



Service Conditions | JENOPTIK Industrial Metrology Germany GmbH

For services performed in Germany as well as for services ordered in Germany but performed abroad

1. Conclusion of contract, general information

1.1 These Service Conditions apply for service contracts which are agreed JENOPTIK Industrial Metrology Germany GmbH with its factories in Villingen-Schwenningen, Jena and in Ratingen as well as its branch offices in Germany.

1.2 In the case of an unchallenged written confirmation of order, such an order shall be deemed authoritative regarding the content of the contract and the scope of service work.

1.3 If the service item is not delivered by the supplier, the customer shall be obliged to inform about existing industrial proprietary rights with regard to the item. The customer shall indemnify and hold harmless us against all claims of a third party resulting from a violation of industrial proprietary rights.

2. Cost data, estimate of cost

2.1 Service work shall be calculated according to the time required.

2.2 If an estimate of cost including binding price rates is requested before the service work is performed, this is to be expressly requested by the customer. Such an estimate of cost shall only be deemed binding if submitted in writing and reference is made to the binding force of such an estimate of cost. The customer shall be charged for the services rendered in order to provide the estimate of cost if this is agreed upon prior to preparing the estimate of cost.

3. Service date and service duration

3.1 The date of the service work shall be specified following a mutual agreement and following written confirmation.

3.2 All information pertaining to the service duration is based on estimates and is therefore not binding.

3.3 An agreed service duration with binding force shall be deemed to have been adhered to if, up to its expiry, the service item is ready to be taken over by the customer. In the case of a contractually agreed trial/acceptance until a trial is carried out or acceptance takes place.

3.4 In the case of additional or extension orders subsequently placed by the customer, or in the case of necessary additional service work which is established by the service technician while performing the service work, the agreed service duration shall be extended accordingly.

3.5 Work that is performed at night, on Saturdays, Sundays and public holidays is subject to a separate contractual agreement.

3.6 If the performance of the agreed service work is delayed as a result of measures within the framework of industrial disputes, in particular strikes and lock-outs as well as the occurrence of circumstances which are not the responsibility of the supplier, the service duration shall be extended accordingly insofar as such hindrances are proven to have a considerable effect upon the completion of the service work.

3.7 If the service work cannot be commenced, and if this is not the responsibility of the supplier, the customer shall be obliged to reimburse the supplier with the proven costs incurred as a result of such a delay.

4. Collaboration and technical assistance on the part of the customer in performing the service work outside the supplier's location

4.1 The customer is to support at his own cost the service personnel in performing the service work.

4.2 The customer is to undertake the necessary special measures to protect persons and materials at the location at which the service work is performed. He shall also inform the service manager/service engineer of existing special safety regulations.

4.3 The customer undertakes to provide technical support at his own cost, in particular:

(a) To provide the necessary and suitable assistants in line with the numbers required for the service work and for the necessary period, the assistants are to follow the instructions issued by the service technician. The supplier shall not assume any liability for the assistants. If the assistants' actions result in defects or damage as a result of instructions issued by the service technician, the provisions of Sections 10 and 11 shall apply accordingly.

(b) To provide the necessary devices, ladders and heavy tools as well as the necessary commodities and materials.

(c) To provide heating, lighting and operating power, including the necessary connections.

(d) To provide the necessary, dry and lockable rooms for storing the service personnel's tools.

(e) To protect the service location and materials against all kinds of harmful influences, and clean the service location.

(f) To provide the materials and carry out all actions that are necessary to check the service item and to carry out an acceptance test as specified in the contract.

4.4 The technical assistance on the part of the customer must guarantee that the service work may commence without delay following the arrival of the service personnel and without delay up to the acceptance by the customer. Insofar as special plans or instructions of the supplier are necessary, the supplier shall make these available to the customer in good time.

4.5 If the customer does not honor his obligations, the supplier shall be entitled, but not under obligation, after having fixed a deadline to carry out the actions incumbent upon the customer in his place and at his cost. In other respects, this shall not affect the supplier's statutory rights and legal claims.

5. Transport and insurance in the case of service work at the supplier's location

5.1 If nothing to the contrary is agreed upon in writing the service item shall be transported to and from the service location - including possible packaging and loading - at the customer's request and on his account. Otherwise the service item shall be delivered by the

customer at his own cost to the supplier and once the service work has been performed at the supplier's premises the service item shall be collected by the customer.

5.2 The customer shall carry the transport risk.

5.3 At the customer's request the transport to and, if applicable, from the service location shall be insured at his cost against insurable transport risks such as theft and fire.

5.4 The insurance coverage shall not apply while the service work is being performed at the supplier's premises. Only on the express request and at the cost of the customer shall the supplier bring about the necessary insurance coverage.

6. Price and payment

6.1 The prices for working time, material and incidental costs are stated in Annex 1 of these Service Conditions. The supplier shall inform the customer in good time of amendments to Annex 1.

6.2 The supplier shall be entitled to request an appropriate advance payment upon the conclusion of contract.

6.3 With regard to the calculation of service work, the prices for used parts, materials and additional services as well as the prices for the work performance and the travelling expenses shall, in each case, be stated separately. The signed service report shall serve as a basis in this respect. If the service work is performed on the basis of a binding estimate of cost, reference to the estimate of cost shall be deemed sufficient. In this respect merely variations regarding the scope of services are to be stated separately.

6.4 The customer shall be additionally charged for the respective statutory value added tax.

6.5 Payment is to be affected within 14 days and without deductions upon acceptance and upon the presentation or forwarding of the invoice.

6.6 The customer shall only be entitled to claim set-off and to use his right of retention if his counter-claims have been established res judicata or are indisputable or are acknowledged by the supplier.

