

SEW-EURODRIVE (PTY) LTD - South Africa**GENERAL CONDITIONS FOR SERVICES (GCS)****TABLE OF CONTENTS:**

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1. SCOPE OF VALIDITY, CONCLUSION OF THE CONTRACT, SCOPE OF THE SERVICES

- 1.1 The following conditions (hereinafter referred to as “GCS”) apply to all services that shall be carried out now or in future for the customer by SEW-EURODRIVE (PTY) LTD (hereinafter referred to as “SEW”).

Conflicting or differing terms and conditions shall not become part of the contract, even if SEW does not expressly reject to such terms and conditions.

- 1.2 The scope of the services is determined according to the mutual written declarations, or if there are none, according to the written order confirmation by SEW.
- 1.3 Services are all services mentioned in SEW’s CDS® Service Catalogue (Complete Drive Service), in particular inspections, maintenance, assembly, commissioning, modernizations, and similar services.
- 1.4 Repair and commissioning services are governed by the SEW-GCR (General Conditions for Repair and Commissioning).

2. GENERAL OBLIGATIONS OF THE CUSTOMER

- 2.1 The customer shall at his own cost support the service personnel to render services at his plant or at another location named by the customer, and he shall name a qualified and authorized contact person. The customer shall support SEW concerning the fulfilment of public-law requirements (visas, work permit, formal invitation etc.).
- 2.2 As far as relevant for the service personnel, the customer shall take the specific measures necessary for the protection of personnel and property at the place of action, and provide comprehensive advice on existing specific safety regulations and specific dangers (e. g. floating loads, hazardous materials). This applies in particular for laws or regulations applicable outside South Africa. SEW shall be obliged to observe these laws and regulations only after prior written information. The customer shall immediately inform SEW of any infringement of such safety regulations by the service personnel.
- 2.3 The customer shall be obliged to provide technical assistance at his own cost, particularly regarding the following aspects:

(1) Provision of necessary and qualified assistant workers in necessary numbers and for the necessary period of time (including, as far as necessary, specialised staff for the customer’s superordinate systems or components). The workers provided by the customer shall be obliged to observe the orders of the maintenance supervisor.

SEW shall not be liable for the workers provided by the customer. If such a worker causes a defect or damage due to orders of the maintenance supervisor, the provisions of nos. 9 and 10 shall apply accordingly.

(2) Execution of all construction, bedding and scaffolding works where required.

(3) Provision of necessary devices and heavy tools, hoisting devices as well as necessary utensils and materials.

(4) Provision of heating, lighting, energy, water, including the required connections.

- (5) Provision of required dry and lockable rooms for the storage of the service personnel's tools.
 - (6) Protection of the service site and the service material against hazardous effects of all types and manners, cleaning of the service site.
 - (7) Provision of appropriate and thief-proof recreation rooms and working rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for the service personnel.
 - (8) Provision of materials and execution of all further operations necessary for the adjustment of the object of services and for the performance of a function test.
- 2.4 The customer's technical support must be provided in such a way that the services can be commenced immediately after the arrival of the service personnel, and that they can be executed without any delay up to the time of acceptance by the customer.
 - 2.5 On demand or if deemed necessary, after conclusion of the contract the customer shall immediately provide SEW with all technical documentations (e. g. current designs, descriptions, instructions, operating and maintenance instructions etc.) necessary for the execution of the agreed services.
 - 2.6 In the case that the customer does not fulfil his duties and obligations in accordance with no. 2, SEW, at its own discretion and after announcement, shall be entitled to act in lieu of the customer and at his expense. Further rights and claims of SEW shall remain unaffected.
 - 2.7 The Customer must inform SEW about all damages and accidents related to the service works without delay by phone followed by written notice.
 - 2.8. Any requests for SEW personnel must be made at least 10 (ten) days in advance.
 - 2.9 Should SEW request the submission of documents, such documents must be submitted at an early stage, at the latest by the time of placing the order and prior to the request for personnel of SEW.
 - 2.10 The Customer shall nominate in writing members of its staff to be at the disposition of the provided SEW-personnel throughout the performance of the services (the "contact persons"). The contact persons must be entitled, and where necessary, authorized to make statements and to receive on behalf of the customer all statements that the personnel provided by SEW makes in connection with the services. Unless agreed otherwise, the customer shall provide a qualified specialist interpreter throughout the performance of the services.

