

## Excelitas Noblelight GmbH - Terms of Service

### 1. Scope

1.1 All provision of installation, maintenance and other services as well as the sale of spare parts by Excelitas Noblelight GmbH ("Excelitas") to the customer is exclusively subject to the following terms and conditions (the "Terms of Service"). These Terms of Service apply to both the one-time installation, service, maintenance and repair work performed under a single Service Order and to the regular work to be performed under a Service Level Agreement.

1.2 Terms and conditions of the customer which deviate from or supplement these Terms of Service shall become part of a contract only if and to the extent that Excelitas expressly agrees to their applicability in writing. Such terms and conditions of the customer shall in particular not become part of a contract by the fact that Excelitas performs installation, service, maintenance and repair work for the customer without expressly rejecting the terms and conditions of the customer. Individual agreements between Excelitas and the customer made in particular cases always take precedence over these Terms of Service. In the absence of proof to the contrary, the content of such individual agreements is subject to a written contract or the written consent of Excelitas.

### 2. Remuneration

2.1 The remuneration for the services provided by Excelitas will be agreed in the single Service Order or, as applicable, in the Service Level Agreement.

2.2 If the single Service Order or, as applicable, the Service Level Agreement provides for a lump sum remuneration of the services provided by Excelitas, payment of the agreed lump sum shall constitute full and final settlement and discharge of any and all services ordered by the customer. Payment of such lump sum shall in particular constitute full and final settlement and discharge of any and all costs of materials and tooling, of any and all travel and transport expenses, and of any and all costs of operating supplies and auxiliary materials.

2.3 If no lump sum remuneration for Excelitas' services is agreed in the single Service Order or if Excelitas provides services beyond the services covered by the agreed lump sum remuneration, the following applies:

2.3.1 The remuneration for working time is subject to the hourly rates of Excelitas in force at the time.

Weekdays, 07:00 - 18:00 hrs.:

Working time: EUR 135.00 / hour  
Traveling time: EUR 95.00 / hour

Outside regular working hours (18:00 - 07:00 hrs.) on weekdays as well as on Saturdays, Sundays and public holidays:

Working time: EUR 182.00 / hour  
Traveling time: EUR 116.00 / hour

Waiting times outside the responsibility of Excelitas are charged as working time. Traveling time starts and ends at the location of the respective Excelitas service site.

2.3.2 The purchase price for spare parts and expendables and for operating supplies and auxiliary materials is subject to the list prices of Excelitas in force at the time.

2.3.3 For all work and services performed outside the plant of Excelitas, the costs of travel to/from the Excelitas plant, the costs of overnight accommodation and meals as well as other expenses related to such travel are charged as actually incurred. Travels by car are charged at a flat rate mileage of EUR 0.70 / km. Travels by train and by air are subject to the provisions of the Excelitas Global Travel Policy in force at the time.

2.4 Value-added tax at the applicable statutory rate in force at the time is charged separately. All invoices are due and payable without any deductions immediately after receipt into a bank account named by Excelitas. The customer agrees to the electronic transmission of the invoice.

2.5 Excelitas charges interest for default at the rate of nine (9) percentage points p.a. above the applicable base rate in force at the time (Section 247 of the German Civil Code (BGB)). The right to furnish proof of a higher or further damage caused by default remains reserved. Subject to evidence of a higher damage, Excelitas will charge EUR 5.00 for the second and each further reasonable reminder.

### 3. Services of Excelitas

3.1 Excelitas performs the services agreed in the single Service Order or, as applicable, in the Service Level Agreement with qualified personnel having the professional knowledge and skills required by applicable law for the performance of such services.

3.2 The following provisions apply to particular services of Excelitas only:

#### 3.2.1 Installation/Start-Up

If the customer entrusts Excelitas (within the scope of a single Service Order or in connection with a purchase order for products) with the installation/start-up of a system or part of a system, Excelitas will perform the installation in accordance with the documentation provided to it. The customer is responsible for the timely provision and availability of the required utilities. Any services exceeding or diverging from the installation services originally agreed (e.g., additional installation work or work deviating from the documentation) will be performed by Excelitas only after consultation with and a written confirmation (including via e-mail) from the customer. After completion of the installation, Excelitas and the customer will sign an acceptance protocol.

#### 3.2.2 Inspection

If the customer entrusts Excelitas (within the scope of a single Service Order) with the inspection of a system, Excelitas will perform such inspection of the system and, if applicable, with regard to a specific malfunction reported by the customer or a specific defect. Excelitas will inform the customer of the result of the inspection after completion of the inspection. Unless otherwise agreed, the result of the inspection is intended to help the customer in deciding about a repair that may have to be carried out. At the request of the customer, Excelitas will prepare a non-binding estimate of cost of repair of the system. If a repair order is placed, the costs for the preparation of such estimate of cost will be offset against the remuneration for the repair work.

