

General Terms of Service

Unless otherwise agreed, the following terms and conditions shall apply to service orders for repairs and maintenance on machinery and systems.

The following terms and conditions apply in addition to the terms of delivery of PVA TePla AG and its subsidiaries PVA Industrial Vacuum Systems GmbH, PVA Metrology & Plasma Solutions GmbH, PVA Crystal Growing Systems GmbH, PVA TePla Analytical Systems GmbH, PVA Soldering and Materials Technology GmbH, PVA Control GmbH, PVA SPA Software Development GmbH, PVA Vakuum Anlagenbau Jena GmbH unless otherwise agreed in the order confirmation and if the customer is an entrepreneur (section 14 of the Bürgerliches Gesetzbuch (BGB – German Civil Code), a legal entity under public law or a fund under public law.

§1. Contract conclusion, general:

(1) If an uncontested written order confirmation has been submitted, it is authoritative with regard to the content of the contract and the scope of the repair work. Supplementary agreements and contract amendments must be confirmed in writing by the contractor.

(2) If the subject of the repair work has not been supplied by the contractor, the customer shall declare any existing intellectual property rights in respect of the subject; provided that the contractor is not at fault, the customer shall indemnify the contractor against any claims by third parties relating to intellectual property rights.

(3) The contractor shall be entitled to engage subcontractors.

§2. Infeasible repairs

(1) The customer will be invoiced for the work involved in submitting a quotation and the additional work to be documented (time spent identifying defects is counted as working time) if the repairs cannot be carried out for reasons beyond the contractor's control; in particular, because

- the defect at issue was not found during the inspection,
- spare parts cannot be obtained,
- the customer culpably neglected to attend the agreed appointment,
- the contract has been terminated by the customer during the performance of work without the client having provided grounds for doing so, or the contract has been terminated by the client and the customer has provided grounds for doing so.

(2) The subject of the repair work shall be restored to its original condition only if expressly requested by the customer and if the cost of doing so is reimbursed, unless the work undertaken was not necessary to restore its function.

§3. Cost information, quotation

(1) If possible, the estimated repair price shall be indicated to the customer when the contract is signed; if not, the customer may set price limits.

If the repair work cannot be carried out at these prices or if the contractor considers additional work necessary during repairs, it shall be necessary to obtain the customer's consent if the prices quoted are exceeded by more than 15%.

(2) If the customer wishes to be provided with a quotation containing binding prices before repair work is carried out, it shall expressly request such a quotation. A quotation of this type shall be considered binding only if it is declared as such and submitted in writing.

§4. Price and payment

(1) The contractor shall be entitled to request an appropriate advance payment when the contract is signed.

(2) The prices for parts, materials and special services used as well as the prices for labor, travel and transportation costs shall be itemized on the invoice for repair work. If repairs are conducted on the basis of a binding quotation, a reference to the quotation, with only deviations in the scope of services listed in detail, shall be sufficient.

(3) Value-added tax shall be added accordingly and charged to the customer at the applicable statutory rate.

(4) The customer shall submit any complaints in writing no more than six weeks following receipt of the invoice.

(5) Payment shall be made without any discount upon acceptance and handover or dispatch of the invoice.

(6) Withholding payment or offsetting on account of any counterclaims by the customer disputed by the contractor shall not be permissible.

(7) The assignment of claims against us or other rights is excluded. This does not affect section 354a of the German Civil Code.

§5. General and technical assistance from the customer with repairs taking place outside the contractor's premises

(1) The customer shall assist repair personnel during performance of repairs at its own expense.

(2) The customer shall put in place the special measures necessary to protect personnel and property at the repair site. The customer shall also brief the repair team leader nominated by the contractor on any special safety regulations that may be relevant to the repair personnel. It shall notify the contractor should the repair personnel violate any such safety regulations. In the event of serious violations, it may deny the perpetrator access to the repair site in consultation with the repair team leader.

(3) The customer shall be required, at its own expense, to render technical assistance when notified in good time by the contractor, especially in relation to the following:

- a) Providing the required number of suitable support staff for the time necessary to render assistance. The support staff shall follow the instructions of the repair team leader. The contractor shall assume no liability for the support staff. Should the support staff cause defects or damage as a result of instructions from the repair team leader, the stipulations outlined in sections 10 and 11 shall apply accordingly.
- b) Carrying out all construction, foundation and scaffolding work, including procuring the necessary materials.
- c) Providing the necessary appliances and heavy tools as well as the required commodities and materials.
- d) Providing heating, lighting, electricity and water, including the necessary connections.
- e) Providing the necessary dry and lockable rooms for storing the tools of repair personnel.
- f) Protecting the repair site and materials against detrimental external effects of any kind; cleaning the repair site.
- g) Providing suitable, theft-proof break rooms and work spaces (with heating and lighting as well as washing and bathroom facilities) and first aid supplies for the repair personnel.
- h) Providing the materials and carrying out all other actions necessary to make adjustments to the subject of repair work and to carry out testing as required by the contract.

