

## Terms of Service of PVA TePla Group\*

Unless otherwise agreed, service orders are subject to the following conditions for the repair and maintenance of machines and systems.

The following clauses are valid in addition to the terms of sales and delivery of the PVA TePla AG except as agreed otherwise in the confirmation of order.

### 1. Conclusion of contract, general information:

- 1.1 If a non-disputed written confirmation of order is present, then this is decisive for the content of the contract and the scope of the repairs. Collateral agreements and changes of the contract require written confirmation of the contractor.
- 1.2 If the object of repair is not delivered by the contractor, then the customer must inform the contractor of the existence of commercial industrial property rights with regard to the object, insofar that the contractor is not in default, the customer shall release the contractor from any possible third party claims from commercial industrial property rights.

### 2. Repairs that cannot be accomplished

- 2.1 The services rendered for the submission of an estimate of cost as well as additional expenditures incurring for which proof is to be provided of (debugging time = labour time) will be charged to the customer, if the repairs cannot be carried out by the contractor for reasons which are beyond the contractor's control, in particular because
  - the reported error does not occur during the inspection,
  - spare parts cannot be acquired,
  - the customer culpably fails to comply with the deadline agreed to,
  - contract is cancelled during implementation.
- 2.2 The object of repair must be returned to its original state only at the express request of the customer and for reimbursement of the costs, unless the work performed was not necessary.
- 2.3 In case of repairs that cannot be accomplished, the contractor shall not be liable for damages on the repair object, the breach of contractual accessory obligations or for damages that have not occurred on the repair object itself, irrespective of the legal grounds the customer quotes as reference. This limitation of liability does not apply in cases of intent or gross negligence of the owner or supervising employee of the contractor.

### 3. Cost information, cost recommendation

- 3.1 If possible, the customer will be informed of the estimated repair price at the time of contractual conclusion, otherwise the customer can set a cost limit.

- If the repair cannot be carried out at this cost or the contractor considers
  - additional work necessary during the repairs, then the contractor must obtain
  - the customer's consent if the costs indicated are exceeded by more than 15%.
- 3.2 If a cost recommendation with binding prices is desired prior to implementation of the repairs, then this is to be expressly requested by the customer. Such a cost recommendation is only binding if it has been made in writing and it is stated that it is binding.

### 4. Price and payment

- 4.1 The contractor is entitled to request appropriate advance payment at the time of conclusion of the contract.
- 4.2 For the calculation of the repairs, the prices for parts and material used, special services as well as prices for labour, travel and transport costs are each to be listed separately. If the repair is carried out as a result of a binding cost recommendation, then it is sufficient to make reference to the cost recommendation, whereby only deviations in the scope of performance are to be listed separately.
- 4.3 The value added tax will be calculated to the respectively valid amount and charged to the customer.
- 4.4 Any adjustment of the invoice on the part of the customer must be made in writing four weeks after receiving the invoice at the latest.
- 4.5 The payment is to be made at the time of acceptance and delivery or transmission of the invoice without deduction of a discount.
- 4.6 Withholding of payments or offsetting as a result of any counterclaims of the customer disputed by the contractor is not permitted.
- 4.7 The assignment of existing claims or other rights vis a vis the contractor is not permitted.

### 5. Cooperation and technical support of the customer for repairs outside of the plant of the contractor

- 5.1 The customer must assist the repair personnel at his own expense during repair work.
- 5.2 The customer must take special measures needed to protect against personal injury and property damage at the place of repair. He must also inform the repair supervisor about existing special safety guidelines insofar that these are relevant for the repair personnel. He will inform the contractor of violations made by the repair personnel of such safety guidelines. In case of severe violations,

the customer can refuse the offender access to the repair site after consulting with the repair supervisor.

