

# General Terms and Conditions of Repair and Maintenance of Vacuum Equipment and Components

## I. General; Coming into Force of Contract

- In the absence of any separate contractual agreements, Pfeiffer Vacuum, as the provider, shall perform repairs or maintenance to vacuum equipment and components solely on the basis of these General Terms and Conditions of Repair and Maintenance of Vacuum Equipment and Components. Under no circumstances shall any contradictory conditions of purchase of Customer become a part of said contract – and neither by acceptance of an order – even if not expressly refuted. These General Terms and Conditions of Repair and Maintenance of Vacuum Equipment and Components shall apply to both the present transaction as well as to any and all future business transactions.
- Should an uncontested written confirmation of order have been issued by Pfeiffer Vacuum, it shall be definitive with respect to the content of the contract and the scope of the repair/maintenance. Any collateral agreements or modifications to the contract shall require written confirmation by Pfeiffer Vacuum.
- Should the item to be repaired/maintained not have been supplied by Pfeiffer Vacuum, Customer shall advise as to existing intellectual property rights with respect to said item; Customer shall hold and save Pfeiffer Vacuum harmless against any claims by third parties in connection with intellectual property rights to the extent that Pfeiffer Vacuum shall not be culpable.
- Pfeiffer Vacuum shall not perform repair/maintenance until such time as Customer has supplied to it a written statement relating to any contamination of the vacuum equipment and components. An appropriate form is enclosed with these General Terms and Conditions of Repair and Maintenance of Vacuum Equipment and Components.

## II. Unperformable Repair/Maintenance

- 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 (troubleshooting time shall be deemed to be time worked) should the repair/maintenance be unable to be performed for reasons beyond the control of Pfeiffer Vacuum, in particular because:
  - The fault indicated by Customer did not occur during the course of the inspection
  - Replacement parts were unable to be procured
  - Customer failed to keep the agreed date for repair/maintenance
  - The contract was terminated during the course of performance of the repair/maintenance
- The item to be repaired/maintained shall only be restored to its original condition at Customer's express wish and against reimbursement of costs, unless the performed work shall not have been necessary.
- Should repair/maintenance have been unable to be performed, Pfeiffer Vacuum shall not be liable for damage to the item to be repaired/maintained, for any breaches of subsidiary contractual obligations or for damages not incurred by the item to be repaired/maintained, itself, regardless of the legal grounds that may be asserted by Customer. Said exclusion of liability shall not apply in the case of gross negligence on the part of the owner or executives of Pfeiffer Vacuum or in the event of culpable infringement of major contractual obligations. In the event of culpable infringement of major contractual obligations, Pfeiffer Vacuum shall – with the exception of instances of willful intent or gross negligence on the part of its owner or executives – be liable only for typical damage under the contract that could reasonably be foreseen.

## III. Indicated Costs; Cost Estimate

- Wherever possible, Customer shall be notified of the anticipated repair/maintenance price upon the contract being entered into; Customer shall otherwise be entitled to set cost ceilings. Should it not be possible for the repair/maintenance to be performed at said costs or should Pfeiffer Vacuum deem additional work to be necessary during the course of performance of said repair/maintenance, Customer's approval shall be obtained should the indicated costs be exceeded by more than 15%.
- Should Customer request a cost estimate with binding prices prior to performance of the repair/maintenance, Customer shall expressly request said cost estimate. Said cost estimate shall only be binding if submitted in writing and designated as being binding. Customer shall not be charged for any and all work performed in conjunction with submission of said cost estimate if said work can be utilized in connection with performance of said repair/maintenance.

