

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

## **德马吉森精机售后服务和备件交付一般条款**

### **1. General provisions**

The following terms and conditions shall apply to all current and future after sales services of our company ("Supplier") 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"). These terms and conditions shall apply exclusively. Differing or contrary terms of the Customer shall not apply, unless expressly agreed upon. A contract shall only come into force with the Supplier's written order confirmation by letter, fax or email, unless the contract is concluded orally through the Supplier's hotline.

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

2.1 The Customer shall provide to the extent necessary at his own risk and expense assistant staff, and, tools, lifting devices with operating staff based on the Supplier's needs 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, ventilated 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 inappropriate instruction; in this case, section 17 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 to the extent to which the Customer is responsible for the loss or damage occurred.

2.3 The Customer shall be obliged to ensure the safety in the workplace, and ensure the operational procedures and systems comply with relevant safety regulations and provide appropriate working conditions. In particular, the Customer shall thoroughly clean machines to be repaired by Supplier before and after the repairs. 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 schedule of prices and services which the Customer may request from the Supplier at any time. The Supplier shall be entitled to charge the Customer with 90% of the value of the services provided before service provision.

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 CIF (Incoterms 2010), including costs of packaging and statutory VAT.

3.4 If the Customer fails to make payment on the due date, the Supplier remains the right to charge the Customer liquidated damages on the amount unpaid, at the rate of 0.5 % of such due payment each seven-day.

3.5 Unless expressly agreed otherwise, since payment for Services Parts has been made from the Customer, the Supplier will issue official invoice within 10 days to the Customer.

3.6 The Customer shall be entitled to offset or to claim retainer rights only to the extent to which his counterclaim is acknowledged, undisputed or assessed in a legally binding judgment.

### **1. 一般条款**

以下的一般条款不仅适用于本公司("供应商")当前和未来与机床的维修、维护和其它服务有关的售后服务("服务"),同时适用于备件和替换备件("备件")的交付。本一般条款的适用具有排他性。除非明确约定,客户的与本一般条款不同或者相反的条款不适用。除非合同是通过供应商的热线电话口头订立的,合同仅在供应商通过信函、传真、邮件形式的书面订单确认后生效。

### **2. 客户的责任**

2.1 客户应在必要的范围内,自行承担风险和费用,提供协助人员,还应根据需要提供工具、起重设备及其操作人员和因供应商履行服务所必需的其他材料和设备。此外,客户应提供给供应商人员干燥可通风可上锁的房间用于存放交付的备件、工具、衣物和供应商人员的个人物品。客户应对协助人员能够听从供应商的指导负责。供应商对于因客户的协助人员造成的损失不负任何责任,除非相应的损失是因供应商的不当指导所造成,在此情形下,应适用第 17 章有关供应商责任的规定。

2.2 如果供应商的材料、工具在客户的工作地点遭受损坏、损毁,客户应在其对损失或损坏负责的范围对就供应商遭受的损失承担责任。

2.3 客户有义务保障工作地点的安全,操作规程和制度须符合相关的安全规定,并应营造合适的工作条件。特别的,客户应将供应商要修理的设备在修理前后彻底清洁。客户应指导供应商人员了解其工作地点的具体安全规章。

2.4 如有必要,客户应出资为供应商购买内部工作许可证、身份证件等。

### **3. 价格和支付条款**

3.1 除非另有书面明确约定,客户应根据供应商的价格和服务时间表付款,客户可随时向供应商索要该价格和服务时间表。供应商在提供服务前有权向客户索取 90% 的服务价款。

3.2 二手备件,材料和特殊的服务,以及供应商员工的交通费 and 住宿费应该单独开具发票。

3.3 除非另有书面明确约定,价格应为 CIF 价格(2010 年国际贸易术语解释通则),包括包装成本和法定增值税。

3.4 若客户不能在到期日前付款,供应商保留以每 7 日 0.5% 的标准向客户收取未付款部分违约金的权利。

3.5 除非另有书面明确约定,客户支付服务和备件费用后 10 日内供应商向客户出具正式发票。

3.6 客户仅在其反诉被承认、没有争议或者在有约束的法律判决评估后的范围内有权抵销或主张其保留的权利。

## 4. Unfeasibility of Services

4.1 In the event that Services are unfeasible for reasons not attributable to the Supplier, any expenses, in particular such expenses for fault diagnostics, shall be borne by the Customer. This provision particularly applies 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, \_if the Customer fails to provide environment and conditions required by Services of the Supplier.

