

General Terms and Conditions for the rendering of services

of the FLEXIM GmbH-Group



I. General provisions

1. For any and all contractual relations by and between, on the one hand, the FLEXIM GmbH and its subsidiaries and other affiliates (such subsidiaries and other affiliates hereinafter referred to as „Affiliates“, and the FLEXIM GmbH and its Affiliates beforehand jointly referred to as „FLEXIM GmbH-Group“, and each of them individually hereinafter referred to as „Contractor“) and, on the other hand, the contractual partner and other customers (these contractual partners and other customers hereinafter individually referred to as „Customer“) with respect to the rendering of calibration and test and installation and beyond any warranty executed repair and maintenance and other services by the Contractor (all these services unless specifically referred to, hereinafter jointly referred to as “Services”) solely these General Terms and Conditions for the rendering of services (hereinafter referred to as „General Conditions“) and, if any, specifically concluded contractual agreements shall apply. Unless otherwise explicitly agreed upon in writing, any and all general terms and conditions of the Customer deviating from the General Conditions shall not be applicable. The General Conditions shall also apply solely where the Contractor despite its knowledge of any general terms and conditions of the Customer performs Services to the Customer without reservation. The General Conditions, however, shall not apply if and insofar mandatory law provides deviating provisions.
2. The General Conditions shall also govern likewise all contractual relations between the Contractor and the Customer which applies even in case that their application is not specifically agreed upon thereto.
3. Any and all offers by the Contractor shall be non-binding and subject to confirmation by the Contractor unless explicitly determined by the Contractor as binding.
4. The conclusion of a contract is subject to a prior offer by the Contractor followed either by the acceptance of such offer by the Customer and thereupon an order confirmation made by the Contractor or a jointly between the parties agreed single contract document, such order confirmation and contract document issued by at least electrical means (“Textform” as per Sec. 126 b German Civil Code (“Bürgerliches Gesetzbuch” hereinafter referred to as “BGB”)). In case that the Contractor has not made a prior offer but the Customer has made an offer constituting an offer for conclusion of a contract (§ 145 German Civil Code (“BGB”)) the Contractor shall be entitled to accept such offer by the Customer by, within a two weeks period, either the transmittal of an order confirmation or the execution of the Services.
5. Any estimate of costs submitted by the Contractor shall be non-binding unless otherwise agreed upon.
6. The Contractor reserves any and all rights to all of his depictions, plans, drawings, sketches, calculations and other technical documentation as well as cost estimates (hereinafter jointly referred to “Contractor’s Documentation”) until the conclusion of a contract, and beyond this without any time limitations in general any and all intellectual property rights embodied in this Contractor’s Documentation. Unless otherwise agreed upon the provisions of Sec. XIV.1 shall apply correspondingly to the Contractor’s Documentation; thus, in particular, the Customer shall be obliged to keep the Contractor’s Documentation confidential towards third parties and solely to make use of them for the execution of the contract with the Contractor. In case that no contract is concluded between the parties the Customer upon request by the Contractor shall be obliged to return the Contractor’s Documentation to the Contractor.

II. Content and scope of Services / no obligation in case of imminent danger

1. The scope of the Services of the Contractor shall be determined by either the order confirmation issued, or the contract document agreed upon, as per Sec. I.4.
2. The Contractor shall only be obliged to provide Services beyond the agreed scope as per Sec. II.1 subject to a prior separate agreement pursuant to Sec. I.4 on the rendering of such additional Services whereby in case of such separate agreement unless otherwise agreed upon the Contractor shall be entitled to an additional remuneration.
3. Any and all permissions for the rendering of Services shall be arranged by the Customer at its risk and expenses. In case of any assistance rendered by the Contractor, the Customer shall reimburse the Contractor for any costs incurred by the Contractor for such assistance.
4. As far as the Services contain software the Contractor hereby grants to the Customer the non-exclusive right to make use of the delivered software including the relevant documentation for the contractual purpose, limited, however, on the application to the Services to which the software is assigned; furthermore, the Customer is granted the right to produce a backup copy. Any and all other rights with respect to the software and the documentation shall vest with the Contractor respectively the supplier of the software. Furthermore, the Customer shall not be entitled to make any further use of the software than granted beforehand, in particular, to grant any sublicenses.
5. The Contractor shall be entitled to withdraw from any and all obligation to render Services if after the conclusion of a contract a threat for life, body or health occurs at the place or in the country destined for the rendering of the Services whereby the occurrence of such threat shall be deemed in particular if the Foreign Offices of Germany or United Kingdom or USA have issued a travel warning with respect to this place or country.

