

# GETRIEBEBAU NORD

Member of the NORD DRIVESYSTEMS Group



## General Service Conditions of Getriebebau NORD GmbH & Co. KG

### Section 1 General

- (1) The General Service Conditions apply to services provided by us, e.g. repairs, overhauls, maintenance, local repairs, modifications and commissioning.  
In addition to the General Terms of Business, the following service conditions apply exclusively. Other conditions such as special agreements must be made in writing; purchasing or order conditions do not apply.
- (2) Our offers are non-binding. An order by the customer constitutes a binding offer. At our discretion we may accept this offer by sending an order confirmation or by accepting the offer by commencing with provision of the service.
- (3) The customer is responsible for the operating permit for his plant or machine. If a country-specific operating permit is impaired by an overhaul or modification the customer is obliged to regain this at his expense.
- (4) Furthermore, the customer is responsible for compliance with the Machine Directive 2006/42/EC indicated with the CE label, if renewed inspection of safety relevant requirements and conditions, or a restoration of conformity is necessary due to the replacement or modification of one of our products.
- (5) We do not undertake services for functional safety. The customer is responsible for compliance with the relevant regulations and standards.
- (6) The customer must give notification in good time of any contamination, residues which are hazardous to health in the products, plants and transportation crates as well as other measures which are relevant to the service.

### Section 2 Non-feasible service

- (1) Services provided for the issue of a cost estimate as well as the further demonstrable expense (troubleshooting is deemed to be work time) will be invoiced to the customer if the service cannot be carried out for reasons for which we are not responsible, in particular because:
  - a) The fault which is complained of cannot be found during the inspection,
  - b) Replacement parts cannot be obtained,
  - c) The customer has culpably failed to meet an agreed deadline
  - d) The contract has been terminated during provision of the service.
- (2) In these cases the subject of the service must only be restored to its original condition at the explicit request of the customer against reimbursement of costs, unless the work which has been carried out was not necessary.
- (3) In the event of non-feasible services we are not liable for damage to the subject of service, breach of ancillary contractual obligations or for damage which has not been incurred by the actual subject of the service, regardless of the legal grounds which are cited by the customer.

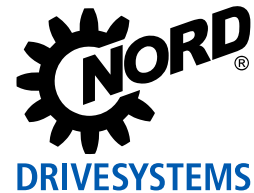
The liability circumstances of Section 11.3 of these conditions apply accordingly.

### Section 3 Costs and cost estimates

- (1) As far as possible, the anticipated price for the service will be stated to the customer on conclusion of the contract; otherwise the customer may set cost limits. If the service cannot be performed at these costs, or we consider further work to be necessary in the course of provision of the service, consent must be obtained from the customer if the stated costs are exceeded by more than 15%.
- (2) If a cost estimate with binding prices is required prior to provision of the service, this must be explicitly requested by the customer. Unless otherwise agreed, such a cost estimate is only binding if it is issued in writing. This must be paid for. The services which are provided for issue of the cost estimate will not be charged to the customer if we are awarded the service contract.
- (3) In all other cases services will be invoiced by us according to the relevant valid price list.

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## Section 4 Price and payment

(1) We are entitled to demand an appropriate advance payment on conclusion of the contract.

(2) The statutory VAT will be charged to the customer.

(3) If we become aware that the customer has inadequate assets for fulfilment of the contract prior to sending our order confirmation, we reserve the right to only provide the service against immediate payment or payment in advance prior to provision of the service. Cheques are only deemed to be payment after unreserved crediting to our account, whereby we reserve acceptance of the said.

(4) In case of arrears of payment or other apparent credit unworthiness of the customer after sending our order confirmation, all existing claims against the customer fall due immediately. In this case we reserve the right to account incoming payments against the oldest claims regarding § 367 BGB, initially against the said costs and interests and then against the main claim. In addition, in deviation from any existing order confirmation which has already been sent, we are also entitled to provide outstanding deliveries and services against advance payment or to withdraw from the contract after a reasonable period of grace. However, the customer is entitled to avoid these consequences by provision of security.

(4) The customer is only entitled to offset claims which are not disputed by us or which have been established as legally binding. The customer is only entitled to exercise a right of retention if his counter-claim is based on the same contractual relationship.

## Section 5 Cooperation and technical assistance by the customer, duty of information

(1) The customer must support us in the provision of the service at his expense.

(2) The customer must take the necessary measures to protect persons and objects at the place of provision. He must inform our employees of existing safety regulations if these are relevant to our personnel. The customer must inform us of special conditions such as safety inspections. He must inform us if our personnel violate such safety regulations. In the event of serious violations he may refuse the violating employee access to the place of provision of service. For locations in foreign countries the customer must indicate the necessary travel formalities. We reserve the right to withdraw from the contract if official travel warnings are in effect.

(3) In the case of provision of programming services the customer must indicate the relevant information relating to interfaces or provide such information prior to provision of the service.