#### 3.2.3 Service and Maintenance

If the customer entrusts Excelitas (within the scope of a single Service Order or under a Service Level Agreement) with the performance of scheduled service and maintenance work, Excelitas will, to the extent possible, also carry out minor overhauls and repairs of the systems to be serviced. Minor overhauls and repairs are activities which increase the service and maintenance work only insignificantly. Any further services (e.g., fault clearance outside the scheduled service and maintenance dates, or larger repairs) will be performed by Excelitas only after consultation with the customer and on the basis of a separate single Service Order, if applicable. After completion of service and maintenance, Excelitas will prepare a service protocol which specifies the service and maintenance work performed and, if applicable, all minor repairs and fault clearances carried out.

#### 3.2.4 Repairs

If the customer entrusts Excelitas (within the scope of a single Service Order) with the repair of a system or with the correction of a malfunction, Excelitas will use its commercially reasonable efforts to identify the cause of the malfunction or defect and remedy such malfunction or defect after its detection. The objective is to restore the functioning of the system under repair. However, Excelitas cannot assume any responsibility for the successful remedy of a defect or malfunction. In particular, Excelitas cannot warrant for the successful remedy of a defect within a specific time period with the available tooling and spare parts. After completion of a repair, Excelitas will prepare a work report specifying the work carried out.

#### 3.2.5 Spare Parts

These Terms of Service also apply to the sale of spare parts as well as operating and auxiliary materials supplied to the customer in connection with the performance of the services under a Service Order or a Service Level Agreement or otherwise used or installed by Excelitas in the performance of the services. If available, Excelitas will sell and install original spare parts; otherwise Excelitas will use technically equivalent spare parts which may deviate from the specifications of the original parts.

#### 3.2.6 Trainings

The scope of any training provided by Excelitas includes the instruction of specialist personnel of the customer in the operation and maintenance of the products supplied by Excelitas, unless expressly agreed otherwise. The training is carried out by a service technician of Excelitas on the basis of the operating instructions. The training will be held once for a group of a maximum of 4 participants during or directly after delivery or assembly of the supplied products. Excelitas performs the services in compliance with the applicable laws and regulations in force, including the rules and regulations of the German statutory accident insurance (DGUV), the additional instructions and requirements which may be provided by the customer prior to contract conclusion, especially hazard assessments, manufacturer's information and factory standards as well as any rules or directives separately agreed in the individual case.

3.3 Excelitas will provide the tooling as well as product-specific operating supplies and auxiliary materials ordinarily required for the

performance of its services, unless the tooling, the operating supplies and auxiliary materials are provided by the customer within the scope of its contractually agreed duty to cooperate.

3.4 Excelitas will submit or transmit the service protocol or, as applicable, the work report to the customer after completion of the services, however, at the latest together with the invoice.

3.5 The services of Excelitas will be performed by qualified personnel of Excelitas, another Excelitas company, or a certified partner company of Excelitas.

#### **4. Obligations of the Customer**

4.1 As the operator of the system, the customer shall observe and abide by the applicable laws and regulations as well as the information and internal policies and guidelines of the system manufacturer. The customer shall grant Excelitas access to the system and provide to Excelitas, at the customer's cost and expense, the transport and lifting gear and the general operating supplies (e.g., electricity, water and the requisite water and power supplies) which are required for the performance of the services of Excelitas, as well as the product-specific operating supplies and/or tooling specifically agreed in the single Service Order or, as applicable, the Service Level Agreement. If required, the customer shall make available appropriate auxiliary staff.

4.2 Before placing a single Service Order for the repair of a system, the customer shall provide Excelitas with as detailed information as possible about the malfunction or defect and the operating conditions.

4.3 The customer shall advise the employees of Excelitas of existing hazards and safety rules and take any and all measures which are required for the protection of these employees.

4.4 If the services to be provided by Excelitas also extend to systems or components thereof which were not delivered by Excelitas, the customer shall provide Excelitas with any and all circuit diagrams, drawings, maintenance instructions and operating manuals of the system manufacturer, with existing hazard assessments, and with any further provisions and instructions which have been separately agreed in the single Service Order or, as applicable, the Service Level Agreement. In the case of scheduled service and maintenance work, the customer shall document and inform Excelitas in a timely manner of any damage, defect, malfunction and other abnormal operating phenomena of the system and of any changes in the operating or ambient conditions.

4.5 The conclusion of single Service Orders for the performance of service and maintenance work and the conclusion of a Service Level Agreement do not release the customer from its obligation for any further or additional service and maintenance in accordance with the system manufacturer's operating manual.

#### **5. Acceptance**

5.1 The customer is obligated to declare acceptance of the services as soon as Excelitas has notified the customer of their completion or, with respect to installation/start-up services, if the functional tests set forth in the documentation have been completed successfully.

5.2 The customer must report obvious defects to Excelitas promptly in writing but no later than within 10 calendar days after Excelitas' completion of the services. Failure to report an obvious defect in due course results in the exclusion of a claim for such defect by the customer.

5.3 Acceptance will be deemed to have occurred at the latest upon the system's productive use or upon the expiration of 30 days from the completion of the services (whichever is earlier), provided that Excelitas is not responsible for the delayed acceptance.

