

## Terms and conditions for licensing and use of DMG Netservice

### **IN ADDITION TO THE DMG MORI TERMS AND CONDITIONS THE FOLLOWING CONDITIONS FOR THE DELIVERY AND USE OF THE DMG NETSERVICE SHALL APPLY.**

#### **1. Contractual basis**

1.1 The following conditions shall govern the contractual relationship between the Supplier and the Customer regarding the delivery, deployment, licensing and use of the DMG Netservice, Software (hereinafter referred to as "DMG Netservice" or "Software").

1.2 The Customer declares acknowledgement to and accepts the following conditions by installing, copying, downloading the Software or any other use of DMG Netservice. General Terms and Conditions of the Customer shall not become part of any Contract.

1.3 No variation to these Conditions shall be binding unless agreed in writing by the Supplier.

#### **2. Services, Subject Matter of the Services**

2.1 With regard to the machine tool delivery specified in the confirmation of order (hereinafter referred to as "machine"), the Supplier renders services via telephone comprising online-access communication between the machine and the Supplier's data processing tools.

2.2 In detail – subject to the specified scope of services in the confirmation of order – the following services will be rendered (hereinafter referred to as "Remote Services").

- \_Enabling a remote-access the machine for DMG Netservice;
- \_Start and Release of the remote access by the Customer upon request by the DMG MORI Service;
- \_Access to the machine control via remote access;
- \_Enabling an error-diagnosis (using the remote-access);
- \_Troubleshooting (via remote access);
- \_Software-Updates for the machine, including machine control (to the extent feasible and possible via remote access);
- \_Additional services as provided in the confirmation of order.

2.3 The maintenance of the machine, any computer hardware or machine control hardware shall not be a subject matter of the services to be rendered by the Supplier and is not due under these DMG Netservice Terms.

#### **3. Technical prerequisites for the use of DMG Netservice-Software**

Remote-Services and use of DMG Netservice is subject to the fulfillment of the following technical prerequisites by the Customer:

- \_Duly installed DMG Netservice-Software License (e.g. VPN Client or onboard) as specified in the confirmation of order,
- \_Integration of the machine in the Customer's overall IT-Network with due access to the world wide web;

- \_Compliance with any of the technical parameter as set out in the DMG Netservice Checklist (hereinafter referred as "Technical Requirements").

#### **4. Delivery, Installation of Netservice**

4.1 The installation of the DMG Netservice shall only be conducted with the assistance of the Customer's IT-Department respectively Customer's IT-Representatives. The Supplier's duty to deliver and install DMG Netservice is subject to the fulfillment of all technical prerequisites. In particular the Technical Requirements as set out in the DMG Netservice Checklist have to be completely filled out.

4.2 The Customer shall, at its own expense, obtain any necessary permits and licenses to install the Software respectively for the use

of the Software (hereinafter referred to "Permits"). It should be denoted that in case that until the moment of the commissioning of the machine not all Permits had been obtained by the Customer, this may cause follow-up costs. In this case, the Customer shall not obtain an enforceable right to receive installation services, to install and/or use the DMG Netservice including Remote-Services.

#### **5. Licensing**

5.1 The supplier grants to the Customer a nonexclusive, nontransferable, perpetual license – limited to the provisions of these terms – to install, access and use the Software for the purpose of processing Customer's own internal business ("License").

5.2 Any license, which is granted under these terms, is limited to the use of Concurrent Users. Any usage of the Software outside the scope of the applicable License rights constitutes an infringement of the intellectual property rights of the Supplier and is to be considered a material breach of the contractual relationship between Supplier and Customer. "Concurrent User" means that access to the Software at any given moment is limited to the maximum number of machines for which licenses have been validly acquired according to the specifications in the confirmation of order. Unless otherwise agreed and specified in the confirmation of order it is understood, that per one machine one DMG Netservice Software can be used.

5.3 With a granting of the License no title to or ownership in the Software, is transferred to the Customer. Title to the Software, and all applicable copyrights, trade secrets and other intellectual property rights inherent in the Software (including know-how) or intellectual property rights to the Software remain with the Supplier or third parties from whom the Supplier has obtained the right to license the Software. Supplier reserves all rights in the Software not explicitly granted herein.

5.4 Customer may copy the Software as reasonably required in conjunction with the Customer's permitted use under these terms and for back-up purposes. Customer shall retain and reproduce all copy-right or proprietary notices in their exact form on all copies (including partial copies) of the Software made by the Customer. The original and all complete and partial copies of the Software, including any intellectual property rights inherent in the Software, will remain the sole property of the Supplier.

#### **6. Confidentiality**

Supplier is obliged to keep confidential all information relating to the Customer's trade secrets, business, organization and organizational processes (including know-how), which may become known to him during the performance of the performances relating to DMG Netservice (hereinafter "Confidential Information"). Supplier shall keep strictly and confidential not disclose any such Confidential Information to third parties and shall use such Confidential Information only for the purposes contemplated by these terms and to the extent required for the performance and use of the DMG Netservice. The Supplier acknowledges, that any Confidential Information and data disclosed to him shall be handled with diligent care according to the respective mandatory's laws of the country of use including any data protection laws and data privacy laws.

