

Terms and Conditions of Repair and Maintenance

The repair/maintenance services provided by Pfeiffer Vacuum are provided only on the terms and conditions stated herein. Pfeiffer Vacuum's performance of the repair/maintenance services is expressly made conditional on Customer's agreement to these Terms and Conditions of Repair and Maintenance ("Repair Terms"). These Repair Terms shall apply to both the present transaction as well as to any and all future business transactions involving the repair or maintenance of vacuum equipment and components ("Equipment"), unless otherwise agreed in writing by Pfeiffer Vacuum and Customer.

1. General

- a) All repair/maintenance quotations are subject to the terms and conditions stated herein as well as any additional terms and conditions that may appear within Pfeiffer Vacuum's quotation, proposal form or order acknowledgement. In the case of a conflict between the terms and conditions stated herein and those appearing within Pfeiffer Vacuum's quotation, proposal form or order acknowledgement, the terms and conditions on the face of Pfeiffer Vacuum's quotation, proposal form or order acknowledgement shall control.
- b) Unless otherwise specified in writing, all quotations for repair or maintenance services constitute offers, and are valid for and expire thirty (30) days after the date the quotation is issued or until revoked or revised, whichever is sooner; provided that budgetary quotations and estimates, indicated as such on the quotation, are for preliminary information only and shall neither constitute offers, nor impose any responsibility or liability upon Pfeiffer Vacuum. Unless otherwise stated by Pfeiffer Vacuum in writing, all prices quoted shall be exclusive of transportation, insurance, taxes, (including without limitation, any use tax, sales tax, excise or similar tax), license fees, customs fees, duties, and other charges related thereto, and Customer shall report and pay any and all such shipping charges, premiums, taxes, fees, duties and other charges related thereto in a timely manner, and shall hold Pfeiffer Vacuum harmless therefrom.
- c) All repair orders are subject to acceptance by Pfeiffer Vacuum, with acceptance becoming effective upon receipt by the Customer of Pfeiffer Vacuum's written Order Acknowledgment.
- d) Customer shall indemnify and hold Pfeiffer Vacuum harmless from and against any third party claims for infringement of intellectual property rights with respect to any Equipment (or any part thereof) which was not supplied or manufactured by Pfeiffer Vacuum.
- e) Pfeiffer Vacuum shall not receive or perform repair/maintenance on any Equipment unless and until Customer provides to Pfeiffer Vacuum a written statement identifying any contamination of the Equipment and components.

2. Pre Repair/Maintenance Assessments

- a) Prior to undertaking the repair/maintenance of Equipment, Pfeiffer Vacuum shall, for a fee based on time and materials plus expenses, assess the scope of the work to be performed in order to provide a cost estimate. Customer shall be invoiced for any and all work performed by Pfeiffer Vacuum in connection with the issuance of a cost estimate as well as for any and all further documented expenses (for example, troubleshooting time shall be deemed to be time worked). Customer shall be liable for such costs and expenses even if Customer rejects the repair/maintenance quotation, or if the repair/maintenance cannot be performed for reasons beyond the control of Pfeiffer Vacuum, including, but not limited to: (i) The fault indicated by Customer did not occur during the course of the inspection; (ii) replacement parts were unable to be procured; (iii) customer failed to keep the agreed date for repair/maintenance; or (iv) Pfeiffer Vacuum's services were terminated by Customer during the course of performance of the repair/maintenance.
- b) If the Equipment cannot be repaired/maintained, Pfeiffer Vacuum shall not be liable for damage to the Equipment, or for any loss of damage incurred by Customer as a result of Pfeiffer Vacuum's inability to repair the Equipment, except in the case of Pfeiffer Vacuum's gross negligence or willful misconduct.

