

## Terms of Service (Foreign Business)

Version: February 2018

### 1. Subject

- 1.1 The following terms (the "Terms of Service") apply to the provision of services of all types by [Ewag AG] ("we" or "us") for our customers ("you").
- 1.2 The details of the services to be provided by us (the "services") are set out in the respective service orders concluded between you and us on a case-by-case basis (the "service orders"). For specification of the respective services to be provided, the service orders may refer to our product information sheets or other service specifications (the "Service Specifications") and/or our price lists (the "Price Lists"), which in this case become the subject of the respective service orders.
- 1.3 The subject of the Services may include the following services in particular:
- Maintenance
  - Repair
  - (Partial) overhaul
  - Support
  - Training
- 1.4 The services may also include services in the area of our "UNITED GRINDING Digital Solutions," in particular:
- Remote Service
  - Service Monitor
  - Production Monitor
- 1.5 These Terms of Service form a component of all service orders concluded between you and us for the provision of software. Your deviating terms and conditions do not become part of the contract of the service orders, even by way of order acceptance.
- 1.6 These Terms of Service do not apply to the purchase, delivery or other provision of our machines. These are subject to the relevant terms of delivery, which we have agreed or will agree with you in this respect (the "Terms of Delivery (Domestic)").
- 1.7 If, in connection with the provision of the services, we supply you with replacement parts and/or accessories (in total "replacement parts") with reference to a specific machine, the same Terms of Delivery (Domestic) that have been agreed for the delivery of the machine shall apply in addition to these Terms of Service.
- 1.8 If replacement parts are ordered without reference to a specific machine, the Orgalime SI 14 terms and conditions shall apply for the delivery of replacement parts.
- 1.9 These Terms of Service shall not apply if we have expressly reached a separate, deviating agreement with you. The provisions of the respective service orders are subject to the provisions of these Terms of Service.
- 1.10 Should these Terms of Service change, we will send you the amended Terms of Service as part of the next offer to complete a new service order following the change. For existing service orders, these Terms of Service shall continue to apply, unless we agree with you to the validity of the amended Terms of Service.

### 2. Scope of the order

- 2.1 The content and scope of the services to be provided by us are set out in the service order in question.
- 2.2 In particular, the service order must also specify which specific machines are included in the service order (hereinafter also referred to as the "service objects").
- 2.3 Our staff is instructed to carry out work only within the scope of the service order issued. Activities that exceed the scope of work agreed upon require our prior written consent.

### 3. Quality of service

- 3.1 We provide our services as services within the meaning of §§ 611 et seq. of the Civil Code (BGB). Specific successful performance, in particular the successful elimination of errors within a certain period of time, is not owed.
- 3.2 To carry out service orders, we undertake to employ only qualified expert personnel that will perform the services properly and professionally.

### 4. Completion of service orders

- 4.1 The completion of service orders must be made in writing (including email).
- 4.2 Our offers are only binding if expressly stated in the offer; otherwise, our offers are non-binding. Until the acceptance of a non-binding offer, we reserve the right to change and revoke it.
- 4.3 If you order individual services as part of closed service orders (in each case, a "service request" and such a service request as part of the remote services; in each case, a "service request"), e.g. the use of one of our service technicians at your location, such a service request does not require any special form, but may also be placed verbally or by email or in any other form. In particular, a service request can be made "at the push of a button" via the Remote Service software provided by us. The order for the provision of the individual services comes directly with the receipt of your service request with us, without the need for a separate declaration of acceptance by us, as far as we do not object within a reasonable period of the order (for example in the case of capacity bottlenecks).

