

## **General terms and conditions on after sales services and spare parts delivery of DMG MORI of DMG MORI Polska**

### **1. General provisions**

The following terms and conditions shall apply to all current and future after sales services of our company ("Supplier") 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"). These terms and conditions shall apply exclusively. Differing or contrary terms of the Customer shall not apply, unless expressly agreed upon. A contract shall only come into force with the Supplier's written order confirmation by letter, fax or email, unless the contract is concluded orally through the Supplier's hotline.

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

- 2.1. The Customer shall provide to the extent necessary at his own risk and expense assistant staff, and, if so agreed, tools, lifting devices with operating staff as well as all materials and equipment necessary for due performance of the Supplier's Services. Also, the Customer shall provide the Supplier's staff with a dry and lockable room for the storage of delivery parts, tools, clothes and the staff's personal belongings. The Customer is responsible for his assistant staff following the Supplier's instructions or person indicated by the Supplier. The Supplier shall not be liable for any damage caused by the Customer's assistant staff.
- 2.2. In the event that any of the Supplier's materials, tools or devices are damaged or destroyed at the Customer's work-site, the Customer shall be liable for damages to the Supplier to the extent to which the Customer is responsible for the loss or damage occurred.
- 2.3. The Customer shall be obliged to take reasonable care for the safety in the workplace, the compliance with relevant safety regulations and appropriate working conditions. In particular, the Customer shall thoroughly clean machines to be repaired by Supplier. The Customer shall instruct the Supplier's working staff about specific safety regulations in his workplace.
- 2.4. If necessary, the Customer shall procure internal work authorizations, ID cards and the like at his own expense.

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

- 3.1. Unless expressly agreed otherwise in writing, the Customer shall make payments according to the Supplier's schedule of prices and services which the Customer may request from the Supplier at any time. The Supplier shall be entitled to payment for partially Services carried out.
- 3.2. Used parts, materials and special services costs, as well as costs for travelling and accommodation of the Supplier's staff shall be returned or paid and shall be charged separately in the invoice. If Services are carried out on the basis of a binding cost estimate, reference to such cost estimate in the invoice shall suffice; however, deviations from the cost estimate shall be listed separately.
- 3.3. The remuneration may be expressed in EUR, PLN or may constitute the equivalent in PLN of the amount in EUR, calculated in accordance with the average exchange rate of the National Bank of Poland published on the day preceding the day of invoice issue.
- 3.4. If the Customer fails to make payment on the due date, the Supplier shall be entitled to charge the Customer statutory interest for delay payment on the amount unpaid.
- 3.5. Unless expressly agreed otherwise, payment for Services and deliveries of Parts is due within 10 days upon receipt of invoice without any discount and shall be transferred to the Supplier's bank account.
- 3.6. The Customer has the right to withhold payment of remuneration and / or to deduct the remuneration with his own receivables, only with prior written consent of the Supplier.

### **4. Unfeasibility of Services**

- 4.1. In case of diagnose of defects performed in order to submitting Customer an offer and for further incurred and documented costs, an invoice will be issued to the Consumer, as well as in case if repair or service cannot be performed for reasons not attributable to the Supplier, any expenses, in particular such expenses for fault diagnostics, shall be borne by the Customer.  
This provision particularly applies to the following circumstances:
  - 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. The Supplier shall only be obliged to put back the serviced item in its original state upon the Customer's express request and at Customer's expense. This does not apply if and to the extent to which the Supplier's Services prove not necessary.
- 4.3. If Services are not feasible, the Supplier shall not – irrespective of the legal ground – be liable for damages of the serviced item, breach of contractual obligations and damages not caused to the serviced item itself. In the event of intent or gross negligence of the Supplier, the Supplier shall be liable according to the provisions of applicable law.

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

- 5.1. Travel and incidental expenses incurred by service personnel 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.
- 5.2. The flat call-out rate includes all incidental service costs (travel times, kilometres, expense allowances, etc.), but not accommodation expenses.

