

GENERAL TERMS AND CONDITIONS FOR SERVICE AND MAINTENANCE (Microtrac Formulaction S.A.S., Toulouse)

Integrally available on www.microtrac.de/terms

MICROTRAC
a VERDER company

1. Scope of Application

1.1 These general terms and conditions for service and maintenance (hereinafter the "General Terms") shall apply to all legal acts, such as but not limited to:

- service plans (hereinafter a "Service Plan");
- single services, as offered and/or ordered on a case-to-case basis (hereinafter a "Single Service"), e.g. preventive-/corrective maintenance (repairs), calibration, trainings, qualification/validation;
- other types of service agreements (hereinafter a "Service Agreement"); as entered into by Microtrac Formulaction SAS (hereinafter "Service Provider") and its customer (hereinafter the "Customer").

1.2 Deviations from these General Terms shall only apply if agreed by Parties in a written contract or if Service Provider has confirmed such deviations in writing. Herewith, the applicability of the General Terms and Conditions of the Customer are explicitly excluded.

1.3 In case of total or partial nullity or otherwise invalidity of one or more stipulations of these conditions, the other stipulations remain in force. Parties will draft a new provision in accordance with the spirit of these conditions.

1.4 In addition to these General Terms and Conditions for Service and Maintenance, the General Terms and Conditions for Sale and Delivery of Verder Group apply at all times.

2. Service Plans

2.1 The Service Provider offers two types of Service Plans that the Customer can purchase: A Basic and an Advanced version.

2.2 The scope of services of these Service Plans include:

- a) Preventive maintenance of the covered product(s) carried out in accordance to the manufacturer's specifications and the product's maintenance protocol once every 12 months. In addition, Customer has the option to add additional preventive maintenance visits at an extra charge according to its operational demands.
- b) Discount on required spare and wear parts, working hours for necessary repairs outside the warranty period, training and qualification/validation services.
- c) The discount only applies to parts and services for products covered under the Service Plan. In order to receive the discount, Customer is required to provide the Service Plan / contract number as a reference when ordering parts or services directly.
- d) Discount to be applied: Basic Plan = 7.5%, Advanced Plan = 15%.
- e) If the Service Plan is signed within 12 months after the purchase of the covered products, the warranty period granted is 24 months if Customer purchases a Basic Plan and 36 months if Customer purchases an Advanced Plan. The warranty provisions of the General Terms and Conditions for Sale and Delivery apply.
- f) Software updates free of charge during the term of the contract (does not include software re-qualifications).
- g) Free support by telephone or via the internet in the event of technical problems with the covered products (Remote Technical Support).
- h) Free support by telephone or via the internet with regard to the proper operation and use of the covered products (User & Application Support).
- i) In addition to these services, the following is included only in the Advanced Plan:
 - Prioritized treatment over non-agreement Customers for all service requests (e.g. scheduling and providing technical support like preventive maintenance, troubleshooting, repairs, support tickets, etc.)
 - First Reaction Response Target of 48 hours. This First Reaction Response Target is a best estimate and approximate only and shall not constitute a fatal term. Service Provider has no liability for late performance, clause 7.2 applies. The First Reaction Response Target means that within 48 hours following a service request by a Customer, submitted via the official service email address, Service Provider will:
 - confirm receipt of the request;
 - qualify the request as critical or non-critical;
 - provide an initial qualified response.

3. Prices, Invoicing, Terms of Payment

3.1 Agreed prices, fees and hourly rates (hereinafter the "Fees") exclude, where applicable, travel costs and packaging, taxes and costs for delivery and export clearance, unless specifically agreed otherwise.

3.2 If Customer enters into a Service Plan or other Service Agreement, the annual basis fee and agreed add-on fees (hereinafter the "Total Annual Fee") are due upfront (i.e. annually at the beginning of the year), unless specifically agreed otherwise.

3.3 Fees for Single Services are due immediately following performance of such single services.

3.4 All fees shall be invoiced by Service Provider to Customer subject to a 30 days payment period without deductions. Any objections by Customer may be submitted to Service Provider in writing within 14 days of invoicing.

3.5 For work outside of the regular working hours or in the event of additional effort (e.g. due to the deployment of multiple service technicians or an unforeseeable increase in maintenance/repair work), Service Provider is entitled to charge additional costs.

3.6 The Customer is not entitled to offset payment claims. The assertion of a right of retention against claims of the Service Provider is excluded.

4. Indexation

4.1 All prices (including all fees and hourly rates) are subject to an annual indexation based on the producer price index (as applicable in the country of Service Provider's seat of business).

