

General Terms and Conditions of Repair of DEUTSCHE PLASSER Bahnbaumaschinen GmbH

1. Applicability

- 1.1 These General Terms and Conditions of Repair ("**GTCR**") of DEUTSCHE PLASSER Bahnbaumaschinen GmbH („**DEUTSCHE PLASSER**") shall apply to any and all contracts between DEUTSCHE PLASSER and its customers regarding repairs, extensions and modernisations ("**Retrofit**") and other comparable services ("**Services**") to/by/of machines and/or accessories or components of the customer ("**Repair Object**"), provided that the customer is an entrepreneur (Section 14 of the German Civil Code [*Bürgerliches Gesetzbuch/BGB*]), a public-law entity or constitutes public-law special funds.
- 1.2 These GTCR shall apply exclusively. General terms and conditions of the customer shall only apply if and when DEUTSCHE PLASSER expressly accepts them in writing. Silence on the part of DEUTSCHE PLASSER regarding such deviating terms and conditions in particular shall not be considered acceptance of or consent to such provisions, including future contracts. These GTCR shall apply instead of any general terms and conditions of the customer (e.g. general terms and conditions for orders or of purchase), even if they provide that the acceptance of an order is deemed an unconditional acknowledgement of the customer's general terms and conditions. By accepting DEUTSCHE PLASSER's acknowledgement of the order the customer expressly acknowledges that he waives his legal defence derived from the general terms and conditions.
- 1.3 These GTCR as amended from time to time shall apply as a framework agreement, including to future contracts on Services of DEUTSCHE PLASSER with a particular customer, without DEUTSCHE PLASSER being required to refer to the same in every single case.
- 1.4 To the extent that individual agreements were entered into with the customer in a specific case, they shall prevail over these GTCR. A written contract and/or written confirmation of DEUTSCHE PLASSER shall be decisive for the content of such agreements.
- 1.5 Legally relevant statements, declarations or notifications to be made by the customer vis-à-vis DEUTSCHE PLASSER after conclusion of the contract (e.g. setting of deadlines, notices of defect or rescission or price reduction) shall be made in writing to be effective.
- 1.6 Any references to the applicability of statutory provisions shall only serve the purpose of clarification. Accordingly, the statutory provisions shall apply even without such clarification unless they are directly modified or expressly excluded by the Terms and Conditions of Repair.
- 1.7 To the extent that written form is prescribed by these GTCR text form and application of the rule of interpretation of Section 127 (2) *BGB* shall be excluded.

2. Information on and properties of the Services; Guarantee

- 2.1 DEUTSCHE PLASSER shall give information and render Services exclusively on the basis of past experience and information provided by the customer. Any and all information on the Services of DEUTSCHE PLASSER, including but not limited to the illustrations, drawings, content and service specifications and any other information contained in DEUTSCHE PLASSER's offers or printed materials, shall be considered approximate average figures.
- 2.2 Proof of the contents of an agreement on the quality of the Services shall require a written statement by DEUTSCHE PLASSER. The same shall apply to the issuing of a guarantee by DEUTSCHE PLASSER which refers to the quality or useful life of the Services.
- 2.3 Documents which belong to the offer, such as drawings, illustrations, technical data, references to standards or information in means of advertising, shall not contain quality information, assurances of properties or guarantees unless such information is described as such expressly and in writing.
- 2.4 DEUTSCHE PLASSER expressly reserves any and all rights of ownership and copyrights in catalogues, technical documentation (e.g. drawings, plans, weight and measurement information, computations, calculations), tools, forms and other product descriptions or documents, including in

electronic form. The customer undertakes not to disclose to third parties the documents stated in the foregoing sentence, unless DEUTSCHE PLASSER expressly agrees in writing.

