

## **General Terms and Conditions for Assembly, Commissioning, Repair, Maintenance and Other Services**

### **§ 1: Application Area, Validity of These Conditions**

1. These General Terms and Conditions for Assembly, Commissioning, Monitoring, Repair, Maintenance and Other Services (the “Assembly Terms”) of Zimmer Group, Inc., or any of its affiliates (referred to herein as the “Seller,” “Zimmer,” “we,” or “us”), shall apply with respect to the areas of assembly, commissioning, monitoring, repair, maintenance and other services (hereinafter referred to as “work” or “work services”), and the provision of any work by Zimmer is expressly conditioned on the acceptance by the entity procuring the work from Zimmer (referred to herein as the “Ordering Party”) of these Assembly Terms. The Ordering Party and Zimmer shall each be referred to as a “Party” and collectively as the “Parties”.
2. All work is based exclusively on these Assembly Terms. These Assembly Terms, together with Zimmer’s written confirmation of an order (“Order Confirmation”) and any separate agreement (such as any supplementary conditions and annexes) executed by the Parties constitute the entire agreement (“Agreement”) between Seller and the Ordering Party with respect to the provision of work by Seller. No additional or conflicting terms and conditions proposed by the Ordering Party, including in any purchase order (“Order”), shall apply and are expressly excluded by Seller. We hereby expressly reject any references or counter confirmations from the Ordering Party asserting its own terms and conditions of business or purchase. We do not acknowledge any such terms and conditions deviating from our Assembly Terms, unless we have expressly agreed to their validity in writing. Our Assembly Terms shall apply even if we knowingly and without reservation fulfill conditions of the Ordering Party that deviate from our Assembly Terms.
3. If work to be performed is part of a supply contract, our “General Terms and Conditions of Sale” shall also apply to the full extent. In the case of any conflicting terms, the terms in these Assembly Terms shall take priority.

### **§ 2: Definition of Terms; Scope of Work Services**

1. Maintenance: Unless otherwise agreed in writing or defined in the technical regulations of the manufacturer, maintenance work shall include the following:
  - a) Checking the condition of the device
  - b) Checking functions and settings
  - c) Cleaning, if possible and necessary for function
  - d) Lubrication
  - e) Refilling, adding or replacing operating materials or consumables
  - f) Scheduled exchange of wear parts

2. Repairs: Unless otherwise agreed in writing, repair work shall include the following:
  - a) Troubleshooting
  - b) Exchange of worn or defective component parts and acquisition of new parts (original brand or parts of equal quality)
  - c) Overhauling defective component parts or components and subsequent reuse
  - d) Function check
  - e) Measures for remedying damage to machines and systems that (may) compromise their use

Repair work can be performed both at the place of use as well as in our plant. Reference is explicitly made to § 8 for repairs in the plant.

3. Assembly: Unless otherwise agreed in writing or otherwise defined in the installation instructions of the manufacturer, assembly shall include the following:
  - a) Joining the individual component parts into a whole
  - b) Aligning and mounting
  - c) Adjusting and testing
  - d) Auxiliary measures, e.g. cleaning, sealing, lubricating, etc.
4. Commissioning: Unless otherwise agreed in writing, commissioning shall include the following:
  - a) Necessary checks
  - b) Setting work and test runs
  - c) Tests of system parts and systems that are required for beginning test operation after

- the end of assembly to achieve functional capability
  - d) Monitoring test runs
  - e) Detecting and remedying faults for which we are responsible
5. Other services: Unless otherwise agreed in writing, other services shall be understood to mean specially agreed services with which the Ordering Party is individually supported and served.

