General terms and conditions for Maintenance Procedures and Maintenance Contracts

1. Area of application

1.1 The following terms and conditions apply to all maintenance procedures as well as maintenance contracts with the conclusion of Komax AG (hereinafter referred to as “Komax”).

The word “maintenance” as used in these terms and conditions encompasses all maintenance procedures, inspections, overhauls on site (repairs), overhauls at Komax (repairs), and rectification of deficits on plant and machinery carried out in the commercial and industrial sector.

2. Conclusion of the contract

2.1 A contract between Komax and the customer is deemed to come into being upon the customer’s receipt of a written confirmation from Komax that it accepts the order (order confirmation).

2.2 These terms and conditions are binding if declared applicable in the offer or the order confirmation. Deviating terms and conditions of the customer are valid only to the extent that Komax has accepted them explicitly and in writing.

2.3 The closed contract is deemed to be exclusively for the sites, machinery and plants contained therein. Additional sites, machinery and plants must be covered in separate contracts or added to an existing contract. For any changes of this kind to attain validity, Komax must accept them explicitly and in writing. The price is then adjusted in accordance with the changes made.

2.4 For maintenance contracts on machinery and plants not concluded until after the expiration of the period for the warranty of goods as laid down in the purchase contract, a prior inspection is mandatory. If the inspection reveals that further maintenance procedures are needed, they will only be carried out with the customer’s consent. If the customer decides against the necessary maintenance procedures, he shall be billed only the inspection costs. In such cases, Komax reserves the right to refrain from entering into a maintenance contract.

3. Scope of performance

3.1 The scope of services to be performed by Komax is outlined exhaustively in the order confirmation, including any annexes to it. If the necessity arises later on to carry out additional work procedures, the customer can likewise be billed for them in accordance with *Clause 5.2*.

4. Plans, technical documents, and computer programs

4.1 Each party to this contract shall retain all rights to plans, technical documents, and computer programs, in particular to testing and checking programs they hand over to the other party. The receiving party shall acknowledge these rights and refrain from divulging part or all of the documents to third parties or use same for other than the intended purpose unless the other party gives it prior written authorization to do so.

5. Rights and duties of the parties

5.1 Komax agrees to have the maintenance procedures carried out properly by its own qualified personal or by agents specified by Komax. Komax shall contract only duly qualified agents.

5.2 The customer shall notify Komax in advance of the defects which the customer found and on the basis of which the maintenance procedures are required.

If it turns out during the execution of the agreed work procedures that additional services are required, they shall be carried out along with the others with the consent of the customer and billed accordingly.

5.3 For maintenance procedures outside Switzerland, the customer must provide the required spare parts in a timely manner. Otherwise, the customer shall be liable to pay compensation.

5.4 The work procedures specified in the contract shall be carried out at the Komax factory or at the customer’s factory as Komax wishes.

If the work is carried out at the customer’s factory, the customer agrees to provide the personnel sent by Komax with a suitable workshop to carry out the maintenance procedures.

The customer must alert the personnel sent by Komax if special attention must be paid to it, third parties or other contractors or if pertinent regulations must be heeded.

If work is carried out at the Komax factory, the customer is responsible for dismantling, transport and all other associated expenses.

5.5 Komax shall be entitled to turn down or discontinue the maintenance procedures if its personnel’s safety is not assured or if the customer fails to perform the duties incumbent upon it.

5.6 The customer shall carry out the care, cleaning and maintenance procedures in accordance with the operating instructions.

6. Completion deadlines

6.1 All information about the completion deadlines is based on estimates and therefore not binding.

6.2 The agreement of a binding completion deadline requires that the scope of the maintenance procedures be ascertainable.

6.3 A completion deadline agreed to as binding shall be extended by a reasonable period of time:

- If Komax does not receive the data it needs for performing the maintenance procedures on time or if the customer subsequently changes this data or
- If the customer fails to attend to its duties under this contract on time or in a proper manner, in particular the obligations pursuant to *Clause 5* or the payment obligations pursuant to *Clause 8*, or
- If circumstances for which Komax is not responsible are impending or have occurred, for example, mobilization, war, civil war, insurrection or sabotage

and also in the event of labor conflicts, accidents, illnesses, delayed or defective deliveries of the necessary materials, actions or omissions on the part of authorities or government bodies, unforeseeable obstacles to transportation, fire, explosion, and natural events.

