

# **OLKO-Maschinentechnik GmbH**

## **General Terms and Conditions for Remote Services**

### **General**

Unless otherwise agreed in the contract, the contract between the client and OLKO-Maschinentechnik GmbH ("OLKO") for remote services to be performed shall be governed solely by these General Terms and Conditions. The General Supply Terms of OLKO shall apply in other respects; the general terms and conditions of the client shall expressly not be applicable.

Responsibility for and the authority to decide on the operation of the plant and machinery and unfinished machinery within the meaning of the German Mining Regulations for Shaft and Inclined Haulage Equipment (BVOS) and/or Machinery Directive 2006/42/EC (hereinafter "System") shall remain with the client.

Unless expressly agreed otherwise, remote services are not a substitute for regular maintenance and safety testing and inspection of the System.

### **1. Description of the Services**

#### **1.1 Remote Services**

Remote services are intended to determine the actual condition of faults that have occurred and to record the present condition of the System by telecommunication means on the basis of the data and language recorded. OLKO analyses the recorded data and processes for deviations of the actual from the nominal condition. Remote services can also constitute the basis for the preparation of further offers for spare parts or services for rectification of the faults as well as support in commissioning.

OLKO can in principle offer the following remote services:

#### **1a Telephone Support**

Telephone support comprises the analysis of system, process and operating faults by telephone or video transmission and – where possible – telephone advice to provide support when rectifying faults in the System.

#### **1b Remote Maintenance, Commissioning Support (Remote Support)**

Remote support comprises the analysis of system and/or process faults and operating faults over an internet connection with the System and – where possible – the provision of support when rectifying faults in the System (e.g. adjustment of limit values and parameters or of the process; resetting of operating faults, etc.).

#### **1c Condition Monitoring**

Condition monitoring comprises the acquisition of condition-oriented system data and a comparison with reference and nominal values (taking into consideration customer-specific wear scenarios) by means of an internet connection.

#### **1.2 Functions of Remote Services**

The functional scope depends on the version of the system software and the state of technical progress. The client is aware that the scope of this function thus can and will

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change over the course of time. The current scope of service that is possible on the basis of the technical equipment of the System is therefore agreed in the individual case.

At the client's request, OLKO will propose further maintenance measures by which the proper operation of the System can be guaranteed. OLKO will support the client with implementation where appropriate. Unless otherwise indicated from the scope of service of the order, a separate agreement must be concluded to this end. This will be without prejudice to any contractual claims of the client on account of defects.

### **1.3 Other Measures**

If it is not possible to maintain and/or repair the System in full or at all through remote diagnostic services, OLKO will inform the client accordingly.

If deviations pursuant to paragraph 1.1 are attributable to

- external action,
- force majeure,
- average/disaster,
- improper operation,
- insufficient or incorrect maintenance,
- failure to comply with the installation and ambient conditions specified by OLKO,
- modifications to the software or hardware of the System that have not been agreed with or approved by OLKO, or
- soiling/dirt that is neither the fault of OLKO nor has its origin in the functioning of the System,

OLKO will only be obliged to perform services pursuant to paragraphs 1a, 1b and 1c or other measures and service pursuant to paragraph 1.3 of this contract against additional payment based on the service.

This shall in particular also apply for the case that these services extend beyond the rectification of defects to be performed under any other contractual relationship between the parties.

OLKO accepts the obligations specified in these terms and conditions. This does not constitute any guarantee that all damage and defects of the System will be diagnosed and rectified through the use of remote services. It further does not constitute any guarantee of the functionality of the System.

### **1.4 Documentation and Framework Conditions**

OLKO will record the relevant data of the System/processes and/or the deviations as determined by the remote diagnosis within the meaning of paragraph 1.1.

On completion of the repair and/or maintenance work OLKO will inform the client of the work it has performed and will on request provide the client with the logs and any other documentation that may be required.

Remote services will be performed by means of a telephone or internet connection. The client must provide and maintain the necessary telecommunication means free of charge (internet connection as specified by OLKO). It is a further prerequisite that no modifications are made to the installed system software without the consent of OLKO. OLKO will also have the right to transfer the data used for diagnosis by online access.

The parties are responsible for the operation and maintenance of their own systems. OLKO will be released from its obligations to perform pursuant to paragraphs 1a, 1b and 1c in the event that the data transmission between the client and OLKO fails, particularly as a result of faults in the transmission routes, and in the case of missing or insufficient data.

## **1.5 Remuneration and Payment Terms**

The billed remuneration must be paid net (without deduction) within 30 calendar days of receipt of the invoice. Payments will only be deemed made when credited to the bank account of OLKO. In the absence of any agreement to the contrary, the amount of the remuneration will be determined from the current price list. If the client fails to meet its payment obligations from an order, OLKO will have the right to suspend performances under this or another order until the client has paid the due remuneration.

## **2. Performance Period**

### **2.1 Provision of the Remote Services**

OLKO undertakes to perform the agreed services from 8am to 4pm central European Time (CET) Mondays to Fridays and by prior arrangement.

### **2.2 Force Majeure**

If the performance of services is delayed – even if within any existing delay – for reasons of force majeure (including epidemic, war, civil war or war-like conditions or the imminence of such circumstances) or through measures of labour disputes, in particular strike and lockout, or through the occurrence of circumstances for which OLKO is not responsible, the service may be caught up within a reasonable period of time (including time for the resumption of work, etc.) after the end of the events concerned if these events have had an effect on timely performance. In important cases OLKO will – where possible – inform the client of the occurrence and expected duration of such events. The services will likewise be postponed for a reasonable period of time if the client is in arrears with its duties of cooperation pursuant to section 4 or with payment or other obligations under an order.