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. To the extent the Supplier's Services prove not necessary, the Supplier shall be entitled to reject such request.

4.3 If Services are not feasible, the Supplier shall not – irrespective of the legal ground – be liable for damages of the serviced item, breach of non-fundamental contractual obligations and damages not caused to the serviced item itself. In the event of intent or gross negligence of the Supplier or his organs or executive staff or breach of fundamental contractual obligations, the Supplier shall be liable according to the provisions of applicable law. If the Supplier is in breach of fundamental contractual obligations (i.e. obligations, the fulfilment of which is essential for due performance of the contract and on the compliance of which the other party may regularly rely), his liability, except he or his organs or executive staff act intentionally or grossly negligent, shall be limited to the typically foreseeable damage

## 5. Travel and incidental expenses

5.1 Travel and incidental expenses incurred by service personnel may be invoiced by the Supplier to the Customer based on a flat call-out rate. The flat call-out rate will be charged per service technician for each service call. For service calls, which are interrupted by weekends or public holidays, a flat call-out rate will be billed for the service period before and after the interruption.

5.2 The flat call-out rate includes all incidental service costs (travel times, kilometers, expense allowances, etc.), but not accommodation expenses. Expenses incurred for incoming or outgoing international air travel will be invoiced to the customer at cost plus invoice tax.

## 6. Service costs

6.1 The Supplier calculates its service personnel's duration of attendance at site on the basis of the schedule of prices and services applicable at that time and available from the Supplier at any 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. In case that the Customer refuses to approve without due cause, working hours approved by the Supplier shall be the basis.

## 4. 服务履行不能

4.1 因不可归责于供应商的原因导致服务履行不能的,任何费用,特别是故障检测费用,都应由客户承担。本条尤其适用于以下情形:

在故障检测时没有发现所谓的故障的; 未能在客户约定的服务日期见到客户的; 客户终止正在进行中的订单的; 没有及时获得所需的备件的; 客户未提供供应商服务所需的环境和条件的。

4.2 供应商仅在客户明确要求且客户自行承担费用时才有义务将服务项目恢复原状,但供应商的服务被证明是不必要的情形,供应商有权拒绝。

4.3 若服务履行不能,供应商不对服务项目的损失,非基本合同义务的不履行和非对项目本身的损失负责,而不管法律依据如何。若供应商或其机构、执行人员存在故意或重大过失,违反基本的合同义务,供应商应根据适用的法律规定承担责任。若供应商违反基本合同义务(例如:该义务的履行对合同履行至关重要,以及合同相对方通常依赖于该义务的履行),不包括供应商或其机构、执行人员故意或重大过失的行为,其责任仅限于在通常情形下可以预见的损失。

## 5. 交通费和杂费

5.1 供应商可按照固定的上门服务费向客户开具服务人员的交通费和杂费的发票。上门服务费根据每位服务技术人员的每一次服务收取。服务因周末或者节假日中断的,在该次中断之前和其后的服务期间向客户收取此次上门服务费。

5.2 上门服务费用应包含所有的附带服务费用(行程时间,距离,费用津贴等),但不包括住宿费。国际往返航班的费用按照成本+发票税费的总金额向客户开具发票。

## 6. 服务费用

6.1 供应商按照在当时适用并可随时由供应商提供的价格和服务时间表计算其服务人员的现场出勤时间。

6.2 因任何服务的中断或因不可归责于供应商的原因为完成服务而超出约定的期限产生的费用应当由客户承担。

6.3 完成服务后,每个工作周的结束前,客户应在供应商时间表上确认供应商人员的工作时间。客户无正当理由拒不确认的,以供应商核定的工作时间为准。

## 7. Time of performance and delay of Services

7.1 Time periods specified by the Supplier within which Services are to be carried out are based on estimates only and are, therefore, not binding. The Customer may only demand an agreement with the Supplier on a binding time period for Services if the extent of the works is precisely determined, the Supplier is able to provide necessary Parts in time, agreement on the extent of the Customer's duties of cooperation has been achieved and, if necessary, the Customer has obtained permits of competent authorities. The binding period for Services shall commence on the day the Supplier and the Customer agree that the aforementioned requirements are met, the Supplier has free access to the Customer's site and the Customer has given written clearance for the Services to commence and there is no barrier for the Supplier to carry out the Services. The clearance protocol shall state the commencement date and be signed or stamped by the Supplier and the Customer.

