

Terms and Conditions for the Sale and Delivery of Replacement Parts and Terms and Conditions for the Services Provided by the Technical Service of Menerga GmbH

The Terms and Conditions below shall apply to any services provided by the Technical Service, retrofits and deliveries of replacement parts of Menerga GmbH for private and commercial customers (hereinafter "Customer"). To the extent the Customer is a consumer within the meaning of Section 13 of the German Civil Code (*BGB*), i.e. a natural person who enters into a legal transaction for purposes that predominantly are outside his trade, business or profession, deviations and distinctions, if applicable, are marked in the text. Full-time and part-time farmers, who earn income from their activities, shall not be deemed consumers within the meaning of these regulations.

All agreements, offers and deliveries shall be based exclusively on these Terms and Conditions. Hence, they shall apply also to future business relations, even if they have not been separately agreed. Any divergent, conflicting or supplementary general terms and conditions, even if they are known, shall not be accepted as part of the contract, unless their validity is expressly consented to in writing. The same shall apply if the Customer objects to our General Terms and Conditions and places his order only under to his terms and conditions. These General Terms and Conditions shall apply, unless other written agreements have been made between the parties or unless expressly provided otherwise.

Section 1 Conclusion of contract / scope of services

1. Our offers shall be subject to change. This shall not apply if we have expressly indicated its binding nature in the offer.
2. Dimensions, weights, illustrations and drawings, including all information and illustrations contained in brochures and catalogues, shall only be binding if this has been expressly agreed. As a rule, this shall be done in writing. Technical modifications as well as changes and deviations as to shape, colour and/or weight shall be reserved within reason.
3. The quality of the goods shall be based exclusively on the agreed technical delivery instructions. If we are required to deliver according to drawings, specifications, samples, etc. of the Customer, the Customer shall bear the risk of fitness for the intended use. The time of transfer of risk shall be decisive for the contractual condition of the goods. Insofar we shall only be liable for proper workmanship. Unless expressly agreed otherwise, no liability shall be assumed for determining the quality of materials or corrosion damage.
4. The contract shall be deemed concluded upon the legally valid order for the offered service through confirmation by signing the offer or by sending a written purchase order by mail or fax. In case of oral orders or orders by e-mail, we shall be entitled to demand a written order by mail or fax and make execution of work conditional on the same.
5. The content of the services owed by us shall result, to the extent necessary, from the sent order confirmation. Usually, such confirmation is sent not later than 14 days upon the receipt of the binding order.

6. The contract shall be deemed concluded not later than upon sending of the order confirmation at the conditions set out therein, unless the Customer objects within 5 days following the receipt of the confirmation. In case of an objection, confirmed dates, if any, shall be postponed.

Section 2 Subject matter of contract / remuneration

1. We shall perform the agreed servicing, retrofitting and other services or deliveries of replacement parts. The arrangement can be acknowledge by a confirmation of order, other confirmation or unconditional delivery based on a purchase order.

2. The basis of settlement shall be the contractually agreed prices. In the absence of any explicit price agreement, the prices of the Technical Service's price list valid at the time of order shall apply, which can be requested at any time.. This shall not include replacement parts and supplies that are charged separately on the basis of price and expenditure.

3. All prices and remunerations shall be understood to be net amounts plus the legal VAT applicable at the time of invoicing.

4. Upon submission of relevant proof, invoices can be also issued excluding VAT according to the reverse-change method.

5. Invoice amounts shall become due without deduction 30 days after the date of invoice. This period shall be deemed to have been complied with only if the relevant amount has been credited to our account. Credit instruments shall not be accepted. When paying by cheque, the date of payment shall be deemed the date on which the money is available to us without restriction. If the Customer defaults in payment, default interest at the statutory rate shall become payable.

6. Assertion of a right of retention or set-off against any counterclaims of the Customer shall be excluded as a matter of principle. In exceptional cases, offsetting shall be permitted only if the counterclaim to be offset on the part of the Customer is uncontested or has become *res judicata*.

7. When delivering materials to other European countries (EU countries), the Customer undertakes to return immediately, duly completed and signed the entry certificate which is sent together with the invoice to prove shipment into a European country (EU country). If it is not returned after the second request, we shall be entitled to subsequently charge the applicable value-added tax.

Section 3 Price changes

1. Price changes shall be permitted if the period between the offer and the conclusion of contract, on the one hand, or the delivery date agreed in the confirmation of order or any other commitment and the actual delivery date exceeds four months. This shall not apply if a postponement is attributable to us. If thereafter and until completion of the delivery wages, cost of materials or the cost prices relating to the market increase, we shall be entitled to

increase the price in relation to and commensurate with the cost increases upon provision of appropriate proof.