### **§ 3: Workplace Safety; Duties to Cooperate and Technical Assistance of the Ordering Party**

1. The Ordering Party shall support our personnel in the performance of work at its expense; in particular, to ensure that our personnel can begin work immediately in accordance with the agreed schedule and perform work up to completion without delays. To this end, an assembly manager shall be designated by us. This person shall handle communication with the Ordering Party. If work must be performed outside of normal work hours, the Ordering Party will be informed within a reasonable period in writing.
2. The Ordering Party shall take the necessary special measures for the protection of personnel and goods at the installation site. It shall also inform the assembly manager about any existing special safety regulations that are important for assembly personnel. It shall also inform the assembly manager of violations of these safety regulations by the assembly personnel.
3. On request, the Ordering Party shall support us in the import and re-export of our objects and tools, as well as in the acquisition of entry, exit or work permits, fully and at no cost; this shall also apply regarding any customs procedures and tax certificates.
4. On request, the Ordering Party shall supply us in a timely manner with the current technical documentation in its possession (e.g. drawings, descriptions, tables, instructions, etc.) that are useful for carrying out the agreed work, if these have not been created by us ourselves.
5. If the work is carried out on the customer's premises, the Ordering Party is obligated to provide technical assistance at its expense; in particular, to ensure the following prerequisites:
  - a) Electrical, network and compressed air connections in accordance with the specifications named in the supply contract;
  - b) Provision of and free access to a suitable set-up area;
  - c) Floor properties in accordance with the specification defined in any supply contract;
  - d) Provision of a workspace or work area and break rooms for our employees and subcontractors with washing facilities, sanitary facilities and first aid, with phone and Internet connection if necessary;
  - e) Suitable lifting equipment, such as a crane and forklift, for loading and unloading, assembly and transport on the premises. Lifting height and carrying capacity must be sufficient for the assembly of the components;
  - f) Performance of internal transport from the unloading point to the place of use;
  - g) Weather-proof and theft-proof storage area in the vicinity of the assembly location for the supplied parts and a lockable room for storing our tools;
  - h) Sufficient sample parts, material and personnel to start the system running;
  - i) Provision of the required devices and heavy tools (e.g. hoisting devices, welding and drilling units, etc.) as well as the required consumable goods and materials (e.g. underlays, fuels, oils, greases, gas, water, electricity, steam, compressed air, heating, light, etc.). Special tools needed specifically for the systems are provided by us; and
  - j) Provision of the number of necessary, qualified assistant workers for the intended work and for the required time. In particular, personnel in our employment are not obligated to perform incidental masonry work, operational electrical work or auxiliary services. The assistant workers used shall follow the instructions of our assembly manager. We do not assume any liability for the assistant workers. If assistant workers cause defects or damage due to the instructions of the assembly manager, the stipulations under § 10 shall apply.
6. If the Ordering Party does not fulfill its obligations, after a deadline has passed, we shall be entitled to perform the activities incumbent upon the Ordering Party in its place and at its expense. Legal regulations remain unaffected.

### **§ 4: Compensation; Terms of Payment**

1. Work is billed following a calculation of time in accordance with the "Billing rates for services" applicable at the time the Agreement was concluded, provided that a fixed, flat or package rate

was not explicitly agreed in writing. Travel and transport costs, (spare) parts used, materials, special services, wait times caused by the Ordering Party, overtime and other costs are identified separately in the invoice. Wait times caused by the Ordering Party, overtime, special services and other costs attributable to the Ordering Party (additional labor costs, arrivals and departures, etc.) are billed additionally even if a fixed, flat or package rate has been agreed.

2. The prices in accordance with our "Billing rates for services" do not include any applicable taxes. We shall additionally be compensated for any applicable taxes in the respective legal amount.
3. After the completing the work appointment, and no later than the end of each work week, the Ordering Party shall confirm the hours worked for our employed personnel on the time sheets to be submitted.
4. We shall be entitled to demand appropriate advance payments. Invoice amounts shall be paid within fourteen (14) days without any discounts, unless otherwise agreed in writing. This is determined by the receipt of payment on our end. If the Ordering Party is in default of its payment obligations, the Ordering Party shall pay interest of nine percent (9%) above the respective base interest rate on the invoiced amount yet to be paid. We expressly reserve the right to claim a higher amount for damages caused by default.
5. The Ordering Party shall only have the right to withhold payments or offset payments against counterclaims if its counterclaims are undisputed or have been established in a legally binding manner.