7.2 If the Customer requires an extension of the Services or additional Services become necessary, the time period shall be extended accordingly.

7.3 If Services are ready for acceptance within the time period or, if a test run is scheduled, the test run is ready to commence, the time period shall be deemed met.

7.4 In the event of Force Majeure, labor conflicts or other events beyond the Supplier's control, the time period shall be extended accordingly.

## 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 prove defective, the Supplier shall cure the defect, unless the defect is minor or not attributable to the Supplier. 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 2 days 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.

## 9. Warranty for Services

9.1 Upon acceptance of the Services, notwithstanding sections 9.4 and 17, the Supplier shall, to the exclusion of any further claims of the Customer, be obliged to remedy the defect. The Customer shall give written notice of the defect to the Supplier without undue delay. The Customer shall not be entitled to demand cure, if the defect is minor or attributable to himself, in particular if the defect arises from any material provided by the Customer. If the Customer needs the Supplier to cure such defect, the Customer shall pay the corresponding fees. The Customer shall allow reasonable time for the Supplier to remedy the defect. Replaced parts shall become property of the Supplier.

9.2 The Supplier 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 Supplier's approval.

9.3 In the event of justified complaint, the Supplier bears the necessary costs for the rectification of defects, unless there is a disproportionate burden on the Supplier.

9.4 If the Supplier does not remedy the defect, after a reasonable set period of time, the Customer may reduce the price as proposed by the Supplier or, if he has no interest in remedying the defect despite reducing the price, withdraw from the contract. Any further liability shall be subject to section 17.

## 7. 履行时间和服务延迟

7.1 供应商规定的服务履行期限仅为估算, 因此并不具有约束力。在工作范围可以精确确定, 供应商能够及时提供必需的备件, 就客户的合作职责已经达成了协议, 以及客户已取得了主管当局的批准(如有必要)的情形下, 客户仅可就服务时间期限要求与供应商签订有约束力的协议。有约束力的服务时间期限从客户和供应商确认上述条件得到满足和供应商能够自由进出客户的工作场所, 客户为服务的开始已经出具了书面许可协议且供应商提供服务不存在障碍之日起算。许可协议应当载明开始日期, 由客户和供应商共同签字或盖章。

7.2 如果客户需要延长服务或需要其它服务, 服务时间期限应相应延长。

7.3 如果在服务时间期限内准备进行验收, 或者如果按照进度要求进行测试且测试可立即开始, 应当认为满足了时间期限的要求。

7.4 若出现不可抗力, 劳工冲突以及其他供应商不可控制的事件, 事件期限应相应的延长。

## 8. 接收

8.1 如果供应商通知客户其完成了服务, 或者, 运行测试已经完成(如有此约定), 客户有义务接收完成的服务。如果服务确认有缺陷, 除非此缺陷是次要的或是不可归因于供应商, 供应商应修复此缺陷。客户不能因次要的缺陷而拒绝接收。

8.2 如果非因供应商原因, 在通知完成服务的 2 天内客户未能接收或服务已经投入运行, 应当视为服务已接收。

8.3 服务接收后, 供应商不对明显的缺陷负责, 除非客户已明确表示就相应的缺陷保留权利。

## 9. 服务保障条款

9.1 服务接收后, 不管 9.4 条和 17 章如何约定, 供应商有义务修复服务的缺陷, 但应排除客户的任何进一步的主张。客户应当毫不延迟的书面通知供应商服务的缺陷。如果此缺陷是次要的或归因于客户, 特别是导致缺陷的材料是由客户提供的, 客户无权要求供应商进行修复; 需要供应商修复的, 则客户应承担相应费用。客户应给予供应商合理的时间修复此缺陷。被替换下来的备件的所有权归供应商。

