

# General Conditions for Services of ASM Assembly Systems GmbH & Co KG

Status: May 13, 2019

## 1. Scope of Application

**1.1** These General Terms and Conditions for Services (hereinafter "**Terms**") of ASM Assembly Systems GmbH & Co KG ("**ASM AS**") shall apply to all service contracts, including future ones, which ASM AS concludes with entrepreneurs within the meaning of Sec.14 German Civil Code [*Bürgerliches Gesetzbuch* – "**BGB**"], legal entities under public law and special funds under public law (hereinafter together "**Customers**").

**1.2** All services or works [*Dienst- oder Werkleistungen*] relating to ASM AS products, including associated part deliveries, advice, proposals, designs and other ancillary services (hereinafter collectively referred to as "**Services**") within the framework of service contracts between ASM AS and a Customer are carried out exclusively on the basis of these Terms, unless there is an expressly prioritised reference to other general terms and conditions of ASM AS. General terms and conditions of the Customer which deviate from or supplement these Terms or statutory provisions are not applicable, even if ASM AS does not expressly object to their validity or provides Services or accepts payments without reservation. The Customer's general terms and conditions require the express written consent of ASM AS to apply.

**1.3** Whenever these Terms refer to compliance with the written form requirement, this also includes text form pursuant to Sec. 126b BGB.

## 2. Offers; Conclusion and Content of Contract

**2.1** Contract-relevant information, in particular regarding Services and prices, which is publicly accessible or provided by ASM AS at the Customer's request, are not legally binding and are only meant to initiate negotiations, unless expressly stated otherwise by ASM AS.

**2.2** Contractual offers or orders of the Customer are binding unless expressly stated otherwise therein. ASM AS may accept an offer by the Customer to conclude a contract up to the expiry of one (1) week from the date of its submission, unless the Customer specifies a longer period of acceptance.

**2.3** A service contract for the provision of Services is concluded with and to the extent that ASM AS confirms the Customer's offer in writing. If the Customer receives the order confirmation too late, he must inform ASM AS of this immediately. However, ASM AS can also accept the Customer's order by performing the Services ordered by the Customer.

**2.4** Information regarding Services provided by ASM AS do not refer to third-party software or to changes performed to software supplied by ASM AS by third parties or by the Customer, unless this has been expressly agreed in the contract.

**2.5** Except when express contractual provisions provide otherwise, in particular, the respective specifications, the Services provided by ASM AS **do not** include:

- a) supply of spare and wear parts, lubricants, cleaning agents and other consumables ("**Auxiliary Materials**"); these are to be provided by the Customer to ASM AS free of charge;
- b) supply of software, including software updates or upgrades; these must always be ordered separately by the Customer from ASM AS on the basis of the general terms of delivery of ASM AS and will be delivered to the Customer by ASM AS.

**2.6** The following also applies to the provision of Services in relation to Software: Insofar as this is necessary for the provision of the Services, ASM AS is entitled to make modifications to any system software in order to maintain or restore the system to a faultless functional state.

**2.7** If changes to the contractual obligations arise after submission of the offer due to new or amended legal regulations or new or amended requirements of authorities and inspection bodies, the contract shall be adjusted by mutual agreement taking into account the interests of the parties.

## 3. Prices; Terms of Payment

**3.1** Agreed prices are net prices, plus the value added tax to be paid by the Customer at the respective statutory rate. In the case of Services abroad, any and all taxes, customs duties, and other public charges to be paid by ASM AS abroad shall be reimbursed by the Customer.

**3.2** In addition, the following shall apply for Services in terms of the sale of goods law [*Kaufrecht*] or the law on supply of movable things [*Werklieferungsrecht*], provided that

these are indicated separately in the contract and nothing else has been agreed: Prices are DAP (Incoterms® 2020). Payments are due within eight (8) days after conclusion of the contract without deduction.