3. Conclusion of contracts

- 3.1 Communications from DEUTSCHE PLASSER to the customer referred to as an "offer" shall be subject to change and non-binding. They constitute requests for the customer to place purchase orders or orders.
- 3.2 Ordering of Services by the customer shall be deemed a binding offer to contract. Unless otherwise stated in the purchase order, DEUTSCHE PLASSER shall be entitled to accept the offer to contract within two weeks of the date it was made.
- 3.3 A contract shall only be concluded upon DEUTSCHE PLASSER's acceptance of the customer's purchase order or order, even if it is part of the regular business. Acceptance may be declared either in text form (e.g. through an acknowledgement of the order) or by rendering the Service. The acknowledgement of the order of DEUTSCHE PLASSER shall exclusively be decisive for the content of the contract.

4. Services; Costs

- 4.1 Orders shall be executed duly in compliance with the Services defined in DEUTSCHE PLASSER's acknowledgement of the order. If the Services defined in the acknowledgement of the order of DEUTSCHE PLASSER are to be extended or changed at the customer's request, a separate written addendum shall be required.
- 4.2 DEUTSCHE PLASSER shall inform the customer of the expected costs for its Services in the offer as defined in Clause 3.1 or in a follow-up offer, which information shall be non-binding ("Cost Estimate").
- 4.3 A binding fixed price shall be expressly requested by the customer in writing. It shall only be binding if offered by DEUTSCHE PLASSER in written form and if described as a "fixed price". Within three months of receipt of the fixed-price offer the customer shall be entitled to order the requested Services of DEUTSCHE PLASSER at the stated fixed price.
- 4.4 Services rendered by DEUTSCHE PLASSER for the customer in the course of preparation of a Cost Estimate as defined in Clauses 4.2 - 4.3 may be charged to the customer if no order is placed after preparation of the Cost Estimate or if the Services rendered for submission of the Cost Estimate cannot be used for rendering the ordered Services. Clause 7.1 shall remain unaffected.
- 4.5 DEUTSCHE PLASSER reserves the right to carry out additional work not stated in the acknowledgement of the order, especially if the work is necessary for regaining full usability of the Repair Object, for its repair or modernisation. In this case or in the case of other considerable problems due to which the Services can only be rendered by significantly exceeding the Cost Estimate as defined in Clauses 4.2 - 4.3 the stated costs may be exceeded to a reasonable extent. If DEUTSCHE PLASSER expects that the Cost Estimate will be exceeded, it shall immediately notify the customer thereof. The customer's approval shall be obtained if the costs stated in the Cost Estimate are likely to be exceeded by more than 10%.
- 4.6 The costs stated in the Cost Estimate may also be exceeded if the customer orders additional Services, works or changes after conclusion of the contract.
- ### 5. Services at the registered office of DEUTSCHE PLASSER
- 5.1 The customer shall make the Repair Object available at the registered office of DEUTSCHE PLASSER to the incoming department named or a different place specified by DEUTSCHE PLASSER at his own risk and cost (in particular that for packaging, safety and securing, transport, insurance, etc.).
- 5.2 All third-party products, accessory parts, add-on products, programmes, data and storage media which are not part of the Repair Object must be removed before delivery to DEUTSCHE PLASSER; DEUTSCHE PLASSER shall not be liable for objects which have not been removed by

