

General Service Terms (ASB) of RÖHM GmbH, Sontheim

1. Validity

1.1 These ASB form the basis for all business transactions with our customers, which refer to the repair or maintenance of the products manufactured or delivered by us insofar as these customers concern entrepreneurs within the meaning of Section 14 BGB [German Civil Code].

1.2 Contradictory, supplementary contractual terms and conditions of the customer or those which deviate from these ASB will not be recognised.

1.3 Within the framework of a regular business relationship these ASB will also be valid after the effective inclusion for the first time if we do not explicitly refer hereto in follow-up transactions.

1.4 Insofar as the ASB do not include any regulations, the General Terms of Sale and Delivery of RÖHM GmbH shall apply.

2. Offer and conclusion of the contract

2.1 Our offers are – insofar as not explicitly marked as binding – without obligation and merely to be understood as invitatio ad offerendum. The right is reserved to an interim sale.

2.2 Contracts with us will only be concluded with our written acceptance declaration or – if such is not carried out – by our delivery and service. Changes and supplementations to the contracts concluded with us require a written form.

2.3 If the object of maintenance or repair was not delivered by us then the customer has to point out existing industrial property rights with regard to the object if we are not responsible for any fault the customer shall indemnify us from possible claims of third parties from industrial property rights.

2.4 Insofar as we are responsible for negligence Par. 2.3 shall apply accordingly.

3. Contractual parts

The offer and the product list respectively available to us and the customer are a part of the contract.

4. Technical documents and plans

4.1 All rights to our offer documents as well as documents, which have been handed over, shall remain reserved.

4.2 The customer shall recognise our rights and will not reproduce the documents in full or in part, not make these accessible to third parties or use these for any other purpose than that for which they were handed over to him without our prior written authorization.

5. Scope of services, maintenance, condition of device, repair

5.1 Decisive for the scope of our delivery and service is our binding offer or – if such is not available – our written declaration of acceptance. Both individual services can be agreed, which are principally to be remunerated according to Subclause 12.1, as well as the service packages described under Subclause 5.2, which are to be remunerated according to 12.2 respectively 12.3.

5.2 The following activities are a part of our service obligation with the processing of service packages:

5.2.1 Commissioning of service

- skilled execution of the necessary commissioning of the clamping device and control at the place of installation in line with the regulations of the manufacturer.
- assembly work over the course of the commissioning together with the machine manufacturer
- first instructions and operator training
- we will invoice separate requests for the training with regard to the maintenance and use as separate work.

5.2.2 Inspection service

Skilled execution of the necessary inspection of the clamping device and control at the place of installation in line with the regulations of the manufacturer. Insofar as additional maintenance or repairs become necessary at the customer's request or owing to special loads, these are to be remunerated separately by the customer.

5.2.3 Maintenance service

Skilled execution of the necessary maintenance of the clamping device and control at the place of installation in line with the regulations of the manufacturer. Insofar as additional repairs become necessary at the customer's request or owing to special loads, these are to be remunerated separately by the customer.

5.3 The service obligation shall begin with the purchase or conclusion of a service package. With the purchase or conclusion of a service package after the expiry of the warranty period the service obligation of RÖHM shall only refer to such products, which are capable of use and free of defects at the time of the conclusion or purchase of the service package. This is to be ensured by an inspection of the products; if defects are determined these are to be remedied before the start of validity of the service package by a necessary repair liable to costs; this repair is not part of the service package.

5.4 Our service obligation shall not include carrying out work on products and accessories, which was(were) not delivered by us.

5.5 Our service obligation shall lapse if the product was not subjected to the function and safety tests according to the details in the operating instructions or third parties have carried out work on the products concerned without our prior written consent unless this work has no disadvantageous influence on the provision of our service. The same shall apply if the products have been damaged due to causes for which we are not responsible, for example by water, fire, stroke of lightning or other implications of force majeure as well as with improper treatment by the customer or third parties.

5.6 Depending on the use and type of the product an overhaul may be necessary after longer use. This is the case if the costs of a repair exceed the current value of the product. Overhaul within this meaning is also the necessary new acquisition of a product in the absence of available spare parts. Overhauls are not part of the service obligation within the service packages. If we are of the opinion that a products that is to be maintained by us under a service package requires an overhaul, we will inform the customer hereof by stating the current value estimated by us and submit an offer for the overhaul to the customer with a remuneration calculated according to 12.1.

6. Repair/service that cannot be carried out

6.1 The services provided concerning the details of a cost estimate as well as the further incurred and to be proven work (fault search time equal to working hours) will be invoiced to the customer if the repair cannot be carried out due to reasons for which RÖHM GmbH is not responsible, in particular because the fault for which a complaint will be made did not occur during the inspection, spare parts cannot be procured, the customer culpably missed the agreed date or the contract was terminated during the execution.

