonable time for the Supplier to remedy the defect. Replaced parts shall become property of the Supplier.
- 9.4. The Company shall not be liable for any defects that arise from alterations, repairs or maintenance works of the serviced item by the Customer or third parties without the Company's prior written approval. The Customer, however, shall be entitled to remedy the defect himself or by third parties subject to notifying the Company of the works to be undertaken as soon as possible thereafter.
- 9.5. If the Company does not remedy the defect, any further liability shall be subject to section 18.
- 9.6. If the alleged defect does not result from the Company's Services, then, to the extent the defect has been remedied by the Company, the Customer shall reimburse the Company's expenses and costs accordingly.
- 9.7. The Company shall be under no liability in respect of any defects of the Services if the defect is
  - Due to willful damage, incorrect connections or incorrect operation,
  - Force Majeure (e.g. lightning bolts),
  - Wear and tear due to overuse of mechanical and/or electronic items, or failure to maintain in accordance with manuals or
  - Extraordinary mechanical, chemical or atmospheric influences.

## **10. Maintenance, repair and overhaul at the Supplier's work-site**

- 10.1. Any expenses arising from transporting the serviced item for maintenance, repair or overhaul to and from the Company's or its subcontractor's work-site shall be borne by the Customer.
- 10.2. The risk of transportation shall be borne by the Customer. At the Customer's request and cost, the Company may arrange for insurance against damages in transit by reason of theft, breakage, fire and other risks agreed in writing but the Customer must pay for the same in advance on a full indemnity basis.
- 10.3. During Services being provided at the Company or its subcontractor's work-site, there shall be no insurance coverage; the Customer shall be responsible to maintain insurance coverage for the serviced item regarding fire, mains water, storms, machine breakage and the like, unless insurance coverage for such risks is expressly requested and paid for by the Customer.
- 10.4. If acceptance of the serviced item is delayed, the Company shall be entitled to charge the Customer for the storage of the respective item at his or his subcontractor's work-site. The Company shall be entitled to store the serviced item otherwise. Any storage shall be at the risk and costs of the Customer.

## **11. Delivery of spare or replacement parts with or without installation**

The following provisions shall apply to any delivery of Parts whether or not being subject to a repair or service order with regard to delivery time, delay in delivery, warranties and passing of risk:

- 11.1. The Customer shall be responsible for the correct specification of the Part to be delivered by the Company. Whilst the Company will use reasonable care and Skill any advice of the Company on the suitability of the ordered Part shall not be binding and the Company's liability to that effect shall be excluded as the Company accepts orders for delivery of Parts without prior inspection of the machine in which the Part is to be installed.
- 11.2. The parties shall agree on the delivery time however that Time is not of the Essence The agreed delivery time shall not be binding upon the Company and if appropriate the stated delivery time shall be extended accordingly,
- 11.3. The Company will use reasonable endeavours to adhere insofar as it can to delivery time estimates and will keep the Customer reasonably informed in connection therewith but shall not be liable for failure to deliver at a stated time.
- 11.4. The risk of loss or damage will pass to the Customer upon dispatch of the Part. That shall also apply in case of partial delivery or if the Company's transports the Part to the Customer or bears the costs for the transport.

## **12. Warranty for new Parts**

- 12.1. If new Parts, upon passing of risk, i.e. payment in full by the Customer to the Company are defective, the Company shall at its discretion either remedy the defect or deliver a new Part free of defect. The Customer shall give written notice of the defect to the Company without undue delay. The Customer shall allow the Company access to carry out such replacement works Replaced parts shall be returned to and become property of the Supplier.
- 12.2. The Customer shall allow reasonable time for the Company to remedy the defect or to deliver a Part free of defects.
- 12.3. Any expenses for installation and removal of the Part shall be borne by the Customer, unless the Company is liable for such expenses pursuant to section 18.
- 12.4. The Company shall not be liable for unsuitable or improper use, defective assembly, installation or operation of the Customer or third parties, fair wear and tear, negligent handling, improper maintenance, unsuitable operating

material, defective structural work, improper foundation, chemical, electro-chemical or electronic influences, provided, these circumstances are not attributable to the Company.

- 12.5. The Company shall not be liable if the Customer or a third party modifies or repairs the Part without the Company approval being given in writing to any such modification or works

**13. Warranty for used Parts**

Unless agreed otherwise in writing, any warranty claims relating to the delivery of used Parts shall expire after 6 months from delivery or installation whichever is earlier. The foregoing provisions shall not apply in the event of fraudulent concealment of a defect.