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- the customer or which have been damaged before receipt by DEUTSCHE PLASSER. Likewise, the customer shall properly prepare the Repair Object for transport (cleaned, etc.) and pack it in a commercially customary manner.
- 5.3 The customer shall remove all dangerous, toxic and/or hazardous substances with which the Repair Object has come into contact without residues.
- 5.4 While the Repair Object is in the works of DEUTSCHE PLASSER the customer shall himself and in his own responsibility ensure that an existing insurance cover for the Repair Object is maintained (e.g. regarding fire, tap water, storm, machine breakage). Insurance cover for these risks may only be taken out at the customer's express request and at his costs.
- 6. Services in the works of the customer**
- 6.1 For Services rendered in the works of the customer the customer shall support the staff of DEUTSCHE PLASSER at his cost in rendering the Services.
- 6.2 DEUTSCHE PLASSER shall advise the customer the name of a person in charge on the site as the exclusive contact person.
- 6.3 The customer shall take the measures necessary to protect persons and objects. He shall inform the responsible person of DEUTSCHE PLASSER about applicable safety regulations to the extent that they are relevant to DEUTSCHE PLASSER's staff.
- 6.4 The customer shall provide technical support at his cost, including but not limited to:
- a) provision of the required number of suitable auxiliary staff for the period of time required; the auxiliary staff shall follow the instructions given by the responsible person. DEUTSCHE PLASSER shall not be responsible for the auxiliary staff. However, if the auxiliary staff cause defects or damage due to instructions given by the responsible person, Clauses 13 and 14 shall apply accordingly;
 - b) provision of the necessary devices, heavy tools and necessary utensils and consumables;
 - c) provision of heating, lighting, electricity, power, operating power, water, including the necessary connections;
 - d) provision of the required dry and lockable rooms for storage of the tools of DEUTSCHE PLASSER;
 - e) protection of the workplace and working materials against harmful influences of any kind and cleaning of the workplace;
 - f) provision of suitable theft-proof staff rooms and workspaces (inclusive of heating, lighting, washing facilities, sanitary facilities) and first aid for the staff; and
 - g) provision of the materials and taking of all other actions necessary for adjusting the Repair Object and conducting a test as contractually agreed and required for acceptance.
- 6.5 The technical support provided by the customer must ensure that provision of the agreed Services can commence immediately upon arrival of the staff of DEUTSCHE PLASSER and can be carried out without delay until acceptance.
- 6.6 If the customer does not fulfil his duties, DEUTSCHE PLASSER shall be entitled but not obliged to take the actions to be taken by the customer in his place and at his costs and risks after having granted a grace period. For the rest, the statutory rights and claims of DEUTSCHE PLASSER shall remain unaffected.
- 7. Services that cannot be provided**
- 7.1 The Services rendered for submission of a Cost Estimate and any other expenses incurred (time spent on finding defects equals working time) shall be invoiced to the customer if the agreed Services or parts thereof cannot be rendered for reasons for which DEUTSCHE PLASSER is not responsible, in particular if a defect complained about did not occur during inspection, no spare parts can be obtained or if the customer culpably missed an agreed date.
- 7.2 The Repair Object shall only be restored to its original condition upon the customer's express request against reimbursement of the costs.
- 7.3 For Services that cannot be provided DEUTSCHE PLASSER shall not be liable for damage to the Repair Object, irrespective of the legal ground on which the customer relies.
- 8. Performance periods; Delays**
- 8.1 Information on performance periods is based on estimates and shall therefore not be binding.
- 8.2 Performance periods shall only be binding if DEUTSCHE PLASSER has expressly confirmed the same as binding in writing in the acknowledgement of the order. Performance periods stated in the acknowledgement of the order shall commence upon DEUTSCHE PLASSER's unimpeded access to the Repair Object and fulfilment of any and all duties of the customer to cooperate that are necessary for starting the work.
- 8.3 The occurrence of a delay in performance shall be determined in accordance with the statutory provisions. In any case a warning from the customer shall be required.
- 8.4 Observance of performance periods shall require resolution of all technical issues and timely receipt of any and all documents and information, required permits and approvals to be delivered by the customer and exact definition of the scope of the works and fulfilment of all other obligations and duties of the customer to cooperate. Another requirement is the customer's observance of the agreed payment terms. If the aforementioned requirements have not been fulfilled or if any other delay occurs for which the customer is responsible, the performance periods shall be extended appropriately. This shall not apply where DEUTSCHE PLASSER is responsible for the delay.
- 8.5 The performance period shall be deemed observed if the customer has received notice of readiness for acceptance at the agreed time or within the agreed period. The performance period shall be deemed observed also if minor reworks are still necessary which have no significant impact on the usability of the Repair Object.
- 8.6 In the case of addenda agreed after conclusion of the contract or if additional works are required, the agreed performance period shall be extended accordingly.
- 8.7 If the customer causes a delay in performance of the Services, DEUTSCHE PLASSER shall be entitled to claim resulting damages and any extra expenses. Any additional claims or rights shall be reserved.
- 8.8 Should DEUTSCHE PLASSER be in default, the customer may request liquidated damages caused by late performance. For every full calendar week the liquidated damages shall amount to 0.25% of the net price of the part of the Services that the customer cannot use in time due to the delay, and not more than 3% in total. DEUTSCHE PLASSER shall be permitted to prove that no damage or only a significantly smaller damage than the aforementioned liquidated damages has been incurred by the customer.
- 8.9 The customer's rights as defined in Clause 14 and the statutory rights of DEUTSCHE PLASSER, in particular if the obligation to perform is excluded (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.
- 8.10 In the case of late payment by the customer DEUTSCHE PLASSER shall be entitled to withhold Services.
- 9. Termination right; Reservation of self-supply; Force majeure**
- 9.1 If DEUTSCHE PLASSER is unable to observe performance periods for reasons for which it is not responsible, it shall inform the customer thereof immediately and at the same time advise the expected new performance period. If the Service is not available within the new performance period either, DEUTSCHE PLASSER shall be entitled to terminate the contract in whole or in part. If DEUTSCHE PLASSER terminates the contract, it shall be entitled to request consideration for the part of the Services rendered until termination.
- 9.2 DEUTSCHE PLASSER shall, in particular, be entitled to terminate the contract if despite an appropriate covering transaction concluded on the required spare parts and/or accessory parts or services from subcontractors it is not supplied by its suppliers/subcontractors correctly and on time for reasons for which it is not responsible.
- 9.3 In the case of force majeure the regulations defined in Clause 9.1 shall apply accordingly. Force majeure means war or military conflicts, riot, pandemics or epidemics, natural disasters, terror, labour disputes, strikes, lock-outs, attacks on IT infrastructure, official orders or measures, unavoidable shortage of energy or raw materials, shortages in transport

