# General Conditions for Service and Repair Work of BINDER GmbH

The following General Conditions shall be applicable for all our single service and repair work (hereinafter also referred to as **Single Service Performance or Single Service Contracts**) **(A.)** as well as all of our **Permanent Service Contracts (B.)** as long as there is no other agreement in writing and presupposed that the customer is a businessman according to the German Civil code (BGB). Customer's business terms shall only be applicable if we have approved them expressly in writing.

## A. Conditions for Single Service Performance / Single Service Contracts

The following conditions shall be applicable for all our Single Service Performances we carry out on BINDER-Products billing time and material separately:

### 1. Conclusion of Contract

Any Single Service Contract shall be concluded only after we have confirmed customer's prior order done in writing or by telephone in writing by telefax or e-mail. The date of our order confirmation shall be deemed as the date of conclusion of the contract.

### 2. Scope of our Performance

2.1 Our work is executed usually from Monday to Friday between 8-17 hours. We maintain respectively repair the BINDER-Product according to the information received from customer. Additionally, our service technician shall make a diagnosis with respect to potential defaults, using test devices and programs as well as special tools.

2.2 We shall carry out Single Service Performance according to our discretion either by repair or by replacement of defective parts. Our Service Performance shall be deemed finished when we have restored the BINDER-Product's performance for ordinary use.

2.3 Our Single Service Performance shall neither cover power nor water supply nor other work outside of our BINDER-Product nor shall we be responsible for the waste disposal of defective or used parts of our Products. Removed parts shall remain customer's property unless we supply the (new) spare part only against return of the removed part; in this case the removed part shall pass into our sole property.

2.4 We shall be entitled to refuse a Single Service Performance if the relevant BINDER-Product is – at our sole discretion – not in the state to be repaired or serviced anymore or if relevant spare parts are not available anymore. In case we should find out that there is a security risk when repairing or maintaining the BINDER-Product not being caused by BINDER we shall have the right to interrupt the Single Service Performance until the problem has been solved.

### 3. Customer's Obligations

Customer shall care for that our service technicians have free access to the BINDER-Product(s) in case of onsite repair at customer's place. Customer shall support us appropriately to the best of customer's abilities while we carry out the Service Performance. Customer shall care for adequate and proper treatment of the BINDER Product.

### 4. Price and Payment

4.1 We shall invoice our Single Service Performance referring to working hours, travelling expenses and used spare parts immediately after having completed the work on the basis of our relevant price list adding the relevant VAT, if necessary. After completion of our Single Service Performance customer shall sign the relevant sheet/proof of performance.



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4.2 Customer shall pay our invoice net immediately after receiving our invoice. Price reduction, off-setting against our right of payment or right of detention shall be excluded unless customer's rights should be explicitly accepted by BINDER in writing or officially confirmed by a court.

4.3 In case a Single Service Performance should be interrupted on customer's demand or in case certain prerequisites should not be fulfilled or taken back by customer, customer shall have to pay all work that we have carried out (including travelling costs and spare parts) until the date of interruption.

### 5. Guarantee / Liability

5.1 We shall take over guarantee for our Single Service Performance for 12 months starting with the date of acceptance of our work by customer.

5.2 In case our repair work should not remove the defect of the BINDER-Product respectively if a maintenance work should be faulty, customer shall inform us immediately in writing. We then shall have the right of post-performance („Nachbesserung") which shall be granted to us for an appropriate and sufficient period of time. If our post performance should fail, we shall have the right to repeat it.

In case the second post performance should also fail or in case we should refuse the second attempt of post performance (for whatever reasons), then customer shall have the right to ask for a price reduction.

5.3 Any further rights and claims of customer, especially any claims for damages, including for lost profit, shall be excluded unless BINDER or any of BINDER's servants or agents should act with gross negligence or malice intent.

### 6. Transfer of Rights and Obligations

BINDER shall have the right to transfer rights and obligations based on this Single Service Contract to third parties, especially may BINDER have Single Service Performance carried out by third parties, presupposed that the selected third party is able to execute the Single Service Contract.

## B. Conditions for Permanent Service Contracts

In case a Permanent Service Contract should be concluded, we shall take over service and maintenance work on BINDER-Products according to the following provisions:

### 1. BINDER's Obligations

1.1 We shall service and maintain the BINDER-Product listed in the contract once a year.

1.2 Our work is covered by the agreed flat price. Spare parts shall be billed seperately. This shall not apply, if the relevant expenditures should be included according in the flat price depending on the chosen type of contract. Customer shall receive a **discount of 10 % and a 12 months guarantee** on the spare part acquired for the BINDER-Product.