III. Customer's obligations in regard to the rendering of Services

1. Unless otherwise agreed upon in writing and as far as the rendering of Services by the Contractor requires, the Customer shall be obliged to render and to provide on its account to the Contractor the following properly and thereby in particular complete and free of defects executed works and other services at the place destined for the rendering of Services by the Contractor (this destined place hereinafter referred to as „Site“).
 - a) any and all earth, construction and other ancillary works outside the scope of the Contractor including but not limited to the necessary skilled and unskilled staff, construction materials and equipment and tools;
 - b) any and all devices and means required for the rendering of Services in particular but not being limited to construction equipment (including but not limited to scaffolding, lifting equipment and other devices) and tools as well as fuels and lubricants;
 - c) energy and water and, if any, other required means including connections at the Site as well as heating, air-conditioning and ventilation and lighting;
 - d) in order to store and keep safe the products and the construction equipment and tools all provided by the Contractor as well as all construction materials and means and equipment and tools and all other materials and means provided by the Customer required for the execution of the Services, sufficiently sized and suitable and dry and adequately protected and lockable premises at the Site, and in order to grant the Contractor's staff engaged for the Services, proper working conditions, and in accordance with international standards, proper working and recreation space including sanitary facilities at the Site;
 - e) protective devices and clothing, if so required by the circumstances;
 - f) free access to the Site and the Site as such free of any items hindering, and properly prepared and levelled for, the execution of the installation works
 - g) furthermore, any and all information on safety regulations including an adequate briefing.
2. Moreover, unless otherwise agreed upon in writing and as far as the performance of the Services require, in order to enable the performance of Services, including but not limited to the Customers pipework, the Customer shall secure that
 - a) the wiring of the voltage supply and of the output supply and the ultrasonic transducers is properly executed and finalised;
 - b) the respective relevant pipes are stripped and freely accessible and, furthermore, that the flow of means to be transported by these pipes is effected under normal conditions;
 - c) the relevant pipes are accessible for measuring equipment and all other equipment, tools and devices.
3. Unless otherwise agreed upon and required for the rendering of Services, the Customer shall provide the Contractor, prior to the rendering of Services and without prior request by the Contractor, with all data concerning the nature, location and static information of the relevant pipes and systems transporting power, gas, water and other utilities (hereinafter jointly referred to as "Utilities") including in particular also those Utilities, which are concealed.
4. The Customer shall render all devices and means and services to be provided by the Customer prior or during the Services to be effected by the Contractor comprising in particular but not limited to the provision of all devices and means and services for the rendering of Services pursuant to Sec. X.1, X.2 and X.3 (all such rendering of all devices and means and services for the rendering of Services pursuant to Sec. X.1, X.2 und X.3 hereinafter referred to as "Customer Provisions") in due time and in a manner that allows the rendering of the proper Services without any hindrance due to a lack of the Customer Provisions.
5. In case of a delayed start, execution or completion of the Services due to a lack of the Customer Provisions or due to other circumstances not caused by at least negligence by the Contractor, the Customer shall bear all additional accrued costs and fixed dates or deadlines, if any, shall be prolonged. Any and all other contractual or legal claims of the Contractor shall remain unaffected by this.
6. The Customer shall inform the Contractor about a reference person authorised to represent the Customer.

IV. Execution of the Services

1. The Contractor shall be entitled to execute the Services at his sole discretion either by himself or a third party.
2. The Contractor shall be entitled to render his Services in separate parts as long as this is not unreasonable to the Customer.

V. Time of execution of Services / delay

1. Any and all fixed dates or deadlines for the rendering of Services (such fixed dates or deadlines hereinafter jointly referred to as „Deadline(s)“) shall be non-binding unless agreed upon in writing as binding.
2. Such a binding Deadline must only be adhered to by the Contractor if any and all documentation, necessary per mits and releases, especially with respect to plans, owed by the Customer are received by the Contractor in time and if also the agreed terms of payment and all other obligations of the Customer are fulfilled in time. Unless the conditions are fulfilled, the Deadline shall be prolonged appropriately.
3. If the non-compliance of the set Deadline is due to force majeure such as mobilisation, war or rebellion, or similar events, e.g. strike or lockout, or other circumstances not caused by at least negligence of the Contractor the Deadline shall be prolonged appropriately.

General Terms and Conditions for the rendering of services

of the FLEXIM GmbH-Group

4. In case of any delay of the Contractor in regard to his Services, the Customer shall at the request of the Contractor declare within an appropriate period of time whether or not the Customer continues to demand the Services, or wishes to cancel the respective contract.
5. In case of a delay or an impossibility of the Services due to, and caused by fault of, the Contractor for whatsoever reason, any and all claims thereof for whatsoever damages, loss and other harm by the Customer shall be limited to claims and titles as stipulated in Sec. XI of these General Conditions.

