

Service terms and conditions for SEW-EURODRIVE GmbH & Co KG (SEW)

§ 1 General terms

- (1) These terms and conditions are applicable to services provided by SEW such as repairs, conversions, overhauls, startup (provided these are not already part of services to be provided under a purchase agreement between SEW and the Customer), programming services, maintenance and repair work, retrofitting work on machines and systems, replacement of units. Services shall be provided exclusively on the basis of the applicable order confirmation and any special agreements made in writing in addition to the following conditions. Any other terms and conditions, particularly purchase/order terms and conditions, shall not apply unless SEW approves their validity explicitly in writing.
- (2) Offers from SEW are subject to change. An agreement comes into effect with the order confirmation by SEW in text form (*Textform*).
- (3) If the item for which service is rendered (hereinafter referred to as "service item") is not supplied by SEW, the Customer must provide information about any existing intellectual property rights in respect of the service item. The Customer shall indemnify SEW from any third-party claims vis-à-vis the intellectual property rights if SEW is not at fault.
- (4) If any country-specific operating license is affected by the service to be provided by SEW, particularly as a result of changes, extensions, updates etc. to a system or machine, the Customer is obligated to take the required measures to re-procure the respective operating license or have such measures be taken. The Customer shall be responsible for such measures and shall bear all associated costs.
- (5) If individual components or equipment in machines or systems that are labeled CE in accordance with Directive 2006/42/EC on machinery are replaced and/or modified, all safety-related requirements and conditions may need to be checked for continued compliance. The Customer shall be responsible for the check and for restoration of conformity if need be. SEW can assume this responsibility only if an explicit agreement is concluded in writing specifically laying down the responsibilities to be assumed by SEW.
- (6) Unless agreed to the contrary explicitly and in writing, SEW shall not provide any services in the area of functional safety. It shall be incumbent on the Customer to observe and comply with standards and regulations in the area of functional safety relating to the service item.

§ 2 Services that cannot be performed

- (1) If services cannot be performed for reasons for which SEW is not responsible, the Customer shall be billed for the work involved in submitting a cost estimate as well as other time and work required (time required for troubleshooting as well as hours worked). These reasons include the following in particular:
 - the defect that was reported cannot be found during inspection,
 - spare parts are not available,
 - the Customer negligently missed a scheduled deadline,
 - the agreement is terminated while the services are being performed.
- (2) In such cases, the service item must be restored to its original condition only upon explicit request from the Customer against reimbursement of costs except if the work performed was not required.

§ 3 Cost information, cost estimates

- (1) Unless stipulated otherwise, services will be billed on a time and materials basis. The version of SEW's price lists in effect at the time shall apply.
- (2) To the extent possible, the Customer will be provided an anticipated price for the service. Otherwise, the Customer may set cost limits. If the service cannot be provided at these costs, SEW shall inform the Customer immediately if actual costs exceed anticipated costs by more than 15%.

§ 4 Price and payment

- (1) SEW is entitled to demand reasonable advance payment at the time the agreement is concluded.
- (2) Statutory VAT will be billed to the Customer additionally.
- (3) If SEW learns of any significant deterioration in the Customer's financial circumstances after sending an order confirmation, its receivables shall be due immediately. In addition, SEW is entitled to provide outstanding deliveries and services, even at variance from the order confirmation, only against advance payment, and to withdraw from the agreement after a reasonable grace period unless the Customer provides security. The same applies in case of failure to comply with the terms of payment, even if such failure involves other orders arising out of the mutual business relationship.
- (4) The Customer shall be entitled to offset claims only if the Customer's counterclaims are undisputed by SEW or became *res judicata*. The Customer may exercise a right of retention to the extent its counterclaim is based on the same contractual relationship.

§ 5 Customer's participation and technical assistance, duties to supply information

- (1) The Customer must support SEW in the provision of services, at its cost.
- (2) The Customer must provide SEW all information and documents required to duly provide services in due time before the start of work. It must communicate the need for any specific safety checks or requirements (e.g. airport, nuclear power plant, fear of heights) duly in advance. If the services are provided overseas, the Customer must provide information about the travel formalities required (visa, invitations etc.). SEW reserves the right to withdraw from the agreement if any official travel warnings are issued.
- (3) The Customer must inform SEW of all relevant interfaces (hardware and software) that SEW must take into account during the provision of the services. This is especially true for programming services based on the Customer's data processing systems.
- (4) If the service is provided at a location other than SEW's plant, the Customer must take necessary measures to protect persons and objects at the place of performance of the service. In its written order and before start of work on-site, it must also inform SEW personnel of any special existing safety regulations, provided these are of importance for the personnel. It must inform SEW of any violations of safety regulations by SEW personnel. In case of serious violations, it may in conjunction with SEW's contact person deny the offender access to the place of performance of the service.
- (5) If the service is provided at a location outside SEW's plant, the Customer is obligated to provide technical assistance at its cost, especially by:

