

General Terms and Conditions for Remote Services BENTELER Maschinenbau GmbH

Version April 2019

These conditions for Remote Services shall apply to any contracts between the respective contractor (“**Contractor**”) and BENTELER Maschinenbau GmbH (“**BENTELER**”).

The contracting parties (“**Parties**”) agree that the Contractor is wholly responsible for the operation of the machinery and the equipment as well as for the unfinished machinery according to Machinery directive 2006/42/EG (hereinafter “**Equipment**”). Remote Services cannot, if not agreed otherwise, replace regular maintenance and safety inspections of the Equipment.

For questions that cannot be clearly answered by this agreement, both Parties shall endeavour to find a mutual solution by adjusting and complementing the agreed terms. The same applies for ongoing technical development.

The following Terms and Conditions for Remote Services shall apply exclusively, as far as nothing to the contrary results from the following provisions. In addition, the General Terms and Conditions for the Supply of Goods and Services of BENTELER Maschinenbau GmbH are applicable. The Contractors General Terms and Conditions do not apply.

1. Scope

1.1 Remote Services

Orders of the Contractor for the required Remote Services shall be transmitted in textual form, in writing or orally under the telephone number the Contractor has received. The contract shall only become effective upon prior confirmation by BENTELER in textual form or by performing of the Remote Services.

Remote Services determine the current state of possible faults which may occur and measure the current state of the Equipment with tele communicative practices based on data and language. BENTELER analyses the processes and the collected data on possible gaps between as-is and target situation identified. Moreover, Remote Services can be the basis of possible supply of spare parts or services which alleviate the occurred default.

BENTELER can provide the following Remote Services:

- 1.1.1 Telephone support covers the analysis of Equipment, process and operating malfunctions via telephone or video transmission and if possible, advice by telephone on remedying malfunctions of the Equipment.
- 1.1.2 Remote Support includes the analysis of Equipment and/or process malfunctions as well as operating errors via an internet connection of the Equipment and, if possible, the support on remedying malfunctions of the Equipment (e.g.: Adjustment of thresholds and parameters, adjustment of the process flow, reset of operating errors etc.).

1.1.3 Condition monitoring covers the collection of condition-oriented data of the Equipment and the comparison with reference values and target values online (considering customer-specific wear and tear scenarios).

1.2 Functions of Remote Services

The functional scope is dependent on the current state of the system software and technical advancement. The Contractor is aware that the circumstances of this function can change in the course of time. Therefore, the most recent functional scope of service, within the framework of the offered Remote Services by BENTELER and depending on the technical gear of the Equipment, shall be applicable.

1.3 Other Measures and Services

Upon request of the Contractor, BENTELER will recommend further maintenance measures which will ensure the proper operation of the Equipment. Where appropriate, BENTELER will support the Contractor with the implementation. A separate agreement, unless otherwise provided by the scope of performance, shall be requested in this respect. Any claims of defect of the Contractor will remain unaffected.

1.4 Performance Limitations

BENTELER will inform the Contractor if the Equipment cannot or not fully be refurbished through remote diagnostics.

If deviations pursuant to section 1.1 result from external force, loss at sea, improper operation, non-compliance with the manufacturers' assembly or operating instructions, changes of the soft- and hardware of the Equipment not agreed or unapproved by BENTELER, insufficient or improper maintenance, Force Majeure or pollution of which BENTELER is neither responsible nor result of the functioning of the Equipment, BENTELER is solely obligated to perform services, according to section 1.1.1, 1.1.2, and 1.1.3 or other measures and services according to section 2.3, against additional performance-related payment.

This applies to the case, if the services exceed obligations in another contractual relationship of the parties, especially regarding the correction of faults.

BENTELER assumes the obligations specified in these Terms & Conditions. This constitutes no guarantee that the application of Remote Services will resolve and diagnose any existing damages and defects in the Equipment. Furthermore, this does not imply any guarantee for the functionality of the Equipment.

1.5 Documentation

BENTELER keeps a record of the obtained data of the Equipment/Process and/or deviations, during the Remote Services according to section 1.1. After completion of the maintenance, BENTELER informs the Contractor about the work performed and provides the necessary protocols or documents, upon request of the Contractor. Furthermore, for reasons of traceability of changes and for quality purposes during remote access from the screen from which the remote access is controlled, BENTELER saves a screen video which is automatically deleted after six months.