## **6. Service costs**

- 6.1. The Supplier calculates its service cost carried out at Customer's site as a product of personnel's duration of attendance at site on the basis of the Supplier's time sheet and the personnel's remuneration rate on the basis of the schedule of prices and services applicable at that time and available from the Supplier at any time.
- 6.2. Expenses incurred for any interruptions of Services or exceedance of agreed time limits for completion of Services not attributable to the Supplier shall be borne by the Customer.
- 6.3. Upon completion of Services, but not later than upon completion of each workweek, the Customer shall approve the working hours of the Supplier's staff on the Supplier's time sheet.

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

- 7.1. Time periods specified by the Supplier within which Services are to be carried out are based on estimates only and are, therefore, not binding. The Customer may only request for an agreement on a binding time period for Services if the extent of the works is precisely determined, the Supplier is able to provide necessary Parts in time, 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. The binding period for Services shall commence on the day the Supplier and the Customer agree that the aforementioned requirements are met, the Supplier has free access to the Customer's site and the Customer has given written clearance for the Services to commence. The clearance protocol shall state the commencement date and be signed by the Supplier and the Customer.
- 7.2. If the Customer requires an extension of the Services or additional Services become necessary, the time period shall be extended accordingly.
- 7.3. If Services are 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.
- 7.4. In the event of Force Majeure, labour conflicts or other events beyond the Supplier's control, the time period shall be extended accordingly.
- 7.5. If the Supplier's failure to provide Services in good time results in a damage to the Customer, the Customer shall be entitled to demand a lump sum compensation. This compensation shall be 0,5 % for each completed calendar week, but in total no more than 5 % of the Service price of this part of the item to be serviced by the Supplier that cannot be used due to the delay. Further Customer's claims are excluded.
- 7.6. If the Supplier does not carry out the agreed Services on time, despite prolongation this term for performance of Service by Customer in good time, the Customer may withdraw from the service order according to law regulations. The Customer shall declare in written without undue delay whether he will exercise his right to withdraw from the service order.

## **8. Acceptance**

- 8.1. If the Supplier notifies the Customer on the completion of the Services, or, if so agreed, a test run has been completed, the Customer shall be obliged to accept the completed Services. If Services prove defective, the Supplier shall cure the defect, unless the defect is minor or not attributable to the Supplier. Acceptance may not be refused by reason of minor defects.
- 8.2. Services shall be deemed accepted, if the Customer, for reasons not attributable to the Supplier, does not accept Services within 2 weeks upon notification of completion or puts the serviced item into operation.
- 8.3. Upon acceptance of the Services, the Supplier's liability for obvious defects shall be excluded, unless the Customer has expressly reserved his rights with regard to the respective defect.

## **9. Warranty for Services**

- 9.1. Upon acceptance of the Services, notwithstanding sections 9.4, 12 and 18, the Supplier shall, to the exclusion of any further claims of the Customer, be obliged to remedy the defect. The Customer shall give written notice of the defect to the Supplier without undue delay. In the absence of such notification, the Customer loses the warranty rights. The Customer shall not be entitled to demand cure, if the defect is minor or attributable to himself or third party, in particular if the defect arises from any parts provided by the Customer. The Customer after prior agreement shall allow reasonable time and access for the Supplier to remedy the defect. Replaced parts shall become property of the Supplier.
- 9.2. The Supplier 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 Supplier's prior written approval. The Customer, however, shall be entitled to remedy the defect himself or by third parties and demand reimbursement of the necessary expenses from the Supplier, if there is a danger to operational safety or an imminent threat of extensive damage.