**3.3** Except where express provisions in the contract provide otherwise, in particular, the respective specifications, agreed prices **do not** include the following costs:

- a) Auxiliary Materials;
- b) software;
- c) travel and catering expenses;
- d) if provided on Customer request, (i) Services outside normal business hours at ASM AS, (ii) installation, dismantling, removal and other support services;
- e) diagnosis and rectification of faults or damage caused by improper handling or by other circumstances for which ASM AS is not responsible;
- f) Restoring Customer-specific software configurations with backup copies of Customer data.

ASM AS will invoice the Customer separately for these Services in accordance with its valid list prices.

**3.4** If ASM AS performs Services such as repair work or monitoring and maintenance services at intervals under a contract, and no flat-rate price agreement has been made, remuneration will be based on the hourly expenditure in accordance with the respective hourly rates for working and travel time agreed in the contract.

**3.5** In the case of works services [*Werkleistungen*] the remuneration is due at the latest upon acceptance (within the meaning as in Sec. 640 BGB), in all other cases upon performance of Services. ASM AS is entitled to invoice the Customer for partial Services in advance.

**3.6** The Customer shall make payments in such a way that these are received by ASM AS on the contractually agreed date. The date on which the payment is credited to the account of ASM AS is decisive for the timeliness of the payment.

**3.7** If, after the contract has been concluded, ASM AS becomes aware of circumstances which seriously call into question the solvency or creditworthiness of the Customer, and if, as a result, ASM AS is placed at considerable risk of loss of claims against the Customer to which ASM AS is entitled, ASM AS is entitled to refuse to provide the Service until the Customer has paid for it, or to demand the provision of appropriate security, and to set the Customer a reasonable deadline for this in each case. If this period expires without result, ASM AS is entitled to withdraw from the contract.

**3.8** If, in order to compensate for increases in personnel or other costs, the list prices at ASM AS are increased, ASM AS may, at its own reasonable discretion, increase the prices of the contract which are not yet due, insofar as they are affected by the development in costs. An increase in prices for Services rendered within four (4) months after conclusion of the contract is excluded.

**3.9** The Customer shall only be entitled to rights of setoff and retention insofar as his counterclaims are either undisputed or have been legally established or are claims which are in a reciprocal relationship with the Customer's payment obligation.

## 4. Service Conditions and Deadlines

**4.1** ASM AS is entitled to make partial deliveries, insofar as this is reasonable for the Customer.

**4.2** The compliance with the agreed deadlines for Services requires the timely clarification of all details of the contract, in particular the provision of all documents, technical information and permits to be procured by the Customer and compliance with the agreed terms of payment as well as the punctual provision of any agreed payment security. A further prerequisite is the punctual fulfilment of the Customer's agreed obligations to cooperate, in particular, the punctual provision by the Customer of electricity, compressed air and necessary support staff, which are free of charge for ASM AS.

**4.3** ASM AS provides Services Monday to Friday (except on national and local public holidays) within its normal working hours from 8 am to 5 pm. ASM AS will only provide Services outside normal working hours, in so far as this is possible for ASM AS in compliance with the applicable labour and safety regulations.

**4.4** For plannable Services such as regular maintenance

of machines, the dates for the performance of Services shall be agreed as follows: The responsible service centre at ASM AS takes over the monitoring of service intervals. The exact performance date is usually agreed with the Customer by ASM AS approximately four (4) weeks before the planned Services. The Customer will receive an appointment notification from the ASM AS service point responsible for him, with which he can confirm the proposed performance date or specify an alternative date. The date proposed by ASM AS shall be deemed to be accepted by the Customer if no other date is agreed at least ten (10) working days before the scheduled performance date. If one of the parties is unable to meet the agreed date for the performance of Services, the parties will agree on a new date.

**4.5** In the event of force majeure (e.g. mobilisation, war, terrorism) and other unavoidable or extraordinary events that were unforeseeable at the time of conclusion of contract (e.g. operational disruptions of any kind, difficulties in the procurement of materials or energy, strikes, lawful lock-outs, shortages of energy or raw materials, difficulties in obtaining the necessary official permits, official measures or the failure to receive, incorrect or untimely delivery from upstream suppliers) outside the sphere of influence of ASM AS or the Customer, agreed performance dates shall be extended by a corresponding period for the duration of the event. If the event lasts longer than three (3) months, ASM AS and the Customer shall each have the right to withdraw from or terminate the contract.