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without its fault, unforeseeable disruptions of operations, for example due to damage caused by fire, water or machine breakage and all other impediments which from an objective point of view have not been culpably caused by DEUTSCHE PLASSER.

9.4 If a performance period is bindingly agreed and exceeded due to events as defined in Clauses 9.1 to 9.3, the customer shall be entitled to terminate the contract based on the part of the Services that has not been rendered upon fruitless expiry of a reasonable grace period if continuation of the contract is objectively unreasonable for him. Further-reaching claims of the customer, including but not limited to claims for damages, shall be excluded in this case.

9.5 Clause 9 shall apply even if the described circumstances arise after DEUTSCHE PLASSER has been in default.

10. Prices; Terms of payment; Plea of uncertainty

10.1 All prices are generally stated in EUR (exclusive of transport, insurance and other incidental costs) ex works plus the VAT to be borne by the customer at the statutory rate applicable from time to time. DEUTSCHE PLASSER shall be entitled to adjust the agreed price to the payroll cost and raw material prices even with no special agreement if it concerns Services which are delivered or rendered either more than four months after conclusion of the contract or in the context of continuous obligations.

10.2 In the case of transportation of the Repair Object to the works of DEUTSCHE PLASSER or any other agreed place or in the case of return transport to the customer by DEUTSCHE PLASSER the customer shall bear the transport costs and the costs for transport insurance if such insurance is requested by the customer. Any custom duties, fees, taxes or other public charges shall be borne by the customer. Except for pallets, no transport packaging or any other packaging subject to the German Packaging Regulation [*Verpackungsverordnung*] shall be taken back by DEUTSCHE PLASSER and shall become the customer's property.

10.3 Unless the parties have agreed otherwise, the price shall be paid immediately upon acceptance. Any cash discount shall require a written agreement with the customer. Timeliness of payment shall depend on the time of receipt of the money in the account of DEUTSCHE PLASSER. An agreed cash discount shall be calculated based on the net receivables of DEUTSCHE PLASSER and shall only be permissible if all other payables under the customer's business relationship with DEUTSCHE PLASSER which are older than 30 days have been fulfilled.