2. If the Customer is a merchant, a legal entity under public law or a special fund under public law, price changes in accordance with the above regulations shall be permissible if the period between contract conclusion and the agreed date of delivery exceeds two months.

3. If maintenance contracts have been concluded, we shall be entitled to adjust the prices agreed in them to the extent the underlying prices of the wage costs increase or decrease based on the price increase of wage costs of IG Metall. Such price increase shall become effective upon notification of the increase.

Section 4 Duty of the Customer to cooperate

1. The Customer shall grant our employees and/or any third parties commissioned by us free access to the devices at the agreed times.

2. The Customer shall be obliged to ensure that the necessary organisational preconditions have been created to enable us to perform the work. In particular in situations where the equipment is owned by third parties and we have not been commissioned by the owner, the Customer shall ensure that the work can be performed with the consent of the owner or the possessor.

3. The Customer or third parties commissioned by us shall make best efforts at their own expense to support the execution of the agreed services. In particular, the staff of the contractor shall be provided free of charge with auxiliary staff, lifting devices, lift trucks, scaffolds, fall protection devices, implements as well as electricity and water, including the necessary connections, to the extent required for executing the order and/or complying with safety regulations. The same shall apply to the provision of consumables and operating materials. If this is not ensured, we shall be entitled to refuse the execution of work and make further work conditional on the commitment that the above provisions are made available to the extent necessary. If we need to discontinue the assignment due to any lack of auxiliary means, etc. (as described above), we shall be entitled to charge the costs incurred in this respect.

4. To the extent the Customer makes available auxiliary staff, we shall not assume any liability whatsoever, and as a matter of principle, for their activities. If any damage has been caused by auxiliary staff, the Customer shall be held liable for the damage caused to property as well as for any additional costs incurred by Menerga.

5. The Customer shall be obliged to take the necessary measures to protect people and property. He shall instruct our staff and/or third parties commissioned by us about special existing safety regulations if this is of relevance to the services to be provided under the existing contract. Moreover, he shall make an effort to ensure compliance with these safety regulations and inform us about violations.

6. For the services to be provided at the site of the Customer, a contact person shall be named, and kept available, for the staff of the Contractor who is responsible, competent and authorised with regard to any issues in connection with the execution of the order.

7. The Customer shall be obliged to accept our services. In this respect, it must be ensured that, on the last day of the work to be executed, an authorised signatory of the Customer or an authorised third party is present on the site who accepts the work by signing the work sheet. If there is nobody on site, acceptance shall be deemed to have taken place not later than one week upon completion of the work, however not later than upon commencement of the use of the service and operation of the system after completion of work.

8. If the Customer withdraws from an order already placed, we shall be entitled to claim 15% of the sales price for costs incurred for processing the order and for loss of profit, without prejudice to our right to assert a claim for higher actual damage. The Customer shall have the right to prove lower damage. This shall not apply if such withdrawal is attributable to Menerga.

9. If we have concerns during the execution of retrofitting work, repairs, etc. that such work may cause damage to property or people, we shall be entitled to make the execution of such work conditional on the express approval by the Customer or, in special cases, by the principal (owner). We reserve the right to refuse any work or reject any order if we are of the opinion that the risk is too high despite such express approval.

Section 5 Time for the provision of services

1. The time when services are provided shall be defined in the confirmation of order or any other written agreement. Dates shall be binding only if they are expressly agreed in writing.

2. If no date has been agreed, we shall notify the Customer of a scheduled date for service within a reasonable period.

3. If the execution of work on the date specified is not possible for reasons due to the Customer, the Customer shall be obliged to notify the Contractor accordingly not less than 3 days prior to the announced day for the execution of work. If this notice is not given or not given in due time, we shall be entitled to charge any costs incurred as a result thereof.

4. Typically, services are provided from Monday to Friday between 08:00 and 17:00 hrs., except on public and local holidays as well as between 24 and 31 December of each year. To the extent necessary due to an emergency or an express agreement to perform work also outside these times, surcharges for extra work and holiday work shall apply according to the then valid price list of the Technical Service.

5. If performance of our work or deliveries is delayed due to measures in connection with labour disputes, in particular strikes and lock-outs, as well as due to force majeure or other circumstances not attributable to us, the period for providing the services shall be reasonably extended.

6. If performance of work is delayed due to circumstances attributable to the Customer, we shall be entitled to claim compensation for the resulting damage as well as additional expenditures. This shall not affect any further statutory claims.

