

General terms and conditions for periodic servicing and repair of materials testing machines

I. Application

1. These general terms and conditions apply to all contracts of ZwickRoell GmbH & Co. KG (hereinafter "ZwickRoell") involving the periodic servicing and repair of testing machines of the customer (hereinafter called "Client").
2. These terms and conditions are divided into Section A concerning servicing work, section B concerning repair work and Section C concerning provisions common to both servicing and repair.
3. ZwickRoell shall not be bound by the terms and conditions of the Client, even if ZwickRoell does not expressly object to these again after they have been received by ZwickRoell.

Section A Terms and conditions for servicing work

I. Scope of application of this section

The provisions in this Section A apply to all servicing work (maintenance, inspection or calibration) by ZwickRoell.

II. Scope of services

1. The scope of the services to be provided is based on the quotation from ZwickRoell.
2. If during the servicing work (maintenance, inspection or calibration), it is found that repair work that goes beyond the agreed scope of services is required, this will be discussed on site with the Client. The next course of action requires a separate agreement in text form (in writing or e-mail), to which the provisions of Sections B and C apply. In the case of possible modifications to the services, the signed field service assignment order may lead to additional or reduced charges.

III. Material costs

1. The consumables and wear parts required within the framework of the servicing work are also billed according to actual expenses, unless these are included in the scope of services in accordance with Clause II. 1.
2. The parts used are in each case billed at the ZwickRoell prices that are valid at the time of delivery.
3. There is no charge, provided the material is required within the scope of a warranty obligation

on the part of ZwickRoell and within the warranty period.

IV. Obligations of the Client

1. The conclusion of a preventive maintenance support and calibration contract does not release the Client from its obligation to carry out the maintenance work set out in the user manual (e.g. oil level check, checking the condition of the lead screws), unless this maintenance work has been expressly assigned to ZwickRoell in accordance with the underlying quotation.
2. Access to the machinery and equipment must be granted to the maintenance personnel during normal business hours/operating times in order to carry out the announced servicing work. The Client shall provide ZwickRoell with all requested information regarding the machinery and equipment to be serviced and shall provide the associated documents.

V. Date on which servicing is carried out

1. ZwickRoell undertakes to carry out servicing in accordance with the quotation, i.e. to the objects defined there and at the interval determined there.
2. If a specific date was not agreed, ZwickRoell shall inform the Client of the exact servicing date at least one week in advance.
If the work cannot be carried out on the agreed date due to a reason on the part of the Client, ZwickRoell must be notified of this – at the latest 3 days before the scheduled date. If ZwickRoell is notified later than this, the price shall be due and payable in full if the maintenance technicians cannot be otherwise deployed at the scheduled time, unless the late notification is not the fault of the Client.
3. If the servicing is delayed due to measures within the framework of industrial disputes, especially strikes and lockouts, as well as due to the occurrence of circumstances for which ZwickRoell is not responsible, an appropriate extension of the servicing period shall come into effect, provided these impediments demonstrably have a considerable influence on the completion of the servicing.
4. If the Client suffers damages as a result of a delay on the part of ZwickRoell, the Client shall be entitled to demand a flat-rate compensation for delay in the amount of one monthly fee. The Client reserves the right to furnish proof of greater damages. In this case, the compensation for delay shall be offset against the compensation for damages. In all other respects, the restriction of

liability in accordance with Section C, Clause V. applies.

VI. Prices

1. A fixed price is applied for each servicing object listed in this contract. These fixed prices and the respective settlement period are set out in the contract. The equipment and accessory specification that exists for the respective object at the time the contract is concluded forms the basis for calculating the fixed prices. The detailed scope of the servicing can be seen from the respective quotations for the object. These quotations form part of the contract.
2. The price for the work of the maintenance personnel plus VAT must be paid after the servicing has been carried out and invoiced.
3. The Client must be notified of changes to the fixed price with a notice period of three months to the end of the settlement period and these shall apply as of the next settlement period, even if the Client paid the price before it was due.

VII. Duration

1. The preventive maintenance support and calibration contract comes into effect once the order has been confirmed by the Client.
2. The contract is of indefinite duration and can be terminated by either party with a notice period of three months to the end of the respectively agreed settlement period. The extraordinary right of termination for good cause shall remain unaffected.

VIII. Claims due to breach of contract

1. If the agreed performance is not executed in full and not executed properly, ZwickRoell must rework or rectify it.
2. If ZwickRoell does not meet its obligation to rework, rectify or remedy defects, the Client shall be entitled to set an appropriate grace period. If ZwickRoell allows this period to lapse without result, the Client may, at its discretion, either demand a price reduction or terminate the contract without notice. This also applies in the event that the remedy of defects fails. The Client also has the right – where practicable – to have the work carried out by third parties and to demand reimbursement of the necessary costs from ZwickRoell. The liability of ZwickRoell to compensate for damages is based on Section C, Clause V.

