

Terms and conditions for installation, commissioning and servicing work performed by Mahlo GmbH + Co. KG

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I. General terms and conditions

The following terms and conditions shall apply for the installation, installation instruction, commissioning and servicing work to be performed by us and for all ancillary work involved in the above. Any agreements that contradict these terms and conditions shall only be binding for us if they have been expressly acknowledged in writing. This shall also apply for agreements with our representatives (for example commercial agents or service agents) or for statements issued by our representatives. Our current general terms of business shall apply in addition to these terms and conditions for installation, commissioning and servicing work.

II. Content and scope of the work

1. In the absence of detailed agreements, the installation, installation instruction, commissioning of servicing work (hereinafter known as the work) shall involve the machines or machine parts set out in the order confirmation or the installation, commissioning or servicing order and shall only comprise the machines or machine parts supplied by Mahlo.

2. The services of the contractor shall not include transporting the machines to their installation site, the construction of foundations, the provision of scaffolding, etc. The installation of lines of any kind outside the machine is also not included, nor is the installation of cable connections between control cabinets, control desks and individual power consumers, regardless of whether pipes, cables or the like have been supplied by Mahlo or not. Cable connections, which are essential for the function and reliability of the machine(s) supplied by the contractor, shall form an exception to the above.

III. Installation, commissioning and servicing price

1. The work shall be performed as agreed and as set out in the order confirmation on the basis of the actual number of hours worked (**Work charged by the hour, No. IV.**), at a fixed price to be paid separately (**Work charged at a fixed price, No. V.**) or with the full or part inclusion of the price for work in the price for our machines (**Work charged at set rates No. V. 3.**).

2. The agreed rates of remuneration have been calculated on the basis of the tariff rates in force at the time when the order was placed and therefore form the basis for our calculation. In the event of these tariffs changing after the placement of the order we shall be entitled to make an appropriate adjustment to our charges. The prices set out in the order confirmation and in the installation, commissioning and servicing order are net prices. Value-added tax is charged and shown separately for work performed in Germany.

3. The cost of the work shall be payable immediately on receipt of the invoice strictly net. Rights of retention shall not be permitted. These amounts may only be set off against debts that are not disputed by the contractor or that are legally enforceable.

4. Payment of additional work undertaken by us (installation preparation, production of plans and / or instruction manuals, installation supervision work, etc.) shall be made only on the basis of separate agreements.

5. In the event of the non-fulfilment or inadequate fulfilment of contractual obligations, in particular in circumstances that lead to a delay or break in our work, and in the event of the customer being in default with payments, we expressly reserve the right to withdraw from our contractual obligation to perform the work and to recall our personnel. Any additional costs incurred as a result of such action shall be borne by the customer.

IV. Work charged by the hour

The following remuneration agreements shall apply if our work is to be charged by the hour.

1. Travelling expenses
Travelling expenses incurred by our personnel (including the costs of transport and transport insurance for personal luggage and tools carried by the personnel or shipped separately and additional travelling expenses for obtaining visas, medical examinations, etc.) are to be reimbursed on the basis of our actual expenditure and expenses.

Whilst observing the commercial interests of our customer we reserve the right, depending on the actual situation, to determine the means of transport used by our personnel and to charge the cost for first or second class rail travel, flight costs, the costs of a ship's crossing or, if a car is used, mileage allowance at the normal rates. The travelling expenses also include the cost of the return journey.

2. Subsistence allowance
The current rate in force at the time of the completion of the work is to be paid for each employee for each day of his absence from our company. The rate specified in the order confirmation refers to the date of issue of the order confirmation. The same applies for the meal rates set out in the order confirmation.

The subsistence allowance is also payable for Sundays and public holidays on which no work is done and for the duration of incapacity caused by illness or accident if our personnel stays locally during this time. If our personnel must go into hospital, the subsistence allowance rate shall be reduced to 30%.