Section 6 Procedure in the event of warranty claims

1. If the Customer asserts a warranty claim regarding a performed delivery of devices, maintenance, retrofitting and/or repair, we shall review this alleged defect in a timely manner.
2. If it turns out that this notification of defect does not constitute a warranty case, we shall be entitled to charge for the services provided according to the price list valid at the time of work.
3. In particular, a warranty case does not (not conclusively) exist if, for instance,
 - the defect is attributable to faulty operation,
 - the maintenance instructions specified in the maintenance conditions of the devices have not been complied with,
 - third parties performed work on the system during the warranty period,
 - the Customer culpably prevents the performance of the inspection.

Section 7 Shipment of replacement parts

1. If, as requested by the Customer, we ship the goods directly to the Customer or any address named by the Customer, the risk of accidental loss or accidental deterioration of the item shall pass to the Customer when the item is dispatched to the Customer, however not later than upon the item leaving the works. This shall also apply if, as part of drop shipment, a supplier of us ships the goods directly to the Customer or the address named by him.
2. The above provision shall apply irrespective of who bears freight charges or which Incoterms may have been agreed.

Section 8 Terms of payment

1. Payments shall be due without deduction within 30 days upon invoicing. Special agreements shall be made in writing in advance.
2. All amounts are understood to be net amounts and shall be paid plus the legal VAT, unless exempted under the Value-Added Tax Act (*Umsatzsteuergesetz*), e.g. reverse-charge mechanism, etc.

Section 9 Warranty

1. Claims for defects shall become statute-barred after 12 months following the acceptance of the respective service within the meaning of Section 4 (6) of these Terms and Conditions if the Customer is an entrepreneur. This shall not apply if the statutory provisions of Section 438 Paragraph 1 No. 2 of the German Civil Code (*BGB*) or Section 634a Paragraph 1 of the *BGB* require longer periods and the conditions are met.

If the Customer is a consumer, the statutory provisions shall apply.

2. Warranty claims by the Customer (if he is an entrepreneur) require compliance with the inspection and complaint procedures of Section 377 of the German Commercial Code (*HGB*). Obvious defects shall be advised immediately. Hidden defects shall be also advised without delay after they have been detected.

3. In case of replacement parts sent, obvious defects shall be advised not later than 3 working days following the receipt of the goods. Hidden defects shall be also advised not later than 3 working days after they have been detected. If no such notification is received, the goods shall be deemed to have been approved. The Customer shall only be entitled to return the goods after having consulted us in advance.

4. If it turns out that, in fact, our service or the delivered goods exhibited a defect existing at the time of the transfer of risk, such defect was notified on time and this case does not fall under Section 6 (3) of these Terms and Conditions, we shall remedy the defect for our commercial customers under our warranty at our own discretion either by reworking or by replacement and exchange of function units, as appropriate. If no other approach is found to be appropriate with regard to the nature of the item or of the defect or other circumstances, we shall have the option to make at least two attempts at rectification or replacement.

5. If supplementary performance fails, the Customer, as a rule, shall be entitled to choose either to demand a lower price (reduction in price) or to rescind the contract (rescission). The latter shall only apply to the extent technically feasible. However, the Customer shall have not right of rescission for minor lack of conformity with the contract.

6. If the Customer is a consumer, he shall be entitled to choose, in case of deliveries of replacement parts, to have the defect initially remedied under warranty either by reworking or replacement. If no other approach is found to be appropriate with regard to the nature of the item or of the defect or other circumstances, we shall have the option to make at least two attempts at rectification or replacement. We may, however, refuse the type of supplementary performance chosen by the Consumer if such performance is unreasonable, in particular if it is only possible at unreasonable costs. Maintenance services, retrofits and repairs shall be subject to the provisions of Section 9 (4, 5) of these Terms and Conditions.

7. Warranty claims based on normal wear and tear (e.g. bulbs, LED lights and other typical wear parts, etc.) shall be excluded. The same shall apply to cases of only insignificant deviation from the agreed quality or minor impairment of useability. Moreover, claims shall be excluded to the extent the damage has been caused by improper, incorrect or negligent treatment by the Customer or any third party.

8. To the extent permitted, all consequential damage caused by a defect shall be excluded. If the Customer has agreed with his contracting partner damage claims beyond the statutory claims, they shall apply in the relationship with us only if we have been notified of such claims prior to the conclusion of contract and expressly acknowledged them in writing.

9. As a rule, only our product description shall be deemed to have been agreed in relation to the quality of the goods. Public statements, promotions or our advertisements (regarding the product or individual components thereof) shall not form part of the contractually agreed properties and quality of the goods. If the Customer is provided with inadequate assembly instructions, we shall be only obliged to deliver assembly instructions free of defects and only if the defect in the assembly instructions affects proper assembly.

