

# ALPHA MOS TERMS AND CONDITIONS OF SALE IN USA – INSTRUMENTS AND RELATED SERVICES

**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 machines ("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.

**2. Customer's responsibilities** 2.1 | The Customer shall provide to the extent necessary at his own risk and expense assistant staff, safe work environment, access to all machines, necessary consumables and any other items deemed necessary for due performance of the Supplier's Services. 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 or Customer's assistant staff, unless the respective damage is due to a Supplier's instruction; in this case, section 12 shall apply regarding 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 worksite, 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 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.

**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. 3.2 | 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.

**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. 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. 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 fulfillment 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. Time of performance and delay of Services** 5.1 | 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 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. The clearance protocol shall state the commencement date and be signed by the Supplier and the Customer. 5.2 | If the Customer requires an extension of the Services or additional Services become necessary, the time period shall be extended accordingly and additional charges may apply for items and repairs not covered by the service agreement. 5.3 | In the event of Force Majeure, labor conflicts or other events beyond the Supplier's control, the time period shall be extended accordingly.

**6. Acceptance** 6.1 | 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. 6.2 | Services shall be deemed accepted, if the Customer, for reasons not attributable to the Supplier, does not accept Services within 2 weeks upon notification of completion or puts the serviced item into operation.

**7. Warranty for Services** 7.1 | Upon acceptance of the Services, notwithstanding section 12, 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. The Customer shall allow reasonable time for the Supplier to remedy the defect. Replaced parts shall become property of the Supplier. 7.2 | 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. The Customer, however, shall be entitled to remedy the defect himself or by third parties and demand reimbursement of the necessary expenses from the Supplier, if there is a danger to operational safety or an imminent threat of extensive damage or, in case statutory exceptions do not apply, if a reasonable period for cure specified by the Customer has been expired without result. 7.3 | Any expenses for installation and removal arising from defective Services shall be borne by the Customer, unless the Supplier is liable for such expenses pursuant to section 12. 7.4 | 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. 7.5 | 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, (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. 7.6 | Subject to the provisions of section 13, any warranty claims relating to the Supplier's Services shall become statute-barred within 12 months. This limitation period shall commence after acceptance of the Services or operation of the serviced item by the Customer.

**8. Maintenance, repair and overhaul at the Supplier's worksite** 8.1 | Any expenses arising from transporting the serviced item for maintenance, repair or overhaul to and off the Supplier's or his subcontractor's worksite shall be borne by the Customer. 8.2 | 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. 8.3 | During Services at the Supplier's or his subcontractor's worksite, there shall be no insurance coverage; the Customer shall be responsible to maintain insurance coverage for the serviced item regarding fire, mains water, storms, machine breakage and the like, unless insurance coverage for such risks is expressly requested and paid for by the Customer.

**9. 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 regarding delivery time, delay in delivery, warranties and passing of risk: 9.1 | 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. 9.2 | 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.

9.3 | The Supplier shall only be obliged to adhere to the agreed delivery time, if the Supplier's presuppliers deliver the Part in due time. 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 begin and the end of such circumstances as soon as possible. 9.4 | 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.

**10. Warranty for new Parts** 10.1 | 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. 10.2 | 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. 10.3 | 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. 10.4 | The Supplier shall not be liable if the Customer or a third party modifies or repairs the Part without the Supplier's approval.

**11. Return of unused spare parts** 11.1 | 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.

**12. Supplier's liability and limitation of liability** 12.1 | 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 12.3 shall apply. 12.2 | 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.

12.3 | 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 fulfillment 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.

## **13. Statute of limitations**

Any claims of the Customer – irrespective of the legal ground – shall become statute-barred within 12 months. With regard to claims for damages pursuant to section 12.3 a) – d) the statutory periods of limitation shall apply. The statutory periods of limitation shall also apply in relation to defects of a building or if the delivered item has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building.

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

The legal relationship between the Supplier and the Customer shall be governed by the laws of the United States of America as applicable between domestic parties.