VI. Acceptance of the Services

1. Upon completion of the Services, the Customer shall accept the Services without delay, however at the latest 10 working days after the respective notification of completion. In case the Customer fails to accept the Service correspondingly the Services shall be deemed to be accepted upon the expiration of this 10-working days period. The Services, however, shall be deemed accepted regardless such acceptance period in case that the Services provided by the Contractor to the Customer is made use of by the Customer.
2. The Customer may not refuse acceptance and receipt of Services on account of minor defects.

VII. Transfer of risk

1. Any and all risk with regard to the accomplished Services shall pass to the Customer at the latest upon acceptance of these Services.
In deviation of the above provision the transfer of risk in case of a test-run procedure shall pass to the Customer upon the successful execution of the test-run. In case that such test-run is delayed due to at least negligence, or postponed upon request, by the Customer the risk shall pass to the Customer by the latest after expiration of a 10-working-days period such period starting with the notification of readiness for the execution of the test-run.
2. However, regardless the provisions of Sec. VII.1, the risk shall pass by the latest to the Customer in case and at the point of time the Customer defaults in acceptance or payment.

VIII. Remuneration

1. Any and all prices by the Contractor shall be net prices exclusive VAT unless otherwise agreed upon in writing.
2. The remuneration for the Services shall be as determined in the contract; however, the additional remuneration, if any, for the further costs and expenses with regard to the staff and other issues pursuant to Sec. VIII.4 (such further costs and expenses hereinafter jointly referred to as „Further Costs“) shall unaffected unless otherwise specifically agreed upon in the respective contract.
The Contractor reserves the right to adjust the remuneration appropriately in case of any cost reductions or increases after the conclusion of the contract especially due to changes of labour costs, e.g. due to collective agreements. Upon the Customer's request the Contractor will prove the requirement of such changes.
3. In case that in deviation of Sect. VIII.2 no remuneration is agreed upon in the contract, the Services shall be charged according to time exposures on the basis of the following established rates of the Contractor; travelling or idle time exposures will be charged as working time. The Further Costs shall be remunerated separately pursuant to Sec. VIII.4.

The regular working hours (working days only) are as follows:

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| - Monday to Thursday: | 8:00 a.m. until 5.00 p.m. |
| - Friday: | 8.00 a.m. until 1.00 p.m. |

The following general rates per hour shall apply:

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| - Technicians for installation works | 150,00 € |
| - Staff member for the support of systems (data-processing equipment and soft-/hardware) | 200,00 € |
| - Expert technicians for other Services | 250,00 € |
| - Staff member for project planning | 250,00 € |

Overtime, the work done at night or on a weekend or during a public holiday, or work done in case of hardship, the following surcharges apply:

- a) Overtime (all time exposures outside of regular working time on working days): 50% surcharge;
- b) Night work on working days between 8.00 p.m. until 6.00 a.m. (where applicable, in lieu of the surcharge mentioned in a)): 60% surcharge;
- c) Work on Saturdays and Sundays (where applicable, in lieu of the surcharge mentioned in a) and b)): 60% surcharge;
- d) Work on public holidays, as well as on days which are public holidays at the place of business of the Contractor, as well as on the 24th December and 31st December (for all such days from 0.00 a.m. until 12.00 p.m.) (where applicable, in lieu of the surcharge mentioned in a), b) and c)): 100% surcharge;
- e) Work performed under substantial impact of dust, soot, smoke, fumes, heat or noise and unless caused by at least negligence by Contractor, in addition to the other surcharges mentioned in a), b), c) and d): hardship surcharge of 15%.

General Terms and Conditions for the rendering of services

of the FLEXIM GmbH-Group

- Concerning the Further Costs and in case of lack of a specific regulation, the Customer shall pay to the Contractor all costs for the required travelling, room and board, electrical and other communication for his staff, and regarding the construction equipment and tools unless provided by Customer, the costs for their import, export, transport and storage. Unless otherwise agreed upon, Contractor may calculate these additional costs by adding to the – as the case may be already known or anticipated – prices already, or presumably to be, incurred by him, a handling fee of 5 % of the prices.
- The Customer shall attest the Contractor the time exposure spent for working and travelling and for the idle time as well as the provided Services on the performance record submitted by the Contractor. Should the Customer refuse such attesting or in case the Contractor is unable to receive such attestations for other reasons, any and all invoicing shall be made on the basis of the Contractor's records.
- The Contractor shall be entitled to charge a reasonable flat-rate fee for the dispatching and packaging for the return consignment for products repaired by him in addition to the remuneration for his repair Services.