**4.6** In the case of Services under a sales contract [*Kaufvertrag*] or a contract for the supply of movable things [*Werklieferungsvertrag*], the following shall apply:

- a) If delivery is to be made under the contract ("**Delivery Item**"), delivery shall be made DAP (Incoterms® 2020), unless otherwise agreed in the contract. ASM AS sends Delivery Items uninsured. However, insurance of the Delivery Item against the usual transport risks can be taken out by ASM AS at the cost and request of the Customer.
- b) If the Customer is in default of acceptance, ASM AS is entitled to store the Delivery Item at its own premises or those of third parties, at the risk and expense of the Customer.

## 5. Delays

**5.1** If ASM AS is in delay with the performance of Services, the Customer may demand compensation in addition to performance [*Schadensersatz neben der Leistung*] from ASM AS for each full week of delay, only up to a maximum of 0.5 % - but not exceeding a total of 5.0 % - of the net contractual price of the Services in delay.

**5.2** Any further claims for damages in addition to performance due to delay in performance are excluded. This limitation shall not apply in the case of intent, gross negligence or injury to life, body or health. Claims for damages instead of performance shall also remain unaffected by this limitation.

**5.3** The Customer is obliged, at the request of ASM AS, to declare within a reasonable period of time whether the Customer continues to insist on the performance of Services despite the delay in the Services and/or which of the claims and rights to which the Customer is entitled, he is going to assert..

**5.4** A right of termination or withdrawal to which the Customer or ASM AS is entitled, in principle, only extends to the unfulfilled part of the contract. Insofar as partial Services provided cannot reasonably be used by the Customer, the Customer is also entitled to terminate or withdraw with regard to these partial Services.

## 6. Transfer of Risk

**6.1** The risk of accidental loss and accidental deterioration shall pass to the Customer, in the case of Services in accordance with sale of goods law [*Kaufrecht*] and the law on supply of movable things [*Werklieferungsrecht*], as soon as ASM AS has made the Delivery Item available for collection at the agreed place of delivery and has notified the Customer of this, but at the latest when it is handed over to the Customer.

**6.2** In the case of works services [*Werkleistungen*], the risk of accidental loss and accidental deterioration shall pass to the Customer as soon as the Customer gains sole possession of the result of such Services, at the latest, however, upon its acceptance (within the meaning as in Sec. 640 BGB).

## 7. Obligations of the Customer to Cooperate

**7.1** The Customer shall appoint a responsible contact person who can make or bring about binding decisions vis-à-vis ASM AS.

**7.2** The Customer shall provide ASM AS with his affected systems on the agreed dates for the duration of the respective performance of Services. If the respective system is not available for Services in good time, ASM AS may invoice the Customer for the expenditure it incurs (e.g. for waiting time and travel costs of service personnel) at its respective current prices.

**7.3** The Customer must provide ASM AS with information about the systems and make the relevant documentation available to ASM AS before the Service is provided (documentation, instructions, etc.).

**7.4** The Customer undertakes to archive the current source codes, software and technical documentation and to make them available to the service personnel of ASM AS free of charge, if they are required.

**7.5** The Customer is obliged to document all faults and damage of which he is aware, as well as any changes to the systems, and to notify ASM AS of these. The Customer must provide the cooperation required to rectify the fault, particularly in the case of remote diagnosis to be carried out by ASM AS.

**7.6** In determining, localising and reporting errors or other defects in the software, the Customer must observe the application documentation belonging to the software and any instructions from ASM AS.

**7.7** The Customer shall carry out any support activities agreed with ASM AS at his own expense and with technically qualified personnel, who shall remain solely under the Customer's power of instructions. ASM AS may not issue instructions to the Customer's personnel. Conversely, the Customer may not give instructions to service personnel of ASM AS.

**7.8** The Customer undertakes to keep a machine logbook. All malfunctions (data, causes, downtimes), special findings, any technical changes that may have been made, etc. must be entered in this report. ASM AS must be granted access to this machine logbook and other logs (e.g. log files) at all times.