- 9.3. The Customer shall bear the costs of assembly and disassembly of the machine.
- 9.4. If the Supplier does not remedy the defect after a reasonable set period of time indicated by the Customer, the Customer may claim for reduce the price. The Customer hasn't right to withdraw from the contract concerning delayed Services. Any further liability shall be subject to section 18.
- 9.5. If during exercising rights form warranty it occurs that the alleged defect is result of other technical reason than indicated as a source of prior service need or does not result from the Supplier's Services, then, warranty claims expires and, the Customer shall reimburse the Supplier's expenses accordingly.
- 9.6. The Supplier 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 by Supplier or third party,
  - Force Majeure (e.g. lightning bolts),
  - Tear and wear due to overuse of mechanical or soil and/or electronic items or
  - Extraordinary mechanical, chemical or atmospheric influences.
- 9.7. Subject to the provisions of section 13, any warranty claims relating to the Supplier's Services shall become statute-barred within 12 months. This limitation period shall commence after acceptance of the Services or operation of the serviced item by the Customer.

## **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 off the Supplier's or his 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 costs, the Supplier shall arrange for insurance against damages in transit by reason of theft, breakage, fire and the like.
- 10.3. During Services at the Supplier's or his 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 Supplier shall be entitled to charge the Customer for the storage of the respective item at his or his subcontractor's work-site. The Supplier shall be entitled to store the serviced item other-wise. Any storage shall be at the risk and costs of the Customer.

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

The following provisions shall apply to any such delivery of Parts 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 Supplier. Any advice of the Supplier on the suitability of the ordered Part shall not be binding and the Supplier's liability to that effect shall be excluded as the Supplier 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. The agreed delivery time shall only be binding for the Supplier if all commercial and technical matters have been settled between him and the Customer and the Customer has fulfilled all contractual obligations; otherwise, the delivery time shall be extended accordingly, provided such delay is not attributable to the Supplier.
- 11.3. The Supplier shall be obliged to prolong to the agreed delivery time, if the Supplier's presuppliers or producer will not deliver the Part in due time or they improper performed the delivery Delivery time shall be deemed met by the Supplier when, prior to the expiry of the deadline, the Part has been shipped from the Supplier or directly from the presupplier to the Customer, or the Customer has been notified that the Part is ready for dispatch. In the event of Force Majeure, labour conflicts or other events beyond the Supplier's control, the delivery time shall be extended accordingly. The Supplier shall notify the Customer of the begin and the end of such circumstances as soon as possible.
- 11.4. If the Supplier's failure to deliver the Parts in good time results in a damage to the Customer, the Customer shall be entitled to demand a lump sum compensation at the amount of 0,5 % for each completed calendar week, but in total no more than 5 % of the value of the Parts delivered in delay. Further Consumer's claims are excluded. If the Customer extends the Supplier's delivery date, than if the Supplier is in delay, and such an extended delivery date will not be met, the Customer is entitled to withdraw from the contract concerning the spare part purchase in accordance with applicable law. The Customer shall declare in written without undue delay whether he will exercise his right to withdraw from the contract. Further claims for delay shall be subject to section 18.3.
- 11.5. 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 Supplier 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, are defective, the Supplier – at his discretion – shall be obliged to remedy the defect or deliver a new Part free of defect. The Customer shall give immediately written notice of the defect to the Supplier without undue delay. In the absence of immediate notice, the Customer loses the rights resulting from the warranty. Replaced parts shall become property of the Supplier.
- 12.2. The Customer after prior agreement with Supplier, shall allow reasonable time and access for the Supplier to remedy the defect or to deliver a Part free of defects; otherwise, the Supplier's liability shall be excluded.

- 12.3. The Customer shall bear the costs of assembly and disassembly.
- 12.4. Subject to the mandatory provisions of law, the Customer has the right to withdraw from the contract concerning purchase of Part only if the Supplier fails to comply with the defect indicated by him due to a physical defect or replacement of new parts with non-defective ones. In the case of an insignificant defect, the Customer is only entitled to demand a price reduction. In other cases, the right to request a price reduction is excluded.
- 12.5. The Supplier 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, installation of Parts by the other entity than Supplier provided, these circumstances are not attributable to the Supplier.
- 12.6. Subject to clause 18, The Supplier shall not be liable if the Customer or a third party modifies or repairs the Part without the Supplier's approval.
- 12.7. Any warranty claims relating to the delivery of new Parts shall become statute-barred within 12 months. This limitation period shall commence after dispatch of the Part to the Customer.