10.4 DEUTSCHE PLASSER shall be entitled to request a down payment of 50% of the price. The down payment shall be due and payable within 10 days of invoicing. Section 632a BGB shall not be affected thereby; the down payment shall be credited towards any payments on account due.

10.5 Even without a prior warning a situation where the customer does not pay an invoice within 30 days of the due date and receipt of the invoice shall be considered late payment by the customer. For the time of the default late payment interest shall accrue on the price at the statutory interest rate applicable from time to time. DEUTSCHE PLASSER reserves the right to claim additional damages on account of late payment. DEUTSCHE PLASSER's claim to commercial maturity interest (Section 353 of the German Commercial Code [*HGB*]) vis-à-vis merchants shall remain unaffected.

10.6 The customer shall be entitled to rights to set off or rights to withhold only insofar as his claim has been ascertained in a non-appealable manner or is undisputed or to the extent to which it exists under the same contractual relationship with DEUTSCHE PLASSER as a counterclaim to its claim.

10.7 If after conclusion of the contract it becomes apparent that DEUTSCHE PLASSER's claim for consideration is at risk for lack of the customer's ability to perform (e.g. due to a petition for opening of insolvency proceedings), DEUTSCHE PLASSER shall in accordance with the statutory provisions be entitled to delay performance and, if necessary, after granting of a grace period, to rescind the contract (Section 321 BGB). The statutory regulations on situations where setting a grace period is not necessary shall remain unaffected.

11. Title; Right to withhold; Lien

11.1 Until full payment of all current and future receivables of DEUTSCHE PLASSER under the contract for work or services and an ongoing business relationship DEUTSCHE PLASSER reserves title to all spare

parts and accessory parts installed or supplied by it ("**Conditional Goods**").

11.2 Any claims of the customer vis-à-vis his insurance company in connection with a loss concerning Conditional Goods shall hereby be assigned to DEUTSCHE PLASSER in the amount of the value of the Conditional Goods already at this point.

11.3 If the customer acts in violation of the contract, in particular by failing to pay the price due, DEUTSCHE PLASSER shall be entitled to rescind the contract in accordance with the statutory provisions and/or to ask that the Conditional Goods be surrendered on account of retention of its title. The request for surrender shall not include a notice of rescission at the same time; DEUTSCHE PLASSER shall rather be entitled to ask that the Conditional Goods be surrendered and reserve the right to rescission. If the customer fails to pay the price due, DEUTSCHE PLASSER may only claim such rights if it has fruitlessly granted the customer a reasonable grace period for payment or such period is not necessary according to the statutory provisions.

11.4 DEUTSCHE PLASSER holds a statutory lien over the Repair Object. If DEUTSCHE PLASSER exercises its right to sell liens, it shall threaten the customer with the realisation of liens and inform him thereof in time, provided that this is feasible and appropriate under the circumstances.

11.5 Liens may also be claimed on account of receivables from works that were carried out earlier, delivery of spare parts or other Services of DEUTSCHE PLASSER.

11.6 Unless the customer is the owner of the Repair Object, he hereby assigns his claim to transfer of title (vested right) to DEUTSCHE PLASSER to secure the claim to consideration.

12. Acceptance; Passing of risk; Delay in acceptance

12.1 Unless agreed otherwise Services shall be accepted in the works at the registered office of DEUTSCHE PLASSER, which shall also be the place of performance.

12.2 At the customer's request the Repair Object shall be sent to a place of destination other than the place of performance subject to approval from DEUTSCHE PLASSER. Unless agreed otherwise, DEUTSCHE PLASSER itself shall be entitled to define the mode of shipping (including but not limited to the transport company, shipping route, packaging). In the case of agreed shipping DEUTSCHE PLASSER shall insure the shipment against theft, breakage, transport damage and damage caused by fire or water or other insurable risks only upon the customer's express request.

