

General terms and conditions for periodic servicing and repair work of materials test machines

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1. Range of application

- 1.1. 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 our customer (hereinafter called “**Client**”).
- 1.2. 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.
- 1.3. 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

1. Scope of application of this section

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

2. Scope of services

- 2.1. The scope of the services to be provided is based on the quotation from ZwickRoell.
- 2.2. 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.

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2.3. If services should change, particularly in accordance with Clause 2.2 above, the field service assignment order signed by the Client can lead to a price reduction or increase.

3. Material costs

3.1. The consumables and wear parts required within the framework of the servicing work are billed additionally according to actual expenses, unless these are included in the scope of services in accordance with Clause 2.1.

3.2. The parts used are in each case billed at the ZwickRoell prices that are valid at the time of delivery.

3.3. There is no charge, provided the material is required within the scope of our warranty obligation and within the warranty period.

4. Obligations of the Client

4.1. The conclusion of a service 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.

4.2. 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.

5. Date on which servicing is carried out

5.1. ZwickRoell undertakes to carry out servicing in accordance with the quotation, i.e. on the objects defined there and at the interval determined there.

5.2. If a specific date was not agreed, ZwickRoell shall inform the Client of the exact servicing date at least two weeks in advance.

5.3. 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.

- 5.4. 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.
- 5.5. 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 limitation of liability in accordance with Section C, Clause 6 applies.

6. Prices

- 6.1. A fixed price is applied for each servicing object listed in the quotation by ZwickRoell. These fixed prices and the respective settlement period are set out in the quotation. 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 regarding the objects. These quotations form part of the contract.
- 6.2. The price for the work of the maintenance personnel plus VAT must be paid after the servicing has been carried out and invoiced.
- 6.3. The Client must be notified of any change to the fixed price with a notice period of three months to the end of the settlement period, and it shall apply as of the next settlement period, even if the Client paid the price before it was due.

7. Duration

- 7.1. The service contract comes into effect once the order has been confirmed by the Client.
- 7.2. 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 right of extraordinary termination for good cause shall remain unaffected.

8. Claims due to breach of contract

- 8.1. If the agreed performance is not executed in full and/or not executed properly, ZwickRoell must rework or rectify it free of charge.

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8.2. 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 6.

9. Other provisions

- 9.1. Enhancements, relocations, partial renewals and other changes to the machinery and equipment during the terms of the service contract may only be carried out by or in coordination with ZwickRoell.
- 9.2. If the Client transfers the machinery and equipment to a third party, the Client's obligation to pay the fixed prices for the agreed invoicing period 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.
- 9.3. 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 in accordance with Section B.

Section B

Terms and conditions for repair work

1. 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 General 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.

2. Response time model

- 2.1. Insofar as the Client has ordered the response time 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.
- 2.2. ZwickRoell shall be entitled to attempt to remedy the fault by telephone or electronically first if this seems objectively feasible after the Client reports the fault. The response time shall be extended by the period required to determine whether this is possible in this case, but no longer than by 6 working hours.
- 2.3. If a spare part is not available, the response time shall be extended by the time required to procure the spare part.

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

- 3.1. 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.
- 3.2. 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.

4. Transport

- 4.1. If repairs cannot be carried out at the Client’s premises, ZwickRoell shall transport the object to be repaired to its premises in Ulm.
- 4.2. The Client shall bear the risk of accidental loss of the object during outgoing and return transport. ZwickRoell shall be liable in respect of the object solely within the framework of the provisions set out in Section C, Clause 6.

5. Acceptance

- 5.1. The repair work by ZwickRoell must be accepted immediately by the Client after the work has been completed. Acceptance cannot be refused on account of negligible defects.
- 5.2. ZwickRoell must be immediately informed of the refusal of acceptance, otherwise the repair work is deemed to have been accepted. The time, location, nature and scope of the defect must be described precisely.
- 5.3. Acceptance is indicated by signing the completed field service assignment order. The repair services are also deemed to have been accepted if the Client uses the repaired testing machine at its premises.
- 5.4. In the case of a delay of acceptance, risk is transferred to the Client.
- 5.5. If the Client is in delay of 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 of 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.