### **13. Warranty for used Parts**

Unless agreed otherwise, any warranty claims relating to the delivery of used regenerated Parts shall become statute-barred within 6 months. This limitation period shall commence after dispatch of the used Part to the Customer. The foregoing provisions shall not apply in the event of fraudulent concealment of a defect or if an explicit guarantee has been given. Apart from that, the provisions on defective Parts shall remain unaffected.

### **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 Supplier, 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 Supplier shall be entitled to withdraw from the contract concerning purchase of Part. Also, the Supplier 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. The Supplier'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 in writing the Supplier within 7 days on any intellectual property right claim made, support the Supplier in defending such claims to the extent reasonable and / or enable the Supplier to modify the delivered part to the effect that an infringement of intellectual property rights no longer persists; that the Supplier shall reserve the right to all defense 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 Supplier reserves the ownership right in relation to all Parts, spare parts and replacement parts used or delivered ("delivered parts") until all payments under the delivery contract or service agreement are received along with interest due and related costs.
- 15.2. The Supplier is entitled to demand that at the expense of the Customer a copy of the individual contract be given a certain date and issued to the Supplier.
- 15.3. Until the ownership is transferred, the Supplier is entitled to conclude an insurance contract against theft, damage, fire, water and other damages at the expense of the Customer, unless the Customer itself concludes such a contract and submits a copy of the relevant policy to the Supplier.
- 15.4. In the case of occupation, retention, takeover or other regulation of delivered parts by third parties, the Customer is obliged to immediately notify Supplier about these facts.
- 15.5. The examination by the Supplier of the rights resulting from retention of ownership title does not mean that the Supplier will withdraw from the contract.
- 15.6. In cases of return of delivered parts, the Contractor may demand an appropriate remuneration for normal wear or damage to the delivered parts.
- 15.7. In the case of processing of the delivered parts leading to the creation of an object consisting of parts that do not belong to the Contractor, the Contractor acquires joint ownership of the newly created item in a ratio corresponding to the value of delivered parts to the value of the other parts at the time of processing.
- 15.8. An application for declaration of bankruptcy or the opening of a restructuring proceeding entitles the Supplier to withdraw from the contract and to demand immediate return of the delivered parts.

### **16. Processing of replacement parts**

- 16.1. Prices for replacement parts are subject to the Customer transferring to the Supplier the property of an according, repairable used part as replacement. If the used part is not received by the Supplier within 2 weeks after the Customer has received the replacement part from the Supplier, the Supplier shall be entitled to charge the price for a new part.

The used part shall be shipped to the Supplier'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 Supplier's work-site "Carriage Insurance Paid" (CIP Incoterms 2010) within 2 weeks upon completion of the repairs. The customer has to replace any impairments of the returned spare part (e.g. traces of usage due to installation and/or removal) to the supplier.
- 17.2. The Supplier may charge the Customer with a 10 % fee for inspection and restocking of returned spare parts, but not more than 175.00 EUR per position. Redemption of spare parts with a value of below 75.00 EUR shall be excluded; these spare parts shall not be credited. 17.3 Redemption the spare parts referred to in point 17.2 is also excluded if the Customer failed to diagnose or replace the part by the Supplier or his authorized subcontractor.