10. We shall not grant the Customer any guarantees in the legal sense. This shall not affect any third-party manufacturer's guarantees for which we are not liable.

11. Otherwise, we shall only be held liable in the event of intent and gross negligence to the extent we fraudulently conceal defects, culpably cause injury to life, body or health, violate a warranty agreement or liability exists under the Product Liability Act for personal injury or damage to privately used items. Our liability based on culpable violation of material contractual obligations extends also to gross negligence of our vicarious agents. In the event of slight negligence, compensation claims shall be limited to the reasonably foreseeable damage typical for such contracts.

12. For used goods we shall accept liability for defects only if this has been explicitly agreed with the commercial Customer in writing, except for fraudulent misrepresentation or lack of a warranted property. This limitation of liability shall not apply to damage resulting from injury to life, body or health. The warranty period in case of delivery of used goods for consumers shall be 12 months from the date of delivery. This limitation of liability shall not apply to damage resulting from injury to life, body or health.

Section 10 Liability

1. For slightly negligible violations of duty, our liability shall be restricted to the foreseeable, contract-inherent, immediate, average damage that might be encountered in relation to the type of the goods in question. This shall also apply to slightly negligible violations of duty committed by our legal representatives or vicarious agents. We shall not be liable for slightly negligent violations of non-material contractual duties. In particular, any other and further claims of the Customer against us shall be excluded. This shall apply, in particular, to damage claims for violations of duty resulting from contractual obligations and tort. Therefore, we shall not accept any liability for damage not resulting from the delivered goods themselves. This limitation of liability shall not apply to any violation of duties the fulfilment of which make the proper performance of the contract possible at all and the observance of which the contractual partner may regularly rely on (cardinal duties).

2. The above limitations of liability shall not affect claims by the Customer arising from product liability. Moreover, the limitations of liability shall not apply to non-attributable physical injury or damage caused to health or loss of life of the Customer.

3. Any liability for indirect and unforeseeable damage, loss of production and use, lost profit, failure to make savings, and financial losses due to third-party claims – except for injuries to life, body or health – shall be excluded in all cases of simple negligence.

4. Claims for damages of the entrepreneur arising from a defect shall become statute-barred one year after the delivery of the goods. This shall not apply in the event we have fraudulently concealed the defect.

5. These limitations of liability shall also apply if we get direct access to the network of the Customer either by being provided with a network connection by an authorised person from the end customer or by means of remote maintenance. When being granted access, we bindingly assume that we are granted such access from appropriately authorised employees without any further verification being necessary on our part. This limitation shall apply in cases in which damage occurs to data, the data structure and/or any other damage to the network of the Customer demonstrably caused by our connecting to the network of the Customer. If a fault causes data losses, we shall only be held liable for the damage resulting therefrom up to the amount of the recovery expense such as would have been incurred if the Customer had been in the possession of machine-readable, up-to-date and complete backup copies. The Customer shall ensure daily data backups. Moreover, he shall ensure compliance with the requirements in accordance with data protection law.

6. The above provisions shall also apply to the personal liability of employees, representatives and vicarious agents.

Section 11 Reservation of title

1. The delivered goods (reserved goods) shall remain our property until all current or future claims we are entitled to against the Customer are satisfied, including all current account balance claims. If the Customer acts in violation of the contract – in particular if the Customer has defaulted with regard to the payment of an amount when due – we shall be entitled to repossess the reserved goods after we have set a reasonable period for performance. If we repossess reserved goods, this shall constitute a rescission of the contract. If we attach the reserved goods, this shall also constitute a rescission of the contract. We shall be entitled to use the goods repossessed by us. The proceeds from their utilisation shall be offset against amounts owed to us by the Customer after we have deducted a reasonable amount for the costs of utilisation.

2. The Customer shall treat the reserved goods carefully. He shall insure them to a sufficient amount at their replacement value at his own expense against any damage by fire, water and theft. If any maintenance and inspection work is required, the Customer shall have them performed at his own cost.

3. The Customer may use the reserved goods and divest them in the ordinary course of business as long as he is has not in default with his payments. However, he may not pledge the reserved goods or to assign them as security. Even now, the Customer shall fully assign by way of security any claims by the Customer for payment arising against his customers from a resale of the reserved goods as well as any claims by the Customer in connection with the reserved goods arising from any other legal grounds against his customers or third parties (in

particular, claims from tort and claims for insurance benefits), including all current account balance claims.. We accept this assignment.

4. The Customer shall be entitled to collect for us the claims assigned to us on his own account and in his own name as long as we do not revoke this authorisation. This shall not affect our right to collect these claims ourselves; however, we will not assert the claims ourselves and will not revoke the authorisation to collect as long as the Customer properly fulfils his payment obligations.