#### **7. Remuneration**

After the expiration of the warranty period for the machine a commitment charge for the use of the DMG Netservice in the amount of EUR 25,00 per month plus VAT (if any) is to be paid to Supplier. For the time of use of the DMG Netservice no additional costs and expenses for the use of DMG Netservice and Remote-Services shall be due. This, however, does not include any online costs which may be accrued for accessing the world wide web.

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### 8. Warranties

8.1 Customer shall immediately check the Software delivered and any services rendered without undue delay to determine if they are in compliance with the specifications of the confirmation of order. The risk of any errors and/or defects, if any, shall pass to Customer upon issuance of the relevant installation or with the beginning of using the Software, unless they are functional defects and/or functional errors which have occurred or which were only possible to detect in the course of the services rendered after the installation or which could only be detected in the course of the services rendered.

8.2 Notices of defect and/or errors shall only be admissible, if given in writing within one week of receipt of the respective service respectively the determination of the defect and/or error, unless any statutory provision is providing for a longer term.

8.3 The Supplier warrants, that the Software and services rendered are in compliance with the written products specifications applicable at the time of delivery and specified in the confirmation of order.

8.4 In a case of an error and/or defect, the supplier shall, either effect improvement or a subsequent new delivery ("Subsequent Performance"). The Supplier may reject the selected type of Subsequent Performance or the entire Subsequent Performance if it will only be possible to carry out the same by incurring disproportionately and unreasonably high expenses. In case of a substitute delivery the Supplier shall bear the expenses necessary, therefore in particular any transport costs, to the extent that such costs are not increased by the fact that substitute delivery is made to a location of the Software different from the one contractually agreed.

8.5 If the Supplier is not willing or unable to render Subsequent Performance or if such Subsequent Performance is delayed for longer than reasonable periods for reasons for which the Supplier is responsible, or if the Subsequent Performance fails for any other reason, the Customer shall – within the scope of statutory provisions – be entitled to assert its rights to either rescind the contractual relationship with the Supplier to claim a price reduction or damages. Subsequent Performances shall be deemed failed for other reasons only if and when three attempts for Subsequent Performance have been unsuccessful.

8.6 Any additional claims of the Customer, in particular claims for damages including claims for lost profit, shall only exist to the extent as specified under No. 9 below. The warranty period for any errors and/or defects to the Software and performances related to the DMG Netservice shall be one year, beginning with the installation or use of the Software, whatever incident is later.

8.7 The Supplier shall not be liable if an error or defect is caused by conduct of the Customer. This shall in particular, include – to the extent causative – in inappropriate use, maintenance, repair or any other unauthorized modification to the machine or the Software, which were not carried out by the Supplier, or the use with hardware for which the Software is not licensed or in combination with other Software not licensed or technically approved by the Supplier. This shall likewise apply with regard to any incorrectness or incompleteness of the DMG Netservice Checklist, which should be provided until the moment of the commissioning of the machine. Once again, it should be denoted, that in this latter case follow – up costs might be accrued and may have to be borne by the Customer.

### 9. Liability [n/a in france, spain and italy]

9.1 Any warranties given by the Supplier in these Terms are in lieu of all other warranties or conditions expressed or implied by case law or statute. Except in case of willful misconduct or omissions and/or conduct in respect of death or personal injury caused by Supplier's negligence, the Supplier shall not be liable to the Customer by reason of any representation, any implied warranty, condition or other term, any duty at case law, statutory law or under express terms of the Contract, for any consequential loss or damage (whether for loss of profit, production halt or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Supplier, its employees or agents or otherwise) which arise out of or in connection with license and delivery of the Software, the rendering of services (including Remote-Services) and/or their use, except if and to the extent provided in these terms.

9.2 The aggregate liability of the Supplier for any claims arising out of or in connection with any license, delivery and use of the Software and the rendering of services (including Remote-Services) shall not exceed the Supplier's insurance cover which is in place to cover the claim/damage which has occurred. If the Customer wishes to assess the level of insurance cover in order to ensure it is adequate, the Customer should make a written request to Supplier for details of the insurance cover in place at that time.

9.3 The Supplier shall have the right to defer the date of licensing, delivering and/or installing the Software respectively the rendering of services (including Remote-Services) or cancel the contractual relationship to the Customer without any liability to the Customer if the Contractual Performances are prevented or hindered by any cause whatsoever beyond the Supplier's control and in particular but without prejudice to the generality of the forgoing by act of God, War (whether declared or not), Government control, restrictions or prohibitions by any Government act or mission whether local or national, fire, flood, subsidence, epidemic, restraints, acts of strike or lock-out, force majeure, power cuts, world wide web constraints and or shortfalls provided if the event in question continues for a continuous period in excess of 30 days, the Customer shall likewise be entitled to terminate the contractual relationship by written notice vis-à-vis Supplier.

### 10. Place of performance, applicable, jurisdiction

10.1 These terms shall in all respects be construed and governed by law to the exclusion of the United Nation Sales Law Convention.

10.2 Place of jurisdiction shall be at the competent court at the Supplier's place of business. The Supplier shall be entitled to enforce any legal action against the Customer at the Customer's place of business.