9.2 供应商不对因客户或未经供应商许可的第三方对服务项目的改动、维修或维护而造成的任何缺陷负责。

9.3 如果投诉是正当的, 除非供应商负担过重, 供应商应承担修复缺陷的必要费用。

9.4 如果供应商没有修复缺陷, 经过一段合理时间后, 客户可以根据供应商的提议减少支付的价款, 或如果客户对减少支付价款的方案不感兴趣, 客户可以解除合同。任何进一步的责任受第 17 章规制。

9.5 If the alleged defect does not result from the Supplier's Services, then, to the extent the defect has been remedied by the Supplier, the Customer shall reimburse the Supplier's expenses accordingly.

9.6 The Supplier shall be under no liability in respect of any defects of the Services if the defect is (I) due to willful damage, incorrect connections or incorrect operation or other reasons not attributable to the Supplier, (II) Force Majeure (e.g. lighting bolts), (III) tear and wear due to overuse of mechanical and / or electronic items or (IV) extraordinary mechanical, chemical or atmospheric influences.

9.7 Any warranty claims relating to the Supplier's Services shall become statute-barred within 12 months, unless otherwise agreed in this general terms and conditions or other agreements between the Customer and the Supplier.. This limitation period shall commence after acceptance of the Services or operation of the serviced item by the Customer, whichever comes first shall prevail.

## 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 The risk of transportation shall be borne by the Customer. At the Customer's request and costs, the Supplier shall arrange for insurance against damages in transit by reason of theft, breakage, fire and the like.

10.3 During Services at the Supplier's or his subcontractor's work-site, there shall be no insurance coverage of the Supplier; the Customer shall be responsible to maintain insurance coverage for the serviced item regarding fire, mains water, storms, machine breakage and the like. If insurance coverage for such risks is expressly requested and paid for by the Customer, the Supplier is responsible for such insurance

10.4 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 other-wise. Any storage shall be at the risk and costs of the Customer.

## 11. Delivery of spare or replacement parts with or without installation

The following provisions shall apply to any such delivery of Parts 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. Any advice of the Supplier on the suitability of the ordered Part shall not be binding and the Supplier's liability to that effect shall be excluded as the Supplier accepts orders for delivery of Parts without prior inspection of the machine in which the Part is to be installed and totally based on the representations of the Customer.

11.2 The parties shall agree on the delivery time. The agreed delivery time shall only be binding for the Supplier if all commercial and technical matters have been settled between him and the Customer and the Customer has fulfilled all contractual obligations; otherwise, the delivery time shall be extended accordingly, provided such delay is not attributable to the Supplier.

9.5 如果所谓的缺陷并不是由供应商的服务造成的, 在供应商已修复的范围内, 客户应支付给供应商相应的费用。

9.6 供应商在以下情形下不对服务的任何缺陷承担责任: (I) 缺陷是由故意的损坏、不正确的连接、操作或其他非供应商原因所造成的, (II) 不可抗力(如, 闪电), (III) 机械和/或电子元件的过度使用造成的磨损, (IV) 非常规的机械、电子、大气影响。

9.7 任何与供应商服务有关的保质期为 12 个月, 除非本条款另有规定或者供应商与客户另有约定。保质期从服务验收或服务项目投入运行后起算, 以先发生者为准。

## 10. 维护、维修和在供应商场所的详细检查

10.1 任何为维护、维修或详细检查而往返于供应商或其分包商的地点的服务项目运输费用由客户承担。

10.2 运输风险由客户承担。如客户要求且客户承担费用, 供应商应就在运输中因盗窃、破损、火灾等造成的损失投保。

10.3 在供应商或其分包商的工作场所的服务期间, 不属于供应商的保险范围; 客户应对维持服务项目在火灾、自来水、暴风雨、机器破损等范围的保险负责。如果客户明确要求并支付相关费用, 则可由供应商对此类风险投保。

10.4 如果服务项目验收延迟, 供应商有权向客户收取存储在供应商或其分包商地点的相应项目的存储费。供应商有权以其他方式存储服务项目。任何存储的风险和费用由客户承担。