12.3 The time of acceptance of the Repair Object shall be decisive for passing of the risk of accidental loss or accidental deterioration of the same. However, in the case the Repair Object is shipped the risk of accidental loss or accidental deterioration of the products and the risk of delay shall pass as early as upon delivery of the products to the forwarding agent, carrier or any other person or institution instructed to effect shipping.

12.4 The customer shall accept the Services as soon as he has been notified of their completion. As situation where the customer is late in taking delivery of the products shall be deemed equal to acceptance.

12.5 Services shall also be deemed accepted if after completion of the Services DEUTSCHE PLASSER has granted the customer a reasonable period of time for acceptance and the customer did not refuse acceptance in writing within such period and stated at least one material defect which materially adversely affects operability of the Repair Object.

12.6 The Services shall also be deemed accepted if the customer takes delivery of the Repair Object, uses it or puts it into operation and has not reserved the right to claim a material defect in writing before.

12.7 Should the customer accept the Services of DEUTSCHE PLASSER despite being aware of a defect, he shall only be entitled to the rights defined in Clause 13 if he reserves his rights on account of the defect during the acceptance procedure.

12.8 The customer shall not be entitled to claims on account of a defect if he declares acceptance although he could have seen the defect in the course of inspection at the time of acceptance to the extent that this is feasible according to the ordinary course of business, unless the defect was known to DEUTSCHE PLASSER at the time of acceptance.

