

GENERAL TERMS AND CONDITIONS FOR SERVICES (GTC-SERVICES)

I. GENERAL

1. The following terms and conditions shall apply to all services performed by KHS GmbH (KHS) to Customer unless expressly agreed otherwise in writing by the parties. If the Customer issues and submits a purchase order based on a non-binding offer of KHS, a binding contract is concluded only, if, when and to the extent such purchase order is confirmed by KHS in writing (by letter, fax, E-Mail) ("Order Confirmation"). General Terms and Conditions of the Customer referred to in an order does not apply even if not expressly objected by KHS. In case KHS submits an offer expressly nominated as binding, such binding offer must be signed and returned to KHS ("Acceptance") within 6 weeks from the offer date ("Acceptance Period") and will also be confirmed by an Order Confirmation. KHS is entitled to reject any Acceptance received by KHS after the expiry of such Acceptance Period and issue a new offer containing any adjustments which KHS, at its discretion, deems required, including price adjustments due to an actual or envisaged increase of the cost for labour and/or material prices.
2. The Acceptance by the Customer and/or the Order Confirmation by KHS shall hereinafter be referred to as "Concluding Document". The contractual relation as determined by the Concluding Document, any document expressly referred to therein and these terms and conditions is hereinafter referred to as "Contract".

II. SCOPE OF CONTRACT

1. The scope of the services to be provided by KHS shall exclusively be as defined in the Concluding Document ("Scope of Contract"). Reductions to the Scope of Contract shall be effective only if and to the extent confirmed in a written document signed by both parties, such as additional agreements, amendments to the Concluding Document and/or any other document forming part of the Contract.
2. "Project Services" shall mean all work related to the supply of new machines and/or other parts and components by a third party including another KHS entity such as but not limited to installation, commissioning, configuration, conversions, and training. "General Services" shall mean other activities to be provided by KHS including but not limited to maintenance, testing, provision of technical assistance, support, training and/or other after sale services.
3. "Performance" shall mean all Project Services and General Services actually provided by KHS to Customer. Performance beyond the initial Scope of Contract shall be payable on a time and material basis only and shall be invoiced separately.
4. Should either Party proposes a change to the Scope of Contract including costs, delivery dates or installation timelines or a change in circumstances of a Party necessitate a change in the Scope of Contract including shipping, costs, delivery dates or installation timelines, in a way that impacts upon way the Scope of Contract is delivered, that Party must notify the other in writing. The Party receiving the Change Request will consider within 10 working days the proposed Change Request and revert to the proposing Party either accepting or rejecting it or requesting amendments. The Parties will discuss the proposed Change Request in good faith with a view to agreeing amendments. The Purchaser's acceptance shall not be withheld in case the change was necessitated by reasonable economic circumstances.

III. PRICE AND PAYMENT

1. The sum of the total amount invoiced based on the Prices indicated in the Concluding Documents shall hereinafter be referred to as
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the "Contract Price". In the event, the Contract Price is based on time and material; the rates shall be determined by the fees and prices as indicated in KHS' "Supplementary Conditions for Installation and Service".

2. The Contract Price is net, exclusive of value added and withholding tax which is to be added to such prices at the respective statutory rate prevailing at the date of invoice. Moreover, any and all costs and expenses arising during the Performance in accordance with item IV below due to statutory regulations, specific requirements of the Customer or for any other reason, including, but not limited to, customs duties, taxes and/or fees, withholding taxes, for examinations/approvals or otherwise, are at the Customer's account and are to be paid by the Customer in addition to the Contract Price.
3. All costs and expenses not covered by the price index, including but not limited to board and lodging costs, any license and/ or permissions, are to be borne by the Customer.
4. Payment of the Contract Price shall be made by bank-to bank transfer in Euros without deduction, free of charge to KHS' bank account as indicated in the invoices and the and in the instalments set out in the Concluding Document. Any payment shall be deemed made only if and when the corresponding amount has been received in KHS' bank account at KHS' free disposal without any reservation.
5. The Customer shall be deemed to be in default of payment upon the expiration of the period of time set out in the Concluding Documents without the requirement for any prior notice. In the event of default in payment, KHS shall accordingly be entitled to suspend the Performance and adjust the project schedule, taking into account the capacity of KHS. Interest shall be charged on amounts due at a rate of nine percentage points above the basic rate of interest as issued from time to time by the European Central Bank.
6. The withholding or set-off of any payments due under the Contract with any amounts allegedly due payable by KHS to the Customer is excluded, unless and to the extent such amounts are accepted by KHS in writing or finally sustained by a competent court of justice.
7. In case the payment default of the Customer exceeds the duration of payment period set out in the Contract Documents by more than 30 days and payment by the Customer has not been made on or before the expiry of an ultimate deadline notified by KHS to the Customer in writing, KHS shall be entitled to terminate the Contract, in which case item IX, 4, b shall apply.