IX. Other provisions

1. Enhancements, relocations, partial renewals and other changes to the machinery and equipment during the terms of the preventive maintenance support and calibration contract may only be carried out by or in coordination with ZwickRoell.
2. If the Client transfers the machinery and equipment to a third party, the Client's obligation to pay the annual premium continues to exist, unless the third party enters into the contract with the consent of ZwickRoell. ZwickRoell may only refuse this consent for good cause.
3. When taking on the servicing of third-party machinery or equipment, i.e. machinery and equipment that was not supplied by ZwickRoell, or when taking on the servicing of machinery and equipment that has been in operation or out of operation for some time, ZwickRoell can inspect this machinery and equipment. The customer shall be invoiced separately for the costs of the inspection and any repair work.

Section B

Terms and conditions for repair work

I. Scope of application of this section

The provisions of this Section B apply to all repair work by ZwickRoell, provided this is not carried out within the scope of the warranty. In this case, the ZwickRoell Terms and Conditions of Sale apply, which ZwickRoell shall provide free of charge upon request or which can be retrieved under the "Legal Notice" section of the ZwickRoell website at www.zwickroell.com.

II. Response model

Insofar as the Client has ordered the response model from ZwickRoell, ZwickRoell undertakes to dispatch a technician on site to the Client within the agreed response time following receipt of a fault report. The response time shall be extended by the time in which it takes to establish whether the fault can be fixed over the phone.

III. Prerequisites for repair and materials to be provided by the Client

1. Before starting the repair work, all of the necessary prerequisites must be met by the Client such that the work can be started immediately following the arrival of the service personnel without risk to their life or health and can be carried out without interruption.

2. The Client must in any case bear the costs of the following:
 - The provision of specimen materials for instruction in the intended use of the delivery item,
 - Lockable rooms suitable for the duration of the stay of the ZwickRoell employees and for the storage of materials.

IV. Transport

1. If repairs cannot be carried out at the client's premises, ZwickRoell shall, at the Client's expense, transport the object to be repaired to its premises in Ulm and transport it back to the Client's premises.
2. The Client shall bear the risk of accidental loss of the object during transportation to and from the ZwickRoell premises, as well as during storage and repair at the ZwickRoell premises. ZwickRoell shall be liable in respect of the object solely within the framework of the provisions set out in Section C, Clause V.

V. Acceptance

1. The repair work by ZwickRoell must be accepted immediately by the Client after the work has been completed (acceptance period). Acceptance cannot be refused on account of negligible defects.
2. ZwickRoell must be informed of the refusal of acceptance within the acceptance period; otherwise the repair work is deemed to have been accepted. The time, location, nature and scope of the defect must be described precisely.
3. The repair services are also deemed to have been accepted if the Client uses the repaired testing machine at its premises.
4. In the case of a delay in acceptance, risk is transferred to the Client.
5. If the Client defaults in acceptance or breaches other duties to cooperate, it shall be obliged to compensate for the damages incurred as a result. In the event of a delay in acceptance, the Client must pay a flat-rate compensation for damages in the amount of 10% of the order value. The Client reserves the right to furnish proof of lesser damages.

VI. Remuneration and material costs

1. Repairs are carried out in return for remuneration calculated on the basis of time spent. The Client is charged the respectively applicable hourly rates inclusive of additional costs for overtime as well as work carried out on Sundays and public

holidays. Travel time and waiting time are considered working time.

2. Costs for travel to and from the Client, the carriage of baggage and tools, as well as other costs that arise on account of the repair work shall also be borne by the Client.
3. The material required within the framework or the repair work will be billed additionally according to the actual expense incurred.
4. The parts used are in each case billed at the ZwickRoell prices that are valid at the time of delivery.
5. There is no charge, provided the repair work is carried out within the scope of the warranty obligation of ZwickRoell and within the warranty period.

VII. Material defect claims

1. The Client must notify ZwickRoell promptly in text form once a defect has been detected. The notification is deemed to be prompt if it is made within one (1) week of the defect being found.
2. If following the notification of defect by the Client, it is determined that there is no defect in the repair work, the Client shall bear the costs incurred to ZwickRoell.
3. Material defect claims do not exist for faults
 - that are due to circumstances that arose after the transfer of risk,
 - that are caused by improper use or improper servicing or repair work by the Client,
 - that are based on unauthorized modifications made by the Client,
 - that are due to normal wear or usual deterioration, or
 - that are otherwise attributable to the sphere of the Client.

ZwickRoell can also bill for additional expenses as a result of such disturbances.

4. If the repair work does exhibit a defect, ZwickRoell must first be granted an opportunity for supplementary performance within an appropriate time period. ZwickRoell may, at its discretion, rectify the defect at the place of fulfillment; ZwickRoell is, however, not obliged to provide supplementary performance at the location of the testing machine. Replaced parts become the property of ZwickRoell.
5. This is without prejudice to the right of the Client, in extremely urgent cases and having informed ZwickRoell in text form, to remedy the defect itself or have it remedied by third parties with an entitlement to reimbursement of the vouched necessary expenses that were incurred.