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- 12.9 The costs of acceptance shall be borne by the customer. chosen manner of subsequent performance subject to the statutory requirements shall remain unaffected.
- 12.10 If acceptance or shipping is delayed for reasons for which the customer is responsible, DEUTSCHE PLASSER shall at its option be entitled to demand immediate payment of the price or to rescind the contract or to refuse fulfilment and claim damages instead of the entire Service after having granted a grace period of 14 days.
- 12.11 If the customer is in default of acceptance, does not cooperate or collect the Repair Object or if the Services of DEUTSCHE PLASSER are delayed for other reasons for which the customer is responsible, DEUTSCHE PLASSER shall be entitled to claim resulting damages and any extra expenses (e.g. storage costs). In this connection liquidated damages in the amount of 0.25% of the agreed net invoice per started calendar week from the performance period or - if no performance period has been agreed - from delivery of the notification of completion of the Services will be charged. DEUTSCHE PLASSER's right to prove additional damages and to make further claims (including but not limited to the compensation for extra expenses, reasonable compensation, termination) remain unaffected; however, the liquidated damages shall be credited towards further monetary claims. The customer shall be permitted to prove that no damage or only a significantly smaller damage than the aforementioned liquidated damages has been incurred by DEUTSCHE PLASSER.
- 13. Customer's claims based on defects**
- 13.1 The customer's rights in the case of defects in quality or title shall be subject to the applicable statutory provisions unless provided otherwise below.
- 13.2 DEUTSCHE PLASSER's liability for defects shall be based on the agreement made on the quality of the work. Agreements on the quality of the work shall mean service specifications referred to as such which have been made available to the customer before he placed the order or which were included in the contract in the same way as these Terms and Conditions of Repair. There shall be no defect if the circumstance complained about is irrelevant to the customer's interests.
- 13.3 A specific designated purpose of the customer shall only be the subject matter of a contractual agreement on quality upon the express and written consent of DEUTSCHE PLASSER.
- 13.4 There shall be no claims in connection with defects if the customer is solely or mainly responsible for the defect, in particular due to violations of duties to cooperate.
- 13.5 In the case that the Repair Object is a used one it cannot be excluded that defects may arise even after completion of the Services by DEUTSCHE PLASSER which are attributable to the quality of the Repair Object at the time the risk passes, unless the detection or repair of those defects is included in the Services of DEUTSCHE PLASSER. No warranty claims exist for such defects.
- 13.6 Unless otherwise agreed, used parts or accessory parts of DEUTSCHE PLASSER that are delivered with the Repair Object shall be sold in the condition and quality which they have at the time of delivery to the customer. Typical damage based on the goods' age, their previous wear and use in particular are part of the quality of the used goods in accordance with the contract. Replacement parts shall also be deemed used goods. This refers to used spare parts which were processed or regenerated by the manufacturer or DEUTSCHE PLASSER but have a reduced remaining useful life. Any claims of the customer arising from defects regarding used goods shall be excluded.
- 13.7 The customer shall notify DEUTSCHE PLASSER of any complaints or defects in writing immediately upon detection.
- 13.8 Parts or accessory parts delivered with the Repair Object shall be subject to the statutory obligations of inspection and notification of defects (Sections 377 and 381 HGB). The delivered products shall be carefully inspected immediately after delivery to the customer or the third-party named by the customer. The customer shall send a notification of defect in text form immediately and not later than two business days after a defect, if any, became apparent or should have become apparent after inspection. Defects which cannot be seen in the course of inspection shall also be notified within the period from detection defined above.
- 13.9 If the work is defective, DEUTSCHE PLASSER may choose whether to render subsequent performance by repairing the defect (improvement) or by producing a new work. DEUTSCHE PLASSER's right to refuse the
- 13.10 DEUTSCHE PLASSER shall be entitled to make the owed subsequent performance subject to the customer's payment of the price due. However, the customer shall be entitled to withhold a reasonable part of the payment proportional to the defect.
- 13.11 The customer shall grant DEUTSCHE PLASSER the time and opportunity necessary for the subsequent performance owned. If the Repair Object is no longer at the place of performance, the customer shall at his own risk make available the Repair Object at the place designated by DEUTSCHE PLASSER in Clause 13.15 at its request. Clause 10.2 shall apply accordingly.
- 13.12 The expenses required for examination and subsequent performance, including but not limited to costs for transport, travel, labour and material, shall be borne by DEUTSCHE PLASSER, provided that a defect actually exists. If a customer's request for repair of defects turns out to be unjustified, DEUTSCHE PLASSER may ask the customer to refund the expenses incurred.
- 13.13 If subsequent performance has failed or after fruitless expiry of a period for subsequent performance to be granted by the customer or if such period is not necessary according to the statutory provisions, the customer shall have a statutory right of reduction under the statutory provisions. The customer may only rescind the contract if the service rendered by DEUTSCHE PLASSER is provably of no interest to the customer despite such reduction.
- 13.14 The customer's claims for damages and/or claims for refund of frustrated expenses shall only be valid in accordance with Clause 14 and shall otherwise be excluded.
- 13.15 If the parties have entered into a contract for work or services, the customer shall be entitled to terminate the contract until completion of the work. If the customer terminates the contract, DEUTSCHE PLASSER shall be entitled to request the agreed price; however, it shall be charged with the amount of costs which DEUTSCHE PLASSER saves as a consequence of termination of the contract or earns through other use of its manpower or maliciously fails to earn. For Services not rendered due to the termination a lump sum of 70% of the price attributable to the part which is not rendered shall be deducted for expenses saved and/or different use of the manpower unless one of the parties proves them to be higher or lower.
- 13.16 The works at the registered office of DEUTSCHE PLASSER shall be the place of subsequent performance. In derogation from the above, at DEUTSCHE PLASSER's option, the place where the Repair Object is may be the place of subsequent performance.
- 14. Other liability**
- 14.1 Unless provided otherwise in these Terms and Conditions of Repair including the following provisions, DEUTSCHE PLASSER shall be liable for breach of contractual or non-contractual duties in accordance with the applicable statutory regulations.
- 14.2 DEUTSCHE PLASSER shall be liable for damages, independent of the legal ground, in the case of wilful intent or gross negligence. In the case of ordinary negligence DEUTSCHE PLASSER shall be liable only
- a) for damages on account of culpable injury to life, limb or health,
 - b) damages on account of breach of a material contractual duty (i.e. a duty the proper fulfilment of which enables proper performance of the contract and on the compliance with which the contracting party usually relies and may rely); in that case, however, DEUTSCHE PLASSER's liability shall be limited to damages for foreseeable damage that normally occurs.
 - c) for damage on account of breach of a material contractual duty in the case of a used Repair Object; in this case, however, the liability of DEUTSCHE PLASSER shall be limited to damages for foreseeable damage that normally occurs; liability for damages for lost profit and loss of production shall be excluded.
- Any other claims for damages shall be excluded.
- 14.3 Liability for malicious concealment of defects, issuing of a guarantee or a procurement risk as defined in the German Product Liability Act [Produkthaftungsgesetz] and other mandatory statutory provisions shall remain unaffected.

