

Conditions for Delivery of Spare Parts and Provision of Services of Mikron GmbH Rottweil



I. General

- As requested by Customer, Mikron GmbH Rottweil (hereinafter referred to as Mikron) provides services pursuant to the following terms and conditions. Performance is invoiced according to time worked and materials needed.
- Services to be provided by Mikron fall into three categories:
 - Spare Part Service:**
Delivery of spare parts and wear parts, consumables and accessories
 - Xchange Service:**
Delivery of exchange modules
 - Product Support:**
Helpdesk
Guarantee extension
Local services
Overhauling (components and plant)
Service contracts
Teleservice (remote services)
 - Business Support:**
Training services
Rebuilding

II. Offer

- Our offers are not binding.
- Documents provided together with the offer are supplied for guidance purposes only and shall in no case be deemed to constitute a specific quality agreement or quality guarantee with respect to the goods and/or services and must not be forwarded to third parties.

III. Order. Confirmation of Order

- Orders are binding upon Customer.
- They are deemed accepted if not refused by Mikron within 20 days following receipt or if confirmed in writing by Mikron through written confirmation of order.

IV. Service Hours

- Mikron provides services during normal working hours (Monday through Friday, but not on German public holidays, from 08.00 a.m. to 05.30 p.m.), unless extended service hours have been agreed in the service contract.
- Mikron is not obliged to provide services outside normal working hours unless so agreed in writing.

V. Service Contracts

- A service contract enters into force when signed by Customer and is concluded for the duration of the agreed maintenance interval. The contract is tacitly extended by one more maintenance interval or one year, whichever occurs earlier, if none of the parties terminates the contract by written notice two months before its regular expiry.
- Irrespective of the above, each of the parties has the right to extraordinary termination of the contract for good reason.
- Furthermore, the contract shall end without explicit termination if the subject-matter of the contract is sold, and termination shall take effect upon transfer of property.
- The following services are not included in the contract: spare parts and wear parts, modifications of the equipment, modernization and extensions, cleaning of equipment by Mikron personnel prior to intervention, training of Customer's personnel, provision of lubricants and consumables, commissioning work, production support.

VI. Preparation Work

- Customer ensures that equipment is cleaned prior to any intervention incumbent on Mikron personnel.
- Customer's maintenance staff and machine operators must be available to support Mikron personnel.
- Customer provides free of charge additional workers (support), tools, equipment, lubricants, power supply, water, etc. as is necessary for the intervention.
- Customer shall make available to Mikron personnel a lockable room to store its equipment. Insurance against theft and damage caused by fire and/or water is incumbent on Customer.

VII. Working Conditions

- Customer guarantees that local interventions do not have to be carried out under dangerous or unhealthy conditions, and shall take all measures necessary to protect Mikron personnel from any safety or health risk.
- Customer further guarantees that Mikron personnel will be informed accurately of any safety regulations in place where the intervention is to be carried out.
- Customer shall draw Mikron's attention to any statutory, official or other regulations referring to the installation and operation process as well as to illness and accident prevention.

VIII. Extra-contractual Work

- Unless otherwise expressly agreed with Mikron, Customer shall not use Mikron personnel for work outside the scope of the service job.

IX. Prices. Payment

- All services provided by Mikron will be invoiced at the current Mikron rates applicable when the order is confirmed.
- Unless otherwise specifically agreed, prices quoted are binding and apply ex works, including loading in the works and excluding packaging and statutory VAT.
- Unless otherwise agreed, invoices shall be payable net, without any discount, within 30 days after receipt. If no payment is received in good time, Customer shall be automatically in default.
- In the case of periodic services (e.g. regular maintenance intervals), Mikron shall be entitled to adapt the periodic service fee reasonably, provided that Mikron's cost situation so demands due to price increases incurred with respect to travel, accommodation and wage costs. Mikron shall notify Customer in writing of any such increase four months prior to the start of a new contractual period. Customer shall then have the right to extra-ordinary termination.

X. Delivery Period

- The delivery period indicated is only approximate.
- Delivery periods are extended accordingly if Mikron is prevented from effecting delivery in time due to circumstances that were unforeseeable or occurred through no fault of Mikron, and that could not have been prevented despite all reasonable care and diligence.
- The delivery period starts when the confirmation of the order is sent, however no earlier than when the agreed prepayment has been received, consensus on all technical details has been reached, and Customer has fulfilled all of its duties required for the execution of the business.
- The period for delivery is deemed observed if, upon its expiry, the goods have left the works or the goods' readiness for dispatch has been notified.

XI. Dispatch. Transfer of Risk

- Mikron effects delivery ex works.
- The risk passes to Customer when the goods leave the works. This applies irrespective of whether transport is effected with Mikron transport equipment.
- In the event that dispatch is delayed due to circumstances attributable to Customer, the risk shall pass to Customer upon the day of readiness for dispatch.
- If Customer does not take delivery of the goods immediately upon notification, we will store the goods, if possible, and do so at Customer's risk. Storage does not exempt Customer from its payment obligations arising at the date when the goods are ready for dispatch.

XII. Retention of Title

- Mikron reserves title to the goods until it receives full payment of all claims due from an ongoing business relationship. Upon request, Customer shall provide a deed proving the agreed retention to the retained goods and hand the deed over to Mikron. If so requested by Mikron, or if a petition for Customer's insolvency is filed, the retained goods shall be identified clearly with a label that reads "Property of Mikron GmbH".
- Customer shall treat the retained goods with diligent care. Customer shall carry out any necessary regular maintenance and inspection work at its own cost.
- Mikron shall be entitled to take out insurance for the goods against theft and damage resulting from breakage, fire, water or other risks, at the

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cost of Customer, provided that Customer cannot prove to have obtained such protection.

