

# General Flex-Service Terms and Conditions of Jungheinrich Vertrieb Deutschland AG & Co. KG



Valid from May 1st, 2024

## I. Scope of validity

- The present Flex-service terms and conditions apply to all our offers, contracts relating to the Flex-service of trucks, consulting and other contractual services in business dealings. These terms are exclusive. Any terms deviating from the present Flex-service terms and conditions are therefore expressly excluded. The present Flex-service terms and conditions shall also apply if we provide our services without reservation in the knowledge of deviating terms and conditions of the customer. Ancillary agreements to and/or amendments of the following Flex-service terms and conditions require our written confirmation to be effective.
- In the event of an ongoing business relationship, these Flex-service terms and conditions shall also apply to all future Flex-service agreements with the customer, unless other terms and conditions are expressly included.

## II. Participation and technical assistance provided by the customer

- The customer shall provide the service object on which the services are to be performed at the agreed time. Our service engineers shall be provided unhindered access to the service objects for the duration of the performance of the contractually agreed services.
- With respect to performance of the work at the customer's premises, the latter shall ensure that
  - The locations and the equipment for undertaking the work are available at its company. The customer is obliged, at its own expense, to provide technical assistance, particularly the free and adequate provision of support staff, aids, necessary means of transport as well as electricity, water and other necessary resources including the appropriate connections for required time. The support staff are to follow the instructions of the persons appointed by us to carry out the work. We assume no liability for the support staff provided.
  - The agreed work may begin immediately after the arrival of our service engineers and be undertaken without delay until acceptance by the customer. Insofar as special plans and/or instructions are required from us, we shall make them available to the customer in good time.
  - The necessary measures are taken to ensure the protection of persons and property at the place where the work is being conducted. The customer shall inform our service engineers of any existing safety regulations, insofar as they are relevant to our engineers.
- Delays caused by the customer shall be at its expense.
- The customer provide at its own expense all materials and take all other actions that may be required for adjusting the service objects and to carry out the testing.
- Should the customer fail to meet its obligations with the regulations in Section II, nos. 1, 2 and 4 above, we shall be entitled but not obliged to undertake the respective measures or to have them undertaken by a third party in its place and at its expense. We reserve the right to assert further claims.

## III. Payment conditions, late payment, SEPA direct debit scheme

- Invoices shall be payable without deduction within 30 calendar days of receipt of the invoice or on the date specified in the invoice, insofar as nothing has been agreed to the contrary in individual cases.
- We are entitled to demand payment in advance.
- Any objections regarding invoices must be made in writing and within 14 days of the invoice date.
- In the event of default by the customer, we shall be entitled to receive default interest at the rate of nine (9) percentage points above the base interest rate (Section 288 para. 2 German Civil Code) until full payment is received.
- This shall not affect our rights in the event of default in payment and other changes in the economic and business circumstances of the customer, which indicate its lack of capacity to demand collateral in accordance with statutory provisions, at our discretion, for existing claims, to refuse to fulfil the contract to a proportionate amount (e.g. withdraw by suspension of deliveries and/or other services), or to withdraw from the contract.
- Should the customer agree to make payments via the SEPA direct debit scheme, the customer shall provide us with the required SEPA direct debit mandate, stating information about its credit institution and the relevant bank details (IBAN and BIC). The customer shall ensure the necessary coverage of its bank account. The customer shall bear any costs relating to return debits.
- We shall inform the customer about the forthcoming debit including information on the amount, due date, creditor identification number and mandate reference before submission of a SEPA direct debit (advance notification). This advance notification shall take place at the latest five (5) calendar days before the due date.
- If no SEPA direct debit procedure has been agreed, invoice amounts due are to be transferred to the Jungheinrich account named by us.
- The customer may only be entitled to a right of retention against our claims if its counterclaims are undisputed, recognised by us or established in law.
- The customer's offsetting against our claims shall be limited to counterclaims resulting from the same contractual relationship or arising from other legal relationships which are undisputed, legally established or recognised by us.
- Claims made by the customer against us may not be assigned.
- Payments may only be made direct to our head office in Hamburg, and not to our subsidiaries or to our consultants or representatives. In each case, payment shall only be deemed effected upon receipt by our head office.

## IV. Time of performance, delay

- Information on deadlines and dates for the performance of contractual services is based on estimates. It is therefore not binding unless otherwise agreed in individual cases.
- Should the customer award us additional and/or extension orders and/or should additional work be necessary, the period for implementation of the contractual service work shall be extended accordingly.
- If we are late with service work, for each completed week of delay, the customer shall be entitled to claim lump sum compensation for the damage it has incurred as a result of the delay amounting to 0.5% of the agreed fee for the defaulting service work, up to a maximum of 5% of the agreed fee. This restriction shall not apply in the event of grossly negligent behaviour, intent or mandatory statutory liability for delay.
- In the event of delay in delivery where the customer grants us a fair and reasonable period of grace, with the express written stipulation that it will decline acceptance of the contractual services after the expiry of this period, the customer shall be entitled to withdraw from the contract if the period of grace expires fruitlessly. It is not necessary to grant a grace period unless required to

do so by law. At our request, the customer shall declare within a reasonable period whether it intends to exercise its right to withdraw from the contract.