6.2 The object of repair only needs to be restored to the original condition again at the explicit request of the customer against reimbursement of the costs unless the undertaken work was not necessary.

6.3 In case of a repair that cannot be carried out RÖHM GmbH shall not be liable subject to sentence 2 for damages to the object of repair, the breach of contractual secondary obligations and for damages, which were not suffered to the object of repair itself, no matter to which legal grounds the customer refers. RÖHM, on the other hand, will be liable in case of wilful intent, with gross negligence of the owner / the executive bodies or executives as well as with the culpable breach of essential contractual duties. Such contractual obligations are deemed essential, the fulfilment of which makes the proper execution of the contract possible at all and the compliance with which the contractual partner may as a rule rely and depend upon.

7. Duration of the service

7.1 The details with regard to the duration of repairs and services are based upon estimates and merely serve as information and a first estimate by the customer. They are therefore not binding if they have not been explicitly marked as binding.

7.2 In case of subsequently placed additional and extension orders or with necessary additional repair work the agreed repair deadline shall be extended accordingly.

8. Obligations to provide assistance of the customer

8.1 The customer has to draw our attention to the statutory, official and company safety and other regulations applicable at the place of destination of our delivery and service, which refer to the delivery, the assembly and the operation.

8.2 The customer will inform us with or immediately after his order about possible special features of the place of installation, which may have an implication on the proper function of the products, in particular about the structural condition and the concrete operating environment.

8.3 The customer shall ensure – also during the warranty period according to Subclause 17.5 – a regular and skilled maintenance of the products delivered by us insofar as this was not taken over by us as per contract.

8.4 The customer shall dispose of the goods delivered by us at his own responsibility and at his own costs according to the respective valid regulations. We are not obliged to create a possibility for the return unless this would have been stipulated by law.

8.5 The customer has to support the repair / maintenance personnel with the execution of the repair at his own costs.

8.6 The customer has to take the special measures, which are necessary for the protection of persons and objects at the workplace. He also has to inform the repair managers about existing special safety regulations insofar as these are of significance for the repair personnel. He shall inform us in case of breaches of the repair personnel of such safety regulations. In case of serious breaches he can refuse the infringing party access to the repair location by mutual agreement with the repair manager.

8.7 The customer shall bear a supervisory and assistance obligation for the compliance with the statutory working time limits. Breaches are to be reported to RÖHM GmbH.

8.8 The customer is obliged to provide the reasonable and necessary technical assistance at his costs, in particular to:

- a) Provision of the necessary, suitable assistants in the number that is necessary for the repair and for the necessary time; the assistants have to follow the instructions of the repair manager. We do not assume any liability for the assistants. If a defect or damages were caused by the assistants owing to instructions of the repair manager, then the regulations of Sections 17 and 18 shall apply accordingly.
- b) Undertaking of all construction, bedding and scaffolding work including the procurement of the necessary building materials.
- c) Provision of the necessary devices and heavy tools as well as the necessary commodities and required materials.
- d) Provision of heating, lighting, operating power, water, including the necessary connections.
- e) Provision of necessary, dry rooms, which can be locked for the storage of the tool for the repair personnel.
- f) Protection of the repair place and materials against harmful influences of all kinds, cleaning of the repair place.
- g) Provision of suitable, theft-proof recreation rooms and work rooms (with heating, lighting, washing possibility, sanitary facilities) and First Aid for the repair personnel.
- h) Provision of the materials and undertaking of all other acts, which are necessary for the adjustment of the object of repair and for carrying out a testing that is envisaged as per contract.

8.9 The technical assistance of the orderer must guarantee that the service can be started immediately after the arrival of our personnel and carried out without delay until the acceptance by the orderer. Insofar as special plans or instructions of RÖHM are necessary, RÖHM shall make these available to the orderer in time.

9. Obligations of the customer to provide assistance in case of maintenance

9.1 The products are to be used as intended and according to their protection type and in line with the operating instructions together with their annexes.

9.2 In case of an agreement of one of the service packages described in Subclause 5, the customer will place the products that are to be installed, maintained or repaired into a faultless condition, capable of use before conclusion of the contract at his own costs if the products are not already in such a condition. If the customer does not properly satisfy this obligation either after a warning on our part and within the deadline we are entitled to accordingly cancel the contract or the delivery. Further claims for damages on our part shall remain unaffected.

9.3 If the customer uses the maintenance service interferences are to be reported to us immediately in writing, in detail and in an understandable manner.

9.4 Our employees and vicarious agents are to be granted the unimpeded and safe access to the products. In case of delays for which the customer is responsible he is obliged to remunerate the waiting times of our employees and vicarious agents resulting from the delay separately.