### 5. Performance of the service

- 5.1 The subject of the maintenance and repair services is the elimination of faults in the service objects as specified in the relevant service orders. Unless otherwise agreed in the service order in question, the elimination of defects shall be in accordance with the following provisions in connection with the ordering of our Remote Service products.
- 5.2 You have the option of ordering Remote Service Standard or Remote Service Premium from us. If you have ordered one of the Remote Service products as part of the service order, the following applies:
- 5.3 After you send a report via the remote service function or via the helpline (in each case the "error report") or if we recognize a fault in a service object through our remote access which requires a service call, we will carry out the appropriate troubleshooting via remote service if possible. If the service object cannot be or cannot be completely maintained or repaired via remote service, we will notify you immediately. You will then have the opportunity to place a further order for the performance of the services on site by our service personnel.
- 5.4 If you order Remote Service Standard, we cannot guarantee you a fixed response time. If you order Remote Service Premium, we guarantee you a response time of 2 hours, beginning with the receipt of your service request. The response time only applies if your service request is received during our business hours. We will begin troubleshooting within the 2 hour response time. We only provide the troubleshooting itself during our business hours.
- 5.5 Unless otherwise agreed in the service order in question, the following business hours apply [07:45-11:45 / 13:15-17:00]
- 5.6 A remote service call will only be carried out by us with your approval, which you grant us in each individual case by issuing a service request. Without such a service request, remote access is not possible.
- 5.7 Service requests may also be reported or requested via our help line. The current phone number for the help line can be found at [www.ewag.com]. In this cases, initial support is provided by telephone. The helpline is available during business hours.
- 5.8 You have the opportunity to order our Service Monitor from us as part of UNITED GRINDING Digital Solutions. If you have ordered the Service Monitor from us as part of the service order, you will receive the corresponding additional services, such as the display of the maintenance steps required, as specified in the Service Specifications of the Service Monitor product.
- 5.9 You have the option of ordering our Production Monitor as part of UNITED GRINDING Digital Solutions. If you have ordered the Production Monitor from us as part of the service order, you will receive the corresponding additional services, such as the real-time display of the machine statuses, as specified in the Service Specifications of the Production Monitor product.
- 5.10 If you have not ordered any of the Remote Service products from us as part of the service order, you have the option of making service requests via the helpline. If instructed by you as part of the error report, we will send our service personnel to your location.

### 6. Dates and deadlines

- 6.1 Dates for the start or end of the service mentioned by us are only approximate, unless these dates are explicitly agreed on as fixed in individual cases.

