

## **General terms and conditions on after sales services and spare parts delivery of DMG MORI in Israel**

### **1. General provisions**

- 1.1. The following terms and conditions shall apply to after sales services of Mori Seiki Israel Ltd. ("Company") in relation to the repair, maintenance and other services for machine tools ("Services") as well as the delivery of spare and replacement parts ("Parts" or "Part") for machines purchased from the Company and/or DMG MORI ("Supplier"). These terms and conditions shall apply exclusively. Differing or contrary terms of the Customer shall not apply, unless expressly agreed upon.
- 1.2. Where the Company is not the seller of a certain product, the obligations of the Supplier shall not apply to the Company. However, any right and/or defence (including any limitation of liability) granted hereunder to the Supplier and/or available thereto shall apply to the Company and be available to it as if the product was supplied by the Company, irrespective of the identity of the Supplier.

### **2. Customer's responsibilities**

- 2.1. The Customer shall provide to the extent necessary at his own risk and expense assistant staff, and, if so agreed, tools, lifting devices with operating staff as well as all materials and equipment necessary for due performance of the Supplier's Services. Also, the Customer shall provide the Supplier's staff with a dry and lockable room for the storage of delivery parts, tools, clothes and the staff's personal belongings. The Customer is responsible for his assistant staff following the Supplier's instructions. The Supplier shall not be liable for any damage caused by the Customer's assistant staff, unless the respective damage is due to a Supplier's instruction; in this case, section 18 shall apply with regard to the Supplier's liability.
- 2.2. In the event that any of the Supplier's materials, tools or devices are damaged or destroyed at the Customer's work-site, the Customer shall be liable for damages to the Supplier.
- 2.3. The Customer shall be obliged to take reasonable care for the safety in the workplace, the compliance with relevant safety regulations and appropriate working conditions. In particular, the Customer shall thoroughly clean machines to be repaired by Supplier. The Customer shall instruct the Supplier's working staff about specific safety regulations in his workplace.
- 2.4. If necessary, the Customer shall procure internal work authorizations, ID cards and the like at his own expense.

### **3. Prices and terms of payment**

- 3.1. Unless expressly agreed otherwise in writing, the Customer shall make payments according to the Supplier's rates. The Supplier shall be entitled to receive in advance up to 90 % of the consideration for the Services.
- 3.2. Used parts, materials and special services, as well as costs for travelling and accommodation of the Supplier's staff, shall be charged separately in the invoice.
- 3.3. Unless expressly agreed otherwise in writing, prices are ex-works (Incoterms 2010), excluding costs of packaging, statutory VAT and customs duties.
- 3.4. If the Customer fails to make payment on the due date, the Supplier shall be entitled to charge the Customer interest on the amount unpaid, at the rate of 8 % per annum above the base interest at Bank Leumi of Israel.
- 3.5. Unless expressly agreed otherwise, payment for Services and deliveries of Parts is due within 10 days upon receipt of invoice, without any discount or set-off, and shall be transferred to the Supplier's bank account.

### **4. Special Circumstances**

- 4.1. In the event that Services cannot be supplied for reasons not attributable to the Supplier and/or for reasons beyond the Supplier's control, any expenses, in particular such expenses for fault diagnostics, shall be borne by the Customer. Without derogating from the generality of the above, this provision shall apply to the following circumstances:
  - if the alleged fault did not occur during the fault diagnostics
  - if the Customer fails to meet the agreed service date
  - if the Customer terminates an order in process
  - if the Parts required cannot be obtained in due time
- 4.2. The Supplier shall only be obliged to put back the serviced item in its original state upon the Customer's express request and at Customer's expense.

### **5. Travel and incidental expenses**

- 5.1. Travel and incidental expenses incurred by service personnel will be invoiced to the customer. For service calls which are interrupted by weekends or public holidays, the Customer will be billed for the journey to the customer before and after the interruption.
- 5.2. When a flat call-out rate applies, it will include all incidental service costs (travel times, kilometres, expense allowances, etc.), but not accommodation expenses. Expenses incurred for incoming or outgoing international air travel will be invoiced to the Customer at cost.