## IV. Prices and Payment

- Pfeiffer Vacuum shall be entitled to demand a reasonable advance payment at the time the contract is entered into.
- In invoicing the repair/maintenance, the prices for parts, materials and extra services, as well as the prices for labor, travel and shipping costs, shall be indicated individually. Should the repair/maintenance have been performed on the basis of a binding cost estimate, it shall suffice for reference to be made to said cost estimate, with only variances in the scope of performance being indicated separately.
- Any value added tax shall additionally be invoiced to Customer at the prevailing statutory rate.
- Any adjustments to the invoice by Pfeiffer Vacuum or any complaints on the part of Customer shall be effected in writing no later than four weeks subsequent to receipt of said invoice.
- Payment shall be made upon acceptance and hand-over or transmittal of the invoice, without any deductions or discounts.
- Customer shall not be entitled to withhold payments or to set them off against any of its counterclaims that have been disputed by Pfeiffer Vacuum.

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

- Customer shall provide assistance to the repair/maintenance personnel at its expense in connection with performance of the repair/maintenance.
- Customer shall undertake any and all special measures at the place of repair/maintenance that may be needed for the protection of people and property. Customer shall inform Pfeiffer Vacuum in writing of any existing special safety precautions insofar as they are of significance for Pfeiffer Vacuum's personnel. Customer shall inform Pfeiffer Vacuum of any breaches of said safety precautions on the part of Pfeiffer Vacuum's personnel. In the event of serious breaches, Customer shall, in agreement with the repair/maintenance leader, be entitled to prohibit access to the place of repair/maintenance to the individual making said breaches.
- Customer shall be obligated to provide technical assistance at its expense, in particular in connection with:
  - Provision of any and all required, suitable helpers in the quantity and for the duration required for effecting the repair/maintenance; said helpers shall comply with the instructions of the repair/maintenance leader. Pfeiffer Vacuum shall not assume any liability for said helpers. Should said helpers cause a defect or deficiency under the instructions of the repair/maintenance leader, the provisions set forth in Points X and XI shall apply appropriately
  - Provision of heat, illumination, operating power and water, including any and all required connections
  - Provision of any and all required dry and lockable rooms for storage of the tools of the repair/maintenance personnel
  - 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
  - Provision of suitable, theft-proof break and work rooms (including heat, illumination, washing facilities, sanitary facilities) and first aid for the repair/maintenance personnel
  - Provision of materials and undertaking of any and all other actions required for regulating the item to be repaired/maintained and for performance of any contractually required trials
- The technical assistance provided by Customer shall assure that the repair/maintenance will be able to be commenced 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 said items to Customer sufficiently in advance.
- Should Customer fail to satisfy its obligations, Pfeiffer Vacuum shall be entitled, however not obligated, to perform in Customer's stead and at Customer's expense the actions for which Customer is responsible after having first stipulated a term for compliance. Pfeiffer Vacuum's statutory rights and requirements shall otherwise remain unaffected thereby.

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

- Unless otherwise agreed in writing, shipment and return at Customer's request of the item to be repaired/maintained – including any off- and on-loading – shall be performed for Customer's account; otherwise, said item to be repaired/maintained shall be delivered to Pfeiffer Vacuum by Customer at its expense and picked up from Pfeiffer Vacuum by Customer again following performance of the repair/maintenance.
- Customer shall bear the risks of transportation.
- 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 factory.
- There shall be no insurance coverage in force during the period of repair/maintenance at the Pfeiffer Vacuum factory. Customer shall maintain its existing insurance coverage for the item to be repaired/maintained, e.g. against fire, pipe water damage, windstorm and mechanical breakage. Insurance coverage for these perils shall be obtained only at Customer's express request and expense.
- Should Customer delay hand-over, Pfeiffer Vacuum shall be entitled to charge storage costs for storage at the Pfeiffer Vacuum factory. The item to be repaired/maintained shall also be able to be stored elsewhere, as Pfeiffer Vacuum may deem fit. The costs and risk of storage shall be borne by Customer.

