

General Terms and Conditions of Service and Repairs of Atlas Copco IAS GmbH

AG Mannheim, HRB 729840
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1. Scope

- 1.1 Any (work) instructions and contracts for works, in particular for consulting, service, repair and maintenance work as well as the entire legal relationship in this context with our customers shall be effected solely on the basis of the following General Terms and Conditions of Service and Repairs (our “**GTC Service**”). These GTC Service shall also apply to all future business transactions between the parties and no further reference to these GTC Service shall be required. They shall also apply if we do not expressly refer to them in future contracts, in particular, in situations in which we make deliveries or render services to customers without reservation while being aware of contrary or deviating conditions of the customer. We do not agree to any conflicting or deviating general conditions of the customer; we hereby expressly object to any general conditions of the customer.
- 1.2 Our GTC Service only apply vis-à-vis entrepreneurs, legal persons under public law or special funds under public law according to Sec. 310 para. 1 German Civil Code (*Bürgerliches Gesetzbuch, BGB*). They do not apply vis-a-vis consumers within the meaning of Sec. 13 BGB.

2. Offers, Contract Formation, Scope of Service, Replaced Parts

- 2.1 Our offers to customers are non-binding and shall be construed as an invitation to the customer to make an offer to enter into a contract with us. A contract shall not be formed until we confirm the order of the customer in writing or in electronic form or if we render the work.
- 2.2 The scope of our work and our contractual duties is defined in our written order confirmation or – if we render the work without reservation without sending an order confirmation – in the written order of the customer as supplemented by these GTC Service.
- 2.3 Unless expressly agreed otherwise (e.g. in our order confirmation), the quality of our work is exhaustively specified in our catalogues, brochures and other publications in writing or in images (e.g., descriptions, illustrations or drawings).
- 2.4 If used parts are removed when performing our work the customer is obligated to properly dispose of such used parts. Upon our request the customer shall prove the proper disposal.
- 2.5 Unless agreed otherwise, our offers are based exclusively on the specifications provided by the customer without any knowledge of the customer’s conditions on our side. The customer bears the risk that the goods offered on such basis do not reflect his wishes and needs.
- 2.6 The customer is responsible for compliance with special provisions applying to the customer’s business or import as well as export and for providing all necessary permits; the non-issuance of permits shall not affect the customer’s obligation to accept the delivered goods.
- 2.7 We do not accept contractual penalty clauses in the customer’s general terms and conditions of purchase. We expressly object to such penalty clauses.

3. Time of Performance

- 3.1. Agreed performance times shall only be considered as an approximate estimate, unless it was expressly agreed on a contract with an absolutely fixed date in writing.
- 3.2. Compliance with our performance obligations requires the timely and duly fulfilment of the customer’s obligations. If an advance payment is agreed or our performance requires the provision of documents, approvals or clearances by the customer, the performance time shall not start to run until the aforementioned requirements are fulfilled. We reserve the right to raise the defence of unperformed contract. Agreed advance

payments must be deposited into our bank account prior to the performance of our service. If such payments are not deposited into our bank account until the scheduled performance of our service, we reserve the right to withhold the performance.

- 3.3. If we still do not render our performance on time due to reasons attributed to us, the customer may upon the expiry of an appropriate grace period withdraw from the contract by written notice.
- 3.4. In the event of force majeure or other unforeseeable extraordinary circumstances not attributable to us, such as downtime due to fire, flood or similar factors, malfunctioning of production equipment or machines, failure on the part of our suppliers to fulfil delivery dates or to deliver at all, or interruptions in production due to lack of raw materials, adequate power supply or available staff, strike, lockout, difficulties in ensuring transportation, traffic congestion, or action by official bodies, we shall be entitled to delay our performance or fulfilment of the agreement for the duration of such circumstances, plus an adequate recovery period, if such circumstances prevent us, through no fault of our own, from fulfilling our obligations. This shall also apply if we are already in delay with our delivery. If our performance is thereby delayed by more than three months, both the customer and we shall be entitled to withdraw from the contract with regard to the delivery quantities or performances affected by the delay under exclusion of any claims for compensation of damages.

