

General Terms and Conditions for Customer Service and Fitting

I. Sphere of validity

These terms and conditions shall apply for all customer service and fitting work carried out by Wilhelm Bahmueller Maschinenbau Präzisionswerkzeuge GmbH (Hereinafter known as Bahmueller) for customers (Hereinafter known as Buyer) unless agreements are made otherwise in specific instances. Bahmueller is entitled to call in experienced sub-contractors to carryout its work.

II. Price

1.

The customer services or fitting work shall be invoiced on a time basis unless a fixed price has been expressly agreed.

2.

The amounts agreed do not include value added tax, which may have to be paid to Bahmueller at the rate in force.

III. The Buyer's duty to cooperate

1.

The Buyer has to assist the customer service staff or fitters to carry out their work at his own expense.

2.

He shall have to take the special measures necessary to protect people and property where the work is to be carried out. He shall have to notify the customer service foreman or fitter foreman of any special safety regulations there may be, in so far as these are important for the customer service staff and fitters. He shall inform Bahmueller of breaches against the safety regulations by the customer service staff or fitters. If breaches are serious, he may after consultation with Bahmueller, refuse the persons concerned access to the site where work is being carried out.

IV. Technical assistance to be provided by the Buyer

1.

The Buyer shall be obliged to render technical assistance in particular for:

- a) Providing suitable assistants in suitable numbers and for the time necessary as required for the customer service work or fitting work; the assistants have to obey the instructions passed out by the customer service foreman or fitting foreman. Bahmueller shall not accept any liability for the assistants. Section VII and Section VIII shall apply if a defect or damage is incurred as a result of the instructions passed out by the customer service foreman or fitting foreman.
- b) Carrying out all earthwork, building work, bedding and scaffolding work including the provision of the necessary building materials.
- c) Providing the necessary devices and heavy tools (E.g. hoisting devices, compressors) as well as the necessary materials and articles (E.g. Scaffolding planking, wedges, support plates, cement, cleaning and sealing materials, lubricants, fuels, drive cables and drive belts).
- d) Providing heating, lighting, power, water, including the necessary connections.
- e) Providing the necessary dry and lockable rooms for storing tools belonging to the customer service or fitting staff.
- f) Transportation of the necessary parts and materials from the point of unloading to point of use, protection of the parts and materials from harm of all types, cleaning the site where work is carried out.
- g) Providing suitable theft proof rest rooms and workrooms (with heating, lighting, washing facilities, toilets) and First Aid facilities for the customer service and fitting staff.

h) Providing the materials and carrying out all the other work necessary for adjusting the machine or machine components concerned and for carrying out a test in as specified in the contract.

2.

The Buyer's technical assistance has to ensure that the customer service or fitting work begins straight away after the staff arrive and can be started and carried out by the buyer without delay up to acceptance. Insofar as special plans or instructions from Bahmueller are necessary, he shall provide the Buyer with them in good time.

3.

If the Buyer fails to fulfill his duties, Bahmueller shall, having set a period of time, consequently be entitled, but not however obliged, to carry out the work incumbent upon the Buyer instead of him and at the Buyer's expense. In other respects the statutory rights and claims of Bahmueller shall not be affected.

V. Time periods, Delays

1.

If by the time the period of time agreed for fulfilling performance expires the customer service or fitting work is ready for acceptance by the Buyer or for a test to be carried out, if provision has been made for one in the contract, this shall constitute compliance.

2.

If the customer service work or fitting work is delayed as a result of measures taken as a consequence of labor disputes, in particular strikes and lock-outs, as well as the occurrence of circumstances for which Bahmueller is not to blame, the period of time allowed for the customer service work or fitting work to be carried out shall consequently be extended as appropriate in so far as it can be proven that such hindrances are of considerable importance for completing the customer service work or fitting work.

3.

If, as a result of a delay, the Buyer incurs damages, he shall consequently be entitled to demand a lump sum as default compensation. For each full week of delay it shall amount to 0.5%, not to exceed, however, a total of 5% of the price for the customer service or fitting work for that part of the plant to be fitted by Bahmueller which cannot be used on time as a result of the delay.

4.

If – taking into consideration the statutory exceptional cases – the Buyer sets Bahmueller a reasonable period of time to fulfill performance after completion was due and if Bahmueller fails to fulfill performance within this subsequent period of time, the Buyer shall be entitled to withdraw from the contract as provided for by statutory regulations. Upon request by Bahmueller, he shall undertake to state within a reasonable period of time, whether he intends to make use of his right to withdraw from the contract.

Other claims based on default shall only be determined in accordance with Section VIII.3 of these terms and conditions.

VI. Acceptance

1.

The Buyer is obliged to accept the customer service or fitting work as soon as he has been notified that it has been completed and the machine or machine components have been tested as provided for in the contract. If it turns out that the customer service work or fitting work is not in compliance with the contract, Bahmueller shall consequently be obliged to rectify the defect. This shall not apply if the defect is of minor importance with regard to the Buyer's interests or is the result of a circumstance attributable to the Buyer. If there is no significant defect, the Buyer may consequently not refuse to grant acceptance.

