

## General Terms and Conditions of Service Provision as of November 11, 2021

### 1 Scope of Application

- 1.1** All services of KRATZER AUTOMATION AG are provided exclusively on the basis and in accordance with the following General Terms and Conditions of Service Provision (referred to hereinafter as “Service Conditions”). After these Service Conditions have been validly included in the contract, they shall also apply to all future transactions concluded with the customer. The customer is deemed to have accepted these Service Conditions once the customer has issued the purchase order or accepted the services provided.
- 1.2** KRATZER AUTOMATION AG hereby rejects all terms and conditions of the customer that conflict with, or deviate from, these Service Conditions. They shall not become part of the contract unless KRATZER AUTOMATION AG has explicitly consented to their application. Such consent shall be given by KRATZER AUTOMATION AG in writing or in text form (“Textform” according to § 126b BGB – German Civil Code) (e.g. by email). In no case shall KRATZER AUTOMATION AG’s failure to specifically object to any reference made to the customer conditions in the documents submitted by it, be deemed to constitute, or shall be construed as, consent by KRATZER AUTOMATION AG to the customer’s conditions. After these Service Conditions have been validly included in the contract, they shall also apply if KRATZER AUTOMATION AG, even though being aware of the customer’s conflicting or deviating terms and conditions of business, delivers the ordered goods or provides the agreed services without reservation.
- 1.3** Deliveries of replacement parts by KRATZER AUTOMATION AG which take place in the context of the services provided by it shall be carried out on the basis of the ORGALIME S 2012 conditions. The provisions of § 1 para. 1 and 2 of these Service Conditions shall apply *mutatis mutandis* to deliveries of replacement parts made in the context of the services provided by KRATZER AUTOMATION AG.

### 2 Subject matter of the contract

- 2.1** The services provided by KRATZER AUTOMATION AG may consist in the following:
- Preventive maintenance and corrective maintenance (repair)
  - SW/HW modernization
  - Technical support
  - Training / service training
- 2.2** The scope and details of the services to be provided by KRATZER AUTOMATION AG shall be agreed between KRATZER AUTOMATION AG and the customer in service contracts to be concluded from time

to time.

- 2.3** If and to the extent that a work performance ("*Werkleistung*" in terms of German law<sup>1</sup>) and/or delivery is agreed to be carried out as a service or part of a service within the meaning of these Service Conditions, the expected target quality of the work and/or delivery at the time of the passing of risk shall be exclusively determined by the specific agreements on the qualities, characteristics and performance features of the work or delivery laid down in the service contract between KRATZER AUTOMATION AG and the customer. The parties hereby undertake to lay down any such specifications in writing.
- 2.4** Warranted qualities ("*Beschaffenheitsgarantien*") must be explicitly agreed in writing. The parties in particular agree that information contained in catalogues, price lists or other information material which KRATZER AUTOMATION AG makes available to the customer as well as product descriptions shall not be deemed to constitute a warranty of specific qualities of the work or service or goods to be delivered.
- 2.5** Any oral or written advice which KRATZER AUTOMATION AG renders with respect to application techniques shall be non-binding and shall not release the customer from its own obligation to check the specific work, service or delivery for suitability and fitness for the intended application or use. This shall also apply in cases where the work, service or goods are generally recommended for some specific application or use.
- 2.6** Any additional work or service beyond that agreed in the service contract requires a prior written agreement between KRATZER AUTOMATION AG and the customer.
- 2.7** Our service staff are generally instructed to perform any services that are not included in the service contract if the customer has commissioned them in writing on the occasion of any other commissioned service and if our service staff can perform the additional services ad hoc and if such additional services do not require additional time of more than three hours. Additional services according to sentence 1 shall be invoiced at the applicable hourly rates.

### **3 Conclusion and change of service contracts**

- 3.1** Any offer which KRATZER AUTOMATION AG submits for the conclusion of a service contract is made without engagement and subject to change unless otherwise stated in the offer. The service contract shall only be deemed concluded after KRATZER AUTOMATION AG has confirmed the service contract in writing. Contract conclusion shall be excluded if KRATZER AUTOMATION AG has not confirmed it within a period of 4 weeks. The service contract conclusively defines the content and time frame of the services to be provided by KRATZER AUTOMATION AG and describes the customer's obligation to cooperate and assist.
- 3.2** Changes to the service contract must be agreed in writing. Any orally or implicitly agreed changes must

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<sup>1</sup> Note: "*Werkleistung*" in terms of German law pertains to work to be carried out by a contractor who undertakes to bring about a particular result (e.g. repair a car, transport goods to a specific destination etc.).

be confirmed by KRATZER AUTOMATION AG in writing to be valid. Prior to the valid agreement on the change to the service contract, KRATZER AUTOMATION AG shall be entitled but not obliged to perform the changed service and invoice the customer for the changed service at the applicable hourly rates unless the parties make another remuneration arrangement in the valid change agreement.