6. Remuneration and material costs

- 6.1. 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.
- 6.2. 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.
- 6.3. The material required within the framework of the repair work will be billed additionally according to the actual expense incurred.
- 6.4. The parts used are in each case billed at the ZwickRoell prices that are valid at the time of providing the service.
- 6.5. There is no charge, provided the repair work is carried out within the scope of our warranty obligation and within the warranty period.

7. Claims for defects

- 7.1. The Client must notify ZwickRoell promptly in text form as soon as any defects that were not recognizable during the acceptance inspection have been detected. Notification is deemed to be prompt if it is made within one (1) week of discovery of the defect.
- 7.2. 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.
- 7.3. 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.
- 7.4. 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.
- 7.5. In urgent cases, e.g. if operational safety is at risk or to avoid disproportionate damage, the ordering party shall be entitled to rectify the defect itself and to demand compensation from ZwickRoell in the amount of the demonstrated expenditures objectively required. ZwickRoell must be notified promptly about such self-performance, preferably in advance. The right of self-performance does not exist if ZwickRoell would be entitled to reject corresponding supplementary performance according to the statutory provisions.
- 7.6. If the supplementary performance fails or if further attempts at supplementary 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 9.

Section C

Common provisions

1. Scope of application of this section

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

2. Payment terms, offsetting and retention

- 2.1. 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.
- 2.2. 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.
- 2.3. The Client is only authorized to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

3. Obligations, cooperation and technical assistance by the Client

- 3.1. 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.
- 3.2. 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 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.

4. Confidentiality

The Contractor undertakes to treat the information received during the performance of the activities as confidential.

5. 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).

6. Delay

- 6.1. ZwickRoell shall not be deemed to be in delay of delivery on the occurrence of disruptions due to force majeure or due to other obstacles for which ZwickRoell bears no responsibility, including force majeure in accordance with Clause 8 of this Section C, or due to late self-delivery, if neither ZwickRoell nor its supplier bears any responsibility on the conclusion of a congruent covering transaction or if ZwickRoell is not obligated to procure in individual cases. If the term of delivery is extended due to the aforementioned reasons, ZwickRoell shall inform the Client about this promptly and state the anticipated new term of delivery.
- 6.2. The beginning of the delay is determined in accordance with the statutory provisions. In any event, however, the Client must issue a reminder and set an appropriate term.
- 6.3. ZwickRoell's liability for delay shall be limited in accordance with Clause 6 of this Section C. Apart from that, the statutory rights of the Client and ZwickRoell, particularly in case of exclusion of a performance obligation (e.g. due to impossibility or unreasonableness of the service and/or supplementary performance), shall remain unaffected.

7. Liability limitation

- 7.1. 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.
- 7.2. 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 representatives or vicarious agents.

- 7.3. ZwickRoell shall be liable for 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 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.
- 7.4. In all other respects, ZwickRoell's liability is excluded.
- 7.5. 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.
- 7.6. To the extent that liability of ZwickRoell is excluded and limited, this also applies to employees, representatives and vicarious agents of ZwickRoell.

8. Statute of limitations

- 8.1. 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.
- 8.2. 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.
- 8.3. In all other cases, the warranty period is one year.

9. Force majeure

- 9.1. If one of the contracting parties cannot fulfill its contractual obligations for reasons beyond its control, such as labor disputes, industrial problems, fire, war, general mobilization, uprisings, embargoes, foreign exchange and export restrictions, natural catastrophes, acts of terrorism, insufficient supplies, it can suspend these obligations insofar as these impediments persist and were not foreseeable at the time of conclusion of the Contract.
- 9.2. The contracting party that invokes force majeure must notify the other party promptly in text form of the beginning and end of this delay; otherwise it shall be obliged to exempt the other party from the costs incurred due to not having provided notification.
- 9.3. Each party can withdraw from the contractual relationship or terminate it with immediate effect once the delays as a result of force majeure have lasted for longer than six months.

10. Applicable law and place of jurisdiction

- 10.1. German law applies to both servicing and repair work.
- 10.2. 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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