3. Quotations and Cost Estimates

- a) Except as otherwise agreed in writing, repair/maintenance costs in estimates are estimates only, and not fixed prices. If the actual repair/maintenance cost exceeds the estimate, Customer shall pay the full amount of the repair/maintenance, provided, however, that Pfeiffer Vacuum shall notify Customer if projected costs will exceed the cost estimate by more than 15%, and, subject to the payment of accrued repair fees to date, Customer may direct Pfeiffer Vacuum to cease further work on any such repair/maintenance.
- b) Any Customer requests for a fixed price shall be made in writing prior to performance of the repair/maintenance. Pfeiffer Vacuum shall be entitled to make such investigation as is necessary to provide a fixed price for a repair, and the cost of any such investigation may be added to the price if it is reasonably determined by Pfeiffer Vacuum that the work performed in the investigations is usable in connection with the performance of said repair/maintenance.
- c) In the event that Pfeiffer Vacuum's cost of production of the goods increases by five percent (5%) or more for reasons beyond Pfeiffer Vacuum's control, Pfeiffer Vacuum may by written notice increase the price for such goods in an amount not to exceed the actual increase in Pfeiffer Vacuum's cost of production. In the event that Pfeiffer Vacuum increases its price by more than ten percent (10%), customer may cancel the relevant purchase order free of charge by giving written notice to Pfeiffer Vacuum's within two (2) weeks of customer's receipt of Pfeiffer Vacuum's notice. On written request, Pfeiffer Vacuum will furnish customer with documentation of the increased costs of production.

4. Prices and Payment

- a) As a condition of performing repair services Pfeiffer Vacuum may demand a reasonable advance payment from Customer at the time the repair order is accepted by Pfeiffer Vacuum.
- b) The prices for service performed, as well as the prices for travel and shipping costs, shall be indicated individually on the invoice, if applicable. If the repair/maintenance has been performed for a fixed price, no such detail is required, however, any pricing for services, etc. outside of the scope of service for such fixed price shall be provided in the detail required hereby.
- c) Any value added tax shall be added to the applicable invoice at the prevailing statutory rate.
- d) Payment shall be made upon acceptance and hand-over or transmittal of the invoice, without any deductions or discounts. Absent written agreement to the contrary, payment shall be in U.S. dollars. Past due balances shall be subject to a service charge of 1% per month (12% per annum), or the maximum rate allowed by law, whichever is less. Any such interest shall accrue and be payable in addition to any other rights and/or remedies available to Pfeiffer Vacuum under these Repair Terms or otherwise provided by law.
- e) Customer shall not be entitled to withhold payments or otherwise have any right of setoff against Pfeiffer Vacuum.

5. Customer's Involvement and Technical Assistance in Connection with Repair/Maintenance outside Pfeiffer Vacuum's Factory

- a) Customer shall provide assistance to Pfeiffer Vacuum's repair/maintenance personnel at Customer's expense in connection with performance of the repair/maintenance by Pfeiffer Vacuum, as provided in this Section 5.
- b) Customer shall undertake to provide clean and safe working conditions at the place of repair/maintenance in connection with the performance of the repair/maintenance services. Pfeiffer Vacuum and its personnel on the Customer premises shall comply with any existing safety rules and precautions applicable to Customer's premises
- c) Customer shall provide, at its expense:
 - I. Any and all required suitable assistance in the quantity and for the duration required for effecting the repair/maintenance. Any such Customer assistance shall comply with the instructions of Pfeiffer Vacuum's repair/maintenance leader. Pfeiffer Vacuum shall not assume any liability for said assistance;
 - II. Heat, illumination, operating power and water, including any and all required connections;
 - III. Any and all required dry and lockable rooms for storage of the tools of the repair/maintenance personnel;
 - IV. Protection of the place of repair/maintenance and the repair/maintenance materials against harmful influences of all types, as well as cleaning of the place of repair/maintenance;
 - V. Suitable, theft-proof break and work rooms (including heat, illumination, washing facilities, sanitary facilities) and first aid for the repair/maintenance personnel;
 - VI. Materials and all other actions required for operating the Equipment and for performance of any contractually required trials.
- d) The technical assistance provided by Customer shall assure that the repair/maintenance will allow the repair work to commence immediately upon arrival of Pfeiffer Vacuum's personnel and performed without delay until acceptance by Customer. Should any special plans or instructions from Pfeiffer Vacuum be required, Pfeiffer Vacuum shall provide Customer with reasonable advance notice of any special instructions or other items required in order for Pfeiffer Vacuum to carry out such repairs/maintenance.
- e) Customer's failure to satisfy its obligations under this Section 5 will result in an excused delay in performance by Pfeiffer Vacuum of its obligations hereunder.