## 11. 在有或无安装情况下的替换备件或备件交付

以下条款适用于任何不受维修或服务订单中有关交付时间、交付延迟、保证和风险转移约定规制的备件交付。

11.1 客户应对由供应商交付备件的正确说明负责。供应商就订购备件的试用性提出的任何建议不具有约束力且供应商对此造成的责任应予排除, 因为供应商在接受交付备件的订单时没有就安装备件的机器进行事先检查而完全依赖于客户的陈述。

11.2 合同方应就交付时间达成一致。如果, 供应商与客户之间的所有商业和技术上的问题都得到了解决且客户已经完全履行了合同项下的义务, 那么, 约定的交付时间对供应商有约束力, 否则, 如果延迟不可归因于供应商, 交付时间应相应的延长。

11.3 The Supplier shall only be obliged to adhere to the agreed delivery time, if the Supplier's pre-suppliers deliver the Part in due time. Delivery time shall be deemed met by the Supplier when, prior to the expiry of the deadline, the Part has been shipped from the Supplier or directly from the pre-supplier to the Customer, or the Customer has been notified that the Part is ready for dispatch. In the event of Force Majeure, labor conflicts or other events beyond the Supplier's control, the delivery time shall be extended accordingly. The Supplier shall notify the Customer of the beginning and the end of such circumstances as soon as possible.

11.4 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 – at his discretion – shall be obliged to 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 become property of the Supplier.

12.2 The Customer shall allow reasonable time for the Supplier to remedy the defect or to deliver a Part free of defects; otherwise, the Supplier's liability shall be excluded.

12.3 In the event of a justified complaint, the Supplier bears the costs necessary to rectify the defect, unless the contractor is disproportionately charged.

12.4 If the Supplier does not remedy the defect or deliver a new Part free of defect, after a reasonable set period of time, the Customer may reduce the price as per the Supplier's proposal or, if the defect is not minor, withdraw from the contract. Apart from that, the right to reduce the price shall be disclaimed. Any further liability shall be subject to section 17.3.

12.5 The Supplier shall not be liable for unsuitable or improper use, defective assembly, installation 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.

12.6 The Supplier shall not be liable if the Customer or a third party modifies or repairs the Part without the Supplier's approval.

12.7 Any warranty claims relating to the delivery of new Parts shall become statute-barred within 6 months. This limitation period shall commence after acceptance or operation of the Part by the Customer, whichever comes first shall prevail and shall not be later than 1 month after delivery.

11.3 如果供应商的上游供应商能够在适当的时间内交付备件，供应商有义务遵守约定的交付时间。在期限届满前，备件已从供应商或其上游供应商直接运送给客户，或客户已收到备件准备发货的通知，应当视为供应商满足了交付时间的要求。如发生不可抗力，劳工冲突或者供应商不能控制的事件，交付时间应相应延长。供应商应尽可能快地通知客户此等事件的开始和结束时间。

11.4 备件发货后，损失或损坏的风险转移给客户。这同样适用于部分备件交付，由供应商运输或由供应商承担运费的情形。

## 12. 新备件的保证条款

12.1 如果在风险转移后，新备件发现有缺陷，供应商有义务修复此缺陷或交付一个新的没有缺陷的备件（选择何种供应商自行决定）。客户应毫不延迟的书面通知供应商备件的缺陷。替换下来的备件的所有权归供应商。

12.2 客户应给予供应商合理时间来修复缺陷或交付一个新的没有缺陷的备件，否则，供应商不承担责任。

12.3 如果投诉是正当的，除非供应商负担过重，供应商应承担修复缺陷的必要费用。

12.4 如果供应商未能修复缺陷或交付一个新的没有缺陷的备件，经过一段合理期限后，客户可根据供应商的提议减少支付价款，如果缺陷不是次要的，客户可以解除合同。除此之外，任何减少价款的权利都不予承认。任何进一步的责任受第 17.3 条的规制。

12.5 供应商不对客户或第三方的不合适或不正确的使用，有缺陷的组装、安装或操作，正常磨损，疏忽处理，不适当的维护，不合适的操作材料，有缺陷的结构性工作，不合适的地基，化学、电化学或电子的影响负责，只要这要情形不可归因于供应商。

12.6 供应商不对客户或第三方未经许可而修改或维修备件负责。

12.7 任何与交付的新备件有关的保质期为 6 个月。保质期从接收或客户将备件投入运行后起算，以先发生者为准且不应晚于交付后一个月。

### 13. 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 17, 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 defense 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.