3. DURATION OF THE SERVICES, TERMINATION, CANCELLATION AND RESCISSION OF CONTRACT

- 3.1 The agreement for the provision of services will end either upon expiration of the agreed period of time or if terminated in accordance with no. 3.3.
- 3.2 In the event that the customer cancels a request for services, or if he prematurely gives notice of termination, SEW shall invoice the customer in full for all costs already incurred (e.g. for flight bookings etc.). The same applies if the execution of the services is or becomes impossible for reasons beyond SEW's responsibility. Further rights of SEW shall remain unaffected.

3.3 In the event that the customer significantly breaches one of his contractual obligations, SEW shall be entitled to cancel the agreement with immediate effect. Except in case of imminent danger, SEW shall notify the customer of the breach of its obligations and demand that the customer performs in accordance with the terms of the contract and within a reasonable period of time. In the case that an ordinary breach of contract or its consequences have not been remedied during a set reasonable period of time, the breach shall be deemed to be material.

4. TIME LIMITS, DELAY

- 4.1 Unless defined in writing as binding, any time limits indicated for services shall be without obligation. The customer shall be obliged to ensure that the service personnel can immediately start with the services upon arrival at his plant, and also that, if necessary, the customer's installation has already been switched off.
- 4.2 The completion of the service works is deemed in time if they are then ready for acceptance by the customer or if they are ready for a contractually agreed upon test run. If additional operations are ordered or become necessary after conclusion of the contract, the time limit of the service works shall be extended accordingly.
- 4.3 In the case that the service is delayed by force majeure (refer to no. 14) and this has a considerable impact on the completion of the service, the time limit for the service works shall be extended by a reasonable period of time.
- 4.4 If the customer incurs damages as a consequence of delay of SEW with the services and if these damages are substantiated by the customer, he shall be entitled to claim compensation for delay. The compensation for delay shall be for each full week of delay 0.5 %, in maximum however, 5 % of the service price regarding that part of the service that as a consequence of the delay cannot be used in time.
- 4.5 In the event that the maximum sum as per no. 4.4 is reached, after defining an additional reasonable period of time combined with the announcement that acceptance of the service will be refused, the customer shall be entitled to cancel the contract after fruitless expiry of the additional period. There shall be no further claims, except according to nos. 12 and 13.

5. ACCEPTANCE

- 5.1 The customer shall be obliged to inspect and formally, in writing accept the services executed at his plants as soon as he has been informed about their completion and after the contractually agreed test run or – if the services were carried out at SEW – as soon as he will have received the object of service (refer to nos. 11 and 11.5.).

In the event that the services prove not to be in compliance with the contract, SEW shall be obliged and entitled to remedy the defects. This shall not apply, however, if such non-compliance is not relevant to the customer's interests, or if it is based on circumstances beyond the responsibility of SEW.

The customer shall in any case be obliged to immediately notify SEW of any defects or infringements of the contract in writing and to precisely describe the details.

In the case of a non-essential defect the customer shall not be entitled to refuse acceptance if SEW expressly acknowledges its obligation to lift the defects or respect the customer's right to reduce the service price.

- 5.2 If the formal acceptance is delayed without responsibility of SEW, it shall be deemed to be formally accepted within 2 (two) weeks after notification of completion of the service, but at the latest once the customer commences use of the object of service.

6. REMUNERATION AND PAYMENT

- 6.1 As a rule SEW shall send the customer a written non-binding cost estimate after identifying the faults and prior to the commencement of services. SEW shall inform the customer as soon as it becomes evident that the final price according to the cost estimate will be exceeded by more than 15 percent.
- 6.2 The payment shall be carried out according to Annex 1 "SEW Price List for Services" in the currently applicable version.
- 6.3 With regard to the amount of remuneration, the public holidays of that country in which the service personnel is resident are decisive. All invoices shall be payable immediately and without any deductions.
- 6.4 In the event that the customer is in delay with due payments inspite of two written reminders defining an adequate deadline, SEW shall be entitled to withdraw any provided personnel without further notification. Any further claims of SEW resulting from the late payment by the customer shall remain unaffected.
- 6.5 The amount of the payment shall be based on the service contract. In the case of invoice by costs, the service price lists of SEW shall be applicable as agreed upon or as provided to the customer. For calculation of the service price, prices for the used parts, materials and special services as well as prices for services rendered, travel expenses and transportation costs respectively shall be displayed separately.
- 6.6 Foreign customers shall be invoiced with value added tax (VAT). This shall only apply to customers from within the SADC, if they indicate their VAT ID.-No. upon conclusion of the contract.
- 6.7 The invoice shall be deemed approved if the customer does not, within a period of 2 (two) weeks after receipt, object in writing and under precise specification of the reasons.
- 6.8 All prices are ex works SEW South Africa (Ex Works Incoterms 2010). Unless determined otherwise in writing, all payments shall be made in Euros irrespective of any deviations of the currency exchange rate.
- 6.9 In the case of late payment, SEW shall be entitled to charge interest with effect of the date on which payment was due. The rate of interest shall be 8 (eight) percentage points above the prime bank rate of the European Central Bank. The Seller insofar may suspend performance of the contract.