- Subject to the regulations in Section XII no. 2, the customer shall not be entitled to further rights due to the delay, in particular claims for damages.

## V. Term of the agreement / termination of the agreement

- Flex-service contracts come into force upon signature and end upon expiry of the agreed term.  
Conclusion of, changes to, additions to or termination of the contract shall require the written form or electronic form to be effective; to safeguard the electronic form it is sufficient to sign using an advanced electronic signature generated in RSign, or comparable software, or a comparable procedure within the meaning of Article 3 No. 11 eIDAS regulation (EU No. 910/2014). The same shall apply to the revocation of this form requirement. Jungheinrich has published the RSign data privacy policy at <https://www.jungheinrich.com/data-privacy-policy-rsign-795376>
- The contract may be terminated with three months' notice to the end of a contractual year.
- This shall not affect the right of either contractual partner to extraordinary termination for good cause.
- We shall be entitled to extraordinary right of termination in particular if
  - The customer is in arrears with the payment of two consecutive Flex-service instalments;
  - The customer fails to meet its contractual obligations or does not perform them adequately;
- The determining factor for whether a deadline is met is receipt by the relevant contractual partner.

## VI. Risk assumption and transport

- Upon notification of the customer regarding completion of the contractual services, the risk shall transfer to the customer.
- The outward and return transport of the service items at which services are to be provided is in principle the responsibility of the customer, who shall bear the risk of loss or damage in transit.
- If it is agreed that we are responsible for transport, this shall be done at the expense and risk of the customer, even when transport is carried out using our vehicles, unless otherwise agreed to the contrary in individual cases.
- The service objects handed over by the customer for fulfilment of the contractual service work have not been insured by us against fire, theft, transport or storage damage, etc. These risks are to be covered by the customer, unless we have purchased corresponding insurance coverage at the express request and expense of the customer.

## VII. Acceptance of the contractual service, handover to the customer

- We shall inform the customer of the completion of the contractual service work. Issuing of the invoice shall also be deemed appropriate communication. Acceptance must take place within two weeks of this communication.
- If the customer has not expressly objected to the agreed service and/or other contractual service in writing during acceptance or if acceptance has not taken place within the prescribed period, the contractual services shall be considered to have been properly accepted.
- If we cease our services at the customer's request, it shall be obliged to pay for the services rendered up to this point less any payments already made within four (4) weeks of the invoice date.
- After completion of the work, or daily in the case of longer work, our service engineers will submit a statement of the working time spent, which is to be signed off by the customer.
- If the customer is in default with the return of the service items, we are entitled to charge the customer an appropriate amount for the storage of the service items.

## VIII. Claims for material defects

- We provide a warranty for defective services and other service work as follows:
  - Any defect discovered must be reported to us immediately in text form (§ 126 b German Civil Code) with a precise description.
  - All services already demonstrably defective on acceptance shall at our discretion either be improved without cost to you, or renewed. The customer shall grant us sufficient time and opportunity to rectify errors. Within the framework of the statutory provisions, we are exempt from the obligation for supplementary performance. Claims for defects do not exist in the case of only minor deviations from the agreed or customary quality or usability.
  - Of the costs incurred by supplementary performance, in the event of legitimate complaints, we shall bear the cost of spare parts including shipment and reasonable costs for removal and installation. Further costs shall be borne by the customer.
  - In the event of failure of the supplementary performance, the customer is entitled to reduce the remuneration or to withdraw from the contract at its discretion. At our request, the customer shall inform us within a reasonable period which right it wishes to exercise.
  - Further claims by the customer are made for or in connection with defects or consequential damages, regardless of the legal reason, only in accordance with the provisions contained in Section XII.
  - The limitation period for deficient services is 12 months from acceptance, with the exception of the instances specified in Section XII no. 2, for which the statutory limitation period shall apply.
  - Should the customer or a third party undertake improper work, modifications or repairs to the service object without our prior express consent, then no defect claims shall exist for such work and the resulting consequences. The same shall apply should the customer request that repair-prone parts are not replaced.
  - As a matter of principle, we do not give a durability and/or other guarantee for our services. As a consequence, none of our descriptions, representations or other statements – either before or during the execution of the contract – shall have the nature of a guarantee. Excluded from this are guarantees expressly agreed in individual contracts (such as Jungheinrich Li-ion battery guarantees).
  - Should any of our statements, either intentionally or unintentionally, take on the nature of a guarantee, we shall be liable only to the extent to which the precise intention of the guarantee was to secure the customer against the loss or damage sustained.

## IX. Spare parts

- Spare parts are sold at the applicable list prices in accordance with our General Terms and Conditions of Delivery, insofar as nothing has subsequently been

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agreed to the contrary. We accept no liability for spare parts not obtained from us. Spare parts that have to be manufactured and/or procured separately for an order cannot be returned. We will only take back parts ordered and delivered as agreed against payment of 20% of the list price plus freight and packaging costs.