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- 6.2 Compliance with fixed dates requires that you fulfill all of your obligations. We undertake to perform the service rapidly. Any fixed deadline is deemed to have been met if the service is completed by the time it elapses. The same applies if, according to the status of the service, approval by you or a contractually scheduled test is possible. If the performance of the service order is delayed due to circumstances for which we are not responsible, a reasonable deadline extension shall generally apply. This shall also apply if such circumstances occur after we have been delayed. However, a deadline extension shall not be granted if the obstacles do not affect the work substantially.
- 6.3 If the service deadline cannot be complied with for a reason for which we are culpably responsible, you are entitled to claim 0.5% of the net value of the service order concerned as a lump-sum compensation for delay for each full week of the delayed performance, up to a maximum of 5% of the net value of the service order concerned, after the expiry of a two-week period of grace and if you furnish documented evidence of corresponding damage. The assertion of claims for damages due to late deliveries and/or compensation in lieu of performance beyond the limits set out in the preceding sentence is only permitted in the case of intent and/or gross negligence on our part. Otherwise, further claims for damages due to default shall be excluded.
- 6.4 You will notify us immediately about an imminent delay or impediment to service performance, for whatever reason. If a service agreed on is postponed for reasons for which you are responsible, we are entitled to demand compensation from you for the additional costs incurred by us as a result (e.g. additional travel expenses and waiting time).
- 6.5 If the performance of the service entails a danger to the life, limb or health of our personnel, we are entitled to postpone the commencement of the work until the occurrence of reasonable circumstances.
- 6.6 If the service must be interrupted for an unreasonable amount of time, we are entitled to call back our personnel. Resulting expenses shall only be borne by us if we are responsible for the interruption.
- 6.7 If the service must be discontinued early due to force majeure, we are entitled to charge for all costs incurred until that point, including those for return travel.
- 6.8 We are entitled to exchange the personnel sent by us with equally qualified personnel during the service at our own expense.
- ### 7 Approval of the services
- 7.1 The approval of our services is generally not required, unless we have agreed to the provision of work performed with you in individual cases. In this case, the following applies: As soon as we indicate the termination of our activities, you will immediately approve the services in the agreed form. The approval must be confirmed in writing on the approval log. Without prejudice to the statutory provisions, you may not refuse approval if the defect is unsubstantial or based on a circumstance which is not attributable to us.
- 7.2 If approval is delayed at no fault of ours, it shall be deemed to have taken place after expiry of 3 days after the announcement of the termination of the service or, at the latest, upon (re-)commissioning of the machine.
- 7.3 Upon approval, our liability for known and/or recognizable defects lapses, provided that you have not reserved the assertion of these defects in the approval report.
- ### 8 Obligations to cooperate
- 8.1 If you have ordered remote service, you will create and maintain all technical requirements (such as an internet connection and remote service Software (see clause 8.7)) for the remote service during the business relationship existing between us. If you do not ensure the technical requirements, only ensure them insufficiently or if a data transfer is disrupted for reasons belonging to your area of responsibility, we are not obligated to perform remote services. The same applies if the data quality does not enable us to perform remote service. We will inform you of this immediately. If you have ensured the technical requirements to a sufficient extent or eliminated any disruptions, we will start or continue the remote services after a notification to this effect is sent to us.
- 8.2 The parties will take appropriate precautions according to the technological state of the art in order to prevent the penetration of viruses into the systems of the other party. If viruses that can impair the remote service or be transferred to systems of the other party occur on the systems of one of the contracting parties, the other contracting party must be notified immediately in writing.
- 8.3 We must be notified and, if necessary, consent to changes that you make to the technical environment of the machine that could have an influence on the remote service.
- 8.4 When determining, containing, reporting and describing errors, you must comply with the instructions given by us.
- 8.5 You must maintain professionally and linguistically trained personnel for remote service. When submitting service requests and questions, you will transfer additional information and documents to us – if uncertainties exist.
- 8.6 You must complete all preparatory work before the start of the service in a timely manner so that the service can start immediately and can be carried out without interruption. In particular, you must provide the necessary operating materials and energy (such as electricity, water, steam, pressurized air, digital data cables) including the associated connections yourself at the site of the service so that we can begin the service immediately. The rooms in which the service is carried out must be protected from the effects of weather, well lit and appropriately temperature-controlled and enable a disruption-free workflow. At the place of service, we require cleaning agents, washing facilities and toilets, as well as first-aid care for emergencies. You must provide dry, locking storage for our personnel's service equipment if we deem this necessary. For service work of a larger scope, you must provide appropriate facilities. If tools or technical devices provided by us are damaged or lost at the service site, you are obligated to replace them provided that you are culpably responsible for their loss or damage.
- 8.7 The provision of Remote Service, Service Monitor, and Production Monitor, as well as other services planned in the future, require your machine(s) on which such services are provided by us to have remote service software available. We provide this free of charge. As part of the Remote Service software, we have pre-installed our UNITED GRINDING Digital Solutions software. To be permitted to use this software, you must first accept the validity of the UNITED GRINDING Digital Solutions Software Terms of Use as amended. If you do not do so, we are not obliged to provide the service you have ordered, which requires the use of UNITED GRINDING Digital Solutions. In this case, we have the right to withdraw from the corresponding service order.
- 8.8 You are obliged to carry out the updates provided by us free of charge and to allow us remote access to your machine(s) for this purpose via service request in order to upload the update.
- 8.9 All construction work and fixtures must be completed before service commences. It is necessary for concrete and masonry to dry and set completely.
- 8.10 You will store all parts to be assembled properly and protected against the effects of weather. The parts should be located at the installation site or in its immediate vicinity before the service commences. The packaging will only be removed by our personnel during the service call. If your personnel opens the packaging and removes the seal in our absence nonetheless, you will bear any resulting additional costs for the inspection of the part to be assembled. The disposal of the packaging at the installation site will be carried out by your personnel. We assume no liability for the consequences of improper storage or improper transport.
- 8.11 You will provide a sufficient number of suitable and qualified staff members to ensure rapid performance of the service on site or online. Your personnel remains under your supervision, responsibility and insurance obligation. If your personnel causes damage, we will only assume liability if we are at fault.
- 8.12 You will provide the supplies and devices as well as the tools required for the service. These must be in flawless, operationally safe condition.
- 8.13 Unless otherwise agreed, you must provide the required materials free of charge and take all other actions necessary to set and test the service object. You must remove used materials and products generated regularly enough to ensure a disruption-free commissioning of the service object. Your service personnel must clean the service object at the request of our personnel.
- 8.14 You must take the necessary precautions for accident prevention and other protection of our and your personnel, including within the scope of remote service and the items introduced by us. You must also make our personnel aware of particular dangers and keep them informed of the relevant safety regulations. If other work is carried out by other companies while our personnel is working, you must designate a person to coordinate the work in order to avoid possible mutual endangerment. In cases in which the remote service can lead to the endangerment of individuals or objects, for reasons of oversight responsibility, you must provide us with confirmation that the intended measures can be carried out without risk (acknowledgment). If not every machine on site can be