## **4 Service Provision**

**4.1** KRATZER AUTOMATION AG entrusts duly qualified service staff with the performance of the service contracts, which carry out the agreed services in a professional manner. Unless otherwise agreed in the service contract from time to time, KRATZER AUTOMATION AG shall act as a mere service provider ("*Dienstleister*" in terms of German law<sup>2</sup>) to the customer, which means that KRATZER AUTOMATION AG is under no contractual obligation to bring about a particular work result.

## **5 Times and deadlines for service provision**

**5.1** If and to the extent that the commencement and end of the service provision have not been explicitly agreed as binding fixed deadlines ("*Fixtermine*") in the service contract, these times shall only be deemed to constitute an intended non-binding time frame.

**5.2** Compliance with any fixed deadlines ("*Fixtermine*") is subject to the fulfilment of all cooperation duties by the customer as agreed in the service contract. If the customer is unable to meet the deadlines agreed in the service contract, the customer shall notify KRATZER AUTOMATION AG thereof without undue delay ("*unverzüglich*") and shall, without undue delay ("*unverzüglich*"), submit to KRATZER AUTOMATION AG proposals to enable the delayed performance to be carried out in the best possible unobstructed way.

If the service provision does not take place at the agreed time or date or is interrupted due to force majeure, KRATZER AUTOMATION AG shall be entitled to invoice the customer for the expenses incurred until the time of occurrence of the circumstance triggering the force majeure event and to call back any service staff already present at the customer's site.

## **6 Customer's cooperation duties**

**6.1** The customer undertakes, prior to the conclusion of the service contract, to provide KRATZER AUTOMATION AG with all information which KRATZER AUTOMATION AG in its discretion considers may be necessary for the service provision. This shall include, without limitation, information about the technical environment and any changes thereto, information about the current know-how and skills of the staff engaged by the customer as well as information about the material and means provided by the customer.

**6.2** The customer undertakes to take, implement and maintain all technical measures according to the current

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<sup>2</sup> Note: "Dienstleistung" in terms of German law – as opposed to the German "Werkleistung" – pertains to the mere service provision whereby the contractor is under no obligation to bring about a particular result.

state of the art which are necessary for the provision of services by KRATZER AUTOMATION AG.

**6.3** The customer undertakes to grant KRATZER AUTOMATION AG unrestricted access to the facilities concerned by the service provision under the service contract and shall make at least one duly qualified person available for operating test stands.

**6.4** The content of, and the time frame for, the cooperation duties to be fulfilled by the customer shall be agreed in the service contract, which agreement shall however not be deemed conclusive.

## **7 Remuneration**

**7.1** Unless otherwise agreed in the service contract, the customer shall be liable to pay KRATZER AUTOMATION AG remuneration according to the price list applicable at the time of service provision.

**7.2** Unless otherwise agreed in the service contract, KRATZER AUTOMATION AG shall be entitled to invoice the customer for the services as follows:

- for the delivery of goods: after the passing of risk
- for work (“*Werkleistung*“): after approval (“*Abnahme*“)
- for services not involving the obligation to bring about a particular work result (“*Dienstleistungen*“): after completion

**7.3** Unless otherwise agreed in the service contract, the remuneration claim shall be due 30 days after the invoice date.

## **8 Warranty claims**

**8.1** In case KRATZER AUTOMATION AG and the customer have explicitly agreed in the service contract that KRATZER AUTOMATION AG is to perform work (“*Werkleistung*“) and/or deliver goods, the customer undertakes to inspect the work performed or goods delivered without undue delay (“*unverzüglich*“) and report any detected defects in writing, in default of which all warranty claims shall be excluded if and to the extent this is permitted by law.