2. Online Communication and General Conditions

2.1 Technical Requirements

Remote Services are performed by telephone or online (via internet connection). The Contractor provides and maintains the necessary means of telecommunication free of charge (Internet connection, according to the specifications of BENTELER). Further prerequisite is that no changes to the installed system software have been made without prior approval of BENTELER. BENTELER has the right to transmit the data used for diagnosis via online access.

2.2 Data Transmission

Each party is responsible for the operation and maintenance of their respective system. In the event of failure of the data transmission between Contractor and BENTELER, especially through malfunctions of transmission routes as well as missing or insufficient data, BENTELER is released from performances according to section 1.1.1, 1.1.2 and 1.1.3.

3. Confidentiality, Data Security and Data Protection

3.1 Username

For allocated user identifications and passwords, the Contractor must ensure that this information is only made known to authorised personal.

3.2 Confidential Treatment of Data of the Contractor

The parties agree that all exchanged originator data and other relevant information of the Contractor on process and product data during the Remote Services shall be used exclusively for the defined services in the relevant order. Any marketing of these information or knowledge sharing to third parties is not permissible. BENTELER shall be authorized to use any knowledge acquired, within the framework of their contractual obligations, to improve company products and services.

3.3 Anti-Virus Protection

The parties shall take the necessary precautions, according to the respective state-of-the-art, to prevent any penetration of viruses in the software of the respective party. If viruses and/or other malware occur in one of the respective parties, which are capable to compromise the Remote Services or can be transferred to the system of the other party, the other party shall be informed immediately in textual form.

3.4 Data Protection

If BENTELER receives access to penal data of the Contractor within the scope of Remote Services, this data is protected under current applicable law. However, personal data will not be used beyond the respective order. A passing on to third parties or the use in any form of this data is expressly excluded.

4. Contractor's Obligation to Cooperate

4.1 Initialization Mode

If necessary, the Contractor activates Remote Services according to section 1.1. Thereupon, BENTELER connects with the Contractor's Equipment.

4.2 Assistance during Error Messages

In determining the identification, report and description of errors, the Contractor must follow the instructions of BENTELER. If necessary, the Contractor must use adjusting instructions/checklists of BENTELER.

To solve such errors the cooperation of the Contractor is necessary. Therefore, technically and linguistically trained personnel must be available. In the even of uncertainties, additional information and documents shall be transmitted to BENTELER.

4.3 Care of Safety/Control Duty

The Contractor must pay attention to the safety notes in the manual of the Equipment as well as to relevant national and international statutes, industry standards and guidelines. In cases in which Remote Services can lead to endangerment of individuals or items, the Contractor is obligated to provide feedback in textual form to BENTELER to the extent that the intended Remote Services can be performed without danger. If such feedback cannot be provided for each Equipment on site, a reliable assurance against personal damage and material damage must be provided by the Contractor. The Contractor must ensure through appropriate measures, protection systems and warnings that no individual associated with the Remote Services, will be at risk.

4.4 Instruction / Maintenance of the System

The Contractor undertakes to train its personnel regularly and adequately on the necessary technical service facilities for Remote Services. Furthermore, the Contractor shall maintain the Equipment pursuant to the requirements of the manufacturer and the current state of art. BENTELER is not responsible for any loss of performance resulting from insufficient maintenance of the Equipment by the Contractor.

4.5 Reporting Obligations of the Contractor

BENTELER shall be informed in textual form and without delay on any modifications of the Contractor on the Equipment or their surroundings, as far as they have an impact on Remote Services.

4.6 Data Retention

The Contractor undertakes to create backups of all data before each utilisation of Remote Services in accordance with Section 1.1.

4.7 Bearing of Costs

The Contractor bears the costs for all obligations under Section 4. Furthermore, the Contractor bears the remuneration for the used telecommunications equipment as well as for the communication link.

Waiting times caused by the Contractor, which result from the malfunction of the telecommunication equipment, shall be charged to the Contractor.