**14. Infringement of intellectual property rights of third parties**

If the use of the Parts is in breach of domestic intellectual property rights of third parties, the Company, at his own expense, shall either provide the Customer with the right to use the respective Part or modify the Part to the effect that the infringement of intellectual property rights no longer persists. If that is not possible under reasonable economical conditions or within a reasonable time period, both the Customer and the company shall be entitled to withdraw from the contract. Also, the Company shall indemnify and hold the Customer harmless against intellectual property right claims of third parties being acknowledged, undisputed or assessed in a legally binding judgment. Subject to the provisions of section 18, the Company's foregoing obligations in the event of an infringement of intellectual property rights shall be conclusive and conditional on the following requirements: that the Customer shall notify the Company without undue delay on any intellectual property right claim made, support the Company in defending such claims to the extent reasonable and / or enable the Company to modify the delivered part to the effect that an infringement of intellectual property rights no longer persists; that the Company shall reserve the right to all defence measures in and out of court; that the alleged infringement of third parties' intellectual property rights is not due to an instruction, unauthorized modification or use of the Part contrary to the contract by the Customer.

**15. Retention of title**

- 15.1. The Company retains title to all accessories and Parts until receipt of all payments of whatsoever nature and howsoever arising due to the Company are paid in full
- 15.2. In case of breach of contract by the Customer including, but not limited to, delay in payment, the Company shall be entitled to enter the customers premises and retake possession of the item and the Customer shall be obliged to surrender the item. Neither the enforcement of the retention of title nor the attachment of the item by the Company shall be deemed as withdrawal from the contract.
- 15.3. The Customer may resell the Part subject to the above retention of title only in the course of his regular business. For this to be the case, the Customer hereby assigns all claims arising out of such resale or use for services, irrespective of whether the goods have been processed or not, to the Company. Notwithstanding the Company's right to claim direct payment, the Customer shall be entitled to receive the payment on the assigned claims. To this end, the company agrees not to demand payment on the assigned claims to the extent the Customer complies with all his obligations for payment and does not become subject to an application for insolvency or to any stay of payment; in these events, however, the Customer shall disclose to the Customer the assigned claims and the respective debtor and provide the Company with all information and documents necessary for debt collection and notify the debtors (third parties) of the assignment.
- 15.4. The Customer shall also assign to the Company such claims which arise against third parties from the incorporation or combination of the item into or with real estate or moveables.
- 15.5. If the foregoing securities exceed the secured claims by more than 20 %, the Company, at his own discretion, shall return to the Customer such securities upon the Customer's request.
- 15.6. Upon the opening of insolvency proceedings, the Company shall be entitled to withdraw from the contract and take possession of the part.

**16. Processing of replacement parts**

- 16.1. Prices for replacement parts are subject to the Customer transferring ownership to the Company in the property of an, repairable used part as replacement. If the used part is not received by the Company within 2 weeks after the Customer has received the replacement part from the Company, the Company shall be entitled to charge the price for a New Part. The used part shall be shipped to the Company's work-site "Carriage Insurance Paid" (CIP Incoterms 2010) or, from abroad, "Delivered Duty Paid" (DDP Incoterms 2010).
- 16.2. If a return delivery note is missing, the used part will be returned unidentified to the Customer. If the Customer refrains from specifying the defect of the returned part, an inspection fee of 50.00 EUR shall be charged.

**17. Return of unused spare parts**

- 17.1. If the Customer orders several spare parts and, upon placing of order, he is not certain as to which spare part is suitable, the Customer shall, at his own risk and expenses, return the spare parts not required to the Company's work-site "Carriage Insurance Paid" (CIP Incoterms 2010) within 2 weeks upon completion of the repairs. The

Customer has to replace the part as a result of any impairments of the returned spare part (e.g. traces of usage due to installation and/or removal) to the supplier.

- 17.2. The Company may charge the Customer a fee based on 10 % of the part cost for inspection and restocking of returned spare parts, but not more than 175.00 EUR per part or such other reasonable sum as the Company specifies. Redemption of spare parts with a value of below 65.00 EUR shall be excluded; these spare parts shall not be credited.

**18. Company's liability and limitation of liability**

- 18.1. If the Company is responsible for a damage to parts of the serviced item, the Company, at its discretion acting reasonably and at its own costs, shall repair the part or deliver a new part. The Company's liability shall be limited to the price agreed for the Services. Apart from that, section 18.3 shall apply.
- 18.2. In the event that – due to the Company's responsibility for omitted or faulty execution of advice given before or after the contract, or breach of other non-fundamental contractual obligations, in particular instructions on the operation and maintenance of the serviced item or delivered Parts – the Customer cannot use the Services or delivered Parts as agreed upon, the following provisions, to the exclusion of any further claims of the Customer, shall apply.
- 18.3. In respect of all claims for damages other than to the delivered Parts or the Services themselves, the Customer agrees that it is reasonable that the Company shall not be liable to it or any third party for consequential loss which is hereby excluded
- 18.4 The Company further shall only be liable in damages (excluding Consequential loss) in the event of:
- a) negligence of the Company;
  - b) damages to life, body or health;
  - c) an explicit guarantee

**19. Applicable law and jurisdiction; personal data**

- 19.1. The legal relationship between the Company and the Customer shall be governed by the laws of England and Wales and the Courts of England and Wales shall have the exclusive jurisdiction over any issue hereunder