4. Collaboration Obligations of the Customer

- 4.1 The customer is obligated to collaborate to the extent this follows from the concluded contract or the obligations stipulated in the performance specification. Such collaboration obligations can also result from documents made available to the customer, in particular from our order confirmation and its annexes.
- 4.2 If we carry out an oil or fuel change (e.g. change of release agent) at the demand of the customer, the customer is obligated to duly dispose of the removed material at his own cost. This also applies for other waste resulting from our performances.
- 4.3 The customer further will provide the following to us free of charge:
 - a) any necessary transport and distribution services at the site of the customer (in particular regarding the receipt of deliveries, e.g. regarding parts and lubricants which we require for our work);
 - b) electricity necessary for the rendition of our services, necessary electricity used for lights and power as well as stands and hoisting devices;
 - c) access to adequate staff rooms (including restroom facilities) for our staff and third parties charged with the rendition of the work;
 - d) supply of materials for test applications in the form of component parts as well as a sufficient amount of adhesives/sealants for a recommissioning;
 - e) adequate production-free time and corresponding plant operators shall also be available.

5. Remuneration

- 5.1 The remuneration agreed on at the time of contract formation shall apply, in particular the remuneration specified in the order confirmation. In the case that the remuneration is not expressly determined, the remuneration according to our price list at the time of contract formation shall apply; or otherwise the usual remuneration.
- 5.2 All statements as to our remuneration, any prices, rental fees and other charges are stipulated in Euro and do not include VAT which is invoiced in addition in the respective statutory amount.
- 5.3 The remuneration is charged for the services stipulated in our order confirmation. Any excess or supplementary services will be charged extra.

6. Acceptance

- 6.1 The customer is obliged to accept our performed work if it is in all material respects defect free.

- 6.2 Unless agreed otherwise, the acceptance procedure shall be carried out without undue delay either on the agreed acceptance date or after we informed the customer that the acceptance procedure can be carried out. The parties will prepare an acceptance protocol and sign it (e.g. in the acceptance protocol, repairers' report or commissioning report). It shall also constitute acceptance if the customer does not accept the work within a reasonable period of time specified for him by us, although he is under a duty to do so.
- 6.3 It is further equivalent to acceptance if the work is materially completed as agreed and we may perceive the customer's conduct as approval of our work as being materially in line with what was agreed. This shall apply in particular if the customer subsequently uses the products which we repaired or serviced for a not insignificant amount of time for production purposes. The customer's receipt of the essentially defect-free work without any complaint shall also be deemed to constitute acceptance. The customer is deemed to have received the work without complaint if the customer does not notify us of any defect within 14 days of our completion of the work and – as the case may be – hand over or delivery of the work product to the customer. Any defect notices have to be in writing (letter or telefax). Our sales representatives and service staff are not entitled to receive defect notices.

7. Payment, Due Date, Right of Retention

- 7.1 Unless stated otherwise in the order confirmation, the remuneration shall be due and payable (without deduction) within 14 days of the date of the invoice and performance of our work. The deduction of a cash discount (*Skonto*) requires a written agreement. If the deduction of a cash discount is agreed, such deduction only is allowed if the customer has fulfilled in full all his other obligations towards us. Cheques will only be accepted if this is expressly agreed and then on account of performance (*zahlungshalber*) only without the possibility to deduct cash discounts.
- 7.2 If we render services for new customers or if circumstances become known, which put in question the customer's creditworthiness, we retain our right to demand advance payment. Partial performances will be charged after partial acceptance. If circumstances become known, which put in question the customer's creditworthiness, in particular in cases of return debit notes, delays in payment, unpaid cheques or if the customer ceases to make payments, or if other circumstance become known which are likely to significantly reduce the customer's solvency, we shall have the right to demand full payment of the outstanding claim, even if we already have accepted cheques. In the above mentioned cases, we shall be entitled to request prepayment or the provision of security for further deliveries, to claim damages after the expiry of an appropriate grace period or to withdraw from the contract.
- 7.3 The German statutory provisions concerning late payments shall apply. In case of default of payments, discounts, deductions of a cash discount and other benefits granted by us become obsolete; interest in the amount of 9 percentage points above the applicable base interest rate (Sec. 247 BGB) at this time will be charged. We shall retain our right to claim additional default damages.
- 7.4 The customer shall only be entitled to a right to set-off or to a right of retention if his claims have been finally established and are non-appealable or are uncontested or acknowledged by us. In addition, customer shall only be entitled to use his right of retention if his claim is based on the same contract as our claim. In case of defective services the customer's rights, in particular under sec. 8 of these GTC Service remain unaffected.
- 7.5 We shall be entitled to credit payments of the customer to the oldest claim irrespective of customer's differing payment instruction.