**8.2** The warranty period for work performed or goods delivered according to the foregoing para. 1 is 12 months. It runs from the time of approval (“*Abnahme*“) of the work or, in the case of goods delivered, from the time when the risk passes to the customer.

## **9 Liability**

**9.1** KRATZER AUTOMATION AG accepts unlimited liability for intentional or grossly negligent acts. In cases where damage is caused by a slightly negligent breach of essential contractual duties (“*wesentliche Vertragspflichten*“), the liability of KRATZER AUTOMATION AG shall be limited to the compensation of the damage that is typically related to the contract and could be foreseen as a possible consequence at the time of contract conclusion. Essential contractual duties (“*wesentliche Vertragspflichten*“) as referred to in the preceding sentence 1 shall be understood as duties the fulfilment of which is absolutely

indispensable for the proper performance of the contract and on the compliance with which the customer is generally allowed to rely and the breach of which by the other party endangers the achievement of the contract purpose. The customer shall be solely liable for any breach of third-party proprietary rights (e.g. application patents) as well as for any breach of statutory provisions caused by the use and/or processing of the delivered goods.

- 9.2** The limitation of liability set out in the foregoing para. 1 shall not apply in cases of mandatory statutory liability such as liability under the Produkthaftungsgesetz (German Product Liability Act) or in the case of fraud, wilful deception or an express warranty or guarantee given by KRATZER AUTOMATION AG or with respect to claims arising from an injury to life or limb or health.

## **10 Reservation of title**

- 10.1** The delivered goods remain the property of KRATZER AUTOMATION AG until all claims of KRATZER AUTOMATION AG arising from the entire business relationship with the customer, including interest and costs as well as any claims arising in the future and also including claims from contracts that are simultaneously or subsequently concluded with the customer, have been paid in full (referred to hereinafter as “goods subject to reservation of title”). In the case of a current account, the reservation of title shall be deemed to secure the balance claim of KRATZER AUTOMATION AG.

- 10.2** If the realizable value of the security exceeds the total of KRATZER AUTOMATION AG’s claims from the business relationship with the customer to be secured by more than 10%, the customer shall be entitled to claim release of the security in the amount exceeding the aforesaid limit. KRATZER AUTOMATION AG may however in its sole discretion choose the specific parts of the security to be released.

## **11 Documents, secrecy, analysis of samples and goods**

- 11.1** KRATZER AUTOMATION AG reserves all rights to all documents (including, without limitation, calculations, technical documentation etc.) and samples which KRATZER AUTOMATION AG makes available to the customer in the context of contract negotiations and contract conclusion, regardless of whether or not the parties actually enter into a contract. This shall also apply to documents which the customer has prepared according to the specifications of KRATZER AUTOMATION AG. The customer is not allowed to use, copy, reproduce, or make the said documents and samples available to third parties for purposes other than the contractual relationship with KRATZER AUTOMATION AG. At the request of KRATZER AUTOMATION AG, the customer shall return the said documents and samples together with all copies and/or reproductions thereof. If no contract is concluded, the customer shall return all documents to KRATZER AUTOMATION AG without undue delay (“*unverzüglich*”) and without being requested to do so or, at the sole discretion and request of KRATZER AUTOMATION AG, delete them and provide KRATZER AUTOMATION AG with appropriate proof of the deletion.

- 11.2** The customer shall consider the request for submission of an offer, the contract and the delivery or service

as business secrets and shall treat them confidentially.

## **12 Data protection, consent, indemnification**

**12.1** KRATZER AUTOMATION AG attaches great importance to compliance with the applicable data protection regulations such as the Bundesdatenschutzgesetz (German Federal Data Protection Act – BDSG) and the General Data Protection Regulation (GDPR). The customer is hereby made aware that, for the purpose of contract negotiation, contract conclusion and contract execution, also personal data of the customer’s employees or agents need to be collected and stored. The customer shall make sure that the employees, freelancers or other agents engaged by the customer expressly consent to the use and processing of their personal data (first name, last name, position in the company and, if applicable, telephone number and email address) for the purpose of contract negotiation, contract conclusion, contract execution and necessary communication in the context of the business relationship with KRATZER AUTOMATION AG. The consent must be documented in writing or text form (“Textform” according to § 126b BGB – German Civil Code). The consent to the data processing must be given at least for the time until the end of the business relationship between the customer and KRATZER AUTOMATION AG. The customer shall notify KRATZER AUTOMATION AG without undue delay (“*unverzüglich*”) of the termination of the employee’s or agent’s employment or engagement and/or of any permanent change of the employee’s or agent’s position in the company. In this case, KRATZER AUTOMATION AG shall immediately delete or pseudonymize the personal data of the person concerned (referred to hereinafter as “data subject”).