(4) The technical assistance rendered by the customer shall ensure that the repair work can begin immediately following arrival of the repair personnel and can be performed without suffering any delays up to the point of the final acceptance inspection by the customer. Should any special plans or instructions from the contractor be required, it shall provide them to the customer promptly.

(5) If the customer is late in fulfilling its obligations, the contractor shall be entitled, but not obligated, to carry out the actions that the customer had been required to perform instead and at the customer's expense, having first announced that it will do so. In such an event, having given prior notice, the contractor shall be entitled to terminate the repair work. The statutory rights and entitlements of the contractor shall otherwise remain unaffected.

§6. Transportation and insurance for repairs on the contractor's premises

(1) Unless otherwise agreed in writing, any transportation of the subject of repair work in either direction conducted upon the customer's request – including any packing and loading – shall be carried out at its expense. Otherwise, the customer shall deliver the subject of repair work to the contractor at its own expense and collect it again once the repairs have been performed on the contractor's premises.

(2) The customer shall bear the risks associated with transportation.

(3) Upon request from the customer, transportation away from and, if applicable, to its premises shall be insured against insurable transportation risks, such as theft, breakage and fire, at its own expense.

(4) There shall be no insurance cover in place during repairs on the contractor's premises. The customer shall ensure that the existing insurance cover for the subject of repair work, such as that insurance for damage caused by fire, water, storms and machine breakage, is maintained. Insurance cover for these risks may be obtained only upon express request from and at the expense of the customer.

(5) If the customer is late in collecting the subject of repair work, the contractor may charge warehousing fees for storage on its premises. The subject of repair work may also be stored elsewhere at the contractor's discretion. The costs and risk associated with this storage shall be at the customer's expense.

§7. Repair period

(1) The information concerning the repair periods is based on estimates and is therefore non-binding.

(2) The customer may request an agreement to conduct repairs within a binding defined period, which must be designated as such in writing, only if the extent of the work is clearly defined.

(3) The binding repair period shall be considered adhered to if the subject of repair work is ready for acceptance by the customer and, in the event that a test is required by the contract, ready for that test before the repair period expires.

(4) If additional or supplementary orders are placed subsequently or if additional repair work is needed, the agreed repair period shall be extended accordingly.

(5) If repair work is delayed as a result of labor disputes, particularly strikes or lockouts, or of circumstances beyond the control of the contractor, the repair period shall be extended accordingly insofar as such hindrances demonstrably have a significant impact on completion of the repair work. This shall also apply if such circumstances arise after the contractor has already fallen behind schedule.

(6) Should the customer verifiably suffer damages as a result of a delay on the part of the contractor, it shall be entitled, to the exclusion of any further claims, to demand compensation for delay; this shall amount to 0.5% for every full week of delay, although shall not exceed in total 5% of the repair price for the part of the object to be repaired by the contractor that cannot be used on time due to the delay.

(7) If the customer grants the delayed contractor an appropriate grace period with an express declaration that it will refuse to accept the repair work if this period is allowed to elapse and if the grace period is not adhered to, the customer shall be entitled to terminate the contract. No further entitlements shall apply, notwithstanding section 11.3.

§8. Final acceptance

(1) The customer shall be obligated to accept the repair work as soon as it has been notified of its completion and any testing of the subject of repair work required by the contract has taken place. If the repair work proves not to meet the requirements of the contract, the contractor shall be obligated to rectify the defect. This shall not apply if the defect is immaterial to the interests of the customer or is due to circumstances for which the customer is responsible. If there is an immaterial defect, the customer shall not be entitled to refuse final acceptance if the contractor expressly acknowledges its obligation to rectify the defect.

(2) If final acceptance should be delayed through no fault of the contractor, final acceptance shall be considered to have taken place once two weeks have elapsed following notification of the completion of repair work.

(3) Final acceptance shall remove the contractor's liability for any defects found, provided that the customer has not reserved the right to assert claims regarding a specific defect.

§9. Retention of title, extended lien

(1) The contractor shall retain title to all accessories, spare parts and replacement appliances used until all payments from the repair contract have been received. It shall be possible to reach more extensive collateral agreements.

(2) Owing to its receivables arising from the repair contract, the contractor shall be entitled to an extended lien on the subject of repair work, which belongs to the customer but has come into the contractor's possession as a result of the contract. The lien may also be exercised as a result of receivables from work performed previously, spare part deliveries and other services, insofar as they are related to the subject of repair work. The lien shall apply to other entitlements derived from the business relationship only if they are undisputed or legally.