8. Customer's Claims in Case of Defects, Retention of Title

- 8.1 If and to the extent we install spare or replacement parts in connection with our services, the customer's warranty claims, our liability as well as the retention of title provisions of our General Terms and Conditions of Sale and Delivery in the version current at the time of contract formation shall apply; in particular sec. 8 through 11. Our General Terms and Conditions of Sale and Delivery can be reviewed and downloaded from our website at www.atlascopco.de/ias-agn or obtained from us free of charge.
- 8.2 If we are obliged to carry out warranty work, we will either at our discretion redeliver a defect free work product or repair the work product in question. If we are not prepared or able to perform such warranty work, in particular if the performance of such warranty work is delayed beyond a reasonable amount for reasons attributable to us, or if such warranty work fails for other reasons, the customer – at his choice – may either revoke the contract or reduce the remuneration. Remedy work shall be deemed to have failed after the third

remedy attempt, if nothing else can be inferred from the purpose of the contract. To the extent the customer has suffered damages from our defective work or has wasted efforts, our liability is limited as set out in sec. 9 below.

- 8.3 The right of the customer to demand remedy work is excluded if the work product at the time the customer demands the remedy work is not located at the original place of performance or the registered seat of the customer. The customer in such cases is limited to revoking the contract or to claim a reduction of the remuneration, unless he returns the work object at his risk and costs to the contractually agreed place of performance or to his registered seat so that we can carry out the remedy work there.
- 8.4 The customer shall not have warranty rights if the work only deviates insignificantly from the agreed quality, if the usability is only immaterially impeded, or in the case of defects which were caused by the customer's unsuitable or improper use, improper operation, regular wear and tear, or other careless treatment by the customer. If the work product is improperly altered or repaired by the customer or by third parties then we also shall not be liable for any resulting consequences.

9. Liability

- 9.1 We shall only be liable for damages or unnecessary expenses – for whatever legal reason – if the damages or the unnecessary expenses
- a) were caused by us or one of our vicarious agents through a culpable breach of an obligation, the fulfilment of which is essential for the carrying out of the contract and which the customer would ordinarily be entitled to depend upon (material contractual obligation), or
 - b) can be attributed to gross negligence or wilful infringement of a contractual obligation on our part or the part of our vicarious agents.
- 9.2 In deviation from sec. 9.1 a), we shall be liable for damages or unnecessary expenses that arise from providing consultation services and/or information that is not to be billed separately only in the event of wilful or gross negligent infringement of a contractual obligation, insofar as such an infringement does not constitute a defect as to quality with respect to the delivered goods according to Sec. 434 BGB.
- 9.3 If we are liable according to sec. 9.1 a) for the breach of a material contractual obligation without acting with gross negligence or wilfully, our liability shall be limited to the damage foreseeable at the time of contract formation and typical in such situation. The above limitation of liability according to sentence 1 shall apply *mutatis mutandis* to claims arising from gross negligent or wilful conduct of our employees or authorized representatives, insofar as such persons are not members of our board of directors or management staff.
- 9.4 In any cases of simple negligence our obligation to pay damages for property damages or resulting pecuniary losses shall be limited to the amount of EUR 1 million per incident and in total to the amount of EUR 2 million per calendar year, even if we are in breach of a material contractual obligation.
- 9.5 The above limitations of liability (sec. 9.1 to sec. 9.4) shall not apply if the liability in question is arising under the provisions of the Product Liability Act (*Produkthaftungsgesetz*), or if claims are brought against us for the injury of life, limb or health.
- 9.6 In the event our work product does not possess a guaranteed characteristic or feature, we shall only be liable for losses directly resulting from the failure to supply this specific characteristic or feature.
- 9.7 Any liability in excess of the liability stipulated in the aforementioned provisions of sec. 9.1 through sec. 9.6 is hereby expressly excluded, irrespective of the legal nature of the asserted claim.
- 9.8 As far as our liability is excluded or limited according to sec. 9.1 to 9.7, this limitation of liability shall also apply with regard to the personal liability of our employees, labourers, co-workers, representatives and vicarious agents.