5. If the Customer acts in violation of the contract – in particular if the Customer has defaulted with regard to the payment of an amount when due – we may require from the Customer that he disclose to us the assigned claims and the respective debtors, that he informs the respective debtors about the assignment and surrenders to us any documents and provides any information we may need to assert such claim.

6. If the reserved goods are inseparably combined or mixed with other items that are not our property, we shall acquire co-ownership of the new item in proportion of the value of the reserved goods (final invoice amount, including VAT) to the other combined or mixed goods at the time of combination or mixing. If the reserved goods are combined or mixed in a way such that the item of the customer must be considered to be the main item, the Customer and ourselves agree already now that the Customer shall assign to us pro-rated co-ownership of that item. We accept this assignment. The Customer shall hold in trust the resulting sole or co-ownership of such an item.

7. In the event of an attachment of the reserved goods by third parties or other interventions by third parties, the Customer shall make them aware of our property and inform us immediately in writing to enable us to enforce our property rights. If any third party is not able to refund the judicial and extra-judicial costs incurred by us in this connection, the Customer shall be held liable in this regard.

8. Upon a relevant request by the Customer, we shall be obliged to release the securities owed to us to the extent their realisable value exceeds our open claims against the Customer by more than 10%. However, we shall be entitled to choose the securities to be released.

Section 12 Software

If, additionally, software is supplied to the Customer for use together with the delivered goods, the Customer shall have a non-exclusive right to use this software with the relevant documentation. The Customer shall be prohibited to copy the software and/or use it on another than the purchased device.

Possible uses, such as duplication, revision, translation, etc. shall be subject to the provisions of Sections 69a of the German Act on Copyright and Related Rights (*Urheberrechtsgesetz*). If manufacturer's information, e.g. copyright notes, is attached to the software provided, the Customer shall be prohibited to remove, alter or render them unrecognisable.

Section 13 Export control

Each offer and contract and/or the performance of a contract shall be subject to the reservation of export licenses being granted, if appropriate, or the performance not being prevented by foreign trade or sanction list restrictions or bans. If a contract / order cannot, or may not, be executed for such reasons, the Customer shall not be entitled to damages in any form.

Section 14 Data protection clause

Pursuant to the provisions of the German Data Protection Act (*Bundesdatenschutzgesetz*), we shall be entitled to collect and use personal data to the extent that this is necessary for the business relationship. Such data shall be passed to third parties only with the consent of the Customer, unless they are subject to the legal or official duty to notify.

According to Article 13 of the General Data Protection Regulation (GDPR) of the European Union, we inform you about the processing of your personal data as follows.

According to Article 6 (1) (b) of the GDPR and on the basis of the contract concluded with you, Menerga GmbH, having its registered office in 45472 Mülheim an der Ruhr, Alexanderstrasse 69, collects the following personal data from you for:

- Performance of contractual services
- Determination of the credit limit by our trade credit insurer
- Query to financial credit agencies regarding a credit line
- Payment processing
- Delivery of contractually ordered products and services
- Transmission of your address as well as contact data to logistics companies for the delivery of the goods
- Transmission of your data to our internal as well as external service engineers to perform services
- Transmission of your contact data, if appropriate, to our field service, Menerga Leipzig, Podelwitzerstr. 5, 04680 Colditz OT Commichau
or
Menerga München, Theresienstrasse 9, 83339 Chieming, for the purpose of individual customer care
- Entry of your data into the CRM system of the Systemair group of companies for preparing offers, preparing and planning assignments of our service engineers or selling spare parts

Within the meaning of the data protection laws, the Customer shall authorise us to process, store, evaluate and use within the framework of our CRM any data obtained in connection with the order.

Section 15 Final provisions

1. The laws of the Federal Republic of Germany shall apply. The provisions of the United Nations Convention on the International Sale of Goods shall not apply.
2. For all disputes arising out of the contractual relationship and if the Customer is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes from this contract shall be the court competent for the place of our registered office. We shall be also entitled to sue the Customer at the place of his registered office. The same shall also apply if the Customer does not have a general place of jurisdiction in Germany or the Customer's residence or usual place of residence is unknown at the time of filing the suit.
3. The place of performance shall be Mülheim an der Ruhr.
4. If any of the provisions of the contract with the Customer, including these General Terms and Conditions, or parts thereof, are or become invalid or there is a gap in them, this shall not affect the validity of the remaining provisions. The wholly or partly invalid provision, or the missing provision, shall be replaced by a provision the economic outcome of which comes as close as possible to the invalid provision.

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