**7.9** The Customer undertakes to inform ASM AS of any adaptations, additions or changes to software regarding the systems mentioned in the product sheet, and of the introduction of additional software.

**7.10** The Customer shall inform the service personnel of ASM AS in detail about the safety and factory regulations that exist in his factory and any health hazards before the start of the Service performance. To this end, the Customer shall hand over the existing regulations to the service personnel of ASM AS in writing and inform them orally of any special features. Insofar as health hazards are to be expected, the Customer shall also expressly draw attention to these in writing in advance. Should the implementation of this information require considerable time, ASM AS shall have the option of invoicing the required time expenditure in accordance with its current price list.

**7.11** The Customer shall support the service personnel of ASM AS in all measures which serve to avert dangers. If the service personnel of ASM AS require special work protection equipment and protective clothing, the Customer shall provide this free of charge and in perfect condition. The service personnel of ASM AS may use the Customer's changing rooms, sanitary facilities and social rooms free of charge on the usual terms, insofar as this is necessary within the framework of the performance of Services. In the event of an emergency, the service personnel of ASM AS shall have a trained first-aider provided by the Customer at their disposal.

**7.12** The Customer is responsible for the disposal of replaced lubricants and parts.

**7.13** For the duration of the performance of Services on site, the Customer shall provide ASM AS with the following services/facilities free of charge, unless these are explicitly included in the contract price:

- a) test material in sufficient quantity for a test run under load;
- b) all technical information necessary for the performance of Services;
- c) functional remote access (ISDN with dial-up characteristics) and functioning terminals.

The Customer's obligation to cooperate also includes ensuring that qualified personnel operate the machines and procure materials and information, insofar as this is necessary for ASM AS to provide its Services. If the Customer wishes that ASM AS should provide the materials, and if this is possible, this can be ordered in advance at additional charge.

**7.14** In the case of performance of Services via remote data transmission (EDI), the Customer must carry out the co-operative acts specified in clause 7.13, insofar as this is necessary for the performance of Services by ASM AS.

## 8. Acceptance

**8.1** If an acceptance of the Services (within the meaning as in Sec. 640 BGB) has been agreed or is prescribed by law, it must be carried out immediately after the respective Service has been performed or after notification of its readiness for acceptance.

**8.2** The Customer shall create the prerequisites necessary for carrying out the acceptance. With the exception of personnel costs of ASM AS, the Customer shall bear any and all costs associated with acceptance.

**8.3** A Service is deemed to have been accepted by the Customer if the Customer, without the agreement of ASM AS, puts objects on which Services have been provided by ASM AS into operation before the agreed acceptance date.

**8.4** In case the acceptance does not take place timely or completely after completion, through no fault of ASM AS, the Services will be deemed to have been accepted at the end of the third working day after the request for acceptance, provided that ASM AS has separately pointed out this consequence to the Customer and the Customer does not claim any significant defect of the Services to ASM AS within the period.

**8.5** The Customer may not refuse acceptance due to minor defects without prejudice to his rights under clause 9.

## 9. Defects and Warranty

**9.1** ASM AS is obliged to provide Services in accordance with sale of goods law [*Kaufrecht*] and the law on supply of movable things [*Werklieferungsrecht*] (in particular spare and wear parts) and Services in accordance with the service contract law [*Werkvertragsrecht*], free from defects of quality and title ("**Defects**") at the time of the transfer of risk. In the event of Defects, the Customer may demand subsequent performance. Subsequent performance will be effected free of charge and, at the choice of ASM AS, by new delivery / renewed performance of the Service or by rectification of the Defects. ASM AS must be given the opportunity to do this within a reasonable period of time.

**9.2** ASM AS must be notified immediately in writing of any Defects.

**9.3** With regard to software, the following additional provisions apply: Warranty claims exist for software which the Customer has extended via an interface provided for this purpose by ASM AS, only up to the interface. Claims for Defects are excluded in the case of non-reproducible software errors.

**9.4** If the supplementary performance ultimately fails, the Customer can withdraw from the contract or reduce the price, without prejudice to any claims for damages in accordance with clause 10, and must notify ASM AS of its decision within a reasonable period of time.

