

I. Scope

The following General Terms and Conditions for Services (hereinafter: "T&C for Services of the ApexToolGroup") apply in respect of the performance of services by the ApexToolGroup to a contract partner (hereinafter: "Customer").

The services rendered by the ApexToolGroup encompass the following in particular:

- o Safety checks on equipment,
- o Maintenance and overhaul,
- o Calibrations of calibration equipment and tools,
- o Services in the context of software maintenance,
- o Technical support and on-call service,
- o Repairs,
- o Assembly and installation,
- o Commissioning the equipment and software,
- o Training.

The services to be rendered in an individual case and the costs incurred shall be governed by the separate service contract entered into between the ApexToolGroup and the Customer.

II. General Provisions

1. Conclusion of the Contract

(1) Quotations of the ApexToolGroup are subject to change. The service contract is only concluded when the ApexToolGroup has given its order confirmation. The order confirmation is authoritative with regard to the content of the service contract.

(2) The T&C for Services of the ApexToolGroup shall apply exclusively. The ApexToolGroup does not accept terms and conditions of the Customer contradicting or deviating from the T&C for Services of the ApexToolGroup unless the ApexToolGroup explicitly agreed to the application thereof in writing or agreed accordingly in the service contract.

(3) The T&C for Services of the ApexToolGroup shall also apply with respect to all future services for the Customer.

(4) Illustrations, drawings, software, calculations and other documents shall remain the property of the ApexToolGroup except to the extent explicitly otherwise provided in the service contract. This also applies in particular to those documents marked "confidential". The Customer shall require the explicit consent of the ApexToolGroup in writing prior to disclosing them to third parties.

2. Remuneration

(1) The services rendered by the ApexToolGroup under the service contract shall be invoiced on a time and material basis unless otherwise explicitly provided in the service contract. The hourly rates shown in the ApexToolGroup Price Lists for Services valid on the date on which a service contract is entered into plus the applicable rate of Value Added Tax shall apply. Travel costs and expenses shall be charged separately in accordance with the ApexToolGroup Price List for Services. The Customer may request a copy of this ApexToolGroup Price List for Services from the ApexToolGroup at any time.

(2) The employees engaged by the ApexToolGroup to render services shall document the scope and duration of the services they render.

(3) The ApexToolGroup reserves the right to amend the ApexToolGroup Price List for Services also with effect on the service contract entered into in an individual case. The changes to the ApexToolGroup Price List for Services shall become effective on the Customer 4 weeks after the date of notification thereof to the Customer (date of the notification).

3. Terms of Payment

(1) Payments owed by the Customer shall be due within 14 days of the invoice date without deduction unless otherwise agreed in the relevant service contract or otherwise agreed between the ApexToolGroup and the Customer. Deduction of a cash discount requires a special agreement in writing. The ApexToolGroup does not accept bills of exchange.

(2) Payments by the Customer only have a debt-discharging effect if they are made to the ApexToolGroup.

(3) With effect from the due date of a claim due from the Customer, the ApexToolGroup has the right to demand interest in an amount 5% above the base rate of interest p.a.

(4) If the Customer should be in default of payment, the ApexToolGroup has the right to demand default interest pursuant to Sec. 288 (2) German Civil Code (BGB) in an amount 8% above the base rate of interest p.a. in lieu of the interest from the due date.

(5) The Customer only has a right of setoff with regard to the ApexToolGroup if its counterclaims are undisputed or have been declared final and absolute.

(6) The Customer is only authorized to exercise a right of retention if its counterclaim is undisputed by the ApexToolGroup and based on the same contractual relationship. Even if the parties have an ongoing business relationship, each individual service contract has to be regarded as a separate contractual relationship.

(7) If a petition is filed for insolvency proceedings to be opened in respect of the Customer's assets, or if the Customer is in default of payment of compensation due to the ApexToolGroup for over 30 days, on request by the ApexToolGroup, the Customer shall pay in advance for the services to be rendered by the ApexToolGroup under the service contract.

4. Obligations of the Customer

(1) Before the services are commenced, the Customer shall name one of its employees as the responsible contact person for the ApexToolGroup. This responsible contact person must

- o be available at the time, i.e. he or she must be available at short notice at any time during performance of the services,
- o be authorized by the Customer to take decisions with effect on the services to be rendered under the relevant service contract.

(2) The Customer shall warrant access free of charge to all the devices, equipment and information required by the ApexToolGroup for performance of the services.

(3) Save as otherwise agreed in the relevant service contract, the Customer warrants that the employees engaged to perform the services by the ApexToolGroup shall have unrestricted access to those places to which access is pertinent for performance of the services, from 08:00 a.m. to 05:00 p.m. on working days apart from Saturdays.

