

## **Service conditions for Döinghaus cutting and more GmbH & Co. KG**

(hereinafter known as Döinghaus)

### **I. General**

1. The following conditions apply to services rendered by Döinghaus, such as repairs, reconstructions, overhauls, start-ups, programming services, maintenance, retrofitting on machines and systems, and replacement of devices. Services are rendered solely based on the respective order confirmation, any special written agreements, and the conditions below. Other conditions, particularly purchase and ordering conditions, do not apply, unless Döinghaus has expressly consented to them in writing.
2. Offers made by Döinghaus are subject to change. Contracts are concluded by virtue of the Döinghaus order confirmation in text form.
3. If the object for which the service is rendered (hereinafter known as „service object“) is not delivered by Döinghaus, the customer must refer to existing industrial property rights regarding this object; if Döinghaus is not at fault, the customer exempts it from any third-party claims resulting from industrial property rights.
4. If the service to be rendered by Döinghaus, particularly through changes, extensions, updates etc., on a system or machine affects the country-specific operating permit, the customer is obliged to take the necessary measures, or have these taken, to re-obtain the respective permit. The customer bears the responsibility and costs for such measures.
5. Replacing and/or changing individual components or equipment items in machines or systems, which are labelled CE as per machinery directive 2006/42/EG, may render it necessary to check whether all safety-related requirements continue to be upheld. The customer is responsible for this check and re-establishing conformity if applicable. Döinghaus can only take responsibility for this based on a written agreement which specifically defines its responsibilities.

### **II. Infeasible services**

1. The services rendered to submit a quote, as well as the further resulting time and expenses (which must be documented) (troubleshooting time = working time) are charged to the customer if the service cannot be performed for reasons not attributable to Döinghaus, particularly because
  - the reported fault did not occur during inspection,
  - spare parts cannot be procured,
  - the customer has culpably missed the agreed deadline,
  - the contract has been terminated during execution.
2. The service object only needs to be returned to its original condition, with costs refunded, at the customer's express wish, unless the performed work was not required.
3. In the event of infeasible services, Döinghaus is not liable for damages caused to the object, breaches of additional contractual obligations, or damages not caused to the object itself, regardless of the legal grounds invoked by the customer.  
On the other hand, Döinghaus is liable for deliberate acts, gross negligence by the owner/administrative bodies or managers, and culpable breach of important contractual obligations.

In the event of culpable breach of important contractual obligations, Döinghaus is only liable for typical, foreseeable damages – except in cases of deliberate intent and gross negligence by the owner/administrative bodies or managers.

### **III. Cost information, quote**

1. Unless otherwise agreed, the services are charged by time, traveling costs and materials. Döinghaus' applicable material prices, rates and hourly rates apply.
2. If possible, the customer is advised the expected price for the service at the time of contract conclusion, otherwise the customer can set cost limits. If the service cannot be performed with these costs, Döinghaus immediately notifies the customer of this, insofar as the stated costs are exceeded by more than 15%.
3. If a quote with binding prices is requested prior to the service being rendered, the customer must expressly state this. Unless otherwise agreed, such a quote is only binding if it is submitted in writing. The services rendered to submit the quote are not charged to the customer, insofar as they can be used to ultimately render the actual service.

### **IV. Prices and payments**

1. Döinghaus is entitled to demand an appropriate advance payment in the event of contract conclusion.
2. VAT is charged to the customer at the legal rate.
3. Service charges must separately show the prices for parts, materials and other services used, as well as the prices for labour, and transport costs. If the service is rendered based on a binding quote, reference to this quote shall suffice, whereby only deviations from the service scope must be specially noted.
4. If, once the order confirmation has been sent, Döinghaus learns of a significant deterioration in the customer's financial circumstances, its receivables become payable immediately. Döinghaus is also entitled to only render outstanding deliveries and services, including those differing from the order confirmation, in exchange for advance payment, and to withdraw from the contract after a suitable extension period, unless the customer furnishes security. The same applies to non-compliance with payment conditions, even if this relates to other orders resulting from the mutual business relationship.
5. Any invoice correction by the contractor or objection by the customer must be made in writing within four weeks of invoice receipt.
6. The customer is only entitled to offset if its counter claims have been legally established or are not disputed by Döinghaus. It is authorised to exercise a withholding right, insofar as its counter claim is based on the same contractual relationship.