7. Service that cannot be performed

7.1 The customer shall be invoiced for services rendered in order to provide an estimate of cost as well as additional costs that have been incurred, and are proven, (error search time is equated with working time) if the service work cannot be performed for reasons which are not the responsibility of the supplier, in particular because

- The determined error did not occur at the start of the service work,
- Spare parts cannot be procured,
- The customer has failed to honor the agreed date,
- The contract on implementing the service work has been cancelled during the implementation.

8. Acceptance

8.1 The customer undertakes to accept the service work as soon as he has been informed of its completion and informed of a trial of the service item which may be provided for in the contract. If the service work proves to be contrary to the agreement, the supplier shall be under obligation to remedy the defect. This shall not apply if the defect is insignificant with regard to the customer's interests or it is based on a situation that is attributable to the customer. The customer may not refuse to accept if a defect is insignificant.

8.2 If the acceptance is delayed without this being the supplier's responsibility, the acceptance shall be deemed to have taken place

following the expiry of two weeks as from notification of the end of the service work.

8.3 The supplier's liability for recognizable defects shall become inapplicable by way of the acceptance insofar as the customer has not reserved the right to lodge a claim regarding a certain defect..

9. Reservation of title, extended lien

9.1 The supplier reserves the right of ownership to all used accessories and spare parts and replacement aggregates (reserved goods) up to receipt of all payments resulting from the respective service contract. In the case of processing or conversion the supplier shall be entitled to co-ownership of the new material in the proportion of the reserved goods (invoice value) to that of the new product. In such a case the customer shall gratuitously store on behalf of the supplier.

9.2 On the basis of his claim resulting from the service contract the supplier is entitled to a right of lien to the customer's service item that has become his possession as a result of the contract. The right of lien may also be exercised on the basis of claims from work previously performed, spare parts deliveries and other services insofar as these are associated with the service item. The right of lien shall only apply to other claims resulting from the business association insofar as these are not disputed or are res judicata.

10. Warranty claims

10.1 Following acceptance of the service work the supplier shall be liable for defects pertaining to the service work by way of the exclusion of all other claims of the customer irrespective of Section 10.4 and Section 11 such that he is to remedy the defects. The customer is to inform the supplier without delay and in writing of a determined defect.

10.2 In the case of possible, improper alterations or repair work on the part of the customer or third parties without prior approval by the supplier, the liability of the supplier shall be excluded with regard to the subsequent consequences. Only in urgent cases in which the operational safety is jeopardized and to ward off disproportionately large-scale damage, whereby the supplier is to be informed without delay, or if the supplier has allowed a reasonable period of time to lapse that was set for him to remedy defects, shall the customer be entitled to remedy the defect himself or have such a defect remedied by third parties and request compensation from the supplier for the respective costs.

10.3 Of the direct costs incurred as a result of remedying defects, the supplier shall carry the cost of the spare part including forwarding - insofar as the complaint proves to be justified. Furthermore, he shall carry the cost of dismantling and installation as well as the cost of providing the necessary fitters and assistants that may be required including travelling expenses insofar as such action does not amount to a disproportionate burden for the supplier.

10.4 The customer will be entitled to reduce if the supplier allows a reasonable period of time to lapse in vain that was fixed for him to remedy defects - while allowing for the statutory exceptional cases. The customer's right to reduce shall also apply in other cases in which the remedying of defects fails. Further claims by the customer in the case of defects pertaining to service work are expressly excluded.

10.5 Typical consumption and wear-and-tear parts (such as printer cartridges and sealing lips on movable parts) are expressly excluded from the warranty.

11. Liability on the part of the supplier, exclusion from liability

11.1 If parts of the service item are damaged as a result of willful or gross negligent conduct on the part of the supplier, the supplier is to repair these at his own discretion and at his cost or deliver new parts. In other respects Section 11.2 shall apply accordingly.

11.2 The supplier shall only be liable for damage that does not apply to the service item itself - irrespective of whichever legal reasons this is based on –

- (a) In the case of intent,
- (b) In the case of gross negligence,
- (c) In the case of culpable danger to life and limb,
- (d) In the case of defects which he has fraudulently concealed or for which he has given an assurance that they do not apply,
- (e) Insofar as liability is assumed in accordance with the Product Liability Act for personal or material damage caused to items used for private purposes.

If an essential contractual obligation is violated through our own fault, liability will be restricted to typical contractual damage.

11.3 The customer shall be responsible for safeguarding of the data of the measuring equipment, including the creation of backup copies. In the event of these obligations being breached, the supplier shall not be liable for any resulting damage. The liability of the supplier for data loss shall be limited to the cost of reproduction which would typically be incurred in conjunction with regular data backups performed by the customer commensurate with the risk.

11.4 Further claims for compensation by the customer shall be excluded.

12. Statute of limitations

12.1 All claims lodged by the customer - irrespective of whichever legal grounds these are based on - shall fall under the statute of limitations in 12 months. The statute of limitations shall commence upon the conclusion of work and signing of the service report or upon acceptance insofar as this is specified in the contract. The statutory deadlines apply to claims for damages in accordance with Section 11.2 (a) to (e).

13. Compensation on the part of the customer

13.1 If, during the course of service work outside the supplier's location, devices or tools that he has provided are damaged at the place at which the service is rendered or if these are lost whereby this is not his responsibility, the customer shall be under obligation to provide compensation for such damage. Damage that is attributable to normal wear-and-tear shall not be considered.

14. Applicable law, place of jurisdiction

14.1 Solely the law of the Federal Republic of Germany is deemed applicable regarding all legal relations between the supplier and the customer.

14.2 The pertinent court with jurisdiction for the supplier's registered office is deemed the place of jurisdiction. However, the supplier is entitled to bring an action at the customer's principal place of business.