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25% of the subsistence allowance is provided to cover the costs of reasonable accommodation. If this amount is not adequate for this purpose, the customer must pay the verified additional expense incurred. The customer shall also be obliged to assist our personnel in finding reasonable board and lodging near the work site.

3. Working hours and payment

Payment at the rates used by the contractor shall be made for each normal working hour completed by our personnel. Our personnel's working hours shall be 35 hours per week, divided into 7.5 hours every day from Monday to Thursday and 5 hours on Fridays.

Supplements for overtime required by the customer or necessary for the job, working on Sundays and/or public holidays shall be calculated on the basis of the current collective wage-bargaining agreements.

Travelling time, waiting time and public holidays at the installation site shall be regarded as working hours. The normal daily working hours missed shall be regarded as the public holiday time. Whether a day is to be regarded as a public holiday depends on the law and the practices at the installation site.

Supplements shall not be charged for waiting and travelling times. If the distance between the personnel's home and the installation site requires more than one hour's travelling time, the daily trip shall be charged as travelling time. If there is a means of transport available for the trip, daily travelling expenses shall also be charged.

If we are completing work, the full daily or weekly working hours will be charged, even if our employees are prevented from working for the full time due to circumstances beyond their control.

V. Work charged at a fixed price

1.

If the number of personnel or duration of the work exceeds the details agreed with the customer or set out in the installation, commissioning or servicing order, circumstances occur to prevent working through no fault of ours, our personnel is asked to perform work that is not included in the work for which we are responsible or if special circumstances arise at the site that demands greater expense (for example additional travelling times, accommodation costs, etc.), the additional costs thus incurred will be invoiced separately in accordance with the terms and conditions that apply for the work (No. IV.).

This shall also apply for any overtime or other additional work.

As standard the contractor shall provide two service technicians for installation work or one service technician for servicing work.

The agreement to charge for the work at a fixed price shall continue on condition that the customer supports our personnel to the best of its ability and provides at least one, but on request two skilled workers (for example fitters, electricians, etc.) for each Mahlo employee or, if requested by our personnel, an adequate number of labourers for the full duration of the work free of charge, and in addition shall provide any further assistants and equipment for transporting heavy components on a temporary basis, thus ensuring that we can perform our work quickly.

2.

If this condition is not satisfied by the customer or not satisfied properly, we shall be entitled to demand that the work be paid for by the hour (No. IV.).

3.

In the event that a lump sum or maximum price has been agreed, the above clauses shall apply as and where appropriate.

VI. Cooperation of the customer

1.

The customer must provide support for our personnel at its own expense when they are completing our work.

2.

Whilst the overall responsibility for our work is borne by our personnel, general supervision shall be the responsibility of the customer. It must take the necessary precaution to ensure that safety of persons and property at the workplace of our personnel and shall be responsible for compliance with general and special safety regulations. The customer shall be obliged to notify the contractor without delay of any breaches of such regulations by our personnel. In the event of serious breaches, the customer may refuse the personnel access to the site with the consent of the contractor, if this action is repeated.

VII. Technical assistance by the customer

1.

The customer shall be obliged to provide technical assistance, in particular to

a)

provide the number of suitable assistants that may be required for the work (bricklayers, joiners, fitters, electricians and other skilled workers as well as labourers) for the required period: V No. 1, Paragraph 4 of these terms and conditions shall apply as and where appropriate.

The customer's personnel must follow the instructions issued by our personnel. The contractor cannot accept any liability for them;