### **V. Customer co-operation and technical assistance for services outside the Döinghaus factory, duty of information**

1. The customer must help Döinghaus with service rendering at its own expense.
2. The machinery and systems must be available during service rendering.

3. The customer must take special, necessary measures to protect persons and objects at the service-rendering site. It must also inform the service manager of any special safety regulations, insofar as these are of importance to the service staff. It advises Döinghaus of service staff breaches of such safety regulations. In the event of serious breaches, it can, in consultation with the service manager, deny the breaching party access to the service site.
4. Insofar as the service is rendered outside the Döinghaus factory, the customer is obliged to provide technical assistance at its own expense, particularly for:
  - Providing the necessary staff in the required numbers and for the required time; the staff must follow the instructions of the Döinghaus staff. Döinghaus assumes no liability for the staff. If the assistants cause a defect or damage as a result of the Döinghaus staff's instructions, X and XI apply.
  - Performing all construction, foundation and scaffolding work, including procuring the necessary construction materials.
  - Providing the necessary equipment and heavy-duty tools, as well as the necessary everyday items and materials.
  - Providing heating, lighting, operators and water, including the necessary connections.
  - Providing necessary, dry and lockable spaces to store the Döinghaus staff's tools.
  - Protecting the service site and materials used against any harm; cleaning the service site.
  - Providing suitable, burglar-proof recreational spaces and work rooms (with heating, lighting, washing facilities and sanitary facilities) and first aid for the Döinghaus staff.
  - Providing materials and taking all other action required to adjust the service object to conduct a contractual test.
7. If the customer does not comply with their duties, the contractor is entitled, but not obliged, after setting a deadline, to perform the customer's duties on the customer's behalf and at the customer's expense. For the rest, the contractor's legal rights and claims remain unaffected.
8. The customer's technical assistance must ensure that the service can be commenced immediately upon the service staff's arrival, and be performed without delay until acceptance by the customer. Insofar as particular Döinghaus instructions or plans are required, Döinghaus promptly provides these to the customer.
9. The customer must promptly provide Döinghaus with all information and documents required to duly render the service before work is commenced. If services are rendered abroad, the customer must advise the necessary travel formalities (visas, invitations, etc.). Döinghaus reserves the right to withdraw from the contract in the event of official travel warnings.
10. The customer must advise Döinghaus of all relevant interfaces (hardware and software) it must adhere to when rendering the services. This particularly applies in the event programming services are rendered on the customer's data-processing systems.
11. The customer is not authorised to issue instructions to Döinghaus staff; the staff are not incorporated into the customer's or end user's establishment.
12. Insofar as the customer cannot fulfil the aforementioned duties of co-operation because the services are not rendered for it, but rather for a third party (e.g. the end user), the customer must arrange for the aforementioned support services to be rendered by the third party.

## **VI. Transportation and insurance when rendering services at the Döinghaus factory**

1. Unless otherwise agreed on in writing, service-object transportation performed at the customer's request – including any packaging and loading – is done so at the customer's expense, otherwise the object is delivered to Döinghaus by the customer at its expense, and re-collected by the customer from Döinghaus once the services have been rendered.
2. The customer bears the transportation risk.
3. At the customer's request, transportation (one or two-way) is insured against insurable transport risks, such as theft, breakage and fire, at the customer's expense.
4. No insurance cover exists while the services are being rendered at the Döinghaus factory. The customer must ensure the existing insurance cover is upheld for the service object, e.g. in terms of fire, tap water, windstorm and machine breakage insurance. Insurance cover can only be procured for these risks at the express request and expense of the customer.
5. If the customer is delayed with accepting the object, the contractor can charge a fee for storage at its factory. The service object can also be stored elsewhere at Döinghaus' discretion. The costs and risks of storage are borne by the customer.