9.5 The customer shall refrain from commission third parties with the services during the term of a service agreement, which we have to provide according to the agreement or from performing this work himself.

9.6 The customer has to draw our attention to the statutory, official and company safety regulations and other regulations applicable at the place of destination of our delivery and service, which refer to the delivery, the assembly and the operation.

10. Inspection and acceptance

10.1 Services will be provided by us according to the guidelines of our quality control and deliveries inspected accordingly. If the customer requests further inspections then these are to be agreed in writing and paid by the customer. This shall relate e.g. to special tests for the acceptance.



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10.2 The customer undertakes to accept our services under this contract immediately after the report that they have been completed. Upon request he has to declare their acceptance in writing towards our employees or vicarious agents insofar as there is no essential defect. This is carried out by the signing of the service report.

10.3 Our services shall be deemed as accepted free of defects with the re-commencement of the operational use of the maintained or repaired product, in particular for production purposes, if no defects have been previously reported by the customer.

11. Cost details and cost estimate

11.1 The creation of the cost estimates is liable to costs if the execution of the repair is not approved.

11.2 The costs for a cost estimate amount to the flat rates fixed in the current price list.

11.3 If the repair cannot be carried out at these costs or if our employees or vicarious agents consider the execution of additional work to be necessary during the repair the customer's consent is to be obtained if the stated costs are exceeded by more than 15%.

12. Remuneration, maturity and terms of payment

12.1 Insofar as not otherwise agreed and there is no warranty case our services are to be remunerated according to the actual work requirement pursuant to our respectively valid general price lists. The time required by our employees will be settled in time sections of 15 min. In addition to the time required for the work that is to be performed in these cases the customer will pay the travelling and waiting times, overtime surcharges, expenses, travelling and accommodation costs as well as the costs of spare parts, materials subject to wear and tear and consumables and replacement part sets according to our prices lists or in line with the offer.

12.2 Insofar as a flat rate remuneration was agreed for a service package, our work and travelling costs and expenses are thus covered, not however the costs for waiting times, overtime at the customer's request, spare parts, materials subject to wear and tear and consumables, replacement parts sets as well as other accessories. Our work for if applicable necessary repairs is to be remunerated separately by the customer according to Subclause 12.1.

12.3 The prices for our services can be derived from the respective price list valid upon conclusion of the contract and are deemed ex works plus value added tax. The calculation basis for the remuneration is the one-shift operation, i.e. a use of the products up to 160 hours in a calendar month. A surcharge to the list price of 50% is charged for the two-shift operation, a surcharge of 100% for the three-shift operation. The above two rates shall only apply to the service packages described under Subclause 5.. If the customer requests assignments outside of our normal working hours (Mo - Fr, 6:30 am - 6:30 pm, a max. of 7 h per day) surcharges will be calculated according to the respective valid price list.

12.4 If our personnel and material costs are increased then we are entitled to adjust the contractual prices after the expiry of the first year up to a maximum of 5% above the price of the previous year. Price changes will be announced to the customer at least one month before the new contractual prices come into force. The customer is entitled to terminate the contract effective as of the time at which the new price would become valid for him for the first time.

13. Transport and insurance with the repair in the plant of RÖHM GmbH

13.1 The object for repair will be delivered by the customer to us at his costs together with the repair and service form and after execution of the repair collected by the customer again or return to him at the customer's costs.

13.2 The customer shall bear the risk of transport.

13.3 At the customer's request a shipment carried out by us will be insured at the customer's costs against the insurable transport risks, e.g. theft, breakage and fire.

13.4 No insurance cover exists during the repair time in our plant. The customer has to ensure the maintenance of the existing insurance cover for the object of repair e.g. with regard to fire, pipe water, storm and machine breakage insurance. Insurance cover can only be procured for these risks at the explicit wish and costs of the customer.

13.5 In case of delay of the customer with the take-over we can charge a storage fee for the storage in our plant. The object of repair can also be stored otherwise at our discretion. The costs and risk of the storage during the delay shall be for the expense of the customer.

14. Repair deadline

14.1. The details concerning the repair deadlines are based on estimates and merely serve for the purpose of information and first orientation. They are therefore not binding unless this is explicitly agreed.

14.2. The agreement of a binding repair deadline, which must be described as binding, can only be requested by the customer if the scope of the work has been precisely determined.

14.3. The binding repair deadline will have been adhered to if by the time that it expires the object of repair is ready for take-over by the customer, in the event of a contractually envisaged testing ready for its execution.

14.4. In case of subsequently placed additional and extension orders or with necessary additional repair work the agreed repair deadline will be extended accordingly.