6. Shipping and Insurance in Connection with Repair/Maintenance at Pfeiffer Vacuum's Factory

- a) Unless otherwise agreed in writing, shipment and return at Customer's request of the Equipment (including any off- and on-loading) shall be performed at Customer's sole cost. In all other cases, said Equipment shall be delivered to Pfeiffer Vacuum by Customer at its expense and picked up from Pfeiffer Vacuum by Customer at its expense following performance of the repair/maintenance. Customer shall inspect the Equipment pursuant to Section 6b of these Repair Terms, and acceptance of the Equipment shall release Pfeiffer Vacuum from liability under this Section 6a.
- b) Customer shall bear the risks of transportation, including risk of accidental loss or damage to the Equipment during transit.
- c) At the request of Customer, insurance coverage against insurable transport perils, such as theft, breakage, fire, etc., shall be taken out at Customer's expense for shipment to and, if applicable, return from the Pfeiffer Vacuum Service Center.
- d) Pfeiffer Vacuum shall not be under any obligation to insure the Equipment for loss or casualty during the period of repair/maintenance at the Pfeiffer Vacuum Service Center. Customer shall maintain its existing insurance coverage for the item to be repaired/maintained, (e.g. against all risks including fire, water damage, windstorm and mechanical breakage), and Customer shall, upon request, provide evidence of such coverage to Pfeiffer Vacuum. Insurance coverage for these perils may be obtained by Pfeiffer Vacuum only at Customer's express request and expense.
- e) Should Customer delay hand-over and pick up of the Equipment, Pfeiffer Vacuum shall be entitled to charge storage costs for storage at the Pfeiffer Vacuum Service Center. The Equipment may, at Pfeiffer Vacuum's option, be stored elsewhere, as Pfeiffer Vacuum may deem fit. The costs and risk of storage shall be borne by Customer. Equipment not claimed within sixty (60) days of written notification to the Customer shall be deemed abandoned by the Customer, and shall, automatically and without further action, become the property of Pfeiffer Vacuum and Pfeiffer Vacuum may dispose of and otherwise deal with such Equipment without liability to the Customer. Any proceeds (if any) realized from the disposal of such Equipment may be applied by Pfeiffer Vacuum to any outstanding invoices, and Customer shall remain liable for any amounts due after application of such proceeds. Notwithstanding the foregoing, Customer shall be liable to Pfeiffer Vacuum for any out-of-pocket costs and expenses related to such disposal.

7. Warranty and Acceptance

- a) For the applicable warranty period for the Equipment listed on the repair invoice, commencing on the date the Equipment was shipped from the Pfeiffer Vacuum Service Center to the Customer; Pfeiffer warrants that the repairs/maintenance shall have been performed in a good and workmanlike manner in accordance with customary industry standards. All parts provided as part of the repair shall be covered by Pfeiffer Vacuum's limited warranty set forth in Pfeiffer Vacuum's Terms and Conditions of Sale. Pfeiffer Vacuum shall have no liability for any defect in material or workmanship unless notice of such defect is received by Pfeiffer Vacuum within the applicable warranty period from the date of acceptance. Items consumed in normal use are not covered by this warranty. All warranty work or replacement or repair of parts shall be limited to items which Pfeiffer Vacuum reasonably determines are due to defects in materials or workmanship. All of Pfeiffer Vacuum's obligations under this warranty shall cease in the event of abuse, accident, alteration, misuse or neglect of the Equipment. In-warranty repaired or replacement parts are warranted only for the remaining unexpired portion of the original warranty period applicable to the repaired or replaced parts.
- b) All claims under warranty should include the Equipment serial number, the date of repair, and a full description of the circumstances giving rise to the claim. Before any Equipment is returned for repair and/or adjustment, Buyer must obtain written authorization from Pfeiffer Vacuum or its authorized representative for the return, and instructions as to how and where the Equipment should be returned or serviced at Customer's location. Any Equipment returned to Pfeiffer Vacuum for examination shall be sent prepaid via the means of transportation selected by the Customer. Pfeiffer Vacuum reserves the right to reject any warranty claim not promptly reported and any warranty claim on any Equipment that has been altered or has been returned by non-acceptable means of transportation. When Equipment is returned for examination and inspection, or for any other reason, Buyer shall be responsible for all damage resulting from improper packing or handling, and/or for loss in transit, notwithstanding any defect or non-conformity in the Equipment or the repair/maintenance services. In all cases, Pfeiffer Vacuum will be solely responsible for determining the actual cause and nature of failure or nonconformity, and Pfeiffer Vacuum's determination with regard thereto shall be final. Any Equipment returned to Pfeiffer Vacuum, for whatever reason, must be free from hazardous substances including, but not limited to, biologically contaminated and/or radioactive substances.
- c) If it is determined that Pfeiffer Vacuum's Equipment has been returned without cause and is not defective or the services rendered conform to this warranty, Customer will be notified and the Equipment returned at its expense; in addition, a charge for testing and examination may be made on Equipment so returned.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO,
 THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE
- d) Customer shall perform and complete all necessary inspections and acceptance procedure within two (2) calendar weeks of Pfeiffer's notification of completion of the repair/maintenance (the "Acceptance Period"). Customer shall be deemed to have accepted the work unless notice of defect or nonconformance has been provided to Pfeiffer within the Acceptance Period.
- e) Acceptance shall release Pfeiffer Vacuum from liability for any nonconformance or defects that Customer should have discovered during the course of the Acceptance Period.