### **6. Service costs**

- 6.1. The Company calculates the estimated duration of on-site Services on the basis of the schedule of prices and services applicable at that time.
- 6.2. Expenses incurred for any interruptions of Services or exceedance of agreed time limits for completion of Services not attributable to the Supplier shall be borne by the Customer.
- 6.3. Upon completion of Services, but not later than upon completion of each workweek, the Customer shall approve the working hours of the Supplier's staff on the Supplier's time sheet.

## **7. Time of performance and delay of Services**

- 7.1. Time periods specified by the Company within which Services are to be carried out are based on estimates only and time is not of the essence. The Company will however use reasonable endeavours to carry out the works in a timely manner using reasonable care and skill but shall not be liable for delays in the supply of Parts or if the Customer restricts access to its premises.
- 7.2. The Customer may only request an agreement on a binding period for the provision of the Services if the extent of the works is precisely determined, the Supplier is able to provide necessary Parts in time, and the Customer has obtained permits of competent authorities.
- 7.3. If the Customer requires an extension of the Services or additional Services become necessary as a result of the Companies experience on site, the time period shall be extended accordingly.
- 7.4. If the works are complete and ready for acceptance within the time period is complete or, if a test run is scheduled, the test run is ready to commence, the time period shall be deemed met.
- 7.5. In the event of Force Majeure, labour conflicts or other events beyond the Supplier's control, the time period shall be extended accordingly and if necessary on more than one occasion.
- 7.6. All claims related to delays shall be subject to section 18.

## **8. Acceptance**

- 8.1. If the Supplier notifies the Customer on the completion of the Services, or, if so agreed, a test run has been completed, the Customer shall be obliged to accept the completed Services. If Services or Parts prove defective, the Supplier shall use reasonable endeavors to cure the defect, unless the defect is minor or not attributable to the Supplier. In any event, acceptance may not be refused by reason of minor defects.
- 8.2. Services shall be deemed accepted if the Customer, for reasons not attributable to the Supplier, does not accept Services within one week upon notification of completion or puts the serviced item into operation.
- 8.3. Upon acceptance of the Services, the Supplier's liability for obvious defects shall be excluded, unless the Customer has expressly reserved his rights with regard to the respective defect in a written notice delivered to the Supplier upon acceptance.

## **9. Warranty for Services**

- 9.1. Upon acceptance of the works, notwithstanding sections 9.4 and 18, the Supplier shall, to the exclusion of any further claims of the Customer, be obliged to remedy the defect provided that:
  - The Customer shall give written notice of the defect to the Supplier without undue delay when it should reasonably have become aware of the same.
  - The Customer shall not be entitled to request rectification, if the defect is minor or attributable to the Customer or its employees, in particular if the defect arises from any material provided by the Customer. The Customer shall allow reasonable time for the Supplier to remedy the defect. Replaced parts shall become property of the Supplier.
  - The Company shall not be liable for any defects that arise from alterations, repairs or maintenance works of the serviced item by the Customer or third parties without the Companies written approval. The Customer, however, shall be entitled to remedy the defect himself or by third parties subject to notifying the Company of the works to be undertaken.
- 9.2. If the Company does not remedy the defect, any further liability shall be subject to section 18.
- 9.3. If the Supplier is not liable for the alleged defect, then, to the extent the defect has been remedied by the Supplier, the Customer shall reimburse the Supplier for the service and its expenses.
- 9.4. The Supplier shall be under no liability in respect of any defects or failure of the Services if they result from
  - wilful damage, incorrect connections or incorrect operation
  - Force Majeure
  - Tear and wear due to overuse of mechanical and/or electronic items failure to maintain; or
  - Extraordinary mechanical, chemical or atmospheric influences
- 9.5. Subject to the provisions of section 13, any warranty claims relating to the Services shall become time-barred within 12 months. This limitation period shall commence after acceptance of the Services.