5. Compensation and Terms of Payment

The invoiced remuneration shall be paid net (without deduction) within 30 calendar days after receipt of the invoice. Payment shall not become effective until credited to the bank account of BENTELER. The amount of the payment will be determined by the current list of prices, if not agreed otherwise. If the Contractor does not fulfil its payment obligations, BENTELER is entitled to suspend its contractual performances until the Contractor has paid the payment due.

6. Performance Period

6.1 Availability of Remote Services

BENTELER undertakes to provide the agreed Remote Services upon Monday to Friday from 7:00 a.m. to 4:00 p.m. or upon prior consultation.

6.2 Force Majeure

If the performance is delayed, even within a delay, due to the occurrence of force majeure events (epidemics, war, civil war or any unforeseeable and unavoidable events (“acts of god”)) or labor disputes, especially strike and lockouts, as well as any other circumstances not due to BENTELER’s responsibility, the performance can be remedied within an appropriate period of time (inter alia for the resumption of the work) after the end of the concerned event, if the force majeure event had an impact on the timely performance of the contract. In important cases, BENTELER is obligated, as far as possible, to inform the Contractor about the occurrence and estimated duration of the event of force majeure. The performances shall be delayed to a reasonable extent, if the Contractor is in default of its obligations to cooperate under section 4, payment or other obligations.

7. Liability for Defects

BENTELER provides the Remote Services according to the generally accepted rules of technology. If the provided Remote Services will not be performed fully or properly, BENTELER must, within the framework of the liability for defects, finish the performance free of charge. Should BENTELER fail to its obligation to subsequent performance, the Contractor is entitled to set an appropriate period of grace. If BENTELER is guilty of allowing the laps of a reasonable period of grace, the Contractor is entitled, in coordination with BENTELER, to a reasonable reduction of the agreement payment or to an extraordinary termination of the contract.

8. Liability

8.1 Limitation

For all damages which are due to Remote Services, BENTELER is liable according to the statutory provisions, provided that the Contractor pursues damage claims which are based on intent or gross negligence – including intent and gross negligence of BENTELER’s representatives or agents. Furthermore, the liability of BENTELER is limited to the foreseeable, typically occurring damage. Otherwise, a liability of BENTELER for consequential damages is excluded.

8.2 Limitations

The limitation of liability under section 9.1 shall not apply

- a) To any culpable infringement of essential contract duties, insofar as the achievement of the contract is endangered.
- b) In the case of culpable damage to life, body or health and
- c) Insofar as BENTELER has taken on a guarantee

A contractual duty is regarded to be of fundamental importance, if compliance with this duty is essential for the execution of the contract and the Contractor regularly relies on it. Furthermore, the limitation of liability shall not apply in the case of mandatory liability under the German Product Liability Act.

9. Assignment / Set-Off

BENTELER is entitled to assign and transfer this agreement with all the rights and duties contained therein to third parties. The Contractor is only entitled to set off with undisputed and legally final claims, or claims resulting out of the same contractual relationship.

10. Limitation Period

The rights and remedies of the Contractor under this agreement resulting from inadequate fulfilment of the agreement through BENTELER shall be time-barred within 12 months, starting upon the completion of the respective service. This shall not apply insofar as Section 634a para. 1 No. 2 of the German Civil Code (BGB) require longer limitation periods, further in cases of injuries to life, body and health, breaches of contract caused by BENTELER's wrongful intent or gross negligence or in cases where a defect is fraudulently concealed. For any damage claims of the Contractor, the statutory limitation periods apply.

11. Applicable Documents

As far as no other regulation is included in these conditions, the General Terms and Conditions of BENTELER Maschinenbau GmbH shall apply in the current version. These are available on the Website of BENTELER (<https://www.benteler-mechanicalengineering.com>) or will be handed over by conclusion of the agreement.

12. Jurisdiction, Applicable Law

This agreement shall be governed by the laws of the Federal Republic of Germany with the exclusion of the international law and the Convention on Contracts for the International Sales of Goods of April 11th, 1980 (CISG).

The place of jurisdiction is, at BENTELER's discretion, the city of Bielefeld (Germany) or the Contractor's seat.

13. Applicable Version

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