## VII. Repair/Maintenance Term

- Statements relating to repair/maintenance terms shall be based upon estimates and shall therefore not be definitive.
- Customer shall not be entitled to demand the agreement of a binding repair/maintenance term, which shall be indicated in writing as being binding, until the scope of the work shall have been able to be precisely ascertained.
- Said binding repair/maintenance term shall be deemed to have been satisfied if the item to be repaired/maintained is ready to be handed over to Customer, or at the time a contractually stipulated trial is ready to be performed.
- In the event of subsequently placed additional or extension orders, or in the event of any necessary additional repair/maintenance work, the agreed term shall be extended accordingly.
- Should said repair/maintenance be delayed in connection with labor disputes, in particular strikes or lock-outs, or as a result of circumstances beyond the control of Pfeiffer Vacuum, said repair/maintenance term shall be appropriately extended if said hindrances are documented to have a significant influence upon completion of the repair/maintenance; the same shall also apply if said circumstances occur during the course of an existing delay.
- Should Customer incur damage as a result of delay by Pfeiffer Vacuum, Customer shall be entitled to demand liquidated damages. Said liquidated damages shall amount to 0.5% of the repair/maintenance price per full week of delay, however not more than 5% of the repair/maintenance price for that portion of the item to be repaired/maintained that cannot be utilized in a timely fashion as a result of said delay. Should Customer grant the provider in delay an adequate term for performance, Customer shall be entitled to withdraw from the contract within the framework of statutory provisions if said adequate term has not been satisfied – with due regard to statutory exceptions. At the demand of Pfeiffer Vacuum, Customer shall agree to stipulate within an adequate term whether it intends to exercise its right to withdraw from the contract.  
No further claims shall exist – without prejudice to Point XI, No. 3.

## VIII. Acceptance

- Customer shall be required to conduct acceptance of the repair/maintenance work as soon as it has been notified of completion and any contractually agreed trials of the item to be repaired/maintained have been performed. Should said repair/maintenance prove to not be in conformity with the contract, Pfeiffer Vacuum shall be obligated to remedy said defect. However this shall not apply if said defect is immaterial to Customer's interests or is attributable to circumstances for which Customer is responsible. Customer shall not be entitled to refuse acceptance should an immaterial defect exist.
- Should acceptance be delayed through no fault of Pfeiffer Vacuum, said acceptance shall be deemed to have been effected two weeks subsequent to notification of completion of the repair/maintenance.
- Acceptance shall release Pfeiffer Vacuum from liability for recognizable defects unless Customer has reserved the right to subsequently assert a complaint for a specific defect.

## IX. Retention of Title; Extended Right of Lien

- Pfeiffer Vacuum shall retain title to any and all accessories, parts or exchange equipment until any and all payments arising from the repair/maintenance contract have been received. It shall be possible to enter into more far reaching agreements on collateral.
- Under its entitlements arising from the repair/maintenance contract, Pfeiffer Vacuum shall have a right of lien against Customer's item to be repaired/maintained which came into its possession under said contract. Said right of lien shall also be able to be asserted for claims arising from previously performed work, parts deliveries or other performances, provided that they are effected in connection with the item to be repaired/maintained. Said right of lien shall only apply to other entitlements arising from the business relationship to the extent that said entitlements are undisputed or legally final.