5. Performance of the Services

(1) The ApexToolGroup shall perform the services owed under the relevant service contract from 08:00 a.m. to 05:00 p.m. on working days apart from Saturdays. The ApexToolGroup is not obliged to be active outside these business hours. If work is conducted outside the afore-stated business hours, the ApexToolGroup is entitled to charge a respective surcharge in accordance with the valid ApexToolGroup Price List for Services, unless otherwise agreed in the service contract.

(2) When the ApexToolGroup employees perform services owed by the ApexToolGroup under the relevant service contract they shall not be subject to the Customer's instructions.

(3) The ApexToolGroup is entitled to avail itself of third party services and to award subcontracts to perform the services owed under the relevant service contract.

(4) Save as explicitly otherwise agreed in the individual service contract, the ApexToolGroup is free to determine the number of employees simultaneously engaged by the ApexToolGroup.

(5) The ApexToolGroup has the right to use, also in future, all the knowledge it obtains whilst performing the service contract, provided that the terms of Section 9 below "Secrecy" are complied with.

6. Warranty

The ApexToolGroup warrants that the services to be rendered by the ApexToolGroup will be performed with care. The services shall be performed in accordance with the description of the relevant service contract agreed. If the services rendered relate to work performance, then the ApexToolGroup shall provide a warranty for a period of 12 months after the date of acceptance. The ApexToolGroup shall similarly provide a warranty for spare parts for a 12-month period with effect from the delivery date or the date of acceptance, if they are processed in the context of work performance.

7. Liability

Save as otherwise provided in the relevant service contract, claims for damages are excluded for whatsoever legal ground. The ApexToolGroup shall only be liable for damages:

- (1) in case of intent;

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Apex Tool Group GmbH (hereinafter referred to as: ApexToolGroup),
Industriestrasse 1, D-73463 Westhausen, Germany



- (2) in case of gross negligence by the ApexToolGroup or by a statutory representative or a person engaged in performance of its obligations [Erfüllungsgehilfe];
 - (3) in case of culpable injury to life and limb and damage to health;
 - (4) in the event of defects fraudulently concealed by the ApexToolGroup;
 - (5) in the context of any guarantee promise;
 - (6) in the event of defects in the goods delivered insofar as the Product Liability Act provides for liability for personal injury and property damage in respect of privately used items.
 - (7) in the event of a culpable breach of material contractual obligations (obligations which, when performed, make the proper execution of the contract altogether possible and which the Customer may regularly rely on compliance with), the ApexToolGroup is also liable in the event of a slightly negligent breach by the ApexToolGroup or a statutory representative or a person engaged in performance of its obligations; this is then, however, limited to reasonably foreseeable damage typical of the type of contract.
- The limitation of liability applies *mutatis mutandis* to claims for compensation of expenses pursuant to Sec. 284 BGB.

In the event of the destruction and/or loss of data, the liability of the ApexToolGroup shall be limited to the expenses, which would be required for the reconstruction thereof if the Customer conducts proper backup.

8. Term of the contract

(1) The term of the contract is governed by the relevant service contract; ordinary termination prior to expiration of this agreed term is excluded.

(2) The extraordinary right of termination is unaffected by the foregoing. The ApexToolGroup has the extraordinary right of termination for cause,

- o if it transpires that in order to enter into the contract, the Customer misrepresented or concealed important circumstances and if, had the ApexToolGroup known of and reasonably assessed the correct circumstances, it would have refrained from entering into the contract,
- o in the event of a material breach of contract by the Customer,
- o if a petition for the opening of insolvency proceedings is filed with respect to the Customer's assets,
- o if the Customer is in default of payment of the agreed compensation for a service for longer than 30 days.

9. Secrecy

(1) The contractual parties undertake to treat as confidential for an unlimited period of time all of the information of the other party notified to the other respective party as being confidential, which it obtains access to in connection with the execution of a service contract, and not to record such information or disclose it to third parties or exploit it in any way whatsoever— except to the extent required to achieve the contractual purpose.

(2) Subsection 9 (1) above shall not apply to information which the recipient already provably knew on the date when the contract was entered into or which it obtains knowledge of from third parties thereafter without there being a violation of any non-disclosure agreement or of provisions of statute or governmental orders; which was public knowledge on the date when the contract was entered into or become public knowledge thereafter, except to the extent that this is based on a breach of this contract; which has to be disclosed due to legal obligations or by order of a court or governmental authority. Insofar as it is permissible and possible, the recipient obliged to disclose must notify the other party in advance and give that party the opportunity to take action against such disclosure.