## **18. Supplier's liability and limitation of liability**

- 18.1. With the exception of the mandatory provisions of law, the Supplier shall be liable only in the cases expressly indicated in these General Terms and Conditions.
- 18.2. Subject to clause 18.4. if the Supplier is responsible for a damage to parts of the serviced item, the Supplier, at his discretion and own costs, shall repair the part or deliver a new part. The Supplier's liability shall be limited to the price agreed for the Services.
- 18.3. In the event that – due to the Supplier'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 Supplier's liability is limited in scope indicated in following provisions of clause 18.4.,
- 18.4. For damages the supplier – irrespective of the legal ground – shall only be liable in the event of
- Intent,
  - Intentional damages to life, body or health
  - fraudulent concealment of damages,
  - defects that Supplier declare do not exist
  - defects in the subject of delivery or the subject of repair/service, as long as in accordance with the provisions on liability for a dangerous product is responsible for damage, on the person or on everyday objects. Any further liability shall be excluded.

## **19. Applicable law and jurisdiction, personal data**

- 19.1. The legal relationship between the Supplier and the Customer shall be governed by the laws of the Republic of Poland as applicable between domestic parties.
- 19.2. The venue shall be the court with jurisdiction at the Supplier's registered office. However, the Supplier shall also be entitled to take legal action at the Customer's registered office.

## **20. Personal Data Processing**

- 20.1. The Administrator of the Customer's personal data is DMG MORI Polska sp. z o.o. Fabryczna street no 7, tax identity number: 617-19-53-827 (hereinafter "Administrator"). Correspondence related to the processing of personal data should be addressed to the address of the Administrator indicated in the preceding sentence or email address
- 20.2. The Customer's personal data will be processed for several different purposes, e.g. for the proper performance of the contract, for the provision of maintenance and sale of spare parts in the Administrator's offer, including correct delivery, direct marketing of products and Administrator services and to fulfill legal obligations, including tax, and they can also be processed for pursuing claims under civil law and defending against such claims, if they arise.
- 20.3. The legal basis for the processing of personal data is:
- art. 6 par. 1 point b) GDPR to the extent necessary to perform the contract;
  - art. 6 par. 1 point c) GDPR when it is necessary to fulfill the Supplier's obligations, such as financial settlements, including tax settlements;
  - art. 6 par. 1 point f) GDPR, when it is indispensable to achieve the objectives arising from Supplier's legally legitimate interests, such as the possible need to repel or enforce civil law claims, as well as to direct marketing content about the Administrator's products or services. During the term of the contract, the legal basis for targeting marketing content is the legitimate interest of the Administrator - art. 6 par. 1 point f) GDPR, and after the end of the contract, the consent of the Employer - art. 6 par. 1 point a) GDPR.
- 20.4. The Customer's personal data will not be shared with other recipients.
- 20.5. The Customer's personal data will not be transferred to a third country / international organization.
- 20.6. The Customer's personal data will be kept for the period necessary for the specific processing of data. Certainly, the data will be processed for the duration of the contract between the Supplier and the Customer, as well as for the duration of any claims related to it.

- 20.7. The Customer has the right to request access to their data and rectification, deletion, processing restrictions, the right to transfer data, the right to object.
- 20.8. The Customer has the right to object at any time to the processing of personal data in order to send marketing content to the Customer.
- 20.9. If the processing of personal data takes place on the basis of consent to the processing of personal data, the Purchaser has the right to withdraw the expressed consent to the processing of data at any time without affecting the legality of processing, which was made on the basis of consent before its withdrawal, by sending a message -mail to the following address: daneosobowe@dmgmori.com
- 20.10. The Customer has the right to lodge a complaint with the supervisory body, which is the President of the Office for Personal Data Protection, when you believe that the processing of personal data violates the generally applicable law, including EU law in the field of personal data protection.
- 20.11. In a situation where the processing of personal data takes place on the basis of consent, the provision by the Employer of personal data is voluntary. If the basis for the processing of personal data is a contract concluded between the parties, the provision by the Employer of personal data is voluntary, but necessary for the implementation of the contract.
- 20.12. The Customer's personal data will not be processed in an automated manner, including in the form of profiling.