- a) providing as much suitable auxiliary staff as necessary for the period required; the staff must follow instructions from SEW personnel. SEW assumes no liability for such staff. If such staff causes defects or damage as a result of instructions from SEW personnel, §§ 10 and 11 shall apply.
 - b) performance of all required construction, ballast and scaffolding works, including the procurement of required building materials.
 - c) providing required equipment and heavy-duty tools as well as required articles and materials of daily use.
 - d) providing heating, lighting, operating force and water, including the required connections.
 - e) providing the necessary dry areas with locks for the storage of tools belonging to SEW personnel.
 - f) protecting the place of performance of the service as well as the materials used from harmful effects of any kind, keeping the place of performance clean.
 - g) providing suitable, burglar-proof day rooms and working spaces (with heating, lighting, washrooms, sanitary facilities) and first aid for SEW personnel.
 - h) providing materials and doing all else that is required for the regulation of the service item and the performance of any tests specified in the agreement.
- (6) The Customer is not authorized to give instructions to SEW personnel, SEW personnel will not become part of the Customer's or end user's operations.
 - (7) The Customer's technical assistance must warrant that the service can begin immediately after SEW personnel arrives and that the service can be performed without delay until acceptance by the Customer. SEW will provide the Customer any special plans or instructions required from it in due time.
 - (8) If the Customer does not fulfill its obligations, SEW is entitled but not obligated, after setting a grace period, to perform those acts that the Customer should have performed in the Customer's stead and at its cost. Notwithstanding the foregoing, SEW's statutory rights and claims will remain unaffected.
 - (9) If the service consists of replacing units, it is incumbent on the Customer to ensure that the replacement unit supplied by SEW is functionally compatible with the machine or system in which the unit to be swapped out was housed. SEW shall merely inform the Customer of the technical characteristics of the replacement unit and will not assess its full compatibility across all conceivable technical characteristics.
 - (10) If the Customer cannot comply with the above duties to participate on its own, because the service was not provided at its site but at the location of a third-party (such as the end-user), the Customer must oblige to the third-party to provide the support services described above.

§ 6 Transport and insurance when providing the service at the SEW plant

- (1) Unless stipulated otherwise in writing, any transportation of the service item to and from the plant, including packing and loading if required, at the request of the Customer will be billed to the Customer. Otherwise, the Customer may deliver the service item to SEW at its cost and collect the item from SEW after the service is completed.
- (2) The Customer shall bear the transportation risk.
- (3) At the Customer's request, insurance coverage will be taken out for transportation to and (if needed) from SEW plant at its cost to cover insurable transportation risks such as theft, breakage, fire.

- (4) There will be no insurance coverage during the period the service is provided at the SEW plant. The Customer must ensure the continuance of existing insurance coverage for the service item, such as fire insurance, mains water insurance, storm insurance and machine breakage insurance. It is only at the explicit request of and at the Customer's cost that insurance coverage for these risks can be arranged.
- (5) If the Customer is in delay in taking delivery of the service item, SEW is entitled to charge the Customer for storage at its plant. At SEW's discretion, the service item may also be stored elsewhere. The costs and risk of storage shall be borne by the Customer.

§ 7 Period of performance, delayed performance

- (1) Service schedules are based on estimates and are therefore not binding.
- (2) The Customer can demand that the service be performed within a binding period of time, which must be designated as binding, only if the scope of the work has been precisely defined.
- (3) The binding period shall be deemed to be have been complied with if the service item is ready for delivery to the Customer, or for testing if testing is stipulated under the agreement, at the time the period expires.
- (4) If additional or extended orders are subsequently placed, or if there is additional work required, the period shall be extended accordingly.
- (5) If there is a delay in providing services due to measures such as industrial disputes, especially strikes and lockouts, or due to circumstances that cannot be attributed to SEW, the deadline will be appropriately extended provided such obstacles have a demonstrably significant effect on the provision of the service.
- (6) If the Customer accrues losses as a result of delay by SEW, the Customer shall be entitled to claim liquidated damages for the delay. This shall be 0.5% for each full week of delay, to an overall maximum of 5% of the service price for that part of the service item that could not be used in time as a result of the delay. If the Customer sets an appropriate deadline after the due date for SEW to provide the service, taking any legal exceptions into account, and the deadline is not met, the Customer is entitled to withdraw from the agreement within the framework of statutory provisions. If called upon to do so by SEW, it must inform SEW within a reasonable period of time whether it plans to make use of its right of withdrawal. Any additional claims due to the delay shall be subject exclusively to § 11.