4.2 Service Provider shall inform Customer about the specific applicable indexation percentage.

5. Term of Contract & Cancellation

5.1 If Customer enters into a Service Plan or other Service Agreement with Service Provider, such agreement may be terminated by Customer in writing: For an undetermined continuous term, subject to a notice period of three months, for a fixed determined term, against the end of such term and subject to a notice period of three months.

5.2 If a Service Agreement with Service Provider for a fixed determined term is not terminated, it shall automatically be renewed by the same period without the need for any written confirmation or other formality.

5.3 The term of a Service Plan is two years (24 months) from the date of acceptance, unless specifically agreed otherwise. After that, the Service Plan automatically extends in 12 month periods if not terminated.

5.4 Service Provider is entitled to terminate the contract in whole or in parts without notice or to refuse performance:

- a) If maintenance or repairs to the equipment have been carried out by third parties or Customer has transferred ownership, possession or use of the device to a third party;
- b) For devices where functional spare parts are no longer in stock and a replacement solution can no longer be provided by Service Provider at an economically justifiable cost;
- c) If the device has been modified to a condition other than that in which it was delivered. This does not apply if the modification is made after consultation with Service Provider and Service Provider has confirmed the permissibility of the modification in writing;
- d) If Customer is in delay with payments due for repairs, spare parts deliveries, maintenance work, etc. and has not settled the balance despite a reminder;
- e) If devices have been damaged by accident, improper handling, theft or other influences such as fire or water.

6. Additional Equipment

6.1 Customer may at all times request Service Provider to add new and/or other equipment to a Service Agreement or Service Plan.

6.2 Service Provider shall only accept such new and/or other equipment, if such equipment: Is newly delivered by Service Provider or was delivered by Service Provider in the past and was serviced and maintained by Service Provider and/or a Service Provider certified maintenance partner.

6.3 Service Provider may, before accepting any additional equipment, inspect the equipment and its maintenance status.

7. Performance of Services

7.1 Services may include (if contracted):

- Preventive Maintenance (periodical/scheduled as well as unscheduled);
- Corrective Maintenance: Problem Diagnosis and Repair (at Customer's facility (on site) or at Service Provider's facility);
- Support and Advice (in person, by telephone or online);
- Software Support (including updates and problem-solving);
- Training and Commissioning;
- Calibration Services;
- Qualification/Validation Services.

7.2 All services, including those that are in scope of the offered Service Plans are provided during regular business hours Monday until Friday, not on weekends, public holidays or during business closures.

7.3 During the performance of the services:

- a) Customer is and remains responsible for the equipment.
- b) Customer shall ensure that the equipment is timely ready and accessible for the performance of the services.