- 5.3 The customer is obliged to provide technical support at his own expense especially with regard to the following:
    - a) Provision of suitable back staff needed in the amount required for the repairs and for the required amount of time, the back staff must follow the orders of the repair supervisor. The contractor assumes no liability for the back staff. If a defect or damages are made by the back staff as a result of instructions of the repair supervisor, then the regulations of Sections 10 and 11 apply, correspondingly.
    - b) Execution of all construction, bedding and scaffolding work including the procurement of the necessary building materials.
    - c) Provision of the necessary devices and heavy equipment as well as the necessary articles of daily use and materials.
    - d) Provision of heating, lighting, power, water incl. the necessary connections.
    - e) Provision of dry and lockable rooms needed for the repair personnel to store their tools
    - f) Protection of the repair site and materials against harmful influences of any kind. Cleaning of the repair site.
    - g) Provision of suitable lounges and work-rooms (with heating, lighting, bathroom and washing facilities) and first aid for the repair personnel.
    - h) Provision of materials and execution of all other actions that are necessary for the adjustment of the repair object and for the implementation of tests as planned in the contractual agreement.
  - 5.4 The technical support of the customer must guarantee that the repair work can be begun immediately after the repair personnel has arrived and carried out without delay up to acceptance by the customer. To the extent that special plans or instructions of the contractor are required, then the customer will make these available in good time.
  - 5.5 If the customer does not fulfil his obligations, then the contractor is entitled on notification, but in no way obliged, to carry out the actions for which the customer was responsible in the customer's place and at the customer's expense. In such cases the contractor is - following notification - entitled to abandon the repair work. For the rest, the legal rights and claims of the contractor remain unaffected.
- ### 6. Transport and insurance during repair work in the plant of the contractor
- 6.1 Unless otherwise agreed in writing, the customer will be invoiced for delivery

and pickup of the repair object carried out at his request, including any packing and loading, otherwise the repair object shall be delivered by the customer at his own expense to the contractor and after implementation of the repairs picked up again by the customer at the contractor..

- 6.2 The customer bears the transport risk.
  - 6.3 At the wish of the customer, the transport costs for delivery and if necessary for pickup will be insured against the insurable transport risks, e.g. theft, breakage, fire.
  - 6.4 No insurance protection exists during the repair time in the plant of the contractor. The customer is responsible for ensuring that the existing insurance protection continues to cover the repair object, e.g. with regard to fire, tap water, storm and machine breakage insurance during the repair time. Only at the express request of the customer and at his own expense can insurance protection be taken out for these risks.
  - 6.5 If the customer is in default of acceptance, then the contractor can charge storage fees for storing the object in his plant. The contractor can also store the repair object elsewhere at his discretion. Costs and risks of storage shall be borne by the customer.
- 7. Repair period**
- 7.1 The information on the repair periods are based on estimates and are therefore non-binding.
  - 7.2 The agreement of contractually binding repair work, which must be expressly described as being binding in writing, can only be requested by the customer if the scope of the work has been exactly determined.
  - 7.3 The binding repair period is considered kept if the repair object is available by the end of the period for customer acceptance or in the event of a planned test contractually agreed to for their execution.
  - 7.4 In case of additional and supplementary orders made at a later time or in case of additional necessary repair work, then the repair period agreed on will be extended correspondingly.
  - 7.5 If the repair work is delayed as a result of measures resulting from work disputes, in particular strike and lock-out as well as the occurrence of Acts of God which the contractor has no control of, then to the extent that it can be proven that such obstacles have a significant influence on the finishing of the repairs, an appropriate extension of the repair period shall be granted, this also applies if such conditions occur after the contractor is in default.
  - 7.6 If damages occur for the customer that are proven to be the result of the contractor's inability to keep the deadline, then the customer is entitled under exclusion of additional claims to demand default damages which amount to 0.5% for each full week of delay, however, a

maximum of 5% of the entire repair price for the respective part of the object to be repaired by the contractor that cannot be used on time as a result of the delay.

- 7.7 If the customer grants the contractor who is in default an appropriate period of grace with express declaration that after lapse of this period he will then refuse to accept the repair work, and if the subsequent period of grace is not kept, then the customer is entitled to withdraw from the contract. Additional claims do not exist – irrespective of 11.3.

**8. Acceptance**

- 8.1 The customer is obliged to accept the repair work as soon as he has been informed of their completion and as soon as any contractually planned test of the repair object has taken place. If the repair work does not comply to the contractual agreement, then the contractor is obliged to remedy any defects. This does not apply if the defects are non-essential for the interest of the customer or if they are based on a condition that can be attributed to the customer. If there is an insignificant defect present, then the customer may not refuse acceptance of the repair work if the contractor expressly acknowledges his obligation to remedy the defect.
- 8.2 If the acceptance is delayed without the contractor being at fault, then the acceptance is considered to have taken place two weeks after the repair work has been indicated as being complete.
- 8.3 With the acceptance of the repair work, the liability of the contractor is no longer applicable for obvious defects, if the customer has not asserted his right to reserve the right to claim for a certain defect.