7. PERSONNEL RENDERING SERVICES

- 7.1 The personnel provided shall be expertly trained and appropriate to perform the services agreed upon by the customer and SEW.
- 7.2 The Customer shall provide accommodation at the agreed service in the form of either a single hotel room or a flat/apartment, each with an en suite bathroom conforming to the "Three Star Hotel Standard" set by the South African Economic Chamber of Trade, Commerce and Industry.

- 7.3 The provided personnel of SEW instructed to draw up proper working hour reports and have confirmed by signature of a contact person on behalf of the customer. Customer shall that a contact person is present at the jobsite.
- 7.4 The personnel cannot perform the requested services on the site for reasons for which SEW is not responsible, up to 8 (eight) working hours per day as standby.

8. SAFETY

- 8.1 The Customer to arrange for safety at the as far as this is located outside SEW's plants that all relevant regulations for the prevention of accidents and all industrial safety regulations observed and arrange for adequate conditions. The customer will instruct, inform and, if necessary, train SEW's service personnel.
- 8.2 SEW reserves the right to immediately withdraw the personnel provided from the respective in of . 8.1. The same apply according to SEW's own standards the adequate safety of the personnel provided demonstrably is not sufficient, even if the legal safety regulations applicable at the are observed. In this case SEW give the customer the reasons in writing. Before SEW ultimately with-draws its personnel it give the customer the opportunity to take remedial action within a reasonable period of time.

9. SCOPE OF SERVICES

- 9.1 The personnel provided shall provide services exclusively according to the written agreement between SEW and the customer.
- 9.2 Doubt, neither SEW nor the personnel provided entitled or obliged to any services that not in writing. This in particular SEW gives oral advice/ support (e.g. on the phone) upon receipt of notice that problems have occurred on the site. In such cases a separate written agreement for consultancy services, otherwise SEW shall bear no responsibility whatsoever.
- 9.3 SEW entitled to have services or any of its warranty obligations partially or completely carried out by competent and reliable contractors, if this seems reasonable in the light of the nature of the obligation and the situation is time- and cost saving and if there are no important reasons on the side of the customer

10. SERVICES WITHOUT A CONTRACTUAL AGREEMENT

Without prior written agreement between SEW and the customer, the personnel provided will not be entitled to carry out works, give support or make any statements beyond the agreed scope of services, not even as an act of courtesy. SEW shall accept no liability whatsoever for any problems or damage caused by such activities.

The customer shall indemnify and compensate SEW for all resulting disadvantages arising from such activities.

11. LIABILITY FOR NON-CONFORMANCE

- 11.1 SEW shall at its own expense lift any defects of any services performed that occur within 1 (one) year after the performance of such services. SEW must be informed, in writing and with precise specification, of such defects immediately. Parts that are replaced become the property of SEW.

- 11.2 To the extent that a complaint proves to be justified, SEW shall bear the following direct costs arising from the lifting of defects: The cost of materials, and – to the extent that this does not place an unreasonable burden on SEW – the costs for dismantling and installation and the costs of providing any necessary personnel, including travel and accommodation costs.

If in the course of any service works a part supplied by SEW is damaged by fault of SEW-personnel, SEW shall at its own discretion and at its own expense either repair or replace any such damaged part.

- 11.3 Upon receipt, the customer shall be obliged to examine the object of service without delay and give written notice to SEW, exactly specifying the nature of the lack of conformity, as soon as he has discovered it. After arrangement with SEW the customer will be responsible for the securing of all evidence.
- 11.4 If the services do not conform with the contract, SEW shall be entitled – even if the nonconformity is essential – to lift the lack of conformity at first and at its own discretion within 2 (two) weeks after the customer's request. For customers based outside the European Union, the period shall be 3 (three) weeks.
- 11.5 Within the scope of the reason, the customer shall be obliged to co-operate in the remedial works, but only against cost reimbursement and according to SEW's instructions.