## **VII. Performance deadline, delay**

1. The information on deadlines for rendering the services is based on estimates, and is therefore not binding.
2. The customer can only ask for a binding deadline to be agreed on, and marked as such, if the scope of the work has been precisely established.
3. The binding deadline is considered upheld if the service object is ready to be accepted by the customer, in the event of a contractually stipulated test, by its expiry date.
4. The agreed deadline is extended for additional or supplementary orders placed later on, or for necessary extra work.
5. If the service rendering is delayed by measures relating to labour disputes, particularly strikes and lock-outs, or circumstances beyond Döinghaus' control, the deadline is appropriately extended, insofar as such hindrances are proven to significantly impact on the service rendering.
6. If the customer suffers damages as a result of Döinghaus' delay, it is entitled to demand a flat compensation. For every full week of delay, this usually is 0.5% (but no more than 5%) of the service price for the service object components which cannot be used on time due to the delay. If – taking into account the legal exceptions - the customer sets Döinghaus an appropriate deadline for rendering the service, and this deadline is not upheld, the customer is entitled to withdraw from the contract under the legal regulations. It commits to declaring, within a suitable time frame, and at Döinghaus' request, whether or not it is using its right of withdrawal. Further default claims are governed exclusively by XI.

## **VIII. Acceptance**

1. The customer is obliged to accept services as soon as it has been advised of their completion, and any contractually stipulated test has been conducted. If the service proves to be contrary to contract, Döinghaus is obliged to rectify the defect. This does not apply if the defect does not significantly

impact on the customer's interests, or is based on circumstances attributable to the customer. The customer cannot refuse acceptance if no significant defect exists.

2. If acceptance is delayed through no fault of Döinghaus, it is considered as having been issued once two weeks have passed since notice of service completion.
3. Acceptance means Döinghaus can no longer be held liable for identifiable defects, unless the customer has reserved the right to assert a specific defect.

#### **IX. Retention of title, extended lien**

1. Döinghaus reserves the right to ownership of all accessories, spare parts and replacement power units used until all payments resulting from the service contract have been received. Further protection agreements can be made.
2. For its claim based on the service contract, Döinghaus is entitled to a lien for the service object which enters into its possession as a result of the contract. The lien can also be asserted for claims resulting from earlier deliveries and services, insofar as they relate to the service object. For other claims resulting from the business relationship, the lien only applies if it is undisputed or legally established.

#### **X. Warranty claims**

1. In the event of defects in the services performed, the customer is entitled to demand subsequent performance, which Döinghaus shall comply with either by rectifying the defect or re-rendering the defective service. The customer must grant the time and opportunity necessary for the subsequent performance. In the event of any changes or repair work performed inappropriately by the customer or third parties without Döinghaus' prior consent, Döinghaus will not be held liable for the resulting consequences. The onus of proof for the appropriateness of changes or repair work lies with the customer. Only in urgent cases of jeopardised occupational reliability or to protect against excessive damage, whereby Döinghaus must be immediately informed, if the customer is entitled to rectify the defects itself, or have it rectified by third parties, and ask Döinghaus to compensate for the necessary expense. Rejected goods or parts must be returned at Döinghaus' first request and, if necessary, in suitable packaging, with a packing slip stating the order number.
2. The customer must immediately advise Döinghaus of any detected defect.
3. In the event of remedial actions, Döinghaus is obliged to bear all relevant and necessary expenses, particularly for transportation, commuting, labour and materials, insofar as these are not increased by virtue of the goods or parts being sent somewhere other than the place of service performance – unless this is part of normal use.
4. In the event of failed subsequent performance, the customer is entitled to reduce the agreed remuneration or withdraw from the contract.
5. Damages resulting from the following reasons and which are beyond Döinghaus' control (in the absence of an obligation breach), do not justify any warranty claims:  
Unsuitable or inappropriate use after transfer of risk; particularly excessive use; incorrect assembly/start-up by the customer or third party despite proper instructions; natural wear and tear; incorrect or negligent handling; unsuitable equipment, replacement materials; defective construction work; non-compliance with operational instructions; unsuitable usage conditions, particularly in the event of unfavourable chemical, physical, electromagnetic, electrochemical or electrical factors,

weathering, natural elements, or excessively high or low ambient temperatures; subsequent change to the rendered service.