## X. Retention of title, retention rights and lien

1. We retain title to the installed aggregates, spare parts and accessories (reserved goods) to the extent that it can be reserved, until payment in full of all claims to which we are entitled as part of the business relationship with the customer. In the event of a current account, all the reserved goods shall serve as security for our claims.
2. For as long as the retention of title exists, the customer shall be obliged to adequately insure the reserved goods against loss or damage. The customer shall authorise us to enforce claims against the insurer under these insurance policies.
3. We may exercise a right of retention on the subject of the contract until payment as per Section IV. is completed and any payments for deliveries and services previously provided by us are made.
4. We are entitled to a lien on the subject of the contract. If we exercise our right to sell the pledge, it is sufficient as a threat of sale of the pledge to dispatch a written notification by registered mail to the last known address of the customer.
5. In the event that the customer is not the owner of the repaired service object, the customer shall assign to us the claim and the expectancy of transfer of ownership or retransfer after settlement of all third-party claims, irrevocably authorising us hereby to fulfil for the customer. However, there is no obligation on our part to fulfil in the customer's place.
6. Should the customer be in significant breach of any of the obligations listed above in Section X, we shall be entitled to withdraw from the contract.

## XI. Disposal of old parts and consumables

The customer shall be responsible for the proper disposal of all used parts and oils as well as other consumables used within the framework of execution of the after sales service contract, insofar as nothing has been agreed to the contrary in individual cases. Insofar as statutory regulations have been issued which stipulate an alternative action, the customer shall be obliged to make an appropriate arrangement with us regarding the disposal. In doing so, it should be assumed that the contractual partners shall employ third parties to fulfil the disposal requirement.

## XII. Liability

1. The following provisions shall apply to claims for damages because of, ancillary to and in lieu of performance, irrespective of legal grounds (in particular due to consulting errors, breach of contractual obligations, defects, torts) as well as claims for reimbursement of expenses and indemnification (hereinafter claims for compensation). The regulations in the event of delay (cf. Section V) shall take precedence.
2. We shall not be liable for compensation claims against us, in particular for consequential damages such as lost profit, damages due to an interruption to business, loss of production and use, as well as for indirect damages. This limitation shall not apply in the following cases:
  - In the event of intent
  - In case of gross negligence
  - Within the framework of a guarantee promise, whereby the liability is limited to the extent to which the guarantee had the specific purpose of protecting the customer against the damage that has occurred.
  - In the event of death, physical injury or damage to health
  - In the event of claims under the German Product Liability Act
  - In the event of a culpable violation of a material contractual obligation. In the event of slight negligence, the liability shall however be limited to reimbursement of foreseeable damage typical to the contract, as long as the liability is not due to death, physical injury or damage to health. Essential contractual obligations are those obligations which guarantee the contract in respect of its contents and purpose; other essential obligations under the contract are those the fulfilment of which enables the proper execution of the contract and compliance with which the customer can rely upon.
  - In other cases of mandatory liability under the law.
3. A reversal of the burden of proof is not associated with the above regulations.
4. Additional claims, in particular claims for indemnification on first request, are excluded.
5. If the service object is damaged in our possession by the customer or a third party commissioned by it and as a result people are injured and/or our property and/or that of third parties is damaged, the customer shall bear liability. Likewise, the customer shall be liable for damages, including any consequential damages caused by the concealment of defects.

## XIII. Data protection

1. Regarding the processing of personal data, the parties shall comply with the requirements of the applicable data protection law, in particular the General Data Protection Regulation.
2. If fulfilment of the contract involves Jungheinrich processing personal data on behalf of the customer, the parties shall conclude separate data processing agreement before data processing commences.

## XIV. General provisions

3. Our service engineers are not authorised to make or accept binding declarations on our behalf.
4. The customer shall immediately inform us of any change of residence or company headquarters as well as alterations to the legal form and contingencies of its company in writing.
5. With the conclusion of the respective contract, the permission to test drive and use the service objects shall be deemed to have been granted at the same time.
6. In the event of the acceptance of services on service objects which have not been supplied by us, we may make the conclusion of the contract dependent on a prior inspection of the service items. The customer shall be invoiced separately for the costs of the prior examination as well as any associated costs.
7. We shall be entitled to transfer our rights and obligations from the respective service contract third party.
8. Should any term or condition of this contract be or become invalid, the validity of all other terms and conditions shall remain unaffected.

9. Should compliance with the written form be required or agreed for declarations and/or notifications of any kind, with the exception of item V. 1 sentence 2ff, text form within the meaning of section 126 b of the German Civil Code shall be necessary, but also sufficient.

## XV. Place of performance, place of jurisdiction, applicable law

1. Unless otherwise agreed, the contractual services and/or other contractual provisions shall be performed at the registered office of the customer on conclusion of the contract.
2. The place of jurisdiction for all disputes shall be Hamburg, when the Customer is a registered merchant, a legal entity under public law or a special estate under public law, or when it has no general place of jurisdiction in Germany. The local court of Hamburg-Mitte shall be the place of jurisdiction for disputes which fall under the jurisdiction of local courts.
3. German law shall apply exclusively to all legal relationships between the customer and us, in the same way as for relationships between domestic contractual partners.