IV. TIME FOR PERFORMANCE / DELAY IN PERFORMANCE

1. Regarding Project Services the Time for Performance shall be as set out in the Concluding Document. General Services shall be performed without a specific Time for Performance.
2. Unless otherwise set out in the Concluding Document, compliance with the Time for Performance is subject to the on-time occurrence of the fulfilment of all Customer's obligations to support and cooperate as well as the following: (i) a Concluding Document has become effective, (ii) agreed payments have been received by KHS, (iii) clarification of all commercial and technical aspects is concluded, (iv) all documents and materials required for the execution of the order must have been received by KHS, and (v) any approval by governmental authority, licences, permit and/ or visas or similar are to be provided regardless of the Party being responsible for the application as well as subject to the proviso that the performance of the obligations shall be physically and legally possible under reasonable and cost-effective circumstances and that the fulfilment is not hindered or prevented by any impediments, such as, but not limited to, those arising out of pandemics, shortages of personnel and raw materials, basic

materials, energies and third-party services.

3. If and when the Performance of the Contract would constitute a violation by KHS or by any of its affiliated companies and/or subcontractors of an embargo and/or similar sanction or restriction imposed by any national or multinational governmental authority on the Customer, on any of its officers, directors or affiliated companies, on the country of the Customer and/or on the country in which the Scope of Contract is intended to be performed, KHS is entitled to suspend its performance of the Contract by written notice to the Customer and the parties shall proceed in accordance with the provisions set out in item X, 5.
4. Only if, KHS is solely responsible for not meeting the scheduled date for restart of production providing a Project Service ("Delay"), which causes the Customer any loss or damage, the Customer is entitled to payment by KHS of a lump-sum compensation for Delay after expiry of a period of 1 (one) full week from the Date for Performance ("Grace Period") in the amount equal to 0.3% of the Contract Price for each full week of delay beyond such Grace Period, but in total no more than 3% of the Contract Price. Subject to item 5 below, payment of the lump-sum compensation shall serve as full and final compensation of any and all loss or damage suffered by the Customer as a result of the Delay and/or any delay caused by KHS and all additional or alternative rights and remedies of the Customer, irrespective of their legal basis, shall be excluded. Any other agreed date scheduled shall be for planning and organisational reasons, only.
5. In case the Delay exceeds 6 months from the scheduled date for restart of production and the production has still not restarted on or before the expiry of an ultimate deadline notified by the Customer to KHS in writing, the Customer shall be entitled to terminate the Contract, in which case item IX, 4, shall apply.
6. In case KHS is not responsible for a delay, the Time for Performance shall be deemed extended appropriately. KHS is deemed not responsible, if (i) KHS did not contribute to the delay at least negligently, (ii) the range of Performance has expanded, (iii) the delay is the result of an Event of Force Majeure as defined in item X, or (iv) if the delay is caused by the Customer.
7. If the Performance is delayed for reasons for which the Customer is responsible, KHS shall be entitled to reschedule the Performance at the sole cost and risk of the Customer.

V. DUTY TO COOPERATION AND RESPONSIBILITIES

1. The Parties agree to cooperate in good faith and to the best of their efforts to achieve the objectives of the contract and to perform their contractual obligations to the best of their abilities. For this purpose, the Parties shall consult, inform, and advise each other at regular meeting and constructively cooperate as efficiently as possible. With this in mind, the Customer may not invoke any complaints or claims of which the Customer was aware or should have been aware of, if it had exercised appropriate due diligence and did not notify to KHS.
2. The Customer is obliged and responsible to submit all necessary plans, drawings and illustrations of already existing machines or parts thereof, which are related to the performance, including those of third parties. If such plans, drawing and illustrations of a machines which are the property to third parties, cannot be provided, the Customer shall indemnify KHS against all costs and expenses required to procurement such documents. Likewise, the Customer shall indemnify KHS against all costs and expenses in the case a performance shall be carried out on protected goods of third parties.
3. The Customer is responsible for all earthwork, construction work and other ancillary work outside the Scope of Contract, such as skilled and unskilled workers, building materials and tools; for

energy and water at the installation site, including but limited to connections, heating and lighting; to sufficiently large, suitable, dry and lockable rooms for storing the machine parts, devices and gadgets, materials and tools as well as for adequate working and recreation rooms, including appropriate sanitary facilities for the KHS's personnel.