IX. Terms of payment

- Unless otherwise agreed upon, payment shall be made within a period of 7 days, the period starting with the date of issuance of invoice; however, the Contractor reserves the right to perform the Services subject to concurrent condition with respect to the payments or subject to an advance payment.
- The Customer shall not be entitled to a cash discount.
- Unless otherwise agreed upon, all payments shall be made in € (EUR).
- The Customer shall render all payments onto the account of the Contractor free of charge for the latter.
- The Customer is only entitled to offset or make use of its right of retention if the respective counterclaims are uncontested or legally established with final effect.
- The Contractor shall be entitled to invoice the remuneration in portion corresponding to partially rendered Services, as long as this is not unreasonable to the Customer.

X. Warranty

- Any and all warranty claims concerning the Services shall be subject to a limitation period of 12 months, beginning with the transfer of risk. Such limitation period, however, shall not apply with respect to any claims on damages due to warranty liabilities in the case the Contractor is compulsively liable for the damage by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health due to at least negligence; in such cases, the limitation periods pursuant to the legal provisions shall apply.
- In case of a justified warranty case, the Contractor shall be entitled to remedy the defects at his sole discretion by either repair or repeated rendering of the Services.
- In case that the Contractor fails to remedy the defect, the Customer shall be entitled in its choice to a reduction of the contractual remuneration or a cancellation of the contract. The Contractor shall be deemed to have failed to remedy the defect in case that two such attempts have not been successful unless with regard to the contractual object further attempts are suitable and reasonable to the Customer.
- Warranty claims shall be excluded in case of only insignificant deviations from the agreed quality or only minor impairment of use of the Services, and in case of damages arising after the transfer of risk due to faulty or at least negligent treatment or use, or treatment or use against the rules, or excessive strain, unsuitable means of operation, improper construction works, an inappropriate Site, particular external influences not assumed under the contract or non-reproducible software errors. Furthermore, warranty claims shall be excluded also in case that the Customer or a third party has modified the Services or has carried out or omitted maintenance works improperly or against the instructions of the Contractor, on in case of a lack of required maintenance.
- Notwithstanding other exclusions of warranty, the Customer shall also not be entitled to warranty claims if and insofar the Customer has remedied the defect by a workshop or a service point not authorised by the Contractor.
- Any and all claims raised by the Customer for expenses required within the process of remedying of defects, in particular costs of transport, labour and travelling shall be excluded, if such costs have arisen on the ground that after execution the Services have been transferred to a place different from the place of business of the Customer or, to the extent it exists, the Site unless this alteration is in accordance with the contract.
- Any and all warranty claims shall be restricted to direct damages, and, within this limitation, be limited further to an amount equal to the remuneration that is attributable to the insufficient Services (or only parts thereof, if applicable). Any further warranty claims against the Contractor including, in particular, claims on indirect or consequential damages, in particular again loss of profit, shall be excluded.
- The above exemptions from, and limitations of, liability do not apply where liability is compulsory by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health or breach of essential contractual obligations due to at least negligence. Notwithstanding the aforesaid, however, the liability for breaching essential duties under a contract shall be limited to the typically foreseeable damage, unless the Contractor is compulsively liable for the damage by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health due to at least negligence. This provision shall not imply a change in the burden of proof to the detriment of the Customer.

XI. Returning of serviced products

In case that the Customer undertakes to return products to the Contractor for whatsoever reason, in particular thereby for the purpose of calibration or repair by the Contractor, the Customer shall be obliged to indicate always the RMA-number determined by the Contractor. Furthermore, the products to be returned shall be clean and free of any foreign matters in particular, but not limited to any chemicals which shall be confirmed by the Customer by at least electronical means ("Text-form" as per Sec. 126 b German Civil Code ["BGB"]).

XII. General liability

1. Unless already determined in particular in Sec. X, any and all claims for damages or expenses of the Customer against the Contractor, irrespective of their legal grounds, in particular arising from faults upon the conclusion of contracts, breach of contractual obligations or unlawful acts, shall be excluded.
2. The aforesaid does not apply where liability is compulsory by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health or breach of essential contractual obligations due to at least negligence. The liability for breach of essential contractual obligations shall be limited, however, to the compensation of the typical foreseeable damage, unless liability is compulsory by law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health due to at least negligence. This provision does not imply a change in the burden of proof to the detriment of the Customer.