6. Insofar as the service involves creating or modifying software, the following provisions also apply:
  - Software defects are only considered to be deviations from the agreed quality which are reproducible or proven by the customer. However, a defect does not exist if it does not appear in the software version last supplied to the customer, and which is feasible for the customer to use.
  - Warranty claims do not exist in the event of defects/damages which arise/form based on particular external factors not provided for by the contract.
  - Warranty claims do not exist for software changes made by the customer or third parties, or the resulting consequences.
  - Warranty claims do not exist in relation to the supplied/created software's compatibility with the data-processing environment used by the customer.
  - Döinghaus can choose to either remedy defects at the customer's premises or at its own premises. If Döinghaus chooses to remedy defects at the customer's premises, the customer must provide hardware, software and other operating conditions (including the necessary computing time) with suitable operating staff. The customer must provide Döinghaus with the documents and information in its possession which are necessary to remedy the defect.
  - By creating the software as per the contract, Döinghaus simply fulfils the customer's functional specifications. It thus cannot guarantee that use of the software it creates will not breach any third-party utility models or patents. The customer bears the risk associated with the fact that the object or processes operated using the software may breach third-party utility models or patents. Döinghaus does, however, guarantee that the software itself is free of third-party copyrights.
  - The customer is obliged to properly back up its data.
  - The customer is obliged to ensure the software modified and/or compiled by Döinghaus undergoes a thorough test run before being incorporated into production operations.

## **XI. Liability for damages, compensation claims and consequential damages**

1. In the event of deliberate or grossly negligent breaches of obligation, and in any case of culpable death, physical injury or harm to health, Döinghaus is unconditionally liable for all resulting damage, unless otherwise stipulated by law.
2. In the event of gross negligence by a non-managerial employee, Döinghaus' liability for material damage and financial loss is limited to typical, foreseeable damages.
3. In the event of slight negligence, Döinghaus is only liable for material damage and financial loss if key contractual obligations are breached. Here, too, Döinghaus' liability is limited to typical, foreseeable damages.
4. Further liability for compensation extending beyond that stipulated above is excluded, regardless of the legal nature of the claim asserted. This particularly applies to unauthorised actions. Any unrestricted liability under the regulations of the German Product Liability Act remains unaffected.
5. The customer cannot assert claims for compensation of consequential damages, such as production downtimes or resulting lost profit, against Döinghaus, unless these are based on deliberate intent or gross negligence. These claims are limited to the order value. The liability restriction does not apply to claims based on third-party proprietary rights.

## **XII. Statute of limitation**

1. All customer claims – regardless of their legal grounds – are time-barred 12 months after legal commencement of the limitation period. Insofar as services are rendered on machines made by other manufacturers, i.e. service objects not produced and/or marketed by Döinghaus or by a company affiliated with Döinghaus, the limitation period is also 12 months, unless otherwise agreed. For damage compensation claims as per XI Para. 1, and in the event of an unrestricted liability under the German Product Liability Act, however, the legal deadlines always apply. If Döinghaus renders the services on structural work and/or work whose success lies in rendering planning and monitoring services for this, and causes defects as a result, the legal deadlines similarly apply.

## **XII. Software usage rights**

1. Insofar as the service involves creating software, the customer receives a worldwide, simple, permanent, irrevocable, unrestricted and transferrable usage right to this. Döinghaus reserves the right to further use the services it renders as part of the software creation for its own business purposes, including third-party services, or to award further usage rights.

## **XIII. Compensation by the customer**

1. If, while rendering services outside the factory of Döinghaus, the equipment or tools provided by Döinghaus are damaged or lost through no fault of its own, the customer is obliged to compensate for these damages. This does not apply to damages resulting from normal wear and tear.

## **XIV. Applicable law, jurisdiction**

1. Federal German law, which governs the legal relationships between domestic parties, applies to all legal relations between Döinghaus and the customer.
2. The place of jurisdiction is the competent court at Döinghaus' headquarters. Döinghaus is, however, entitled to file suits at the customer's headquarters.

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