#### **6. Warranty, Indemnification, Limited Liability**

6.1 Excelitas warrants that it will perform all services in a competent, workmanlike manner. Excelitas's responsibility for a breach of this warranty and customer's sole and exclusive remedy is limited, at Excelitas's option, to either rework of the defective services or return to customer of monies actually received by Excelitas from customer for those defective services. Excelitas may require inspection of the defective services. This warranty extends only to the customer.

6.2 Excelitas warrants that the supplied or installed products (spare parts, wear and tear parts, operating and auxiliary materials) correspond to the specifications given in the data sheets of the products, if available. Excelitas does not warrant that the products are suited for the specific purpose of use at the customer, even if Excelitas is aware of the specific use.

6.3 This warranty does not apply to, and Excelitas assumes no responsibility for, damage or defects due to any cause not amounting to a breach of this warranty, including, but not limited to, damage or defects arising as a result of misuse, improper installation by customer's personnel or subcontractors, accident, neglect, modification, repair by customer, adverse conditions, and demands exceeding performance levels required by applicable specifications by Excelitas.

6.4 Excelitas will assume unlimited liability under the German Product Liability Act as well as in cases of wilful intent and fraudulent misrepresentation, and where a limitation of liability is inadmissible for other compelling legal reasons. The liability for claims arising from bodily injury is limited to EUR 1,000,000 in the aggregate. In all other cases, the liability of Excelitas (i) for claims for damages under or in connection with a Service Order is limited to the order value and (ii) for claims for damages under or in connection with a Service Level Agreement is limited to EUR 5,000 per case of damage and in case of more than one damage within one calendar year to 50 % of the invoiced and paid net revenue under the Service Level Agreement in the preceding calendar year (minimum: EUR 10,000); any liability of Excelitas for indirect damages, especially consequential damages, lost profits, and loss of use due to production standstills, is excluded.

6.5 Any claims of the customer arising from the delivery of a defective product become barred by the statute of limitations after 12 months from the delivery of the product. All other contractual or statutory claims of the customer shall become barred by the statute of limitations after 12 months from the accrual of any such claim.

#### **7. Reservation of Title**

7.1 Excelitas retains title to, and ownership of any delivered products (e.g., the spare parts and expendables) until full payment of all claims from a single Service Order or a Service Level Agreement.

7.2 In the event of seizures of delivered products or other acts or interventions by third parties, the customer must point out that the products are the property of Excelitas and inform Excelitas immediately in writing so that Excelitas can enforce its ownership rights. As long as the customer is not in default of payment, the customer shall be entitled to use the spare parts and expendables which are subject to reservation of title in its ordinary course of business. However, the customer shall not be entitled to pledge, or to assign by way of security, any spare parts and expendables subject to reservation of title.

#### **8. Term, Termination**

8.1 The initial term of a Service Level Agreement is as set forth in the particular Service Level Agreement. Thereafter, the particular Service Level Agreement will be automatically renewed for successive additional periods of 12 months each unless it is terminated by either party upon three months' prior written notice effective as of the expiry of the initial term or each renewal term.

8.2 The right of either party to terminate the relevant Service Level Agreement by extraordinary notice for cause remains unaffected. For the avoidance of doubt, the sale, relocation or closing down of the system(s) concerned in whole or in part is not considered as cause for an extraordinary termination.

8.3 The single Service Orders are terminable in accordance with the statutory termination provisions.

#### **9. Final Provisions**

9.1 Acts of God, labor disputes, riots, governmental acts, decrees or orders by any federal, state or local authorities or courts, and similar circumstances beyond the control of Excelitas shall release Excelitas from the obligation to perform its contractual duties for so long as and to the extent that the effects of such circumstances persist. Excelitas will inform the customer of the commencement and of the end of such hindrances to the performance of its contractual duties without delay.

9.2 If any provision of these Terms of Service should be or become invalid or unenforceable, then this shall be without effect to the other provisions of these Terms of Service, which other provisions shall continue in full force and effect. In such case, the parties shall use their best efforts to replace the invalid or unenforceable provision by a legally valid provision which most nearly reflects the economic intent and purpose of the invalid or unenforceable provision. The same shall apply to any gaps which may be contained herein.

9.3 The customer may offset counterclaims or withhold payment based on such counterclaims only if such counterclaims are uncontested in writing or non-appealable.

9.4 Excelitas shall not be obligated to perform its contractual obligations for so long as the customer fails to perform its own obligations according to contract, including its obligations from other contracts with Excelitas and, in particular, if the customer defaults in the timely payment of invoices due.

9.5 These Terms of Service and any single Service Order or Service Level Agreement shall be governed by German law, without giving effect to its conflict of law provisions. The place of jurisdiction, also for actions on checks and bills of exchange, is the registered place of business of Excelitas. However, Excelitas shall be entitled to recourse in any court having jurisdiction as to the respective legal action under the laws of Germany or under the laws of the country in which the customer has its registered place of business.