#### 14. Retention of title

14.1 The Supplier retains title to all accessories and Parts until receipt of all payments being due to the respective service or delivery contract.

14.2 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.

14.3 Upon the opening of insolvency proceedings, the Supplier shall be entitled to withdraw from the contract and take back and take possession of the item.

#### 15. Processing of replacement parts

15.1 Charges and prices for replacement parts are subject to the Customer transferring to the Supplier the property of an according, repairable used part as replacement (the residual value of used part shall be negotiated between the Supplier and the Customer). 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 full price for a new part. The used part shall be shipped to the Supplier's worksite "Carriage Insurance Paid" (CIP Incoterms 2010) or, from abroad, "Delivered Duty Paid" (DDP Incoterms 2010).

15.2 If a return delivery note is missing, the used part will be returned unidentified to the Customer, and the round-trip freight shall be borne by the Customer.

#### 16. Return of unused spare parts

16.1 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 worksite "Carriage Insurance Paid" (CIP Incoterms 2010) within 2 weeks upon completion of the repairs and all expenses arising from this shall be borne by the Customer.

### 13. 侵犯第三方知识产权

如果备件的使用侵犯了第三方的本地知识产权，供应商应自费提供给客户相应备件的使用权或更改备件以使侵犯知识产权的行为不再存在。如果上述行为在合理经济的条件下或一段合理的期限内是不可能的，客户和供应商均有权解除合同。此外，供应商应赔偿并保护客户免受第三方的知识产权被认可的、无争议或具有法律约束力的判决进行评估后的索赔。根据第 17 章的约定，供应商在侵犯知识产权时应承担的上述义务应具有确定性并取决于以下要求：客户应毫不延迟的通知供应商任何知识产权主张，在合理范围内支持供应商抗辩此类主张和/或使供应商能够修改交付的备件，从而使侵犯知识产权的行为不再存在；供应商应保留在诉讼或非诉讼程序中采取所有防御措施的权利；涉嫌侵犯第三方知识产权的行为并非由于客户违反合同的指示、未经授权的修改或使用造成的。

#### 14. 所有权保留

14.1 供应商在收到相应服务或供货合同的全部款项前保留所有配件和备件的所有权。

14.2 如果客户违约，包括但不限于延迟付款，供应商有权占有物品，客户有义务交出物品。保留所有权的执行和对物品的添附都不应视为供应商解除合同。

14.3 破产程序启动后，供应商有权解除合同并占有取回该物品。

#### 15. 替换备件的处理

15.1 替换备件的收费及其价格取决于客户将与替换备件一致且仍可修复的旧备件转让给供应商（旧备件的残值由供应商和客户协商确定）。如果在客户收到更换备件后两周内，供应商没有收到旧备件，供应商有权向客户收取对应新备件的全部价格。旧备件应按照 CIP 或 DDP 运送至供应商的工作地点。

15.2 如果运货提单丢失，无法识别的旧备件应退还给客户，往返运费由客户承担。

#### 16. 未使用备件的退回

16.1 如果客户订购了多个备件，并且在下单时不确定哪些备件是合适的，则客户应自担风险和费用。在修理完成后 2 周内将不需要的备件按照 CIP 退回至供应商工作地点，因此发生的所有费用由客户承担。

16.2 The Supplier reserves the right to charge the Customer with the relevant goods receipt, testing and restocking costs. This amount is 10% (maximum RMB 1,500.00) per position value. In principle, spare parts with a goods value of under RMB 600.00, are excluded from the withdrawal; No credits will be issued for this.

## 17. Supplier's liability and limitation of liability

17.1 If the Supplier is responsible for a damage to parts of the serviced item, the Supplier, at his discretion and own costs, may 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 17.3 shall apply.

17.2 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 nonfundamental 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.