6. If the subsequent performance fails or if further attempts at subsequent performance are unacceptable to the Client, the Client shall be entitled to a price reduction or to withdraw from the contract. However, a right of withdrawal does not exist for a negligible defect. The liability of ZwickRoell to compensate for damages is based on Section C, Clause V.

Section C **Common provisions**

I. Scope of application of this section

The provisions of this Section C apply to all servicing and repair work carried out by ZwickRoell.

II. Payment terms, offsetting and retention

1. Unless otherwise agreed between the parties, payment must be made in accordance with the invoice without any deduction. This payment is only deemed to have been made when the entire invoice amount has been credited to the ZwickRoell account.
2. The Client is only entitled to rights of set-off if its counterclaims are based on the same contractual relationship, are legally established, undisputed or acknowledged by Zwick.
3. The Client is only authorized to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

III. Obligations, cooperation and technical assistance by the Client

1. The Client is obliged to provide electricity, water and the required connections at its own expense. The Client's staff must, at its own expense, support ZwickRoell staff in carrying out the servicing or repair work, provided this is necessary for the performance of contract.
2. The Client must comply with the special measures necessary to protect persons and property at the place of performance. The Client must also inform the servicing or repair manager (Manager) about any special safety regulations that exist, provided these are of significance for the personnel deployed by ZwickRoell. It shall inform ZwickRoell of breaches of such safety regulations by personnel deployed by ZwickRoell. In the event of serious breaches, the Client may, following consultation with the Manager, refuse to grant the offender access to the place of performance.

IV. Modification of the scope of services due to on-site conditions

If it transpires while providing the services that it is not possible to fulfill the purpose in line with the quotation due to on-site conditions and facilities that were not known or could not be known to ZwickRoell at the time of creating the quotation and additional measures that are subject to charge are necessary, this will be discussed on site with the Client. The next course of action requires a separate agreement in text form (in writing or e-mail).

V. Limitation of liability

1. ZwickRoell shall be liable without limitation for damages due to injury to life, limb or health that are based on a negligent breach of duty by ZwickRoell or on an intentional or negligent breach of duty by a legal representative or vicarious agent of ZwickRoell and in the case of no-fault liability prescribed by law, especially in accordance with the Product Liability Act and in the case of liability on account of a guarantee.
2. ZwickRoell shall be liable for other damages that are based on an intentional or grossly negligent breach of duty by ZwickRoell or on an intentional or grossly negligent breach of duty by one of ZwickRoell's legal representative or vicarious agents. In this case, liability shall be limited to the typically occurring damage foreseeable at the time of conclusion of the contract, subject to the restriction in paragraph 5.
3. ZwickRoell shall be liable for intentional or negligent breach of an essential contractual duty only in respect of the typically occurring damage foreseeable at the time of conclusion of the contract, subject to the restriction in paragraph 5. An essential contractual duty is a duty whose proper fulfillment is required for fulfillment of the contract with the client in the first place and on which the client has relied and was entitled to rely and whereby culpable non-fulfillment thereof jeopardizes the achievement of the purpose of the contract.
4. Liability of ZwickRoell is otherwise excluded.
5. Insofar as ZwickRoell is liable for damages, the liability of ZwickRoell shall be limited to a sum insured under liability insurance of EUR 25 million. ZwickRoell shall increase the insurance cover at the expense of the Client; at the request of the Client, ZwickRoell shall, following consultation with its insurance company, inform the Client of the costs involved.
6. To the extent that liability of ZwickRoell is excluded and limited, this also applies to

employees, representatives and vicarious agents of ZwickRoell.

VI. Statute of limitations

1. In the case damages arising from injury to life and limb or to health that are based on a negligent breach of duty by ZwickRoell or an intentional or negligent breach of duty by one of ZwickRoell's legal representatives or vicarious agents, in the case of other damages that are based on an intentional or grossly negligent breach of duty by ZwickRoell or on an intentional or grossly negligent breach of duty by one of ZwickRoell's legal representatives or vicarious agents, as well as in the case of damages that are based on an intentional or negligent breach of essential contractual duties arising from the respective contract by ZwickRoell or one of its legal representatives or vicarious agents, the statutory warranty period shall apply. The same applies in the case of no-fault liability prescribed by law, especially in accordance with the Product Liability Act and in the case of liability on account of a guarantee.
2. In the case of a building and in the case of an item, which in accordance with its usual manner of use was used for a building and has caused its defectiveness, as well in the case of work whose outcome consists of the provision of planning or supervision services for a building, the limitation period shall be five years.
3. In all other cases, the warranty period is one year.

VII. Applicable law and place of jurisdiction

1. German law applies for both servicing and repair work.
2. If the Client is a merchant or does not have its registered office or principal place of business in Germany at the time an action is brought, the sole place of jurisdiction for all disputes arising from this contractual relationship shall be the registered office of ZwickRoell in Ulm. ZwickRoell is, however, also entitled to appeal to the Client's competent court.

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