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- acknowledged, you must carry out reliable protection of individuals and objects.
- 8.15 You will perform all of the obligations above free of charge for us.
- 8.16 If you do not comply with your obligations to cooperate, after making an announcement to such effect, we are entitled, but not obligated, to carry out the actions required of you at your expense, and any deadlines agreed upon will be extended accordingly. Furthermore, our other legal and contractual rights and claims remain unaffected. In particular our personnel is entitled to return insofar as you do not fulfill your obligations to cooperate. The resulting costs will be at your expense.
- 8.17 You must notify us immediately if one of our employees becomes unfit to work during his stay. In the event of a hospital stay, you must ensure the safe storage of the our employee's baggage. If our personnel must be replaced due to illness, you must help with the organization of return transport.
- 9 Remuneration for services and replacement parts**
- 9.1 For the provision of our services, we charge you a fee in accordance with the service order in question.
- 9.2 For our services in the area of UNITED GRINDING Digital Solutions, we charge you a fixed annual fee per service object in accordance with Price List for UNITED GRINDING Digital Solutions Services as amended.
- 9.3 In principle, we charge a fee for the provision of all other services at cost. For the use of our personnel, we will bill you for every hour of labor on working days (Monday to Saturday) between 6 am and 8 pm at our current hourly rate. Hours of labor on Sundays and holidays, as well as at night (8 pm–6 am) on working days, will be billed at the current special hourly rate. Billing takes place on a quarter-hourly basis.
- 9.4 Preparation and waiting time are also considered working hours; we will charge you our current hourly rate.
- 9.5 For service orders that are performed at a fixed price, additional services beyond the scope agreed upon will be billed at cost.
- 9.6 Hourly rates or amounts agreed upon are subject to additional statutory sales tax.
- 9.7 The first 15 minutes are free for the use of our staff for remote service. After 15 minutes, we will bill you a flat rate for one hour of labor based on our hourly rate as amended. If the remote service call lasts longer than one hour, the additional services will be charged on an hourly basis at our current hourly rate.
- 9.8 The daily working time frame is limited to 8 hours. The performance of overtime, shift hours and work on Sundays, holidays and during the night requires our prior written consent.
- 9.9 In the case of incapacity for work, the service costs will not be billed from the time at which the incapacity for work begins. If the regular weekly working hours are not reached due to reasons for which we are not responsible, the downtime will be billed at the hourly rate agreed on under 9.1. Working hours lost due to statutory and special holidays as well as waiting time will also be billed at the same hourly rate. You will also be billed for the expenses incurred if a service order cannot be carried out because the error that is the object of the complaint does not occur upon inspection, if you have culpably neglected to meet the service deadline agreed on, if the order has been canceled by you during its performance (in this case, § 649 of the Civil Code (BGB) applies) or if required replacement parts could not be procured by you by a reasonable deadline.
- 9.10 Our personnel is obligated to compile a service report for each call. This also contains the time sheet, broken down by hours of labor, travel, preparation and waiting. This time sheet is the basis for our billing and must be checked and signed off on by you. Travel time can only be determined definitively after the return journey.
- 9.11 If no suitable accommodation or catering facilities are available for our personnel within 2 km of the service site, you must bear all related expenses, i.e. in particular, expenses for the use of suitable means of transportation. Travel times are considered working hours
- 9.12 The travel time of our personnel is considered working hours and will be charged per hour of travel at the current hourly rate according to the price list.
- 9.13 For replacement parts, we will charge the current prices from our current price list for replacement parts.
- 9.14 We will charge you for the costs incurred by our personnel during the assembly stay and during the days of travel.
- 9.15 We will charge you depending on the length of travel and according to our travel guidelines, which we are glad to send to you upon request. Moreover, we will bill for all necessary ancillary travel expenses (transport of tools and baggage etc.) and expenditures incurred in connection with the service (such as fees for business communication and local travel including rental cars). Our personnel has a right to statutory vacation time plus the necessary round trip after an uninterrupted stay of three months at the service site. You must bear the incurring travel expenses.
- 9.16 If the current hourly rates change, we will notify you in advance of the change in writing (email is sufficient). The new hourly rates will then only apply to all services provided after receipt of the notification.
- 10 Claims for defects**
- 10.1 Liability for defects only applies to us insofar as we provide our services exceptionally as work performed.
- 10.2 In the case of work performed, after completion of the service in a state suitable for approval, we assume liability for any defects in our work within a period of 12 months after the announcement of completion in a state suitable for approval. You are obligated to notify us immediately and in writing of any defect you detect.
- 10.3 Your right to assert claims for a defect shall become statute-barred in all cases within 12 months, beginning with immediate notice of complaint of this defect. Unless explicitly stated otherwise below, our warranty is limited to the obligation to rectify the defect at the location of our service under the contract. You are entitled to any further claims without prejudice to any claims pursuant to clause 11. If multiple attempts to rectify a defect have not eliminated it, you are entitled to a reduction after expiry of an appropriate extension period without success. If, in spite of reduction, the service is demonstrably without interest to you, you can withdraw from the individual inadequately performed service order upon written notification. Claims for defects are excluded if a defect is insignificant or caused by a circumstance for which we are not responsible, in particular for usual/natural wear and tear, unsuitable and inappropriate use, incorrect or negligent handling, unsuitable foundation, chemical, electrochemical or electrical influence, or failure to comply with the installation or environmental conditions stipulated by us.
- 11 Liability / exclusion of liability**
- 11.1 If during service, a service object supplied by us is damaged at our fault, we must repair or replace it at our discretion and at our expense. Further claims due to damage to the service object delivered are excluded.
- 11.2 If, through our fault, you cannot use the assembled object as provided in the contract as a result of neglected or faulty execution and proposals and consultations carried out before or after conclusion of the contract and other ancillary contractual obligations – in particular, instructions for operation and maintenance of the assembled object – the provisions of clauses 10, 11.3 and 11.4 shall apply for you in exclusion of further claims.
- 11.3 For damage that did not occur to the service object itself, we are only liable on whatever legal grounds
- in the case of willful intent,
  - in the case of gross negligence by the owners/organs or executive employees,
  - in the case of culpable injury to life, limb or health,
  - in the case of defects that we have fraudulently concealed,
  - within the scope of a guarantee promise,
  - to the extent that liability exists for personal injury or damage to privately used items under the Product Liability Act (Produkthaftungsgesetz).
- 11.4 In the case of culpable violation of essential contractual obligations, we are also liable in the event of gross negligence on the part of non-executive employees and in the case of slight negligence, in the latter case limited to contract-typical, reasonably foreseeable damage, but at the most for all damages within a calendar year to the amount of the fee you have paid under the relevant service order in the respective calendar year. Further claims are excluded.
- 12 Payment terms**