7. Prices and ancillary costs

7.1 Unless otherwise agreed, Komax shall bill the maintenance procedures by the time and material expended based on Komax rates. This provision shall also apply in connection with orders regarding the preparation of technical documents, inspection reports and expert opinions as well as the evaluation of measurements and tests. Material costs include costs for the use of special tools and sets of equipment as well as consumables and incidentals.

Work time shall be deemed to include travel time, an appropriate time for order-related preparation, and wind-up work following the trip.

The customer shall attest to the efforts expended by signing the corresponding report. If the customer attests thereto late or fails to attest without providing reasons, the records kept by the Komax personnel shall be deemed the basis for billing.

7.2 The customer shall be billed extra for travel and transport costs, hotel expenses and costs associated with the stay that were incurred in connection with contract performances.

7.3 The customer shall be notified of the inspection findings before the maintenance procedures commence. Komax accepts no responsibility if the figures exceed the expected costs. If the customer forgoes the execution of the maintenance procedures due to the inspection findings, it shall be billed the costs for the inspection and for dismantling and assembly.

8. Terms of payment

8.1 Payments shall be made by the customer to Komax's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like. Deviations from the above must be agreed in writing.

Unless otherwise mentioned in the order confirmation, the payment is due within 30 days after the invoice date.

The payment terms must also be complied with if the maintenance procedures are delayed or rendered impossible for reasons for which Komax is not responsible.

For the rest, Komax makes reference to the terms of payment in its General Terms and Conditions of Supply.

9. Title, risk of loss, and insurance

9.1 Unless otherwise agreed, replaced parts remain the customer's property.

9.2 The customer bears the risk of damage or loss of the object or part thereof that is being processed while the work procedures are performed even if they are performed at Komax factories or during transport or storage that has become necessary.

9.3 The customer shall be responsible for taking out insurance against risks of any kind.

10. Warranty, liability for defects

10.1 Komax shall give a warranty for the proper and conscientious performance of the maintenance procedures with a warranty period of one month after the completion of same pursuant to the following provisions.

If the work procedures are interrupted for reasons named in *Clause 6.3*, the warranty period for the work procedures completed prior to the interruption shall commence at the latest one month after the start of the interruption.

If the serviced object or parts thereof or spare parts included in the delivery or installed pursuant to this contract should prove to be damaged or unusable during the warranty period and if this state is verifiably attributable to the defective execution of the work procedures or to defective material supplied by Komax, then Komax agrees either to repair or to replace these parts within a reasonable period, as it chooses. The prerequisite shall be that Komax must be notified in writing of these defects during the warranty period immediately after they are detected.

The warranty periods for goods contained in the Terms and Conditions of Supply apply to replaced spare parts and wearing parts.

10.2 Komax shall give a warranty for defects that are attributable to the work done by the personnel of the customer or of third parties under the supervision of Komax only if these defects are verifiably based on gross negligence on the part of Komax's own personnel in connection with instructions or supervision.

10.3 There shall be no obligation to give a warranty if the customer or third parties undertake alterations or repairs without the written consent of Komax or if the customer fails to take immediate damage-mitigation measures that are suitable and reasonable to expect of the customer.

10.4 For parts that were reworked pursuant to the warranty, Komax shall make a warranty in the same scope as for the original maintenance procedures but not beyond the warranty period that applies to them.

10.5 Further claims and rights due to defects that go beyond those named in Clause 10 shall be excluded.

11. Limitation or exclusion of liability

11.1 Komax shall be liable to the customer only for property damage culpably caused by Komax's personnel as they performed the maintenance procedures or remedied any defects.

11.2 The liability of Komax shall be limited overall to the amount corresponding to the agreed contract amount but to a maximum amount of CHF10'000 (ten thousand Swiss francs).

11.3 Further claims on the part of the customer, in particular the assertion of indirect damages such as loss of production, loss of use, loss of orders, loss of profit or the compensation of other losses on whatever legal grounds they are asserted shall be excluded to the extent allowed by law.

12. Legal venue and applicable law

12.1 The legal venue shall be the address of the registered office of Komax. Komax shall, however, be entitled to sue the customer at the latter's registered address.

12.2 All maintenance contracts shall be subject to substantive Swiss law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

12.3 The legally binding version of these terms and conditions shall be the German version.

12.4 Komax shall strive to settle any differences with its customers amicably and mutually.

Valid from August 2019