4. The customer is obliged to provide the parts and components necessary for the performance of the Scope of Contract in accordance with the Time for Performance and free from any defect. KHS shall inspect the parts and components in relation to quantity and specification prior to installation and inform the Customer respectively. However, KHS shall not be responsible for the quality of the parts and components.
5. Prior to the start of the installation, the Customer shall provide all necessary information on the location of open and concealed electricity, gas and water lines or similar installations as well as the required structural and static data without request by KHS.
6. The Customer shall decide on the manner, in which the solid and liquid waste generated within the Scope of Contract is to be collected and disposed of. Whereby the containers for separating the waste shall be provided by the Customer at its expense. KHS shall separate the waste into the containers accordingly.

VI. PROVISION OF PARTS AND COMPONENTS

1. KHS shall not be liable for any breach of contract by the supplier of parts and components even if it is an affiliate company. There is no joint and several liability between KHS and such supplier. Thus, KHS shall not responsibility for any delay or any other breach of contract in this regard. Supply immediately upon delivery and shall notify KHS without undue delay of any Defect (as defined in item VIII, 1) that appears during such inspection. If the Buyer fails to either inspect the Scope of Contract or to so notify KHS, then the Scope of Contract is deemed free from Defects with the exception of any Defect which could not have been discovered as a result of a reasonable inspection and with respect to only those Defects the obligations of KHS as set out in item VIII, 2 shall apply.
2. The Buyer shall notify KHS in writing immediately if and when the Buyer discovers a Defect. Otherwise, the Buyer loses any entitlement under item VIII (Warranty) in respect of such defect.

VII. WORK-RELATED HEALTH AND SAFETY PROTECTION

The Parties agree to comply with all statutory, professional association and other safety regulations applicable to the plant under this contract, in particular those relating to health and safety regulations. The customer shall ensure safety on the construction site for the protection of KHS personnel. This includes the Customer ensuring that no harmful effects occur on the construction site and that KHS personnel can perform their work without interference.

VIII. WARRANTY

1. KHS warrants that, upon completion, the Project Services shall be performed free from Defects. The Project Services and/or the General Services are performed with a Defect, if the achieved result of the performance or any part thereof is not as specified in the Scope of Contract, is not safe, and/or is not performed in a way to allow its unrestrained use for the intended purpose. In the event, the Performance shows such Defect, KHS shall only be obliged to provide the respective Project Service and/ or General Service again in a workmanlike manner. The Customer is obliged to accept further Performances and to permit access to the place where the Performance is to be provided. However, should KHS be unable to complete a Performance free of such Defects even after three attempts, KHS shall be entitled to reimburse the costs for a

substitute performance to remedy the Defect that has occurred.

2. As a result of such warranty but subject to item 5 below, KHS shall rectify at its cost, by repeated performance, replacement or repair, any Defect notified in accordance with item VI and within a period of twelve (12) months from Transfer of Risk ("Warranty Period").
3. In case such rectification fails, KHS is entitled to two additional attempts. In case the rectification finally fails or in urgent cases of endangerment of operational safety or to avoid disproportional damages, then, subject to a prior written notification to KHS, the Customer is entitled to rectify the Defect or to have it rectified by a third party itself and to reimbursement of all necessary and reasonable expenses at actual and subject to item IX, 2.
4. In the event referred to in item 3 above as well as in case rectification of the Defect is technically impossible, the Customer may, subject to a written notification to KHS and to the exclusion of any right to rescind from the Contract, reduce payment of the Contract Price in the ratio of the value that the defect-free Scope of Contract would have had to its actual value at the time the contract was concluded up to the limit set out in item IX, 2.
5. No Warranty shall be granted in respect of used parts, if any, contained in the Scope of Contract. Moreover, the obligations of KHS set out in items 2 to 4 above shall cease, if and when one or more of the following has occurred:
 - a. Unsuitable or improper use of the Scope of Performance, incorrect or negligent handling, improper maintenance, unsuitable operating resources, use of insufficient media qualities.
 - b. Noncompliance with the KHS standard regarding media and consumables, defective construction work, unsuitable subsoil, chemical, electrochemical, or electrical influences.
 - c. installation of motors being supplied as a part of the Scope of Contract was not performed by qualified electrician(s) according to the VDE regulations.