**12.2** At the request of KRATZER AUTOMATION AG, the customer shall provide proof of the consent given by the data subject to KRATZER AUTOMATION AG without undue delay (“*unverzüglich*”).

**12.3** If a third party or an authority asserts a claim or otherwise takes action against KRATZER AUTOMATION AG because the customer has culpably (wilfully or negligently) breached the provisions of this § 12 para. 1 sentences 3 to 6 or § 12 para. 2, the customer shall indemnify KRATZER AUTOMATION AG upon first request from all claims for damages, other claims, costs (including lawyers’ fees) and fines incurred as a result of the breach. KRATZER AUTOMATION AG shall notify the customer of any legal action or claim asserted against KRATZER AUTOMATION AG without undue delay (“*unverzüglich*”) and give the customer the opportunity to comment on this. The customer shall support and assist KRATZER AUTOMATION AG in defending itself against the claim or action and shall provide KRATZER AUTOMATION AG with all information and documents which may be required for such purpose without undue delay (“*unverzüglich*”). Any further rights and claims to which KRATZER AUTOMATION AG may be entitled remain unaffected.

## **13 Term and termination**

**13.1** The term of the service contract governed by these Service Conditions is one year. It runs from the beginning of the quarter following the conclusion of the service contract. The agreement referred to in

sentence 1 shall be automatically extended by one more year unless it is terminated by either party giving 3 months' written notice of termination, effective as of the end of the service contract (ordinary termination without cause)

- 13.2** The parties are entitled at any time to terminate the service contract referred to in the foregoing para. 1, sentence 1, for cause (extraordinary termination for cause). Cause for termination shall include, without limitation, the case that the customer has been in default of payment ("*Zahlungsverzug*") or in default of acceptance ("*Annahmeverzug*") for more than 3 months. KRATZER AUTOMATION AG reserves the right to assert against the customer any claims arising in connection with the circumstances underlying the termination for cause.
- 13.3** In the case of ordinary termination without cause (see para. 1, sentence 3, any agreed services shall be performed even if the period of performance is after the time of termination of the agreement.
- 13.4** In the case of extraordinary termination for cause by KRATZER AUTOMATION AG, KRATZER AUTOMATION AG shall decide in its sole discretion whether or not still to perform the agreed services after the termination and/or to claim damages based on the termination.
- 13.5** The provisions of § 10, § 11 and § 12 shall remain unaffected by the termination.

## **14 Certificate of origin, export control**

- 14.1** Unless explicitly stated otherwise in the order confirmation, all purchase orders, as a rule, only refer to goods which are products of preferential origin ("*originating products*") as defined by the preferential agreements of the European Community and the European Union. The supplier is obliged to provide KRATZER AUTOMATION AG, no later than upon delivery, with any necessary proof of preferential origin (long-term supplier's declaration or single supplier's declaration including origin criterion, statement on origin in the invoice: SoO resp. SoO EUR-MED, movement certificate: EUR1 resp. EUR-MED, certificate of origin form A). The supplier is further obliged at the request of KRATZER AUTOMATION AG to furnish proof of the origin criterion within the aforesaid meaning by submitting information certificates INF 4 which have been confirmed by the customs authority of the member state in which the supplier is established. If and to the extent that the said documents of proof contain general information regarding the origin such as "European Union", the national origin (i.e. the state of origin such as "Netherlands") must be indicated in addition.
- 14.2** If, during the term of validity of a long-term supplier's declaration, any of the supplier's deliveries deviate from the declaration, the supplier shall be obliged to specify the changes in the invoice and, in addition, notify the foreign trade customs department that is responsible for KRATZER AUTOMATION AG of the changes in writing (double notification obligation). It is hereby pointed out that KRATZER AUTOMATION AG does not accept any supplier's declarations containing a disclaimer or exclusion clause because they are not covered by the regulatory content of the Regulation (EC) No. 1207/2001. "Disclaimer" or "exclusion

clause” shall be deemed to include any supplement or addition to the prescribed wording of the supplier’s declaration which restricts the substance of the declaration by reference to subsequent individual documents (delivery notes, invoices or the like) and any marking or labelling contained therein or the lack of any such marking or labelling.