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- 14.4 The above exclusions and limitations of liability shall equally apply to executive and non-executive employees, other agents [translator's note: *Erfüllungsgehilfen* as defined in Section 278 *BGB*] and subcontractors of DEUTSCHE PLASSER.
- 14.5 The above regulations shall not imply a shift in the burden of proof.
- 14.6 The customer shall inform DEUTSCHE PLASSER of the risk of large damage (including but not limited to lost profit or loss of production above the contract value) due to a default or defect before conclusion of the contract.
- 15. Statutory limitation**
- 15.1 In derogation from Section 634a (1) No. 1 *BGB* the general statutory period of limitation for claims on account of defects in quality or title shall be one year from acceptance. For the rest, the limitation periods for works as defined in Section 634a *BGB* shall apply.
- 15.2 The above limitation periods shall also apply to contractual and non-contractual claims for damages of the customer which are based on a defect in the work, unless application of the regular statutory limitation (Sections 195 and 199 *BGB*) were to result in a shorter period of limitation in a specific case. However, claims for damages of the customer as defined in Clause 14.2 or in the German Product Liability Act [*Produkthaftungsgesetz*] shall become time-barred exclusively after the statutory limitation periods.
- 16. Replacement by the customer**
- If in the course of the services rendered outside the works of DEUTSCHE PLASSER any devices, tools or other aids provided by DEUTSCHE PLASSER are damaged or lost on the premises of the customer with no fault of DEUTSCHE PLASSER, the customer shall be obliged to replace the same.
- 17. Final provisions**
- 17.1 These Terms and Conditions of Repair and all legal relationships between DEUTSCHE PLASSER and the customer shall exclusively be governed by the laws of the Federal Republic of Germany; the provisions of UN Sales Law (CISG) shall be excluded. Prerequisites for and effects of the retention of title defined in Clause 11 shall however be subject to the law of the place where the object is, provided that according to that law the choice of German law is inadmissible or ineffective.
- 17.2 If at the time the customer takes action for instituting proceedings the customer has its registered office in the European Union, Switzerland, Norway or Iceland, the registered office of DEUTSCHE PLASSER shall be the exclusive (including international) place of jurisdiction for all disputes directly or indirectly arising out of the contractual relationship. However, DEUTSCHE PLASSER shall also be entitled to sue the customer at the customer's general place of jurisdiction or at any special place of jurisdiction.
- 17.3 If Clause 17.2 is not applicable, all disputes arising in connection with the relevant contract over Services of DEUTSCHE PLASSER or over its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration [*Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)*]; resort to the courts of law shall be excluded. The place of arbitration shall be Munich. The language of arbitration shall be German.
- 17.4 Modifications of or amendments to contracts by individual contractual agreements shall be effective without formal requirements. For the rest, modifications of or amendments to these Terms and Conditions of Repair and any side agreements shall be made in written form. This shall also apply to abolishing this requirement of written form.
- 17.5 Employees of DEUTSCHE PLASSER shall not be entitled to amend or deviate from the contents of contracts. This shall not apply to officers or *Prokuristen* [translator's note: authorised officers] of DEUTSCHE PLASSER or to persons who were authorised by the same to do so.
- 17.6 If any of the above provisions is or becomes ineffective, the validity of the remaining provisions shall not be affected. The parties shall replace the ineffective provision by a provision which comes as close as possible to its financial result.