On demand the customer shall be obliged to send the object of the contract to SEW for the purpose of the rectifying the defect.

- 11.6 (Reduction, Termination of the Contract) In the event that SEW fails to lift an infringement of contract in accordance with no. 11 by means of lifting of a defect or offering a replacement delivery, the customer shall be entitled to demand an appropriate reduction of the service price.

12. LIABILITY FOR SERVICES

(Exclusion of further liability regarding defects) Unless stipulated otherwise in nos. 4, 12 and 13, SEW shall not – irrespective of the legal reasons – be liable for any lack of conformity and damages. This applies to any damages caused by the defect, including losses of production, profit or other indirect losses whatsoever (losses and damages not incurred in the objects of service themselves).

In the case of responsibility for a breach of essential contractual obligations SEW shall be liable, but only for typical contractual losses that could have been reasonably foreseen.

SEW shall in any case be liable, however, for gross negligence, for specifically rendered guarantees, fraud, culpably caused damages to life, body or health or if there is liability regarding physical injuries or damages to private items under South African or foreign product liability laws.

13. FURTHER LIABILITY OF SEW, SECONDARY DUTIES

- 13.1 In the case of a substantial infringement of the contract, the customer may set a final period to lift the defects. After fruitless expiration of this period, the customer shall be entitled to cancel the contract. Unless expressly stipulated in these GCS, all further contractual or legal claims against SEW shall be excluded, especially claims for termination of the contract, price reduction or damages of any kind, including such damages that have not incurred in the object of service itself. No. 12 shall apply accordingly.

13.2 This shall also apply to the fulfilment of contractual or pre-contractual secondary obligations.

14. FORCE MAJEURE

- 14.1 Either party shall be liable for non-performance in the event that performance is prevented by circumstances beyond the party's control or especially by one of the following circumstances: fire, natural disasters, war, seizure, requisition, prohibition of export, embargo or other authority measures, general shortage of materials, restrictions in the use of power, industrial disputes, or if a breach of contract of subcontractors is caused by any such circumstances.
- 14.2 Either party may terminate the contract in writing if performance is prevented for more than 12 (twelve) weeks according to no. 14.1.

15. CUSTOMER'S LIABILITY

In the case that, during the execution of the services outside SEW's premises, SEW's equipment is damaged or gets lost at the service site for reasons within the customer's scope of responsibility; the customer shall be obliged to pay compensation. However, damages resulting from normal wear and tear shall not be compensated.

16. TIME LIMITATION

All claims of both Parties based on a lack of conformity with the contract shall expire within 12 (twelve) months from passing of risk – except for payment rights of SEW.

This shall not affect the statutory period of limitation with regard to intentional or malicious conduct or legal claims according to mandatory law (e. g. product liability laws).

17. PLACE OF FULFILMENT, DISPUTE RESOLUTION, APPLICABLE LAW

- 17.1 Unless agreed otherwise, the general place of fulfilment shall be the executing plant of SEW in South Africa.
- 17.2 The Parties shall use their best endeavours to settle all disputes and differences amicably and with mutual respect within a short period of time.
- 17.3 All disputes arising out of or in connection with contracts under these GCS shall be finally settled without recourse to the courts, in accordance with the Rules of Arbitration of the Chamber of Commerce by one or more arbitrators appointed in conformity with the said Rules. The losing Party, as determined by the arbitrators, shall pay all reasonable expenses incurred by the prevailing Party, as determined by the arbitrators, in connection with any such dispute. The place of arbitration shall be SEW Eurodrive, South Africa.
- 17.4 Instead of the arbitration court provided for in no. 17.3, the competent South Africa, shall make final and binding decisions regarding disputes with customers from South Africa and the SADC states from Africa.

- 17.5 SEW, at its own discretion, shall in any case be entitled to invoke the state courts at the place of business of the customer. Insofar the competence of no. 17.2 and 17.3 shall be obsolete.
- 17.6 All contracts concluded under these GCS shall be subject to the substantive and procedural law that is in force at SEW's business headquarters.

18. MISCELLANEOUS

- 18.1 Any contract concluded under these GCS shall remain valid even in the case that individual conditions are or become invalid.
- 18.2 Any and all modifications, amendments or further subsidiary agreements to these GCS or further concluded agreements must be made in written form.
- 18.3 The customer shall be entitled to set off and to exercise a right of retention only if his counter-claims are undisputed or have been awarded by the courts.
- 18.4 The contractual and working language shall be German or English.