8. Security Interest

Pfeiffer Vacuum reserves a purchase money security interest in all of the materials and parts supplied in connection with the repair, in the amount of the purchase price of such parts and materials. That interest will be satisfied once Buyer has made payment in full. A copy of this Term (along with any form of written acceptance) along with a UCC 1 Financing Statement may be filed on Pfeiffer Vacuum's behalf with appropriate state authorities at any time as a financing statement in order to protect Pfeiffer Vacuum's security interest. Customer further agrees to execute – in a timely manner – any necessary paperwork so as to perfect Pfeiffer Vacuum's security interest.

9. Defect Claims

- a) Subsequent to acceptance of the repair/maintenance, Pfeiffer Vacuum shall be liable for defects in the maintenance/repair only as provided in Section 7 above. Customer shall inform Pfeiffer Vacuum immediately in writing of any defects or nonconformance with the warranty provided herein.
- b) Pfeiffer Vacuum shall not be liable if said nonconformity or defect is immaterial to Customer's interests or is attributable to a circumstance for which Customer is responsible. This shall apply, in particular, with respect to parts or labor supplied by Customer.
- c) Pfeiffer Vacuum shall not be liable for the damages or other consequences resulting from modifications or repair work performed improperly by Customer or third parties without Pfeiffer Vacuum's prior consent.
- d) Pfeiffer Vacuum's entire liability and the Buyer's exclusive remedy for any nonconformity or defects in materials or workmanship shall be as set forth above under "Warranty". For any other claim related in any way to the subject matter of the repair or maintenance of the Equipment, Pfeiffer Vacuum's liability, regardless of the form of action, whether in contract or tort, including negligence, shall be limited to the dollar amount Pfeiffer Vacuum actually receives for the repair/maintenance services furnished, or to be furnished, or services rendered, as the case may be, which is the subject of claim or dispute.
- e) THIS SECTION 9 STATES THE EXCLUSIVE REMEDIES AND PROCEDURES FOR MAKING WARRANTY CLAIMS UNDER THESE REPAIR TERMS. IN NO EVENT WILL PFEIFFER VACUUM BE LIABLE FOR ANY DAMAGES CAUSED BY THE BUYER'S FAILURE TO FULFILL THE BUYER'S RESPONSIBILITIES, OR FOR LOST PROFITS OR OTHER CONSEQUENTIAL DAMAGES, EVEN IF PFEIFFER VACUUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM AGAINST THE BUYER BY ANY OTHER PARTY.

10. Customer's Obligation of Indemnification

If during the course of any repair/maintenance work being performed outside the Pfeiffer Vacuum factory, any equipment or tools provided by Pfeiffer Vacuum are damaged or lost at the place of repair/maintenance through no fault of Pfeiffer Vacuum due to Customer's failure to provide a safe and secure area to perform such work, Customer shall be obligated to indemnify Pfeiffer Vacuum for any such loss or damage.

11. Applicable Law; Venue

- a) This agreement and any other agreements between Pfeiffer Vacuum and Customer with respect to repair/maintenance services shall be governed by the laws of the State of New Hampshire, without regard to conflict of interest principles.
- b) Any action arising out of these Terms and any other agreement with respect to repair/maintenance services shall be brought in the State of New Hampshire, Merrimack County Superior Court – Business and Commercial Dispute Docket.