10. Industrial Property Rights

(1) The ApexToolGroup shall release the Customer from a claim asserted by third parties ensuing from a direct infringement of third party rights and property rights through the performance of the respective services, provided that the Customer confirmed to the ApexToolGroup in writing immediately after claims were asserted against it by third parties due to the infringement of rights or property rights that

- o the ApexToolGroup may fully participate in defending against and/or settling legal action,
- o the Customer has not made and is not making any concessions in connection with the legal action and
- o the Customer gives the ApexToolGroup, on request, every reasonable support during the course of defending its rights.

(2) Subsection 10 (1) above shall not apply insofar as the infringement of rights and property rights is based on an instruction given by the Customer or is the consequence of the use of hardware and/or software or other materials provided by the Customer. In this case, solely the Customer shall be liable for claims asserted by third parties resulting from a direct infringement of third party rights and property

rights and it shall release the ApexToolGroup from a claim asserted by such third parties.

(3) The Customer warrants that it is authorized to have the activities conducted that it has engaged the ApexToolGroup to carry out and that it thus rules out any infringement of third party rights and property rights based on this activity.

(4) If, during the course of the activity conducted by the ApexToolGroup under a service contract, a product should be created that is subject to copyright protection, the parties mutually agree that solely the ApexToolGroup is to be considered to be the author to this extent and that the ApexToolGroup has the exclusive right to assert property rights.

11. Enticing Employees, Contractual Penalty

Based on the special professional knowledge required for the activity at the ApexToolGroup, the ApexToolGroup is dependent on having its employees permanently available. The particularly close contact between the employees and the Customer in connection with conducting orders poses the special risk of such employees being enticed away from the Apex Tool Group. The Customer therefore undertakes, for the period of the business relationship between the Customer and the ApexToolGroup and for a 12-month period following termination of these business relationships, not to entice any employee away from the ApexToolGroup GmbH, who was or is fully or partially involved in rendering a service, in order to engage him either in an employed or self-employed position. In the event of a contravention of this provision, a contractual penalty amounting to three times the gross monthly salary of the employee enticed away is agreed. The Customer has the right to evidence that the damage actually incurred by the ApexToolGroup was lower than this. The ApexToolGroup has the right to demand higher damages if it can provide evidence.

12. Amendments to the Contract

Save as otherwise explicitly agreed in the relevant service contract or these T&C for Services of the ApexToolGroup, solely the executive bodies of the ApexToolGroup or other representatives with written authority from the ApexToolGroup have the right to amend the content of the relevant service contract or of these T&C for Services of the ApexToolGroup. Any contractual amendments – including amendments to this provision – must be made in writing in order to be effective and must be set forth in a document explicitly entitled "Amendments to the service contract between the Customer and the ApexToolGroup dated DD.MM.YY".

13. Use of Personal Data

The Customer authorizes the ApexToolGroup to use and process for its own company purposes personal data as defined in the German Data Protection Act (BDSG) that are acquired from the business relationship with the Customer.

14. Severability Clause

If a provision or part of a provision of these T&C for Services of the ApexToolGroup or of the agreements additionally entered into between the contracting parties in an individual case is ineffective, the effectiveness of these T&C for Services of the ApexToolGroup and of the agreements additionally entered into between the contracting parties in an individual case shall not be otherwise affected thereby. In the event of dispute, an ineffective provision shall be replaced by a legally permissible provision approximating most closely the content of the ineffective provision and corresponding to the best commercial interests of the parties in the ineffective provision.

15. Choice of law, Jurisdiction and Venue

(1) Solely German law shall apply between the contracting parties. The application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980 (CISG) is excluded.

(2) If the Customer is a businessperson, the courts of Stuttgart/Germany shall have jurisdiction and venue over disputes between the parties arising from or in connection with this Agreement. The ApexToolGroup has the right to take legal action at the court with general jurisdiction over the Customer. Agreements on arbitration or jurisdiction contained in the service contract shall prevail over this Agreement.

III. Special Provisions for Work Performance

1. Scope

If the services rendered by the ApexToolGroup relate to work performance, in particular assembly, installation, commissioning and repair work at the facility of the Customer or of the ApexToolGroup (hereinafter referred to as "Work Performance"), the following provisions shall apply in addition to those of Section I and II above.