## **10. Maintenance, repair and overhaul at the Supplier's work-site**

- 10.1. Any expenses arising from transporting the serviced item for maintenance, repair or overhaul to and off the Supplier's or his subcontractor's work-site shall be borne by the Customer.

10.2. If acceptance of the serviced item is delayed, the Supplier shall be entitled to charge the Customer for the storage of the respective item at his or his subcontractor's work-site. The Supplier shall be entitled to store the serviced item otherwise. Any storage shall be at the risk and cost of the Customer.

## **11. Delivery of spare or replacement sparts with or without installation**

The following provisions shall apply to any delivery of Parts, whether or not being subject to a repair or service order with regard to delivery time, delay in delivery, warranties and passing of risk:

- 11.1. The Customer shall be responsible for the correct specification of the Part to be delivered by the Supplier.
- 11.2. The Supplier will use reasonable endeavours to adhere insofar as it can to delivery time estimates and will keep the Customer reasonably informed in connection therewith but shall not be liable for failure to deliver at a stated time.
- 11.3. The risk of loss or damage will pass to the Customer upon dispatch of the Part. That shall also apply in case of partial delivery or if the Supplier transports the Part to the Customer or bears the costs for the transport.

## **12. Warranty for new Parts**

- 12.1. If new Parts, upon passing of risk, are defective, the Supplier shall, at its discretion, either remedy the defect or deliver a new Part free of defect. The Customer shall give written notice of the defect to the Supplier without undue delay. Replaced parts shall be returned to and become property of the Supplier.
- 12.2. The Customer shall allow reasonable time for the Supplier to remedy or to deliver a Part free of defects.
- 12.3. Any expenses for installation and removal of the Part shall be borne by the Customer, unless the Supplier is liable for such expenses pursuant to section 18.
- 12.4. The Company shall not be liable for unsuitable or improper use, defective assembly or operation of the Customer or third parties, fair wear and tear, negligent handling, improper maintenance, unsuitable operating material, defective structural work, improper foundation, chemical, electro-chemical or electronic influences, provided these circumstances are not attributable to the Supplier or the Company.
- 12.5. The Supplier shall not be liable if the Customer or a third party modifies or repairs the Part without the Supplier's prior approval in writing.

## **13. Warranty for used Parts**

Unless agreed otherwise in writing, any warranty claims relating to the delivery of used Parts shall expire after 6 months. This period shall commence after acceptance or operation of the used Part by the Customer, whichever is the earlier, but in any event not later than 1 month after delivery. The foregoing provisions shall not apply in the event of fraudulent concealment of a defect.

## **14. Infringement of intellectual property rights of third parties**

If the use of the Parts is in breach of domestic intellectual property rights of third parties, the Supplier, at his own expense, shall either provide the Customer with the right to use the respective Part or modify the Part to the effect that the infringement of intellectual property rights no longer persists. If that is not possible under reasonable economical conditions or within a reasonable time period, both the Customer and the Supplier shall be entitled to withdraw from the contract. Also, the Supplier shall indemnify and hold the Customer harmless against intellectual property right claims of third parties being acknowledged, undisputed or assessed in a legally binding judgment. Subject to the provisions of section 18, the Supplier's foregoing obligations in the event of an infringement of intellectual property rights shall be conclusive and conditional on the following requirements: that the Customer shall notify the Supplier without undue delay on any intellectual property right claim made, support the Supplier in defending such claims to the extent reasonable and/or enable the Supplier to modify the delivered part to the effect that an infringement of intellectual property rights no longer persists; that the Supplier shall reserve the right to all defence measures in and out of court; that the alleged infringement of third parties' intellectual property rights is not due to an instruction, unauthorized modification or use of the Part contrary to the contract by the Customer.