2.

If acceptance is delayed without Bahmueller being to blame, acceptance shall consequently be regarded as having taken place after two weeks have expired from notification that the customer service work or fitting work has been completed.

3.

Liability for identifiable defects shall lapse with acceptance unless the Buyer has reserved the right to assert a specific defect.

VII. Warranty claims

1.
Following acceptance of the customer service or fitting work Bahmueller shall be liable for defects in the work with the exception of all the Buyer's other claims irrespective of No 5 and Section VIII so that he has to rectify the defects. The Buyer must inform Bahmueller of an identified defect in writing immediately.
2.
Bahmueller shall not be liable if the defect is of minor importance for the Buyer's interests or if it is based on a circumstance attributable to the Buyer.
3.
In the event that modifications or repairs are carried unprofessionally out by the Buyer or by a third party without the prior consent of Bahmueller, Bahmueller cannot be held liable for the damages arising as a result. The Buyer shall only be entitled, in keeping with statutory regulations, to rectify a defect himself or to have it rectified by a third party and to demand the reimbursement of the costs incurred from Bahmueller up to a reasonable amount in urgent cases in which operational safety is at risk and to avert disproportionately large damages, whereby Bahmueller is to be notified straight away, or if Bahmueller – taking into consideration the cases deemed exceptions by statutory regulations – has allowed a reasonable period set for him to rectify the defect elapse unsuccessfully.
4.
Provided that the complaint turns out to be justified, Bahmueller shall bear the costs of the replacement part including dispatch of the direct costs incurred in rectifying a defect. In addition to this he shall bear the costs of removal and installation as well as any costs which may be necessary for providing the fitters and assistants required, including travel costs, provided that this does not represent a disproportionate expense for Bahmueller.
5.
If – taking into consideration the cases deemed exceptions by statutory regulations – Bahmueller allows a reasonable set period of time within which to rectify a defect elapse unsuccessfully, the Buyer shall consequently be entitled to reduce the price in keeping with the statutory regulations. Only if the Buyer can prove that the customer service or fitting work is of no interest for him in spite of having the price reduced, may he withdraw from the contract.

Other claims shall be determined only in accordance with Section VIII.3 of these terms and conditions.

VIII. Bahmueller's liability, exclusion of liability

1.
If, when rendering the customer service or fitting work a part supplied by Bahmueller is damaged and Bahmueller is responsible, Bahmueller shall consequently have to repair this part again or supply a new part as he chooses and at his expense.
2.
If, as a result of a fault on the part of Bahmueller, the machine or machine components cannot be used by the Buyer in accordance with the contract as a result of suggestions and advice and other secondary contractual obligations both prior to and after the contract being signed are not carried out or are carried out incorrectly, in particular following the instruction for use, the arrangements in Sections VII and VIII, 1 and 3 shall apply to the exclusion of any other claims by the Buyer.
3.
Regardless of whatever legal reasons there may be, Bahmueller shall only be liable for damages not incurred on the machine or machine components
 - a) in cases of intent,
 - b) in cases of gross negligence on the part of the owner / the executive boards or senior staff,
 - c) in cases of death, personal injury or physical harm for which Bahmueller is responsible,
 - d) for defects which he has maliciously concealed,
 - e) in keeping with a promised guarantee,
 - f) in so far as Bahmueller is liable under the German Product Liability Act for personal injury or property damage to items in private use.

In the event of a culpable breach of important contractual duties Bahmueller shall also be liable for gross negligence committed by non-senior staff and for ordinary negligence, in the latter case limited to reasonably foreseeable damage which is typical for the contract.

No other claims will be admitted.

IX. Period of limitation

All the Buyer's claims – regardless of whatever legal reasons on which they are based – shall lapse after 12 months. The statutory periods of limitation shall apply for compensation claims for damages under Section VIII. 3 a – d and f. The statutory periods of limitation shall likewise apply if Bahmueller carries out the customer service work or fitting work to a structure and as a result of this renders it defective.

The Buyer's duty to render compensation

If the devices or tools provided at the site where the customer service work or fitting work is to be carried out is damaged without the fault being attributable Bahmueller's side, or if they are lost without Bahmueller being to blame, the Buyer shall consequently be obliged to pay compensation for these damages. Damages attributable to normal wear and tear shall not be taken into consideration.

XI. Applicable law, Place of jurisdiction

1.

All legal relationships between Bahmueller and the Buyer shall be governed by the law of the Federal Republic of Germany.

2.

The place of jurisdiction shall be the court responsible for Bahmueller's principal place of business. Bahmueller shall, however, be entitled to take legal action against the Buyer at the courts having jurisdiction where the Buyer has his principal place of business.