XIII. Intellectual property rights and copyrights

1. Unless otherwise agreed upon, the Contractor shall be obliged to perform the Services free of third parties' intellectual property rights and copyrights (hereinafter referred to as Proprietary Rights) solely in the country of the Site.
Even in such case, however, the Contractor shall not be liable for any claims due to infringement of any third party's Proprietary Rights if the Customer or any legal entity directly or indirectly owned or controlled by the Customer through capital or voting shares, holds, or held, title to the Proprietary Rights.
2. The Customer shall be obliged to immediately inform the Contractor of any (alleged) infringement of Proprietary Rights of third parties and respective risks becoming known to him and to grant the Contractor, as far as possible, upon his request the right of action both for judicial and extra-judicial cases in order to refuse any and all claims.
3. In case of an infringement of third party's Proprietary Rights, the Contractor shall at his sole discretion be entitled to either obtain a right to perform the Services, or modify the Services in such a way that they do not infringe these Proprietary Rights any more, or to perform different Services which do not infringe these Proprietary Rights any more. In case that the Contractor cannot exercise such right at adequate conditions or within a reasonable time, the Customer provided, however, that he has enabled the Contractor to remedy the infringement of the Proprietary Rights, shall be entitled to exercise the statutory rights of rescission. Likewise, and subject to the fulfilment of the above conditions, also the Contractor shall be entitled to withdraw from the contract.
4. In case that the Customer ceases to make use of the Services due to an (alleged) infringement of third party's Proprietary Rights in order to reduce damages or for any other substantial reason, the Customer shall be obliged to advise the third party asserting the infringement of the Proprietary Rights that the ceasing of the use shall not be deemed as acknowledgment of the infringement of Proprietary Rights.
5. Any Customer's claims with respect to an infringement of third parties Proprietary Rights shall be excluded insofar as the Customer himself is liable for such infringement of Proprietary Rights.
Furthermore, any Customer's claims shall be excluded in the case that the infringement of Proprietary Rights of a third party was caused by a specific instruction by the Customer or by any use which was unforeseeable for the Contractor, or due to a modification effected or joint use with other supplies and services not performed by the Contractor, by the Customer.
With respect to any remaining claims regarding the infringement of Proprietary Rights of third parties the stipulations as per Sec. XII shall apply.
6. Any and all claims with respect to the infringement of Proprietary Rights of third parties shall be subject to as limitation period of 12 months, such period starting with the transfer of the risk of the respective accomplished Service. Such limitation period, however, shall not apply with respect to any claims on damages due to a liability of the Contractor by compulsory law either without fault, or in case of intention or gross negligence, or in case of death or bodily injury or damage to health due to at least negligence; in such cases, the limitation periods pursuant to the legal provisions shall apply.
7. Any and all further claims or other claims not stipulated in this Sec. XIII 1. to 6 with respect to the infringement of Proprietary Rights of third parties shall be excluded, unless otherwise determined by compulsory law.

XIV. Secrecy / limited use

1. The Customer shall be obliged to keep all depictions, plans, drawings, sketches, calculations and other technical documentations as well as know-how and other technical information of the Contractor strictly confidential and in particular not to disclose or otherwise make available to any third party, and only to make use of it within and for the duration of the respective contract. The obligation to secrecy and limited respective and after termination or ceasing of the contract interdicted use shall continue to last and shall only cease if and insofar the technical knowledge embodied in these depictions, plans, drawings, sketches, calculations and other technical documentations as well as know-how has become generally known.
2. The existence of the business and contractual relations with the Contractor as well as all contractual terms and conditions as well as all related commercial and technical details and also all provided Services and their details shall be deemed business secrets of the Contractor. The Customer shall not be entitled to disclose them or make them otherwise available to third parties without prior written approval by the Contractor.

XV. Governing law / arbitration

1. The law of Germany shall apply.
2. All disputes, controversies or differences between the parties which cannot be settled by negotiations shall be decided finally by the International Court of Arbitration of the ICC in in Paris according to the rules of the International Court of Arbitration by three arbitrators appointed to said rules. Place of arbitration shall be Berlin (Germany); language of arbitration shall be English.

XVI. Miscellaneous

1. Place of performance shall be the place of business of the Contractor.
2. For the sake of good order the Contractor herewith points out that he is bound with respect to the providing of the Services outside of the country where the Contractor has his place of business (such providing of the Services outside of the country where the Contractor has his place of business hereinafter referred to as "Export") to the domestic and international statutory laws and regulations. Thus all Services to be rendered by Contractor are therefore subject to the condition that the relevant permits and licenses have been granted and also all other requirements for the Export have been met.

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