2. Dates

- (1) With regard to conducting the Work Performance, solely the dates set forth in the order confirmation shall be authoritative, unless the parties explicitly agree on different dates in writing at a later date.
- (2) Compliance with these dates is contingent upon punctual and proper performance of the obligations of the Customer.
- (3) In the event of changes to the service contract, the dates originally stipulated shall become ineffective.
- (4) If the ApexToolGroup is in default of execution of the Work Performance, after having set a reasonable additional period for performance to no avail, the Customer shall have the right to withdraw from the contract. If performance of the contract is impossible due to circumstances attributable to the ApexToolGroup, the Customer has the right to withdraw from the contract.
- (5) Subsection II 7 shall apply with regard to any liability of the ApexToolGroup due to default.
- (6) Failure to comply with agreed dates due to force majeure, catastrophes, war, insurrection, lawful strikes and lockouts in the parties' own operations, strikes and lockouts in storage depots, suppliers' operations or in the field of means of transport, whether they relate to the territory of the Federal Republic of Germany or to territories from and/or through which delivery is performed to the ApexToolGroup, is not attributable to the ApexToolGroup. The ApexToolGroup has the right to conduct the Work Performance owed under the service contract after the reason for the impediment has ceased. The Customer shall be informed immediately of the existence of such impediments and of the anticipated duration of the delay. Under such circumstances, the Customer has no rights or claims because of the delay.
- (7) Subsection III 1 (6) above shall apply *mutatis mutandis* to delays caused by conditions imposed by governmental authorities or by delayed delivery by suppliers.
- (8) Insofar as the default is merely based on a culpable breach of a non-material contractual obligation, the Customer merely has the right to claim flat rate compensation for default for each commenced week of delay, amounting to 0.3% of the contract value of that part of the Work Performance affected, but not exceeding a maximum amount of 3% of the contract value of the affected part of the Work Performance.

3. Acceptance

- (1) The ApexToolGroup shall hand over the Work Performance under the service contract in a state that is functional and tested and as described in the service contract. If the Work Performance cannot be handed over due to the nature of the Work Performance, notification to the effect that the Work Performance is ready for acceptance shall replace such handover.
- (2) After the Work Performance has been handed over, the Customer's contact person (cf. Subsection II. 4 (1)) is obliged to declare its acceptance or its acceptance subject to a reservation or its rejection of the Work Performance within five working days. To this end, the contact persons responsible shall examine the functional compliance and operating capability of the Work Performance.
- (3) If the Customer's contact person responsible does not declare its acceptance or only does so subject to a reservation, then the Customer's contact person responsible shall advise the ApexToolGroup in writing of the reasons for such refusal of acceptance or for acceptance subject to reservation with reference to the description of the Work Performance in the order confirmation, within a maximum period of five working days after expiry of the time limit for acceptance set forth in paragraph 2 above and – insofar as possible – describe the alterations required for acceptance without reservation. The ApexToolGroup shall carry out the alterations, insofar as it owes such a service under the service contract, and resubmit the rectified Work Performance for acceptance within 30 calendar days of receipt of the Customer's written demand.
- (4) If the Customer declares its acceptance of the rectified Work Performance, then such declaration complies with the precondition for acceptance within the meaning of Section 640 BGB. If the Customer again only declares its acceptance subject to a reservation or refuses acceptance, then the persons responsible at both contracting parties are obliged to inform their own executive bodies of this circumstance without delay. The executive bodies of the Customer and of the ApexToolGroup shall endeavor to reach an agreement within ten working days.
- (5) If the Customer still refuses acceptance after the second rectification, the Customer may declare its acceptance subject to a reservation whilst reducing the claims of the ApexToolGroup. Such acceptance declared subject to a reservation is then deemed to constitute acceptance within the meaning of Section 640 BGB. The

ApexToolGroup may refuse the Customer's demand for another subsequent rectification.

4. Warranty

- (1) Within the context of warranty, the ApexToolGroup shall remedy defects in the Work Performance after respective notification by the Customer. To this extent the ApexToolGroup shall, at its election, remedy the defect by rectification at the Customer or at the ApexToolGroup, by substitution of a defective part or by recreation. If such a defect remedy should still fail at the second attempt, or if the ApexToolGroup should fail to comply with its obligation to remedy the defect within a reasonable time period and after having been afforded an opportunity which is reasonably acceptable for the ApexToolGroup to remedy the defect, the Customer has the right to demand a reasonable reduction in the agreed price or to withdraw from the contract.
- (2) Insofar as the ApexToolGroup conducts programming work under the service contract, the ApexToolGroup does not assume any warranty for the hardware of the licensee being suitable for the installation and operation of the results of the programming work.
- (3) Defects must be notified by registered letter within 5 working days of discovery thereof. The notification of the defect must contain as detailed a description as possible of the defects claimed. If the period for notification of defects expires unused, the Work Performance shall be deemed approved with regard to the respective defect.
- (4) The warranty does not encompass the remedy of faults due to normal wear and tear, external influences or operating error. It ceases insofar as the Customer undertakes changes or has changes undertaken by third parties without the prior consent of the ApexToolGroup unless the Customer evidences that the defects concerned were not caused by such changes either in whole or in part and that the remedy of the defect is not made difficult by the change.