#### **§ 5: Unfeasible Repair Services**

1. The troubleshooting we perform in order to issue a quotation as well as other expenses incurred and to be documented are billed to the Ordering Party, even if the repair service cannot be performed for reasons for which we are not responsible, in particular because of the following:
  - The fault in question did not appear during the ongoing check,
  - The Ordering Party culpably neglected the agreed service appointment,
  - The repair order was canceled during performance by the Ordering Party,
  - The required replacement parts or spare parts could not be acquired within a reasonable period.
2. The system or machine that requires repair only needs to be restored to the original state, upon explicit request of the Ordering Party, against reimbursement of costs, unless the work performed was not necessary.
3. In the event of unfeasible repair services, we accept no liability for damage to the repair object, violation of accessory contractual obligations and damage that did not occur to the repair object itself. This shall apply regardless of the legal reason invoked by the Ordering Party. On the other hand, Zimmer shall be liable in case of intent, gross negligence of the owner, managing body or executive managers, as well as in case of culpable violation of major contractual obligations (i.e., obligations that must be fulfilled for the Agreement to be fulfilled properly in the first place and that the contractual partner regularly expects and may expect to be fulfilled). In cases of culpable violation of major contractual obligations, Zimmer shall be liable only for reasonably foreseeable damage that is typical for the Agreement, except in cases of intention and gross negligence of the owner, managing body, or executive manager.
4. § 5 shall also apply to the same extent for other work.

#### **§ 6: Performance Time and Delays**

1. Our specifications about anticipated performance times are based on rough estimations and are therefore not binding, provided that a fixed deadline was not explicitly agreed.
2. The Ordering Party can only demand an agreement on a binding performance period if the scope of work is precisely defined, all commercial and technical questions have been clarified, the expected required (spare) parts are present, agreement has been reached about the scope of the Ordering Party's cooperation activities and any official certificates and approvals have been obtained by the Ordering Party.
3. If we do not begin or conclude our work by the agreed time, the Ordering Party must set a final reasonable deadline for us in writing of at least one (1) week for the start or end of work. If we do not begin or end the work to be performed within the set period, the Ordering Party shall be entitled to carry out the necessary work itself or have it done by a third party. The Ordering Party is entitled to demand reimbursement from us for reasonable costs for any such

- replacement work performed.
4. Work interruptions, delays and extensions of the performance periods beyond the explicitly agreed deadline that can be traced back to circumstances for which we are not responsible are at the expense and cost of the Ordering Party.
  5. If the completion of our work is delayed due to force majeure or events that could not be foreseen at the time of service provision (e.g. natural disasters, epidemics, armed conflicts, revolution, terrorism, sabotage, nuclear/reactor accidents, strike, lawful lockouts, shortage of workers, power or raw materials, difficulties in the acquisition of the necessary official approvals, travel restrictions, missing, incorrect or late delivery from suppliers), we shall be released from our contractual obligations for the duration of the interference and the period for completing our work shall be extended by a reasonable amount plus an appropriate lead time. This shall also apply if such circumstances arise after we have fallen behind schedule.
  6. If the Ordering Party suffers damages as a result of a delay for which we are responsible, it is then entitled to demand flat rate compensation for the delay to the exclusion of any other remedy. The compensation shall amount to one-half percent (0.5%) for each full week of delay, but in total not more than three percent (3%) of the compensation for the part of the work to be performed by us that cannot be used in a timely manner due to the delay.
  7. If the Ordering Party, in consideration of statutory exceptions, sets a reasonable deadline for performance after the due date and this deadline is not met, the Ordering Party shall be entitled to withdraw from the Agreement within the scope of any applicable statutory regulations. The Ordering Party shall be obligated to declare within a reasonable period of time whether it intends to make use of its right to withdraw, if grounds for withdrawal exist. Further extensive claims due to the delay shall be based exclusively on § 10 No. 3 of these Assembly Terms.