17.3 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) gross negligence of the Supplier or his organs or executive staff, c) damages to life, body or health, d) fraudulent concealment of damages, e) an explicit guarantee, If the Supplier is in breach of fundamental contractual obligations (i.e. obligations, the fulfilment of which is essential for due performance of the contract and on the compliance of which the other party may regularly rely) the Supplier shall also be liable in the event of gross negligence of non-executive staff and slight negligence. In case of slight negligence, the Supplier's liability shall be limited to the typically foreseeable damage. Any further liability shall be disclaimed.

## 18. Force Majeure

The Supplier shall not be responsible for any delay due to Force Majeure event, such as war, fire, flood, earthquake, typhoon, strikes, natural catastrophe, limitation or prohibition from importation or exportation authority, customs or inspection and quarantine and all other contingencies and circumstances whatsoever beyond the Supplier's reasonable control preventing, hindering or interfering with the performance thereof. The Seller shall advise the Customer immediately with the occurrence mentioned above and within fourteen days thereafter, the Seller shall send by mail to the Buyer for their acceptance a certificate of the accident issued by the competent government authorities where the accident occurs as evidence thereof.

## 19. Applicable law and jurisdiction; personal data

19.1 The legal relationship between the Supplier and the Customer shall be governed by the laws of the People's Republic of China as applicable between domestic parties.

19.2 All disputes arising from Service and Parts shall be settled amicably through friendly negotiation. In case no settlement can be reached through negotiation, the case shall then be submitted to Shanghai International Economic Trade Arbitration Commission. The award rendered by the said commission shall be final and binding upon both parties. Arbitration fee shall be borne by the losing party.

19.3 The Supplier shall be entitled to save and process the Customer's personal data by means of electronic data processing.

16.2 供应商可以就退回备件检查和重新进仓向客户收取 10% 的费用,但对每个备件的前述费用不超过人民币 1500 元。原则上,排除价值低于人民币 600 元的备件的赎回;这些备件不可赊账。

## 17. 供应商责任和责任限制

17.1 如果供应商需对服务项目备件的损坏负责,供应商可自行决定并承担费用,对备件进行修理或交付一个新的备件。供应商的责任不超过服务的约定价格。除此之外,还应适用第 17.3 条。

17.2 如果供应商对在合同之前或其后给出建议的遗漏或错误执行,或违反其他非基本合同义务,特别是关于服务项目或交付备件的操作和维护的说明负责,导致客户不能按照约定使用服务或交付的备件的,应适用以下排除客户任何进一步主张的约定。

17.3 对除交付的备件或服务本身之外的损害,供应商的责任仅限于以下情形,无论法律上的依据如何, a) 故意, b) 供应商或其机构或执行人员有重大过失, c) 对生命、身体或健康造成损害, d) 欺诈隐瞒损害赔偿, e) 明示的保证。如果供应商违反了基本合同义务(即,此义务的履行对合同的履行至关重要,且相对方通常依赖于此义务的履行),供应商还应对非执行人员的重大过失和轻微疏忽负责。在轻微疏忽的情形下,供应商的责任应限于通常可预见的损失。任何进一步的责任不应予以承认。

## 18. 不可抗力

出现不可抗力之情形,如战争、火灾、洪水、地震、台风、罢工、自然灾害、出口国政府禁止或限制货物出口、进口国政府禁止或限制货物进口、海关或检验检疫查验以及由于其它供应商不能合理控制的任何意外事故或情况,妨碍或阻碍服务和备件的提供,供应商不承担责任。发生不可抗力情形时,供应商应立即通知客户所发生的不可抗力,并在其后 14 日内,将事发当地政府机关颁发的事故证书通过邮件寄给客户,以兹证明。

## 19. 适用法律和管辖权;个人数据

19.1 只要在国内各方向适用,供应商和客户之间的法律关系就适用中华人民共和国法律。

19.2 凡因服务和备件引起的或与本合同有关的一切争议,应首先由双方通过友好协商予以解决。如果协商不能解决,应提交上海国际经济贸易仲裁委员会进行仲裁,仲裁裁决为终局,对双方都有约束力。仲裁费用由败诉一方负责。

19.3 供应商有权通过电子数据处理的方式保存和处理客户的个人数据。