10. Limitation of Actions

- 10.1 Claims of the customer relating to defects of our work product or to a breach of obligations including claims for damages and unnecessary expenses, are subject to a limitation period of one year as of the start of the statutory limitation period unless otherwise stipulated in sec. 10.2 and sec. 10.3.

- 10.2 If we provided consulting services and/or information not to be billed for separately constituting a breach of duty without delivering products in connection with the information or consulting services or the consulting services or information in breach of duty did not give rise to a defect as to quality of the delivered services, any claims of the customer against us shall be subject to a limitation period of one year running from the commencement date of the statutory limitation period. Claims of the customer against us arising from breach of contract, breach of pre-contractual or statutory obligations which do not constitute a defect as to quality of the rendered service, shall be subject to a limitation period of one year, running from the commencement date of the statutory limitation period. As far as the aforementioned breaches of contract constitute a defect as to quality according to Sec. 434 BGB arising in connection with the provision of consulting services or information of the delivered goods, the respective claims shall be subject to a limitation period according to sec. 10.1 and sec. 10.3.
- 10.3 The provisions of sec. 10.1 and sec. 10.2 do not apply to limitation periods of claims arising from injury to life, limb or health. They furthermore do not apply to the limitation period of the customer's claim relating to a fraudulent concealment of defects in the rendered services or the wilful or gross negligent breach of an obligation. The limitation period according to Sec. 438 para. 1 No. 2, 634a para. 1 No. 2 BGB (defects of buildings or construction materials) shall likewise remain unaffected by sec. 10.1 and sec. 10.2. In these cases the statutory limitation periods shall apply.

11. Intellectual property, Rights of Use and Confidentiality

- 11.1. We expressly reserve title and intellectual property rights with regard to offers, illustrations, drawings, standard sheets, data storage devices, plans, sketches and other work documents (including copies thereof) handed over by us to the customer. Upon our request and after an order is completely processed these items are to be returned to us entirely. Without our written consent these items must not be given to third parties or used for purposes other than the contractual purposes.
- 11.2. If software is delivered together with goods delivered by us, the customer shall obtain a non-exclusive, non-transferable and non-licensable right to use such software for business purposes. Apart from this, the customer is not entitled to hand over software, data or information to third parties.
- 11.3. The parties agree to keep confidential all items (e.g. software, documents, information) provided or become known to them prior or during the performance of the contract which are protected by the operation of law or which contain trade or business secrets or which are classified as confidential both during and beyond the term of the contract, unless such items become publicly known without a breach of the confidentiality obligation. The parties shall keep and secure these items in such a way that third parties are unable to access them.

12. Place of Performance, Jurisdiction, Applicable Law, Miscellaneous

- 12.1 The respective delivery place shall be the place of performance for deliveries and services of both parties irrespective of the method of pricing with the exception of customer's payments; the place of performance for payments of the customer shall be our accounting office.
- 12.2 The exclusive place of jurisdiction for all disputes with merchants (*Kaufleute*), legal persons under public law or special funds under public law, shall be the place of our registered office in Bretten, Germany. This shall also apply in case the customer does not have a general place of jurisdiction in Germany. However, we shall also be entitled to file a complaint at the statutory place of jurisdiction of the customer.
- 12.3 All legal relationships between us and the customer shall be governed by substantive German law in the way it applies to two German merchants; the provisions of the United Nation's Convention on Contracts for the International Sale of Goods shall be excluded.
- 12.4 The customer shall be liable for the compliance with the governing tax and custom provisions applicable to him. He shall indemnify us from all disadvantages which arise due to the violation of statutory provisions.
- 12.5 Should the contract or these GTC Service contain a gap, such gap shall be filled with a valid provision which the parties would have agreed on taking into account the economic goal of the contract and the purpose of these GTC Service, had they been aware of the gap.
- 12.6 **Note:** The customer is informed that we store data from the contractual relationship for the purpose of data processing in accordance with Sec. 28 of the German Data Protection Act (*Bundesdatenschutzgesetz*) for the

purpose of fulfilling the contractual relationship, and we reserve our right to transfer such data to third parties (e.g., insurance companies) if this is necessary for the fulfilment of the contract.