(4) If the service is provided outside of our plant, the customer is obliged to provide technical assistance at his expense, in particular for:

a) Provision of the required number of suitable assistants for the required time. The assistants must follow the instructions of our personnel. We do not accept any liability for the assistants. Sections 10 and 11 apply if a defect or damage has been caused by the assistant due to instructions by our personnel.

b) Performance of all necessary construction, embedding and scaffolding work including procurement of the necessary construction materials.

c) Provision of the necessary appliances and heavy equipment as well as the necessary consumables.

d) Provision of heat, light, power and water, including the necessary connections.

e) Provision of the necessary dry and lockable rooms for storing our personnel's tools.

f) Protection of the place of performance as well as the materials used from harmful influences of all kinds, cleaning of the place of performance.

g) Provision of suitable theft-proof recreation rooms and work rooms (with heating, lighting, washing and sanitary facilities) and first aid for our personnel.

h) Provision of materials and performance of all other actions which are necessary for the adjustment of the subject of service and performing the contractually agreed trial.

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(5) The technical assistance by the customer must ensure that the service can commence immediately on arrival of our personnel and can be carried out without delay up to acceptance by the customer. If it is necessary for us to supply plans and instructions, we shall provide these to the customer in good time.

(6) If a NORD replacement device is used in the course of the service contract, the customer must check that there is no impairment of the function of the machine or plant. We provide information regarding the technical characteristics of the new product. Compatibility of all technical characteristics is not evaluated by us.

(7) If the customer fails to meet his obligations, after setting a deadline we shall be entitled but not obliged to carry out the actions which are the responsibility of the customer on his behalf and at his expense. Otherwise, our legal rights and claims remain unprejudiced.

## Section 6 Transport and insurance for the provision of service in our plant

(1) Unless otherwise agreed in writing, transportation of the subject of the service at request of the customer to and from the customer's premises, including any packaging and loading shall be carried out at the customer's expense. Otherwise the customer shall deliver the subject of the service to us at his expense and collect it after completion of the service.

(2) The customer bears the risk for transportation.

(3) At the request and at the expense of the customer, the transport or return transport can be insured against insurable transportation risks, e.g. theft, breakage and fire.

(4) No insurance cover pertains during the time of provision of service in our plant. The customer must ensure that the existing insurance cover for the subject of the service, e.g. with regard to fire, mains water, storm and machine failure is maintained. Insurance cover for these risks can only be arranged at the exclusive wish and expense of the customer.

(5) IN the event of delay of acceptance by the customer we may charge a storage fee for storage in our plant. At our discretion, the subject of service may also be stored elsewhere. The costs and risks of storage shall be borne by the customer.

## Section 7 Period of service, delays

(1) Statements for the periods for providing the service are based on estimates and are therefore not binding.

(2) The customer may only demand agreement of a binding period which is designated as such, if the scope of the work is precisely specified.

(3) The binding period is deemed to have been complied with if on its expiry the subject of the service is ready for acceptance by the customer; in the case of a contractually provided trial, on its performance.

(4) In the event of additional and extended orders or in the case of necessary additional work the agreed period is extended accordingly.

(5) If the provision of the service is delayed by measures due to industrial disputes, in particular strikes and lock-outs, or the occurrence of circumstances for which we are not responsible, the deadline shall be extended to a reasonable extent for as long as such obstructions demonstrably have a significant effect on the provision of service.

(6) If the customer incurs damages as a result of delays by us, he shall be entitled to demand a lump sum compensation for the delay. This amounts to 0.5% for each full week of delay, however in total to a maximum of 5% of the service price for that part of the subject of service which cannot be used as a result of the delay. If the customer sets us a deadline for completion of the service after a reasonable period which takes the statutory exceptions into account, the customer shall be entitled to withdraw from the contract within the scope of the legal regulations. He commits to inform us on demand within a reasonable period of whether he will exercise his right of withdrawal. Further claims due to delays are governed exclusively by Section 11.

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## Section 8 Acceptance

(1) The customer is obliged to accept services as soon as their completion has been notified to him and any contractually provided testing of the subject of service has been performed. We shall be obliged to eliminate the defect if the service proves not to be compliant with the contract. This does not apply if the deficit is insignificant to the interests of the customer or is due to a circumstance for which the customer is responsible. The customer may not refuse acceptance if no significant defect exists.

(2) If acceptance is delayed for reasons for which we are not responsible, acceptance is deemed to have been made after the expiry of two weeks after notification of completion of the service.

(3) On acceptance, we are no longer liable for defects which are identifiable to us if the customer has not reserved a claim for a particular defect.

## Section 9 Reservation of title, extended lien

(1) We reserve the right of ownership to all accessories, spare parts and replacement units until receipt of all payments resulting from the service contract. Further collateral agreements may be concluded.

(2) We are entitled to a right of lien for our claims arising from the service contract on the subject of the service which comes into our possession due to the contract. The right of lien can also be claimed for claims from previously supplied deliveries and services if these are in association with the subject of the service. The right of lien only applies to other claims from the business relationship if these are undisputed or legally binding.