We shall inform customer in time about the date of the service work. We will supervise the service dates without charging any extra cost. If we should carry out an extra service operation because of a defective BINDER-Product, we are entitled to combine this operation with the regular service and maintenance work.



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1.3 We repair defects of BINDER-Products after having received customer's information professionally in case such a defect should not occur during regular service and maintenance work. Such extra operation shall be invoiced separately referring to working time, travelling expenses and used spare parts. This shall not apply, if the relevant expenditures should be included according in the flat price depending on the chosen type of contract. Repair work shall be carried out according to our discretion either by repair or by replacement of defective part(s). Our performance shall be deemed finished when we have restored the BINDER-Product's performance for ordinary use. Any maintenance and repair work will be carried out by qualified technicians during BINDER's regular business hours.

1.4 The work executed due to the Permanent Service Contract shall neither cover power nor water supply nor other work outside of our BINDER-Product nor shall we be responsible for the waste disposal of defective or used parts of our Products.

1.5 In case the defect of the BINDER-Product should be caused by operating error(s), misuse of the device, non appropriate transport of the BINDER-Product, intervention, influence of fire or water or other Acts of God or other circumstances comparable with the aforementioned, we may charge our service performance additionally, even if the agreed flat price should include full-service.

1.6 We shall be entitled to refuse a service performance if the relevant BINDER-Product is – at our sole discretion – not in the state to be repaired or serviced anymore or if relevant spare parts are not available anymore. With our refusal the relevant Permanent Service Contract shall be deemed terminated.

In case we should find out that there is a security risk when repairing or maintaining the BINDER-Product not being caused by BINDER we shall have the right to interrupt the service performance until the problem has been solved.

## 2. Customer's Obligations

Customer shall inform us about any defect of the BINDER-Products immediately. Customer shall support us appropriately to the best of customer's abilities while we carry out the service performance. Customer shall care for adequate and proper treatment of the BINDER Product.

## 3. Price and Payment

3.1 We invoice customer immediately after having performed our work on the basis of the agreed flat rate.

3.2 Any work not being covered by the flat rate shall be invoiced according to our relevant price list.

3.3 Customer shall pay our invoices immediately net after receipt. Price reduction, off-setting against our right of payment or right of detention shall be excluded unless customer's rights should be explicitly accepted by BINDER in writing or officially confirmed by a court.

## 4. Term of Permanent Service Contract

4.1 The Permanent Service Contract is concluded fix for 3 (three) years. It shall be prolonged automatically by 1 (one) year terms, unless it is terminated by BINDER or customer beforehand by keeping to a period of notice of 4 weeks becoming effective at the end of each contract term.

4.2 Additionally, both parties may terminate this Contract for important reasons without keeping to a period of notice. Any termination has to be in writing.

## 5. Guarantee / Liability

5.1 The same shall apply as under Article A. 5 above. Additionally, if the second post performance („Nachbesserung“) should fail or if we should refuse post performance for whatever reasons, customer shall have the right to cancel the Permanent Service Contract in due time or ask for a price reduction or – if the continuation of the contract should not be reasonable - customer may terminate the Permanent Service Contract with immediate effect.

5.2 Any further rights and claims of customer, especially any claims for damages, including for lost profit, shall be excluded unless BINDER or any of BINDER’s servants or agents should act with gross negligence or malice intent.

## 6. Transfer of Rights and Obligations

BINDER shall have the right to transfer rights and obligations based on this Permanent Service Contract to third parties, especially may BINDER have service performance carried out by third parties, presupposed that the selected third party is able to execute the Permanent Service Contract.

For all our Service Contracts (Single Service Contracts (see **A.**) as well as Permanent Service Contracts (see **B.**)) the following provision shall be applicable:

## Applicable Law and Place of Jurisdiction – Application of BINDER’s General Terms of Sale and Delivery

1. Place of Jurisdiction with respect to all Single Service Contracts as well as all Permanent Service Contracts shall be D-78532 Tuttlingen if the customer is a merchant or a legal entity of public law. We shall also have the right to take customer to court at customer’s domicile.

2. German substantial Law shall be applicable, excluding the UN Convention on the International Sale of Goods (Vienna Convention of 1980).

3. Additionally, our General Terms of Sale and Delivery shall be applicable in the relevant version.

Edition: August 2009