§ 8 Acceptance

- (1) The Customer is obligated to accept the services as soon as it is notified of their completion and any contractually stipulated testing of the service item is complete. If the service has not been performed as stipulated in the agreement, SEW must remedy the defect. This does not apply if the defect is irrelevant to the Customer's interests or is due to a situation attributable to the Customer. In case of minor defect, the Customer cannot refuse to accept the work performed.
- (2) If acceptance is delayed and SEW is not responsible for the delay, acceptance will be deemed to have taken place two weeks after the Customer has been notified that the services have been successfully completed.
- (3) SEW's liability for visible defects shall be excluded once acceptance is complete, provided the Customer has not reserved the right to assert a claim for a specific defect.

§ 9 Retention of title, extended lien

- (1) SEW reserves ownership of accessories, replacement parts and replacement units used until all payments stipulated in the service agreement have been received. Additional arrangements for providing security can be made.
- (2) For its receivables under the service agreement, SEW is entitled to a lien on the service item that is in its possession as a result of the agreement. The lien may also be enforced because of claims from supplies and services rendered earlier, provided these are associated with the service item. The lien shall be applicable to other claims under the business relationship only if these are undisputed or have become legally binding.

§ 10 Warranty

- (1) In the case of work performances (*Werkleistungen*), the Customer shall be entitled to claim subsequent performance if there are defects. SEW will have the option to either cure the defect or re-perform the service that was defective. The Customer shall grant SEW the time and opportunity to effect subsequent performance. If inappropriate changes are made or maintenance is performed by the Customer or a third party without prior approval from SEW, SEW shall no longer be liable for any consequences. The burden of proof for the appropriateness of the changes or maintenance work shall lie with the Customer. The Customer shall have the right to remedy the defect itself or appoint a third party to perform any necessary repairs in urgent cases only. Such defects must represent a threat to operational safety or cause unreasonably excessive damages, and the Customer is obligated to inform SEW immediately of the same. Any expenses associated with such repairs can be submitted to SEW for reimbursement. Goods or parts which the Customer alleges are defective shall be returned to SEW only when SEW requests the Customer to do so and, if necessary, properly packaged with a packing slip indicating the order number.
- (2) The Customer must promptly inform SEW of any defects detected.
- (3) In the event defects are to be remedied, SEW agrees to bear all expenses incurred in the remedy of the defect, particularly transportation, freight, labor and material costs, as long as such costs do not increase due to the fact that the goods or parts had been brought to a location other than the place of performance of service, unless the transport was in accordance with the intend use.
- (4) In the event subsequent performance proves unsuccessful, the Customer shall be entitled to reduce the remuneration agreed upon or to withdraw from the agreement.
- (5) Any damages caused for any of the reasons listed below and for which SEW is not held responsible as a breach of duty do not constitute a right to claim under warranty: Inappropriate or improper use after passing of risk, particularly excessive use, incorrect assembly or startup by the Customer or third party despite the provision of appropriate assembly instructions, natural wear and tear, incorrect or negligent handling, unsuitable operating material, replacement materials, defects in construction work, non-observance of operating instructions, unsuitable operating conditions, particularly unsuitable chemical, physical, electromagnetic, electrochemical or electrical influences, climatic or environmental influences as well as excessively high or low ambient temperatures, subsequent alterations of the service provided.

- (6) If the service consists of creating or modifying software, the following provisions shall also apply:
 - a) Only deviations from the agreed characteristics that are proven and reproducible by the Customer shall be considered software defects. It shall not be considered a defect if the deviation does not occur in the last version of the software provided to the Customer and it is reasonable for the Customer to use such version.
 - b) There shall be no warranty claims for defects or damages that appear or arise due to special external influences that have not been presumed under the agreement.
 - c) There shall be no warranty claims in case of changes to the software by the Customer or by third parties and the consequences thereof.
 - d) There shall be no warranty claims if the software provided or created is not compatible with the data processing environment used by the Customer.
 - e) A defect shall be remedied either at the Customer's location or at the SEW plant, at SEW's option. If SEW chooses to remedy the defect at the Customer's location, the Customer must provide hardware and software and ensure other operating conditions (including computing time required) with appropriate operating personnel. The Customer must provide SEW all required documentation and information that is in its possession for remedying the defect.
 - f) In creating the software as stipulated in the agreement, SEW merely implements the Customer's functional specifications. SEW does not therefore assume any liability if the use of software created by it violates any patents or utility models of a third party. The Customer bears the risk that the object operated by using the software or that any process using the software violates any patents or utility models of a third party. SEW does, however, warrant that the software itself is free of any third-party copyrights.
 - g) The Customer is responsible for proper backups of its data.
 - h) The Customer is responsible for testing the software created and/or modified by SEW thoroughly before moving it into production.