## X. Defect Claims

- Subsequent to acceptance of the repair/maintenance, Pfeiffer Vacuum shall be liable for defects in the maintenance/repair which shall occur within 12 months subsequent to acceptance, to the exclusion of any and all other claims by Customer, notwithstanding Point X, No. 5, and Point XI, in such a manner that Pfeiffer Vacuum shall remedy said defects. Customer shall inform Pfeiffer Vacuum immediately in writing of any defects ascertained.
- Pfeiffer Vacuum shall not be liable if said 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 supplied by Customer.
- Pfeiffer Vacuum shall not be liable for the consequences resulting from modifications or repair work performed improperly by Customer or third parties without Pfeiffer Vacuum's prior consent. Only in urgent cases endangering operational safety or to prevent unreasonably high damages, whereby Pfeiffer Vacuum shall be notified immediately, or if Pfeiffer Vacuum has allowed a reasonable term set by Customer for rectification of said defect to expire, shall Customer have the right to remedy said defect itself or to have it remedied by third parties, and to demand restitution from Pfeiffer Vacuum for the necessary expenses incurred in connection therewith.
- Of the costs resulting from rectification of said defect, Pfeiffer Vacuum – should said complaint prove to be legitimate – shall bear the costs of the replacement item, including shipping as well as the reasonable costs associated with removal and re-installation, as well as the costs of any required provision of Pfeiffer Vacuum filters and helpers which may equitably be deemed to have been necessary on the basis of the individual case in question.
- With due consideration being given to statutory exceptions, Customer shall have the right to a reduction of the repair/maintenance price should Pfeiffer Vacuum allow an appropriate term to rectify said defect elapse. Customer shall also be entitled to the right of reduction of the contractual price in other cases of failure to rectify defects. Only if said repair/maintenance shall be evidenced to not be of interest to Customer – in spite of said reduction – shall Customer be entitled to withdraw from the contract.

## XI. Provider's Liability; Exclusion of Liability

- Should through the fault of Pfeiffer Vacuum components of the item to be repaired/maintained become damaged, Pfeiffer Vacuum shall at its option and at its own expense repair or re-supply said components. Said replacement obligation shall be limited to the amount of the contractual repair/maintenance price. Point XI, No. 3, shall otherwise apply correspondingly.
- Should through the fault of Pfeiffer Vacuum the item to be repaired/maintained not be able to be employed in the contractual manner as a result of non-execution or faulty execution of suggestions and advice, as well as other contractual subsidiary obligations – in particular operating or maintenance instructions – provided prior or subsequent to entering into the contract, the provisions set forth in Points X and XI, Nos. 1 and 3, shall apply accordingly, to the exclusion of any and all further claims by Customer.
- In the case of damages that are not incurred on the item to be repaired/maintained, itself, Pfeiffer Vacuum shall be liable – for whatever legal reasons – only
  - In the event of willful intent
  - In the event of gross negligence on the part of its owner or executives
  - In the event of culpable injury to life, limb or health
  - In the event of defects or deficiencies that Pfeiffer Vacuum has maliciously concealed
  - Within the framework of an assured warranty
  - To the extent liability exists under the German Product Liability Act for personal injury or property damage to privately utilized items

In the event of a culpable infringement of major contractual obligations, Pfeiffer Vacuum shall be also liable in the case of gross negligence on the part of non-executive employees and in the case of minor negligence, however in the latter case limited to typical damage under the contract that could reasonably be foreseen.

No further entitlements shall exist.

## XII. Statute of Limitations

Any and all claims on the part of Customer – regardless of the legal grounds therefor – shall be subject to a statute of limitations of 12 months. Said term shall not recommence for spare or replacement parts supplied within this term; the original warranty term for the item to be repaired/maintained shall instead continue to be definitive.

Claims for indemnification pursuant to Points XI, 3a) - d) and f), shall be subject to the statutory terms. Said statutory terms shall also apply in the event that Pfeiffer Vacuum performs repair/maintenance work to a structure and is the cause of its defectiveness.

## XIII. Customer's Obligation of Indemnification

Should during the course of the repair/maintenance work outside the Pfeiffer Vacuum factory, any equipment or tools provided by Pfeiffer Vacuum be damaged or lost at the place of repair/maintenance through no fault of Pfeiffer Vacuum, Customer shall be obligated to provide indemnification for said damage. Damage attributable to normal wear and tear shall not be taken into consideration in this regard.

## XIV. Applicable Law; Venue

- Any and all legal relationships between Pfeiffer Vacuum and Customer shall be subject exclusively to the pertinent laws of the Federal Republic of Germany pertaining to the legal relationships between domestic parties.
- The venue shall be the court having jurisdiction for Pfeiffer Vacuum's domicile. However Pfeiffer Vacuum shall also be entitled to bring action at Customer's primary domicile.