## **3. Liability**

### **3.1 Liability for Defects**

OLKO will perform the services according to the generally accepted rules of technology. If the services are not performed properly or in full, OLKO must provide subsequent performance free of charge under its liability for defects. If OLKO fails to meet its duty of renewed performance, the client will have the right to set a reasonable period of grace. If OLKO culpably allows this period of grace to lapse without result, the client may by agreement with OLKO demand a reduction in price or cancel the order with immediate effect.

### **3.2 Limitations**

OLKO will be liable according to statutory provisions if the client brings claims for compensation based on intent or gross negligence - including the intent or gross negligence of OLKO's representatives or vicarious agents – for all losses attributable to remote services by OLKO. OLKO's liability for compensation is further limited to the foreseeable loss typically occurring. The liability of OLKO, including for consequential losses, is excluded in all other respects.

### **3.3 Restrictions**

The limitation of liability pursuant to paragraph 3.1 will not apply

- a) in the case of a culpable breach of material contractual obligation to the extent that the purpose of the contract is endangered,
- b) in the case of culpable loss of life, physical injury or damage to health, and
- c) to the extent that OLKO has assumed a guarantee.

Material contractual obligations are those which make the due performance of the contract possible in the first place and on fulfilment of which the client may normally rely. The exclusion of liability will further not apply in the case of mandatory liability under the German Product Liability Act.

## **4. Client's Duties of Cooperation**

### **4.1 Initialisation Mode**

When required, the client activates the remote services pursuant to paragraph 1.1, whereupon OLKO will connect with the client's System.

### **4.2 Help in the Event of an Error Message**

The client must follow the instructions issued by OLKO when determining, limiting, reporting and describing errors. Where appropriate, the client must use setting instructions/checklists provided by OLKO.

Rectification requires the cooperation of the client, which must provide personnel who have the necessary linguistic and technical skills. If anything is unclear, additional information and documents must be sent to OLKO.

### **4.3 Attention to Safety/Duty of Supervision**

The client must follow the security instructions in the operating and user instructions for the System and the relevant national and international laws, (industrial) standards and guidelines. In cases in which remote services can present a danger to people and/or property, the client must confirm to OLKO in writing that the intended measures can be performed without risk. To the extent that such feedback cannot be given locally for every System, the client must take reliable measures to protect against personal injury and material damage. The client must in particular ensure through the appropriate barriers, protective devices and warnings that no persons on its local premises can be put in danger in connection with performance of the services.

#### **4.4 Training/Servicing of the System**

The client undertakes to train its specialist personnel sufficiently and regularly in the technical service equipment required for the remote services. The client further undertakes to maintain and to service the System in accordance with the manufacturer's instructions and the state of the art. OLKO will not be responsible for impairments to service caused by inadequate servicing of the System by the client.

#### **4.5 Client's Duties of Notification**

OLKO must be informed in writing without undue delay of modifications which the client makes to the System or its environment insofar as these can have an effect on the agreed remote services.

#### **4.6 Storage of Data**

The client undertakes to create backup copies for all data before claiming any remote services pursuant to paragraph 1.1.

#### **4.7 Bearing of Costs**

The client shall bear the costs for

- the obligations set out under paragraph 4,
- the telecommunication means it uses,
- the communication connection it uses, and
- the wait times for which it is responsible, e.g. because its telecommunication means are not functioning properly.

### **5. Transferability/Set-off**

OLKO will have the right to transfer its rights and obligations under the contract to third parties.

The client only has the right to set off against undisputed claims established as final or claims resulting from the same contractual relationship.

### **6. Confidentiality, Data Security and Data Protection**

All exchanged client data and other information of the client concerning its relevant process and product data may only be used for the services defined in the respective order. The marketing of this information on OLKO's own account or transfer of knowledge to third parties is not permitted. However, OLKO will have the right to use the technical findings obtained in the course of performing its service obligations in order to improve its own products and services.

The parties hereto will take appropriate precautions according to the state of the art to prevent the software of the parties being penetrated by viruses. Should one of the parties hereto suffer viruses and other malicious software which impair remote services or can be transferred to systems of the other party, the other party must be informed in writing without undue delay.

If OLKO receives access to personal data of the client within the scope of the remote services, these data will be protected in accordance with current applicable law. These data will not be used in any way outside the respective order. The transmission to third parties or use of these data in any way whatsoever is expressly excluded.

## **7. Limitation Period**

The rights and claims of the client under this contract on account of deficient performance of the contract by OLKO will become time-barred in 12 months commencing upon termination of the respective service.

This shall not apply

- a) if section 634a (1) no. 2 of the German Civil Code (BGB) specifies a longer period,
- a) in cases of loss of life, physical injury or damage to health,
- c) in the event of an international or grossly negligent breach of duty by OLKO,
- d) in the case of malicious failure to disclose the deficient performance of a service.

Claims of the client to compensation shall be governed by the statutory limitation provisions.

## **8. Place of Jurisdiction, Applicable Law, Applicable Version**

The place of jurisdiction is Coesfeld. OLKO may also take legal action at the registered office of the client.

The contractual relations shall be governed by German law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

In case of doubt the German version of these General Terms and Conditions shall prevail.

## **9. Final Clauses / Severability**

Individual agreements made with the client in the particular case (including secondary agreements, additions and amendments) shall always take precedence over this contract.

Statements and notices of legal relevance which the client is required to submit to OLKO after conclusion of the contract must be made in writing in order to have effect.

If one or more of the above paragraphs or parts thereof is/are null and void, the rest of the contract shall remain effective and the ineffective clause shall be replaced either by the statutory provision or, if there is no such provision, a clause that the parties hereto would admissibly have agreed in good faith had they been aware of the nullity.

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