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- 12.1 We will issue the invoice immediately after the provision of the service or delivery of the replacement part.
- 12.2 For our services in the area of UNITED GRINDING Digital Solutions, we charge you a fixed annual fee per service object in accordance with Price List for UNITED GRINDING Digital Solutions Services as amended. Billing takes place, notwithstanding clause 12.1, at the beginning of each service year.
- 12.3 We will bill you separately for sales tax.
- 12.4 Your payments are due both for the provision of services and for the supply of replacement parts, net, 14 days after the date of the invoice.
- 12.5 All payments are considered made only once we can dispose of the payments without reservation. If you are in default of a payment to us, we are entitled to postpone the fulfillment of our own contractual obligations until receipt of the payments in arrears.
- 12.6 If the payment deadlines agreed on are exceeded, we will charge interest at a rate of 5 percentage points p.a. above the current base rate of the European Central Bank. If you are in default of payments due and do not pay despite additional respite or if you otherwise breach the contract in a serious manner, we are entitled to withdraw from the contract and claim for damages.

### 13 Confidentiality

- 13.1 All of the data received from you during remote services and other information of yours pertaining to production secrets, relevant product-related data etc. will only be used by us within the scope of the services defined in the service order in question.
- 13.2 You agree that we may provide you with technical improvement suggestions for the machine as well as new products if we discover during a remote service call that there is a need for improvement to the machine or that a different product appears more suitable for the purpose of your production.

### 14 General provisions

- 14.1 You may assign demands or other claims under the service order only with our prior written consent, insofar as your counterclaim is not undisputed or legally established.
- 14.2 All service orders are subject to Swiss law, to the exclusion of international private law and the UN Convention on Contracts for the International Sale of Goods. The place of jurisdiction is Zurich. However, we are also entitled to assert our claims at your general place of jurisdiction.
- 14.3 If the Terms of Service above contain requirements for written form, transmission via email is sufficient to maintain them.
- 14.4 Unless otherwise agreed between us, these Terms of Service supersede any and all agreements between us and contracts for the transfer of software within the meaning of these Terms of Service.