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- c) Service Provider commits to perform the services with qualified technical personnel who have the expertise required for the services and the necessary qualifications in accordance with the applicable laws and regulations.
- d) Service Provider provides the tools required for the services, unless Customer provides these within the scope of the obligations to cooperate.
- e) Customer guarantees the availability and provides free of charge all necessary consumables and facilities to ensure that services can be executed without the need for any further provisions of facilities, such as but not limited to energy, water, air, hoisting, crantage.
- f) Customer guarantees that Service Provider can perform services in a continuous motion or way without disturbance or interference. In case the activities are interrupted or delayed due to causes outside Service Provider's control, Customer is liable to Service Provider for all additional costs, including costs for (de)mobilization. Any agreed completion date shall be extended.
- g) Completion shall take place if and when the services are fully performed. Customer is not entitled to use the equipment before completion.
- h) Completion shall be documented in a report. Any observations and/or comments shall be mentioned.
- i) Aspects or shortcomings of minor importance which do not hinder or prevent actual operation of the equipment shall not prevent the completion. Any such aspects or shortcomings shall be made good by Service Provider within a reasonable time.
- j) Customer is responsible to ensure adherence to and instruction of the applicable safety laws and regulations. Service Provider commits to comply with those regulations as well as additional specifications made by Customer, in particular factory safety standards.
- k) Service Provider is not obliged to provide services if specific, in particular device-specific risks do not allow this. Service Provider shall notify Customer of the reasons without delay. If work safety can be restored at short notice, Service Provider shall provide the respective services immediately thereafter against payment of the verifiable additional expenditure.
- l) Disposal of waste: Customer is responsible for the disposal of any waste produced in connection with the provision of the services, especially for material that is assigned to a hazard class.
- 8. Delivery Dates / Performance Dates**
- 8.1** Delivery and/or performance dates, terms or periods take effect immediately after written confirmation by Service Provider and fulfilment by Customer of all agreed conditions such as but not limited to advance payment.
- 8.2** Any dates, terms or periods for the performance of services are best estimates and approximate only. No such dates, terms or periods shall constitute a fatal term. In no event time shall be of the essence of the agreement. Service Provider's liability for late performance is at all times limited to costs and damages up to a maximum of 2.5% of the invoiced fees.
- 8.3** If Customer cancels scheduled appointments or postpones the agreed time slot less than 48 hours before the appointment, Service Provider is entitled to charge the costs in accordance with the applicable service price list.
- 9. Maintenance**
- 9.1** Preventive Maintenance (in accordance with DIN 31051) describes the process of ensuring and maintaining the functionality of a product over a certain period of time. In contrast, Corrective Maintenance/Repair involves the replacement of defective components and/or functional units.
- 9.2** The scope of maintenance for a device is determined on the basis of the Service Provider's experience. This results in the maintenance frequency (time interval between maintenance) and the maintenance work. The scope of maintenance can vary from interval to interval in terms of maintenance work carried out and duration.
- 9.3** Preventive Maintenance is carried out in accordance to the manufacturer's specifications and the product's maintenance protocol.
- 9.4** Maintenance dates will be scheduled in consultation with Customer. Regular maintenance schedule is depending on the usage intensity of the equipment.
- 9.5** Service Provider reserves the right to shorten or extend the interval of actual maintenance by up to three months at own discretion.
- 9.6** If Customer desires unscheduled maintenance, it should notify Service Provider minimal two weeks in advance.
- 9.7** Customer shall make available all up-to-date technical documentation (such as up-to-date drawings, descriptions, diagrams, and instructions) necessary for the performance of the agreed maintenance as well as any logbook of the specific equipment. Any changes in the equipment or the use thereof shall be duly documented.
- 9.8** Service Provider shall draw up a written maintenance report, with details of its findings and the action(s) taken as well as, if required and part of the agreed services, the required IQ, OQ and/or PQ documentation.
- 9.9** Customer remains fully and exclusively responsible for any necessary daily care of the equipment. Customer shall keep a logbook in relation to the operation and the care of the equipment.
- 9.10** Customer shall not perform any maintenance itself (or have such maintenance performed by a third party) without the prior written permission of Service Provider.
- 9.11** If during maintenance it is determined that additional work, repairs and/or replacements are required, Service Provider shall provide a written quote for Customer's acceptance.
- 10. Corrective Maintenance / Repairs**
- 10.1** Repairs shall be performed based on a previous problem diagnosis and repair advice including a pre-estimate of repair costs.
- 10.2** Repair costs shall be invoiced against actual costs (i.e. time spent against hourly rate plus repair parts) or the lumpsum costs agreed in advance.
- 10.3** Delivery of any equipment by Customer to Service Provider for repair, treatment or processing will be Duty Delivery Paid (DDP) Service Provider plant, (Incoterms latest edition) unless otherwise agreed.
- 10.4** Any warranty shall only apply to the repaired and/or replaced part of the equipment. With proper use, 12 months on the repair scope, excluding wear parts. The warranty provisions of the General Terms and Conditions for Sale and Delivery apply.
- 10.5** If it is justified based on the state of the equipment or possible cause of the damages, Service Provider has the right, in compliance with clause 11.7, to exclude any and all warranty.
- 11. Warranty & Liability**
- 11.1** Service Provider warrants that it shall perform the services with due diligence and in compliance with professional standards.
- 11.2** The warranty provisions of the General Terms and Conditions for Sale and Delivery apply. The warranty is excluded if maintenance or repairs have been carried out by third parties or if the customer has transferred ownership, possession or use of the device to a third party.
- 11.3** Service Provider shall make good any default in the performance of its services by redoing such services and, if need be, repairing any damages caused.
- 11.4** Service Provider's liability for such default shall be limited to the above mentioned make good obligations. All equipment shall remain entitled to the standard warranty granted at delivery including any carve-outs and limitations thereof.
- 11.5** Service Provider's maximum liability arising out of or in connection with the Service Plan, any other agreement and/or performance of services, whether in contract, tort or otherwise, shall be limited to the fees invoiced and/or due, or EUR 20,000, whichever is the lower.
- 11.6** In no event shall Service Provider be liable for any consequential, indirect, punitive or exemplary damages, including but not limited to loss of profit or turnover, loss of contract or downtime costs.
- 11.7** None of the above limitations and/or exclusions of liability shall apply in case of fraud, gross negligence or willful misconduct of Service Provider, in case of breach of public law or in cases of personal injury or death.