IX. LIABILITY / CONSEQUENCES OF TERMINATION

1. KHS shall not be liable for any indirect or consequential losses or damages nor for any loss of profit, loss business, loss of production or product, loss of use, business interruption, increased operating cost, nor for any other financial or economic loss or damage whatsoever.
2. Without prejudice to remedies of specific performance set out in the Contract related to warranty, infringement of third parties' intellectual property rights and termination of the Contract, the remaining liability of KHS shall be limited to 20 % of the Contract Price of the part of the Scope of Contract giving rise to such liability.
3. The above exclusions and limitations shall apply notwithstanding anything to the contrary set out in the Contract and to any liability of the KHS under and/or in connection with the Contract, irrespective of its legal basis, whether under contract or at law, but shall not apply to the extent liability cannot be limited or excluded under the governing law nor in case of malevolent intent or gross negligence, product liability or injury to life, limb or health.
4. In case of a termination of the Contract, KHS shall cease any Performance for those parts of the Scope of Contract in respect of which the Contract has been terminated and the parties' sole and exclusive liabilities shall be as follows:
 - a. In case only the Customer was entitled to such termination, the Customer shall pay to KHS the part of the Contract Price for the part of the Scope of Contract as performed by KHS prior to termination. In case the right of termination arises after completion of the Performance, KHS shall reimburse the price of the terminated part of the Contract as far as already paid.
 - b. In case only KHS was entitled to such termination, the Customer shall pay to KHS the entire Contract Price deducted only by the

cost saved by KHS due to the termination and insofar as the employee could be reassigned elsewhere. Pursuant to a default in payment, KHS is entitled to reclaim the Scope of Performance and the Customer shall be obliged to place it at KHS' disposal.

- c. In case of either Party was entitled to such termination, neither Party shall be under any obligation or liability with respect to the Contract other than those already fulfilled at the time of termination.

X. FORCE MAJEURE

1. If and to the extent either Party is impeded or prevented from the due fulfilment of any of its obligations under the Contract as a direct or indirect consequence of an Event of Force Majeure, such party shall neither be liable for any delay nor for a failure in performing its obligations nor for any consequences thereof.
2. Events of Force Majeure shall mean, without limitation, the occurrence of (i) forces of nature e.g. fire, earthquakes, floods, epidemics; (ii) accidents e.g. explosions, shipwreck, car crash, contaminations, environmental pollution, (iii) man-made crises beyond the reasonable control of the parties e.g. wars, riots, civil unrest, terrorist attacks, strikes, disruption to the supply chain or to international container shipping, as well as (iv) governmental activity or administrative measures regardless of the time of their establishment such as embargoes, export control provisions, lock or close downs as well as (v) any other occurrences which are otherwise beyond the reasonable control of the parties, such occurrences also including their respective direct or indirect effects.
3. Notwithstanding the generality of the foregoing, effects of an Event of Force Majeure are in particular delays and/or other impediments arising from the non-availability to KHS of materials and/or components beyond its reasonable control, whether arising as a consequence of long-term effects of a pandemic, of a supply chain disruptions or raw material shortages, of an ongoing or future war or other armed conflict and/or of any other unpredictable event. KHS shall inform the Customer without delay if and when KHS becomes aware of such non-availability of KHS materials and/or components on the performance of the Contract, in particular, of an expected delay in the Performance. Notwithstanding item 4 below, for the duration of such delay so informed by KHS, neither Party shall be entitled to terminate the Contract.
4. As soon as either Party becomes aware that it will be impeded or prevented from the due fulfilment of any of its obligations under the Contract due to an Event of Force Majeure, such party shall inform the other party in writing thereof as well as of the expected duration of the impediment and the resulting effects on the performance of the Contract. With the aim to mitigate adverse impacts of an Event of Force Majeure on the performance of the Contract, KHS will endeavour to identify and propose to the Customer reasonable measures and the parties shall, prior to their implementation, agree on the additional cost for such measures, if any.
5. Without prejudice to item 3 above, If and when the effects of an Event of Force Majeure Event prevent the performance of any part of the Scope of Performance beyond six (6) months from the initial Date for Performance, the parties shall, within further thirty (30) days, discuss and agree how to proceed, failing which either Party may terminate the Contract but solely with respect to the non-delivered parts of the Scope of Performance in which case item IX, 4, c shall apply.

XI. CODE AND LIMITATION PERIOD

1. The Contract is a code, which means that, to the extent permitted

by the governing law, any additional or alternative obligations, liabilities, right and/or remedies arising therefrom and not expressly set out in the Contract shall be excluded.

2. Any and all claims of the Customer against KHS under or in connection with the Contract, irrespective of the legal basis, shall expire upon completion of 18 months from Performance.

XII. SEVERABILITY

Should any provision of the Contract be invalid or unenforceable, or should any provision have unintentionally been omitted, this shall not result in the invalidity of the remaining provisions. The invalid or missing provision shall be replaced by a valid and enforceable provision which comes as close as possible to the legal and economic purpose intended by the parties.

XIII. APPLICABLE LAW, PLACE OF JURISDICTION

1. The Contract as well as the arbitration agreement set out below shall be governed by the substantive law of Switzerland without reference to its conflict of law provisions and excluding the United Nations Convention on the International Sale of Goods (CISG).
2. Any dispute arising out of or in connection with the Contract shall exclusively and finally be settled in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators appointed in accordance with these Rules. The place of arbitration shall be Zurich Switzerland and the proceedings shall be conducted in English.