#### **§ 7: Acceptance; Transfer of Use and Risk**

1. The Ordering Party is obligated to accept the work service as soon as it has been notified of the completion of work service and any contractually defined testing of the work performed has taken place. The Ordering Party may not refuse acceptance due to the presence of a non-significant defect. If the Ordering Party neglects the immediate acceptance after willingness to accept has been demonstrated, our work service shall nonetheless be considered accepted if twelve (12) work days have passed since willingness to accept was demonstrated or if the Ordering Party has begun use of the system/ machine/device (e.g. commissioning, start of production), or the Ordering Party has neglected to accept for a reason other than a flaw indicated to us.
2. The costs of the acceptance test (including the costs of sample materials and operational media) shall be borne by the Ordering Party. On the other hand, the costs of our personnel shall be borne by us.
3. If our work service is shown not to be contractually compliant, we shall be obligated to remedy the defect. This is not applicable if the defect is insignificant for the interests of the Ordering Party or based on a condition attributed to the Ordering Party.
4. Our liability for observable defects is extinguished upon acceptance to the extent that the Ordering Party has not asserted a particular defect.
5. When the end of work is demonstrated or test operation (if agreed) has been completed, use and risk of the work transfers to the Ordering Party.

#### **§ 8: Transfer of the Repair Object to Our Plant**

1. If transferring the repair object to our plant is necessary for certain repair orders, transport of the repair object to and from the plant takes place at the expense of the Ordering Party.
2. The Ordering Party shall bear the risk for transport. At the explicit request of the Ordering Party, transport to and from the plant can be insured against insurable transport risks (e.g. breakage, fire, theft, etc.) at its expense.
3. No insurance coverage exists during repair in our plant. The Ordering Party shall ensure that existing insurance coverage is maintained for the repair object (e.g. regarding protection against fire, water main breakage, storm and machine breakage, etc.). We will provide insurance protection against these risks only at the explicit request and the expense of the Ordering Party.

## § 9: Warranty; Defect of Quality

1. Following acceptance of the work service, we shall be liable for defects such that we must remedy the defects, irrespective of § 9 No. 5 and § 10, to the exclusion of all other claims of the Ordering Party. The Ordering Party must inform us of any defects immediately and in writing, but at the latest within five (5) work days after detection.
2. We shall assume no liability if the defect is insignificant for the interests of the Ordering Party or based on a condition attributed to the Ordering Party.
3. If the Ordering Party or a third party commissioned by the Ordering Party makes changes or performs overhauling work improperly without our prior approval, our liability shall be waived for the resulting consequences. Only in urgent cases that endanger operational safety and in order to prevent inordinately great damage, in which case we shall be immediately notified, or if we allow a set reasonable period for remedying defects to pass, the Ordering Party has the right to have the defect remedied themselves by a third party and to demand reimbursement for the necessary costs from us.
4. Of the immediate costs resulting from remedying the defect, the costs of the replacement part or spare part, including shipping, shall be borne by us, provided that the claim is proved to be justified. We shall also bear the costs of removal and installation as well as the costs of providing the necessary installation technicians and assistant workers, including travel costs, provided that this does not result in a disproportionate burden for us.
5. If – in consideration of statutory exceptions – we allow an appropriate deadline for remedying the defect to pass without action, the Ordering Party will have a right to reduce the price within the framework of the statutory regulations. The right of reduction shall also exist in other cases of failure to remedy defects. For the case that the Ordering Party is demonstrably uninterested in the work service rendered despite the reduction, the Ordering Party can withdraw from the Agreement.
6. If the Ordering Party has made a claim against us in relation to alleged defect rights and it transpires that either there is no defect or the claimed defect is due to circumstances for which we are not liable, the Ordering Party shall be obligated to reimburse us for all costs incurred in conjunction with examining the defect claim and/or rectification, unless we invoke this without justification and the Ordering Party is not responsible for this.
7. We shall not be liable:
  - a. for damages and defects caused by improper or unsuitable use of the machine or system, particularly due to overuse or excessive strain, incorrect or negligent handling, improper maintenance, incorrect assembly by the Ordering Party, use of unsuitable operating materials or consumables, unless the circumstances of the aforementioned nature are our responsibility;
  - b. if statutory directives or directives issued by us with regard to handling, installation, operation, maintenance and cleaning are not complied with by the Ordering Party or third parties, unless the respective defect in question is not the result of such failure to comply;
  - c. for the consequences of improper remedial work by the Ordering Party or a third party commissioned by the Ordering Party or if the Ordering Party or a third party commissioned by the Ordering Party has made changes to the machine/system or replaced parts without our consent – unless the respective defect in question is not the result thereof; or
  - d. for natural wear and tear of the machine/system or individual parts.
8. The warranty period for new parts is twelve (12) months. The warranty period for used assembly, spare, or replacement parts is six (6) months, unless otherwise agreed by the Parties in writing. We reserve the right to make a deviating rule for the installation of certain parts, which then must be included in the order confirmation. This pertains to installed parts that conform to an operating hours regulation in the sense of stress on the part and that thus involve shorter warranty times in certain circumstances. In the abovementioned cases, the periods begin with acceptance or commissioning, but at the latest one (1) month after delivery of the parts.