**9.5** Warranty claims (including any claims due to breach of of subsequent performance obligations) shall become statute-barred within a period of twelve (12) months after the statutory commencement of the limitation period; a corresponding preclusive period shall apply to any other rights due to a Defect. Notwithstanding the foregoing, the statutory limitation period shall apply in respect of (i) all rights and claims of the Customer in the case of Sec. 438 para. 1 No. 1 BGB (real rights of third parties), Sec. 438 para 1 No. 2 BGB (buildings; objects usually used for a building), Sec. 445b para 1 BGB (claims for reimbursement of expenses by the entrepreneur) and Sec. 634a para 1 No. 2 BGB (buildings; planning and monitoring services for a building), in case of fraudulent concealment of the Defect, of intent, as well as in the event of non-compliance with a guarantee of quality and (ii) claims for damages in the event of injury to life, body or health, claims under the ProdHaftG and grossly negligent or intentional breaches of obligations.

**9.6** Subsequent performance by ASM AS is always carried out as a gesture of goodwill and without recognition of a

legal obligation. The provisions on suspension of expiry, suspension or recommencement of the limitation periods remain unaffected, except that negotiations concerning a claim or the circumstances substantiating a claim do not lead to an extension of the limitation period.

**9.7** Apart from the claims and rights mentioned in clause 9, the Customer is not entitled to any further claims and rights due to Defects, with the exception of claims for damages and reimbursement of expenses, which can be asserted in accordance with clause 10.

## 10. Compensation for Damages and Expenses

**10.1** Claims for damages and reimbursement of expenses, regardless of the legal ground (contract, tort, breach of duties arising from the contractual relationship or pre-contractual obligation) are excluded. This applies in particular, but is not limited to claims for loss of profit, interruption of business, loss of use, loss of interest or loss of information and data as well as indirect and consequential damages.

**10.2** The above restrictions shall not apply a) to claims for reimbursement of expenses in accordance with Sec. 439 para. 3 sentence 1 and Sec. 445a para 1 BGB, b) in the event of liability under the Product Liability Act [*Produkthaftungsgesetz* – "**ProdHaftG**"], c) in the event of intent or gross negligence, d) in case of culpable injury to life, body or health, and e) in case of culpable breach of material contractual obligations; in this case only, however, liability is limited to foreseeable, typical contractual damage. Material contractual obligations are such provisions whose fulfilment makes the execution of the contract possible in the first place and that the Customer may regularly rely on to be complied with.

**10.3** Insofar as the liability of ASM AS is excluded in accordance with this clause 10, this shall equally apply to the respective liability of the vicarious agents, legal representatives and employees of ASM AS.

**10.4** Further limitations of liability agreed in the contract remain unaffected by this clause 10. Clauses 5.1 and 5.2 shall take precedence for liability arising from delay.

**10.5** The foregoing provisions don't imply any shift in the burden of proof to the disadvantage of the Customer.

## 11. Software Usage

**11.1** Insofar as, contrary to clause 2.5, the scope of Services includes the supply of software, ASM AS grants the Customer a non-exclusive right to use the software with the agreed performance characteristics in unchanged form on the agreed equipment.

**11.2** Software, drawings, components and other information are an integral part of the Services and may not, by way of transfer, duplication or in any other way, be passed on to third parties separately from the equipment or separable parts of thereof.

**11.3** The software and the documentation provided may not be modified, decompiled or parts of it removed, unless this is permitted pursuant to mandatory provisions of the Copyright Act [*Urheberrechtsgesetz*]. Furthermore, the Customer may not remove any alpha-numeric identifiers, trademarks and copyright notices from the software or the data carrier and will reproduce them unchanged in the event of justified reproduction.

**11.4** Unless otherwise agreed, the Customer may make two backup copies.

**11.5** With regard to licence software which has not been developed by ASM AS, but has been licensed by third parties ("**Licensor**"), the Customer shall receive, together with the software, conditions from the respective Licensor, which shall apply in this respect with regard to the liability of the Licensor towards the Customer and to the liability of ASM AS towards the Customer.