- Customer shall neither pledge the goods nor use them as collateral. It shall notify Mikron forthwith of any pledges or seizures or other dispositions of third parties.
- Mikron shall be entitled to withdraw from the contract and claim the goods back if Customer is in breach of contract, in particular if it defaults in payment or does not fulfill obligations stipulated in paras 2 to 4 inclusive of this provision.
- Customer may resell the goods within the ordinary course of its business. Customer herewith assigns to Mikron any claims equivalent to the value invoiced which the Purchaser may have against a third party from such resale. Mikron herewith accepts this assignment. Following the assignment, Customer shall be entitled to collect the debt. Mikron reserves the right to collect debts by itself, provided that Customer does not duly meet payment obligations and defaults in payment.
- Any processing or amalgamation of the goods by Customer shall be considered effected on behalf of Mikron. If the goods are combined with items that are not the property of Mikron, we shall acquire co-ownership in the new item in proportion of the value of the new item to the value of the supplied goods used. The same applies mutatis mutandis if the goods are amalgamated with other items to which Mikron has no title.
- Spare parts installed shall become the property of Customer. Old parts replaced remain in the possession of Mikron.

XIII. Warranty

- Customer shall inspect goods and/or services provided without undue delay, notify Mikron in writing of any alleged defects, and describe them in sufficient detail no later than two weeks following receipt at the place of destination.
- Failing immediate notification, the goods and/or services provided by Mikron shall be deemed accepted, except in the case of a defect that was unrecognizable during the inspection.
- Should Mikron have delivered defective parts and has been informed thereof in due time, Mikron will try and provide a remedy forthwith. Mikron may choose at its own equitable discretion what type of remedy it provides. If the maintenance item is not suitable to perform the particular function, Mikron does not assume any warranty to effect its readiness for operation.
- The warranty period for new components and spare parts provided and/or installed by Mikron under this contract shall be twelve (12) months.
- Revised parts and components shall be subject to a warranty period of twelve (12) months for parts replaced.
- Wear parts shall be subject to warranty only to the extent that they have been defective already at the time when the risk had passed.
- The warranty periods starts when the parts/components are delivered and/or the services fully provided. The service engineer's report shall be authoritative in this respect.
- There shall be no warranty if Customer or third parties carry out modifications or repair work without the prior written consent of Mikron or if Customer does not take appropriate emergency measures forthwith to prevent or reduce damage.

XIV. Liability

- Mikron shall be liable for damage to the maintenance item intentionally or grossly negligently caused by Mikron or its agents in as much as Mikron shall remove such damage free of charge.

The following provisions 2 – 7 (incl.) shall apply.
- Mikron shall not be liable for any loss that may have occurred in connection with one of the services mentioned in Article 1, such as loss of production, loss of use or loss of profit.
- Furthermore excluded from liability is the replacement of damaged or lost data, e.g. pictures, text, and figures, if data media is damaged.
- Customer shall be solely responsible for the operation of the machine throughout remote services sessions. It shall ensure that the operation requested by Mikron is not incongruent with the state of the machine. This shall also apply during the warranty period of the plant. An exception shall apply if Mikron personnel operates the item locally.
- Other claims of Customer shall be excluded subject to the following exceptions:
 - in the case of intent;
 - if Mikron or its agents are guilty of gross negligence;
 - if Mikron negligently causes damage to life, body or health;

- in the case of defects Mikron has fraudulently concealed or whose absence it has guaranteed;
- in the case of liability for death, injuries or damage to items used privately pursuant to the German Product Liability Act ("Produkthaftungsgesetz");

- In the case of a negligent breach of a condition which goes to the root of the contract, Mikron shall also be liable for gross negligence and slight negligence, whereas in the latter case liability is limited to the reasonably foreseeable damage which is intrinsic to the contract.
- Customer is not entitled to lodge any claims against Mikron exceeding the scope of these provisions; this applies in particular to claims for damages, including claims based on extra-contractual liability, or other rights based on any loss incurred in connection with the agreed intervention services; irrespective of the underlying legal reason brought forward.

XV. Software

- To the extent that software is included in the scope of delivery, Customer is herewith granted the non-exclusive right to use the software and the documentation supplied. Its use is permitted with respect to the specific goods. The software shall not be used on more than one system.
- Customer shall be allowed to copy, revise or translate the software or convert the object code into the source code only as legally permitted. Customer undertakes not to remove manufacturer identification labels – including, but not limited to copyright marks – or modify them without Mikron's prior express consent.
- All other rights to the software and documentation, including any copies that may exist, shall remain with Mikron and/or the software supplier. No sublicenses shall be granted.

XVI. Environmental Aspects

- Customer warrants that materials (components, lubricants, etc.) to be removed subsequent to the intervention will be disposed of as provided for by law.

XVII. Severability Clause

- Should any individual provisions of these conditions be invalid, or should a gap occur, the validity of the remaining provisions shall in no way be affected. In either case, the Parties will endeavor to agree on a new provision, taking into account the objectives pursued by the present conditions.

XVIII. Venue

- The contractual relationship of the parties shall be governed by German substantive law.
- These Conditions are supplemented by the General Conditions for the Sale and Supply of Mikron GmbH.
- The parties agree the venue to be Rottweil am Neckar, irrespective of who is the claimant.

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