**THE WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.**

## § 10: Liability; Exclusion of Liability

1. If a supplied assembly, spare or replacement part is damaged through our fault during our work service, we shall have the choice either to repair or replace the part at our cost. Moreover, § 10 No. 3 shall apply.
2. If the deliveries we have made and work services we have performed cannot be used by the Ordering Party as intended in the Agreement through our fault as a result of a lack of or incorrect execution of recommendations made before or after the conclusion of the Agreement or through the violation of other accessory contractual obligations, in particular instructions for the operation of the machine/ system or of spare/replacement parts we have delivered, the following stipulations shall apply, to the exclusion of other claims by the Ordering Party.
3. We shall be liable for damage – regardless of the legal reason – that has occurred outside of damage to the object of our rendered work service in accordance with the following:
  - a. In case of intent;
  - b. In case of gross negligence of the company owner, managing body or executive managers;
  - c. In case of culpable injury of life, limb and health;
  - d. In case of defects that we have maliciously concealed;
  - e. Within the framework of a promise of guarantee; or
  - f. To the extent there is liability for personal injury or material damage on privately used objects in accordance with any applicable law.
4. In the event of a culpable violation of major contractual obligations (i.e., obligations that must be fulfilled for the contract to be fulfilled properly in the first place and that the contractual partner regularly expects and may expect to be fulfilled), we shall also be liable in case of gross negligence of non-executive employees and in case of simple negligence, limited to reasonably foreseeable damage that is typical for the Agreement in the latter case. More extensive claims are excluded. The exclusion of liability shall also apply with regard to the personal liability for damages of our employees.

## § 11: Statute of Limitation

1. Subject to § 9 No. 8, the limitation period for claims of the Ordering Party – irrespective of the legal reason – is one (1) year in accordance with the *Limitations Act*, 2002 (Ontario) (the “Act”). This Agreement is made for business purposes and is a “business agreement” as defined in the Act and any amendments thereto, and no limitation period in the Act, other than the ultimate limitation period of the Act, shall apply to this Agreement and to the obligations imposed by this Agreement. The period begins with acceptance or commissioning, but at the latest one (1) month after delivery.
2. The legal limitation periods apply to claims for compensation in accordance with § 10 No. 3 (a-d) and (f) and to defects of a structure and defects of delivery items that were used for a structure according to their usual type of use and that have caused its defectiveness.