**11.6** If, in addition to the software, the Customer receives other software products that are activated for use free of charge, the Customer may use these products free of charge exclusively for validation purposes, limited to a period of two (2) weeks, beginning with the first start of this software program, unless another period is specified.

## 12. Export Control Reservation

Fulfilment of the contract with the Customer is subject to the reservation that fulfilment is not hindered by any obstacles

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due to national or international foreign trade law, as well as embargos and/or other sanctions.

## 13. Transfer of Rights/Obligations

ASM AS may transfer its rights and obligations under a contract to a third party. The transfer of obligations will not become effective if the Customer objects in writing within a period of four (4) weeks after receiving of written notification of the transfer; ASM AS will draw attention to this possibility of objection in the written notification.

## 14. Property Rights and Industrial Property Rights

**14.1** ASM AS reserves all property rights and industrial property rights, such as patent rights, trademark rights, utility rights, design rights and copyrights, in respect of illustrations, moulds, templates, samples, designs and design proposals, models, profiles, cost estimates, drawings, software, know-how, worksheets and other documents ("**Documents**") provided to the Customer by ASM AS. such Documents include but are not limited to information on plant configurations. Except with the prior written consent of ASM AS, Documents may only be used by the Customer for the contractually agreed purpose and may not be made available to third parties.

**14.2** Documents must be returned to ASM AS immediately on request if the contract is not concluded.

## 15. Confidentiality

**15.1** The Customer undertakes to treat all Documents, know-how, trade secrets and other information, which the Customer receives from ASM AS in connection with the implementation of this contract ("**Confidential Information**"), as confidential and, in particular, to maintain silence towards third parties.

**15.2** The Customer may only use Confidential Information for the purpose specified in the contract. The obligation of secrecy does not apply to such Confidential Information in respect of which the Customer can prove that (i) it is already generally known or becomes generally known without breach by the Customer of its obligation of secrecy, (ii) it was already known to the Customer at the time of its receipt without any obligation of secrecy, (iii) it was lawfully obtained by the Customer from third parties without any obligation of secrecy, or (iv) it was developed independently by the Customer without any use of the Confidential Information obtained under this contract.

**15.3** The above confidentiality obligations shall remain in force for a period of five (5) years even after the end of the contract and regardless of the manner in which the contract is terminated.

## 16. Termination

**16.1** ASM AS and the Customer have the right to terminate the contract without notice for good cause. Good cause shall be deemed to exist if, taking into account all circumstances of the individual case and weighing up the interests of both parties, the terminating party cannot reasonably be expected to continue the contractual relationship until the agreed termination of the contract and/ the completion of the Services. According to this, good cause is given, in particular, if any party has not fulfilled its contractual obligations several times and despite having been given notice thereof by the other party.

**16.2** The Customer is also entitled to terminate the contract within the contractual year with a notice period of three (3) months to the end of a calendar month, if the Customer resells or scraps the system serviced by the service personnel of ASM AS.

**16.3** Terminations must be made by registered letter.

## 17. Place of Performance; Place of Jurisdiction; Applicable Law

**17.1** The place of performance for all obligations arising from these Terms or the contract, including subsequent performance, is the location of the system specified in the contract, unless otherwise specified in these Terms or the contract.

**17.2** The exclusive place of jurisdiction for any and all legal disputes arising from or in connection with these Terms or the contract is Munich, Germany. This does not apply if the law deviates from this and provides for an exclusive place of jurisdiction.

**17.3** All legal relations between ASM AS and the Customer are governed exclusively by the law of the Federal Republic

of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Law/CISG).

## 18. Final Provisions

**18.1** The Customer shall inform ASM AS immediately in the event of a change of company name, corporate transformation, discontinuation of business or change of address.

**18.2** Supplements, amendments or subsidiary agreements to these Terms require a contractual arrangement between ASM AS and the Customer in order to be effective.

**18.3** In the event that individual provisions of these Terms or other agreements between ASM AS and the Customer are invalid, the validity of the remaining provisions in these Terms or other agreements will not be affected.