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<p>b) complete all earthworks, building work, embedding work and scaffolding work including the provision of the necessary building materials;</p> <p>c) provide the required equipment and heavy tools (for example lifting gear) and the necessary utility items and materials (for example wedges, supports, etc.);</p> <p>d) provide heating, lighting, water and the required connections;</p> <p>e) provide all materials and complete all other action required to provide and complete the contractually agreed work;</p> <p>f) transport the components to the installation site, protect the components and materials from harmful influences of all kinds, clean the components and the installation site;</p> <p>g) provide any dry, lockable rooms that may be required for storing our personnel's tools in the immediate vicinity of the installation site;</p> <p>h) provide suitable theft-proof social and working rooms with heating, lighting, washing facilities, sanitary facilities and First Aid facilities for our personnel;</p> <p>2. The technical assistance of the customer must ensure that the contractor's personnel can start work immediately after their arrival and be continued without delays until the acceptance procedure by the customer. In particular the access routes and the workplace or installation site must be level at floor height, any foundations and other masonry required for the installation must have been completed as shown on the drawings and descriptions supplied by us (if this has been agreed with us), they must be dry and hardened and the base walls must be built and backfilled, the wall and ceiling plastering work must have been completed, doors and windows installed and any wall openings specified by us must have been opened.</p> <p>3. If we are to perform installation work any machines or parts shipped and packed by us must be unpacked in the presence of our personnel at the installation site. If the machines or parts must be opened before the arrival of our fitters for customs reasons, the customer shall be obliged to check the contents to ensure that they are complete and ensure that the packaging is resealed until the arrival of our personnel. If the contents of the consignment do not comply with the enclosed freight and/or customs documents and / or the invoice, the customer must notify the</p>	<p>contractor of this without delay. If the packaging is opened when our personnel are not present, the customer shall be liable for any damage unless the transfer of risk occurred earlier in any case.</p> <p>4. For work to be performed by the contractor, which requires preparations to be made by the customer, the customer shall receive a written or telephone inquiry from the contractor in good time beforehand as to whether the required preparations have been completed in full by the customer. In the interests of both parties to save costs, our personnel shall not be dispatched until the customer has stated in writing that it has completed the preparations. This statement must be received by the contractor in good time before the scheduled starting date for the work. Notwithstanding this, if the work is to be performed in another country the customer must notify us of the scheduled starting date in plenty of time beforehand so that the required work permits, entry documents, etc. can be obtained.</p> <p>5. If the customer fails to meet its obligations in this respect the contractor shall be entitled but not obliged to perform the work that is the responsibility of the customer in its place and at its expense. The statutory and contractual rights and claims of the contractor shall not be affected by this.</p> <p>VIII. Timing of the work, bearing of the risk</p> <p>1. All the information supplied by the contractor relating to the timing and the duration of the work shall be regarded as approximations.</p> <p>2. If exceptionally the timing of some work is described as binding, compliance with this criterion shall be deemed to have been satisfied if, by the expiry of the period the work is ready for acceptance by the customer. The same shall apply in the event that a trial has been agreed in the contract.</p> <p>3. If the work is delayed due to circumstances that are beyond the control of the contractor, a reasonable extension of the period for the work shall be deemed to have been agreed between the parties. This shall apply even if such circumstances occur after the contractor is in default. The costs incurred as a result of the delay, in particular waiting times and for repeat travelling by the contractor's personnel, shall be borne by the customer unless the contractor is in default with the work.</p>
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4.
If as a result of the contractor being in default the customer suffers a verifiable loss, with the exclusion of all further claims, he shall be entitled to demand default compensation. For each full week of the delay this shall amount to 5% of the total cost of the work, subject to a maximum of 50% of the total cost (for example of the price for the installation work) for the part of the work to be performed by us that has caused the delay. In no circumstances may the contractor be held liable for bringing the customer's production to a halt or the reduction of production capacity.

5.
The customer shall bear the risk of the provision of the service by the contractor.

IX. Acceptance of the work

1.
The provision of the installation work shall end with a function test conducted by the contractor (verification of machine/electrical engineering function of the machine system without goods).

2.
The provision of installation instruction shall end with completion of the instructions as to where and how the customer should assemble and install the unit correctly (for example cabling).

3.
The provision of commissioning services shall end when the unit is operating successfully in normal production conditions.

4.
The provision of servicing work shall end with the full completion of the work for which the contractor has been commissioned.