## § 12: Retention of Title

1. The accessory, spare or replacement parts that are delivered, installed or used by us remain our property until all claims arising from the business relationship with the Ordering Party have been paid in full. Further security agreements can be made.
2. In the event that the Ordering Party acts in a way that is contrary to the Agreement, in particular in case of delay of payment, we shall be entitled to repossess the accessory, spare, or replacement part after issuing a reminder. The Ordering Party is obligated to surrender the part. Enforcement of the retention of title as well as seizure of the accessory, spare, or replacement part shall not be considered a withdrawal from the Agreement.
3. The right of lien can also be enforced due to a claim resulting from work services and spare parts deliveries made earlier if they are in connection with the assembly or repair object. For other claims resulting from the business relationship, the right of lien shall only apply if these claims are undisputed or legally binding.
4. While the retention of title exists, the Ordering Party shall inform us immediately and in writing if a third party enforces claims on or rights to the object of the retention of title. The Ordering Party shall support us in the pursuit of our interests at no cost.

### **§ 13: Return of Unused Spare Parts By the Ordering Party**

1. If, for the purposes of reducing repair or service time, the Ordering Party orders various spare parts from us because the spare part that is ultimately needed is not defined when placing the order, then the Ordering Party shall send the unneeded spare parts back to us within two (2) weeks after the end of repair at its own cost and risk (carriage and insurance paid to our warehouse location). The Ordering Party shall reimburse us for any reduction in value of the returned spare part (e.g. signs of use due to installation and/or removal).
2. We reserve the right to charge the Ordering Party the resulting costs for incoming goods, testing, and restocking.

### **§ 14: Applicable Law; Place of Jurisdiction; Miscellaneous**

1. The Agreement and any Order placed thereunder shall be governed by and construed solely and exclusively in accordance with the laws of the Ontario, Canada, and all claims relating to or arising out of this Agreement and the Order, or the breach thereof, whether sounding in contract, tort, or otherwise, shall likewise be governed by the laws of Ontario. The Parties agree that any dispute, claim, or action relating to or arising from this Agreement or an Order shall be brought only in the provincial or federal courts sitting in Ontario, Canada. The Ordering Party waives all defenses of lack of personal jurisdiction and forum non conveniens. Application of the United Nation's Convention on the International Sale of Goods is excluded.
2. If a provision in these Assembly Terms or a provision in other agreements between us and the Ordering Party shall at any time be deemed either entirely or partially invalid or unfeasible, or if these Assembly Terms should contain any gap, the validity of all other provisions and/or agreements shall not be affected. The effective or feasible provision most closely approaching the purpose of the ineffective or unfeasible provision shall apply in its place as agreed upon. In the case of a gap, the provision corresponding to what would have been agreed upon in accordance with the purpose of these Assembly Terms, insofar as the parties to the Agreement would have taken the matter in question into account from the outset, shall apply.
3. Unless otherwise stipulated in these Delivery Terms, communication via fax or e- mail can be used to comply with the written form requirement.
4. The place of fulfillment of all mutual obligations arising from the contractual relationship shall be the official location of business of Seller in Hickory, North Carolina.
5. Notwithstanding the foregoing, we reserve the right also to choose to file an action in any jurisdiction where the registered office of the Ordering Party is located, or in any other permitted court of competent jurisdiction, to the extent deemed we deem necessary in our sole and absolute discretion.
6. The Agreement constitutes the entire Agreement between the Parties, there being no warranties, representations, or conditions of any kind or nature between the Parties except as set forth therein. The Agreement - including this clause - cannot be modified, changed, waived, substituted, or discharged orally, except by a writing signed by the Party against whom enforcement of the change, modification, waiver, substitution, or discharge is sought. No waiver by either Party, whether express or implied, of any provision of the Agreement or any breach of default of either Party shall constitute a continuing waiver of such provision or a waiver or any other provision of provisions of the Agreement, and no such waiver by either Party shall prevent such Party from enforcing any and all provisions of the Agreement, or from acting upon any subsequent breach of default of the other Party, under any provisions of this Agreement.
7. The technical documentation supplied by the Ordering Party to us and that we require to perform the agreed work, e.g. as part of § 3 No. 4, shall not be used for purposes other than the fulfillment of the contract.