## Section 10 Claims for defects

(1) With regard to the type, extent and characteristics of the result of the service to be provided, the details stated in the order confirmation are exclusively definitive. Other public statements by us are not relevant for the provision of the result of the service.

(2) The customer must give us written notification of faults in a comprehensible form together with the necessary information for rectification of the fault.

(3) At our discretion, we shall provide rectification of faults which are acknowledged us by means of remedy of the fault (reworking) or by delivery of a fault-free item (replacement delivery). Our legal right of refusal remains unprejudiced.

(4) If a total of 3 reworking attempts or replacement deliveries are fruitless, the customer may withdraw from the contract or demand reduction of the remuneration or remedy the fault himself and demand reimbursement of the necessary costs. The duty of notification remains in effect in the event of failure of subsequent fulfilment.

(5) The customer may make warranty claims for the work based on the contract until the expiry of the warranty period for components which are installed to remedy the fault. Remedy of a fault under warranty does not constitute a recommencement of the limitation period for the work.

(6) Components which are replaced become our property.

(7) Warranty claims for defective services are subject to a period of limitation of one year after acceptance of the service. This reduction of the period of limitation does not apply to the following claims according to Section 10 (1). For these, the statutory warranty period of two years applies.

(8) Warranty claims are excluded if the fault is due to one of the following causes; unsuitable or improper use; excessive use; incorrect installation or commissioning; natural wear and tear, operation under conditions which deviate from those stated in the order confirmation; improper treatment; unsuitable operating materials; substitute materials; use of oils and/or greases which are not approved by us; mechanical, chemical, physical, electro-mechanical, electro-chemical and/or electrical influences; actions by third parties. Furthermore, warranty claims are excluded if the customer carries out or commissions reworking, modifications or repairs without previously providing us with opportunity for remedy or obtaining our written permission.

(9) In addition, the following provisions apply in association with software services provided by us.

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- a) Claims of defects are excluded if they are due to influences which were not known at the time of conclusion of the contract, modifications by third parties, or incompatibility with the IT environment used by the customer. Trial operation and acceptance of the software service prior to use in production is the responsibility of the customer.
- b) Deviations from the contractually agreed condition which are reproducible or for which evidence can be provided by the customer fulfil the conditions for acknowledgement of a fault if this is not acceptable in use.
- c) Data backup is the responsibility of the customer.
- d) In the case of software services, the function specifications by the customer will be implemented. We accept no warranty that use of the software service does not infringe patents or registered designs of third parties.

## Section 11 Liability for damages and compensation for expenses

(1) If parts of the object of the service are damaged by us, we shall have the option of repairing these at our expense, providing a new object or providing a replacement at our discretion. In case of slight negligence, the costs which are to be applied are limited to the contractual service price. Furthermore, in case of damage to the object of service we shall be liable according to Section 11.3 of these provisions.

(2) If the subject of the service cannot be used by the customer in accordance with the contract due to culpably omitted or incorrect suggestions or advice on our part which were made before or after conclusion of the contract, or by culpable breach of other ancillary contractual agreements, in particular instructions for the operation and maintenance of the subject of the service, the provisions of Section 10 and Section 11 (1), (3) apply to this condition. Further claims by the customer are excluded.

(3) We shall only be liable, for whatever legal reason, for damage which does not occur to the actual subject of the service:

- a) In case of wilful action and gross negligence,
- b) In case of culpable injury to life, limb or health,
- c) In case of defects which we have maliciously concealed,
- d) In the context of guarantees,
- e) In case of liability under the Product Liability Act for personal injury or material damage to privately used items.

In case of culpable breach of contractual obligations we shall also be liable for simple negligence, however limited to the damages typical for the contract and which can be reasonable foreseen.

Further claims are excluded.

## Section 12 Period of limitation

All claims by the customer for whatever legal reason are subject to a period of limitation of 12 months. The statutory periods apply for claims for compensation according to Section 11 (a - c). The statutory periods also apply if the service work is provided in a building and this causes a defect to the said.

## Section 13 Rights of use of software

In the case of provision of software services, we reserve the right to utilise the services provided for our own business purposes, including services to third parties.

## Section 14 Compensation by customers

If during the performance of services outside of our plant, equipment or tools provided by us are damaged or are lost for reasons for which we are not responsible, the customer shall be obliged to compensate for these damages. Damage

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which is due to normal wear and tear shall not be considered.

## **Section 15 Place of fulfilment, place of jurisdiction, applicable law**

(1) Unless otherwise resulting from the order confirmation, the place of fulfilment is our headquarters.

(2) The place of jurisdiction for traders, legal entities under public law or special funds under public law is Hamburg. If a legal dispute is within the jurisdiction of the district courts, district court Hamburg-Mitte is accepted as the competent court.

(3) The laws of the Federal Republic of Germany shall apply with the exception of all international and supranational contract laws, especially the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Bargteheide, January 2021