5.
Function tests shall be conducted by the fitter in charge of the installation or servicing work. If an agreement has been made to commission the equipment or provide capacity verification, an engineer may be dispatched for this purpose by the contractor at the expense of the customer.

6.
The customer shall be obliged to accept the work and the sign the acceptance report and/or the capacity verification as soon as it has been notified that the work has been completed. If it is found that the work does not comply with the contract the contractor shall be obliged to rectify the defect at its own expense, with the exclusion of all other claims.

This shall not apply if the defect is unimportant in terms of the interests of the customer or is due to circumstances that is the fault of the customer. If the equipment is not suffering from a major defect the customer shall not be entitled to refuse its acceptance as long as the contractor

expressly acknowledges its obligation to rectify the defect.

7.
If the acceptance procedure is delayed through no fault of the contractor, the customer and the contractor agree that the procedure shall be deemed to have been completed one week after notification is given that the work has been completed.

8.
After the acceptance procedure the liability of the contractor for obvious defects shall be void unless the customer reserves the right to claim for a specific defect.

X. Warranty

1.
After the acceptance of the work the contractor shall be liable for defects in the work that occur within a period of three months after the acceptance procedure with the exclusion of all other claims on the part of the customer. This liability shall mean that the contractor must rectify the defect in the work. For this purpose the customer must notify the contractor promptly of the defect. The right on the part of the customer to claim for defects in the work shall become statute-barred three months after the notification of the defect.

2.
The period of liability for defective work shall be extended by the duration of the break in operations caused by the refinishing work.

3.
The contractor shall not accept any liability if the defective work is unimportant for the interests of the customer or is due to circumstances that are the fault of the customer. In addition no liability shall be accepted if the customer makes modifications to the machine, parts of it or to the work performed by the contractor without the latter's consent.

4.
The warranty set out in number IX of these terms and conditions shall become completely void if the customer does not use or has not used original Mahlo (spare) for operating the machine.

5.
Lodging claims based on negligent illegal acts, negligent positive breach of contract or negligent pre-contractual breach (culpa in contrahendo) relating to the provision of the service shall be excluded.

XI. Other liability

If a component supplied by the customer is damaged by the contractor during the installation work, the contractor

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shall either pay compensation for this or repair the component free of charge.

XII. Restriction of liability

1.

Apart from the rights to which it is entitled as per the above terms and conditions the customer may not make any compensation claims against the contractor or lodge any other rights due to any disadvantages related to the work, regardless of the legalities on which they are based. In particular the contractor shall not accept any liability for indirect or direct personal or property damage. The contractor recommends that the customer takes out a suitable personal liability and property insurance policy.

2.

In the same way the contractor shall not accept any liability for his work being performed in full and on schedule if it does not have adequate suitable personnel available to dispatch to the customer's site.

XIII. Compensation by the customer

If, at no fault of the contractor, the equipment or tools provided by it are damaged or lost in transit to or at the site of the work, the customer shall be obliged to compensate the contractor for this loss. Damage caused by normal usage shall not be considered in this respect.

XIV. Miscellaneous, salvatory clause

1.

Information on the processing effects and capacities of the goods being supplied, other proposals and advice and manuals for their operation and servicing shall be provided by our personnel before and after the conclusion of the contract to the best of their knowledge and belief. However, we cannot accept any liability for this or for any other supplementary contractual obligations.

2.

The possible invalidity of individual clauses in the above shall not affect the validity of the other clauses. In the event of individual clauses being invalid, the parties hereby undertake to replace the invalid clause by a valid one, which is as close as possible to the content and purpose of the invalid one, including its commercial impact.

XV. Place of jurisdiction and place of fulfilment

1.

The place of fulfilment for the work performed by the contractor shall be Saal / Donau. The exclusively agreed place of jurisdiction shall be the registered office of the contractor.

2.

This contract shall be governed by the laws of the Federal Republic of Germany with the exception of the UN Convention on the International Purchase of Goods.

Saal / Donau, 01.06.2000

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