14.5. If the repair is delayed due to measures within the scope of industrial disputes, in particular strike and lock-out as well as the occurrence of circumstances, which were not caused by us, a reasonable extension to the repair deadline will occur insofar as such impediments have as proven a substantial influence on the completion of the repair; this shall also apply if such circumstances occur after we are in default.

15. Ban on offsetting and assignment; subcontractors

15.1 The customer is only entitled to offsetting in the event of undisputed claims or claims which have been declared final and binding. This shall not apply if the customer asserts claims in the reciprocal relationship, in particular claims for defects.

15.2 The assignment of rights of the customer from contractual relationships with us presumes our prior consent in order to be valid. This shall not apply insofar as Section 354 a HGB [German Commercial Code] applies.

15.3 We are entitled to use third parties in order to fulfil our contractual obligations.

16. Reservation of title

16.1 The goods delivered by us shall remain our property until the payment of all of our claims against the customer, no matter for what legal grounds, also future ones. In case of current account the aforementioned property shall be deemed as security for our balance claim.

16.2 The customer may only sell within the framework of his customary business transactions and neither pledge, nor assign the goods as collateral. The customer hereby

assigns us for security of our payment claims against him, in the amount of the value of our delivery and service, all claims with all secondary rights, which he acquires against his buyer owing to such a sale.

16.3 As long as the property has not yet been assigned, the customer has to inform us immediately in writing if the delivered object is attached or is exposed to other interventions of third parties. Insofar as the third party is not in the position to reimburse us the court and out-of-court costs of an action according to Section 771 ZPO [German Code of Civil Procedure] the customer shall be liable for the loss incurred to us.

16.4. We undertake to release the securities to which we are entitled at the customer's request insofar as their value exceeds the claims which are to be secured by more than 20 %."

17. Warranty

17.1 Insofar as the creation of a work has been agreed and thus the law governing contracts for work and services applies the following shall apply: If our services are faulty then we are first of all entitled and obliged to subsequent satisfaction according to Section 634 No. 1 BGB. If the subsequent satisfaction finally fails the customer can according to Section 634 No. 3 cancel the contract or reduce the remuneration and according to Section 634 No. 4 BGB request damages. Claims of the customer for reimbursement of expenses according to Section 634 No. 2 BGB (self-execution) are excluded. Subclause 18 shall apply to claims for damages.

17.2 Insofar as we provide planning services without executing these and thus the law governing service contracts applies (e.g. in the event of a breach of our duties under Subclauses 5.2.1, 5.2.2 and 5.2.3) the following applies: If our services are faulty then we are first of all entitled and obliged to subsequent improvement. If the subsequent improvement finally fails the customer is entitled to damages according to Subclause 18.

17.3 Excluded from the warranty are damages as a result of natural wear and tear, faulty maintenance – insofar as we have not carried out this maintenance as per contract, failure to comply with operating equipment regulations, excessive use, unsuitable operating equipment, chemical or electrolytic influences, faulty construction and assembly work of third parties as well as other causes, for which we are not responsible.

17.4 The warranty shall lapse if the customer or third party makes changes or repairs to our services /products without our prior written consent unless the defect is not a result thereof.

17.5 Claims of the customer owing to defects of quality and title shall become statute-barred with the expiry of 12 months after the acceptance of the work or the knowledge of defects with the provision of planning services.

18. Liability

18.1 We shall be liable to an unlimited extent in case of wilful intent and gross negligence as well as with the injury to life, the body and the health as well as with the culpable breach of essential contractual obligations. Deemed as essential are such contractual obligations, the fulfilment of which makes the proper execution of the contract possible at all and the compliance with which the contractual partner may as a rule rely and depend on.

18.3 Incidentally our liability is excluded.

18.4 A liability according to the Product Liability Act remains unaffected.

18.5 The personal liability of our legal representatives and vicarious agents is limited as our own liability according to the aforementioned provisions.

19. Term of the contract; termination

19.1 Service agreements according to Subclause 5. shall come into force when signed by both parties and shall initially apply until the end of the calendar year, that follows the year in which the contract was concluded. The contractual relationship will subsequently be extended respectively by one further year unless it is terminated by one of the parties with a period of notice of 3 months to the end of the second or a following year. Contractual relationships can be terminated on the whole or only with regard to individual products.

19.2 The right to the extraordinary termination for an important reason remains unaffected.

20. Place of jurisdiction; applicable law

20.1 With all disputes ensuing from the contractual relationship if the orderer is a merchant, a legal entity under public law or a special fund under public law, the action is to be filed at the court that has jurisdiction for our headquarters. We are also entitled to file an action at the headquarters of the orderer.

20.2 The legal relationship is subject to the law of the Federal Republic of Germany. German international private law and the Viennese Convention of the United Nations concerning Contracts for the International Sale of Goods (CISG) will not apply.

RÖHM GmbH

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