§10. Warranty

(1) Following final acceptance of the repair work, the contractor shall be liable for defects in the repair work, also including the lack of expressly promised characteristics, that arise within six months of final acceptance, to the exclusion of all further claims on the part of the customer notwithstanding nos. 6 and 11, in such a way that it is required to rectify the defects. Upon identifying a defect, the customer shall notify the customer in writing without delay. Its right to claim for the defect shall lapse within one year of the date of final acceptance.

(2) The deadline for rectifying the defect shall be extended by the duration of the downtime of the subject of repair work resulting from the rectification work.

(3) The contractor shall not be liable if the defect is immaterial to the interests of the customer or is due to circumstances for which the customer is responsible. In particular, this shall apply with regard to parts provided by the customer.

(4) Any changes or repair work performed improperly by the customer or third parties without the prior approval of the contractor shall void the contractor's liability for the consequences. Only in urgent cases of risk to operational safety and to prevent excessive damage, in which case the contractor shall be informed immediately, or if the contractor is late in rectifying the defect shall the customer be entitled to rectify the defect itself or have it rectified by third parties and demand compensation from the contractor for the costs incurred.

(5) Of the direct costs arising from the rectification work, if the complaint proves justified, the contractor shall bear the costs of the replacement item, including shipping, and reasonable costs for removal and installation, as well as any costs for providing its fitters and support staff, if this is required and can justifiably be demanded in the particular case in question. Otherwise, the customer shall bear these costs.

(6) If the contractor allows an appropriate grace period granted to it for rectifying any defects to elapse without result through its own fault, the customer shall be entitled to demand a reduction in price. The customer's right to demand a reduction in price shall also apply in other cases of failure to rectify defects. Only if repair work is demonstrably of no interest to the customer despite the reduction may the customer terminate the contract, having first announced its intention to do so.

§11. Other liability on the part of the contractor, disclaimer

(1) If parts of the subject of repair work are damaged through the fault of the contractor, the contractor may opt either to repair or replace these at its own expense. Liability to pay damages shall be limited to the amount of the repair price agreed in the contract, provided that there is no malicious intent or gross negligence on the part of the contractor's owner or chief executive.

(2) If the customer is unable to use the subject of repair work in accordance with the contract through the fault of the contractor as a result of suggestions and advice provided before or after the contract was signed, as well as other secondary obligations arising from the contract, being implemented incorrectly or not being implemented at all, especially instructions for operating and maintaining the subject of repair work, the stipulations of sections 10 and 11, 1. and 3., shall apply accordingly to the exclusion of any further claims on the part of the customer.

(3) Other than those specified in these terms, the customer may not assert any claims for compensation, especially for damages, against the contractor, including claims for extracontractual activities or other rights arising from any detrimental effects associated with the repair work, irrespective of any legal basis. This disclaimer shall not apply in the event of malicious intent or gross negligence on the part of the contractor's owner or chief executive, death or personal injury or cases in which liability is attributed for personal injury or damage to personal property as a result of errors in repair work in accordance with product liability legislation. It shall also not apply if characteristics that were expressly promised are absent in the event that the promises to that effect had the specific purpose of protecting the customer against damages not arising from the subject of repair work itself. In the event of violation of a material contractual obligation that is essential to the nature of the contract, the fulfillment of which is a prerequisite for enabling the proper performance of the contract or the violation of which jeopardizes the purpose of the contract (cardinal obligation), the contractor shall be liable only for the damage that the provision that was breached intended to prevent in the amount set out when the contract was signed; if there are ordinary vicarious agents, this damage shall be limited to EUR 200,000 per claim, the total not exceeding EUR 500,000 or, if the limitation of liability is not reasonably proportionate to the risk typical of the contract, it shall be limited to the reasonably expected damage typical of the contract.

§12. on the part of the customer

If, during repair work outside the contractor's premises, the appliances or tools provided by the contractor at the repair site are damaged or lost through no fault of its own, the customer shall be obligated to provide compensation for the damages incurred as a result. This shall not apply to damage attributable to normal wear and tear.

§13. Privacy/confidentiality

The contractor notes that it will process the data received from the customer in accordance with the German Federal Data Protection Act and the General Data Protection Regulation. Personal data will also be stored by affiliates and companies executing the deliveries (Article 6 (1) sentence 1 (f) of the GDPR in conjunction with Recital 48).

§14. Venue, applicable law

(1) The law of the Federal Republic of Germany shall apply to these terms of service and all legal relationships between the customer and the contractor, to the exclusion of the United Nations Conventions on Contracts for the International Sale of Goods (CISG).

(2) If the customer is a merchant as defined by the German Commercial Code, a legal entity under public law or a special fund under public law, the court at the place of business of the contractor shall be the sole venue for all disputes arising from the contract. The contractor may also bring proceedings before the court responsible for its branch tasked with the repair work or the court responsible for the customer.