**9. Retention of title, extended lien**

- 9.1 The contractor retains the title to all accessories, spare parts, exchangeable aggregates used until receipt of all payments from the repair contract. Additional security agreements can be made.
- 9.2 Due to his claims from the repair contract, the contractor is entitled to a lien on the repair object of the customer, which is now in his possession as a result of the contract. The lien can be asserted also for claims from work, spare part deliveries and other services previously carried out insofar as they are associated with the repair object. The right of lien only applies to other claims from the business relationship, if these are undisputed and legally binding.

**10. Guarantee**

- 10.1 After acceptance of the repair work, the contractor shall be liable for defects of the repair work also including the lack of expressly ensured properties that occur within six months after acceptance under exclusion of all other claims of the customer irrespective of No. 6 and 11 to the extent that he must remedy

the defect. The customer is to report determined defects immediately in writing to the contractor. His right to have the defect remedied is only valid for six months from the time of reporting the defect.

- 10.2 The deadline for the defect liability will be extended by the duration of the downtime of the repair object caused by the subsequent improvement work.
- 10.3 The contractor shall not be liable, if the defects are non-essential for the interest of the customer or if they are based on a condition that can be attributed to the customer. This especially applies with regard to parts supplied by the customer.
- 10.4 Faulty modifications or repair work performed, for example, on the part of the customer or a third party without prior consent of the contractor will cancel the liability of the contractor for the consequences resulting therefrom. Only in urgent cases of endangerment of the operational security and to avoid larger damages that are out of scale, whereby the contractor is to be immediately informed or if the contractor is in default in remedying the defect, the customer has the right to remedy the defect himself or have the defect remedied by a third party and to demand from the contractor compensation for the necessary costs.
- 10.5 The costs incurring directly as a result of the improvement shall be borne by the contractor insofar as the complaint is proven to be justifiable, the costs of the replacement piece including shipping and handling as well as the appropriate costs of dismantling and installation. Further, if this is justly in individual cases, then the costs shall be borne for the necessary hiring of service technicians and back staff. For the rest, the customer shall bear the costs.
- 10.6 If the contractor culpably allows an appropriate respite for the remedy of defects lapse without any results, then the customer has a right to reduction. The customer's right of reduction also exists in other cases of failure to remedy the defect. Only if the repair work is proven to be of no interest to the customer despite reduction, then the customer shall be entitled to withdraw from the contract after giving notice.

**11. Other liability of the contractor, exclusion of liability**

- 11.1 If parts of the repair object are culpably damaged by the contractor, then the contractor is to repair this or deliver a new at his sole discretion and at his own cost. The replacement obligation is limited to the amount of the contractual repair price insofar as no intent or gross negligence of the owner or the supervising employee of the contractor exists.
- 11.2 If the repair object of the customer cannot be used in accordance with the contract due to culpable action of the contractor as a result of failure to provide adequate consultation or recom-

mendations as well as other contractual accessory obligations or the provision of faulty consultation or recommendations - in particular with regard to the instructions for operation and maintenance of the repair object - then the regulations of Sections 10 and 11, 1. and 3. apply correspondingly under exclusion of additional claims.

11.3 The customer cannot assert any other additional claims against the contractor that exceed those agreed to in these provisions, especially claims for compensation, including those from extra contractual action or other rights due to any disadvantages associated with the repair work, irrespective of the legal grounds the customer quotes. This exclusion of liability does not apply in case of intent or gross negligence of the owner or supervising employee of the contractor or in cases of personal injury or property damage to privately used objects in cases of faulty repair work in accordance with the product liability act. This also does not apply to the absence of properties that have been expressly ensured if the assurance served to protect the customer from damages that did not occur on the repair object itself.

## **12. Replacement**

If the repair work is performed outside of the plant of the contractor and devices or tools of the contractor are damaged at the place of repair and this occurs at no fault of the contractor or if the devices or tools are lost at no fault of the contractor, then the customer is obligated to compensate these damages. This excludes damages occurring as a result of normal wear and tear.

## **13. Data Protection**

We wish to point out that we will process the data we receive from customers according to the provisions of the German Data Protection Act. Personal data will also be stored by company groups and delivery centres (Sections 28 and 33 of the German Data Protection Act).

## **14. Place of Jurisdiction, Applicable Law**

14.1. These Conditions of Service and all legal relationships between customers and the contractor are subject to the laws of the Federal Republic of Germany to the exclusion of the provisions of the UN Convention on the International Sale of Goods (CISG).

14.2. The court where the headquarters of the contractor are located shall have sole responsibility for all disputes arising from the contractual relationship if the customer is a general merchant, a legal entity under public law or a special fund under public law as defined by the German Commercial Code. The contractor can also call upon the court responsible for the branch of the contractor in charge of the repair work or the court responsible for the customer.