§ 11 Liability for damages and reimbursement of expenses

- (1) SEW shall be liable without limitation for any damages resulting from intentional or grossly negligent breach of duty as well as culpable injury to life, body or health unless governed otherwise by applicable laws.
- (2) In case of gross negligence on the part of non-managerial employees (*nicht leitende Angestellte*), SEW's liability shall be limited to property damage and pecuniary loss deemed typical within the scope of this agreement and which can be reasonably foreseen.
- (3) In case of minor negligence, SEW shall be liable for property damage and pecuniary loss only if there is a violation of significant contractual obligations. Here too, SEW's liability shall be limited to property damage and pecuniary loss deemed typical and foreseeable within the scope of this agreement.
- (4) All other liability for damages other than that regulated in the preceding paragraphs is excluded, irrespective of the legal nature of the claim asserted. This applies in particular to tortious actions (*unerlaubte Handlungen*). This shall not affect any unlimited liability in accordance with the German Product Liability Act (*Produkthaftungsgesetz*).

§ 12 Statutory limitation

All claims of the Customer, on any legal ground whatsoever, shall become barred by limitation after 24 months from the commencement of the statutory period of limitation. For services performed on non-SEW products, namely service items not produced and/or marketed by SEW or a company associated with SEW, the warranty period shall be as well 24 months, if not agreed differently in writing. For compensation claims under § 11 (1) as well as in case of unrestricted liability under the provisions of the German Product Liability Act (*Produkthaftungsgesetz*), however, the statutory period of limitation shall apply in each case. In cases where SEW provides the services at a building and/or at a work whose success depends on planning and supervision services for the same and causes its defectiveness as a result, statutory periods of limitation shall also apply.

§ 13 Rights of use to the software

If the service consists of the creation of software, the Customer shall receive the worldwide, non-exclusive, unlimited, irrevocable, unrestricted and transferrable right of use to the same. SEW reserves the right to continue to use, or to grant additional rights of use to, any of the services it provided as part of the software creation process for its own business purposes, including services to third parties.

§ 14 Payment of damages by the Customer

For services provided outside SEW's plant, if equipment or tools provided by SEW are damaged or lost and SEW is not responsible, the Customer is obligated to pay for this damage. Damages that can be traced to normal wear and tear shall be excluded.

§ 15 Export Control Compliance

- (1) Customer and SEW acknowledge that the supply and/or service or parts thereof, in particular the export and transit of goods, the transfer of technology, trade and brokering, technical support or the provision of economic resources may be subject to EU-, German-, US- or other country-specific export control laws and regulations (e.g. restrictions against countries, persons, use et al.) and financial sanctions (afterwards named as Export Control Regulations).
- (2) Customer and SEW shall comply with all applicable Export Control Regulations. This includes in particular any regulations of the country of destination. Customer and SEW acknowledge that the supply and/or service affected by such Export Control Regulations can be subject to authorization or is prohibited. In the event that any applicable Export Control Regulation would prevent SEW or the Customer not only temporarily from complying with this Agreement, then each Party shall have the right to cancel the affected supply and/or service or the Agreement in whole or in part.
- (3) Delays caused by licensing procedures by competent export control authorities shall extend the time of performance accordingly; this applies in particular to delivery times.
- (4) Any claims for compensation in connection with the refusal or delay of an application with respect to Export Control Regulations are excluded, unless they concern damages from the injury of life, body or health or unless the damage was caused intentionally or gross negligently by any Party.

- (5) Customer and SEW undertake to cooperate in any authorisation/licensing procedures. Upon request, each Party shall immediately provide relevant information/documents (e.g. end-use certificates) that are required in the application process to the other Party.

§ 16 Place of performance, place of jurisdiction and applicable law

- (1) Unless stated otherwise in the order confirmation, SEW headquarters in Bruchsal, Germany is the place of performance.
- (2) If the contractual partner is a merchant (*Kaufmann*), the place of jurisdiction for any disputes that arise directly or indirectly from the contractual relationship shall be Bruchsal, Germany.
- (3) The provisions of this agreement shall be subject to German law exclusively, even if goods and services are performed in other countries. The United Nations Convention on the International Sale of Goods (CISG) shall not apply.



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