- 14.3** Any delivery of goods other than products of preferential origin (“originating products”) within the meaning of a preferential agreement of the European Community or European union requires prior written consent by KRATZER AUTOMATION AG.
- 14.4** The supplier is obliged, in addition to the alternative obligations under § 9 para. 1 and para. 3, to submit certificates for all goods to be delivered (certificate of origin, long-term supplier’s declaration and single supplier’s declaration without origin criterion, duly supplemented statement on origin in the invoice) which evidence the non-preferential origin of the goods. If these documents contain general information regarding the origin such as “European Community”, the national origin (i.e. the state of origin such as “Netherlands”) must be indicated in addition.
- 14.5** All proofs of origin must be submitted without request together with the delivery at the latest and at the supplier’s sole expense.
- 14.6** The supplier undertakes to completely and properly fill in the KRATZER AUTOMATION’s foreign trade questionnaire and the long-term supplier’s declaration (according to the Implementing Regulation (EU) 2447/2018 and digitally transmit them by email to [suppliersdeclaration@kratzer-automation.com](mailto:suppliersdeclaration@kratzer-automation.com) no later than five business days of receipt (“Zugang”) of the order confirmation. The originals must be sent by post to KRATZER AUTOMATION AG, Abteilung (department): Zoll Export/Import (customs export/import), Gutenbergstr. 5, D-85716 Unterschleißheim, Germany, no later than ten business days of receipt (“Zugang”) of the order confirmation. The respective current versions of the forms to be used for this, the KRATZER AUTOMATION AG foreign trade questionnaire and our long-term supplier’s declaration are available at:

<http://www.kratzer-automation.com/de/unternehmen/rechtliches>

## **15 Force majeure**

- 15.1** In the case of unforeseeable, inevitable events beyond the control of KRATZER AUTOMATION AG such as force majeure including, without limitation, war, natural disasters, raw material shortage, labour disputes, pandemics and other disturbances of the production processes, KRATZER AUTOMATION AG shall be released from the obligation of timely delivery of goods or provision of work or services for the duration of the respective event. For goods or parts of goods which have not been manufactured by KRATZER AUTOMATION AG itself, compliance with the agreed delivery times or deadlines shall be subject to correct and timely supply of the goods or parts by KRATZER AUTOMATION AG’s own suppliers. The foregoing sentences 1 and 2 shall not apply if the delay is attributable to KRATZER



AUTOMATION AG (“zu vertreten haben”).

**15.2** In the event of a delay as described in the foregoing para.1, the agreed delivery times shall be automatically extended by the duration of the delay. KRATZER AUTOMATION AG shall duly notify the customer of the occurrence of the delay. If the duration of the delay cannot be foreseen or the delay lasts longer than three months, each party shall be entitled to withdraw from the contract.

## **16 Final provisions**

**16.1** Subject to any individual agreements according to § 305b BGB (German Civil Code), changes and amendments to the contract and/or these Service Conditions as well as side agreements must be made in writing (“*Schriftform*”) or text form (“*Textform*”) (e.g. by email). If and to the extent that these Service Conditions provide for a requirement of writing, this shall also be deemed satisfied by declarations in text form (e.g. by email)

**16.2** If a provision of the service contract and/or these Service Conditions should be or become invalid or impracticable in whole or in part, the validity of the remaining provisions shall remain unaffected thereby. The parties are obliged in this case to work towards the replacement of the invalid or impracticable provision with a valid or practicable provision which approximates the economic purpose of the invalid or impracticable provision as closely as possible. This shall apply accordingly if a gap is found in the contract and/or these Service Conditions which needs to be filled.

**16.3** The place of exclusive jurisdiction and place of performance (“*Erfüllungsort*”) for all disputes arising out of the contractual relationship is Munich city (München-Stadt). KRATZER AUTOMATION AG shall however be entitled to also sue the customer at the place of general jurisdiction (“*allgemeiner Gerichtsstand*”) applicable to it.

**16.4** The contractual relationship is governed by the law of the Federal Republic of Germany. The application of the Vienna Convention of the United Nations on Contracts for the International Sale of Goods (CISG) and the German Private International Law is excluded.