## **15. Retention of title**

- 15.1. The Supplier retains title to all accessories and Parts until receipt of all payments being due to the respective service or delivery contract.
- 15.2. In case of breach of contract by the Customer including, but not limited to, delay in payment, the Supplier shall be entitled to take possession of the item and the Customer shall be obliged to surrender the item. Neither the enforcement of the retention of title nor the attachment of the item by the Supplier shall be deemed as withdrawal from the contract. The above shall not be interpreted as derogating from the Supplier's right to cancel the contract.
- 15.3. The Customer may resale the Part, subject to the above retention of title, only in the cause of his regular business. For this case, the Customer hereby assigns all claims arising out of such resale or use for services, irrespective of whether the goods have been processed or not, to the Supplier. Notwithstanding the Supplier's right to claim direct payment, the Customer shall be entitled to receive the payment on the assigned claims. To this end, the Supplier agrees not to demand payment on the assigned claims to the extent the Customer complies with all his obligations for payment and does not become subject to an application for insolvency or to any stay of payment; in these events, however, the Customer shall disclose to the Supplier the assigned claims and the respective debtor and provide the

Supplier with all information and documents necessary for debt collection and notify the debtors (third parties) of the assignment.

- 15.4. The Customer shall also assign to the Supplier such claims which arise against third parties from the incorporation or combination of the item into or with real estate or moveables.
- 15.5. If the foregoing securities exceed the secured claims by more than 20 %, the Supplier, at his own discretion, shall return to the Customer such securities upon the Customer's request.
- 15.6. Upon the opening of insolvency proceedings, the Supplier shall be entitled to withdraw from the contract and take possession of the item.

## **16. Processing of replacement parts**

- 16.1. Prices for replacement parts are subject to the Customer transferring to the Supplier the property of a repairable used part as replacement. If the used part is not received by the Supplier within 2 weeks after the Customer has received the replacement part from the Supplier, the Supplier shall be entitled to charge the price for a new part. The used part shall be shipped to the Supplier's work-site "Carriage Insurance Paid" (CIP Incoterms 2010) or, from abroad, "Delivered Duty Paid" (DDP Incoterms 2010).
- 16.2. If a return delivery note is missing, the used part will be returned unidentified to the Customer. If the Customer refrains from specifying the defect of the returned part, an inspection fee of 200.00 Israeli New Shekels shall be charged.

## **17. Return of unused parts**

- 17.1. If the Customer orders several spare parts and, upon placing of order, he is not certain as to which spare part is suitable, the Customer shall, at his own risk and expenses, return the spare parts not required to the Supplier's work-site "Carriage Insurance Paid" (CIP Incoterms 2010) within 2 weeks upon completion of the repairs. The customer has to replace any impairments of the returned spare part (e.g. traces of usage due to installation and/or removal) to the supplier.
- 17.2. The Supplier may charge the Customer with a 10 % fee for inspection and restocking of returned spare parts, but not more than 700.00 Israeli New Shekels per position. Redemption of spare parts with a value of below 260.00 Israeli New Shekels shall be excluded; these spare parts shall not be credited.

## **18. Supplier's liability and limitation of liability**

- 18.1. If the Supplier is responsible for a damage to parts of the serviced item, the Supplier, at his discretion and own costs, shall repair the part or deliver a new part. The Supplier's liability shall be limited to the price agreed for the Services. Apart from that, section 18.3 shall apply.
- 18.2. In the event that - due to the Supplier's responsibility for omitted or faulty execution of advice given before or after the contract, or breach of other non-fundamental contractual obligations, in particular instructions on the operation and maintenance of the serviced item or delivered Parts - the Customer cannot use the Services or delivered Parts as agreed upon, the following provisions, to the exclusion of any further claims of the Customer, shall apply.
- 18.3. For damages other than to the delivered Parts or the Services themselves, the Supplier – irrespective of the legal ground – shall only be liable in the event of:
  - a. Intent
  - b. negligence of the Supplier or the Company
  - c. damages to life, body or health
  - d. an explicit guarantee

## **19. Statute of limitations**

Except for section 13, any claims of the Customer – irrespective of the legal ground – shall become time-barred within 12 months.

## **20. Applicable law and jurisdiction; personal data**

- 20.1. The legal relationship between the Company and the Customer shall be governed by the laws of Israel and will be subject to the exclusive jurisdiction of the courts of Israel.
- 20.2. The local jurisdiction will be in the courts of Tel Aviv, unless otherwise elected by the Company.