

General Terms and Conditions for Service and Spare Parts

VULKAN

[VULKAN Kupplungs- und Getriebebau GmbH & Co. KG] (hereinafter referred to as "VULKAN")
Heerstraße 66 | 44653 Herne | Germany

SECTION 1 APPLICATION OF THE SERVICE CONDITIONS

1. The provisions and requirements set out in the respective order confirmation from VULKAN as well as the following General Terms and Conditions for Service and Spare Parts (hereinafter referred to as the "General Service Conditions") shall apply exclusively to all current and future services within the meaning of section 1.2 below, both in national and in international business transactions, even if these General Service Conditions are not expressly referred to in future contracts.
2. VULKAN's services include: advisory services, inspections, repairs, servicing and other, similar services.
3. Any terms, in particular, purchasing conditions of the customer, that conflict with, supplement or deviate from these General Service Conditions shall only become part of the contract if expressly agreed in writing. These General Service Conditions shall also apply if VULKAN provides services without reservations whilst being aware of conflicting or deviating terms and conditions.
4. Any master agreements entered into between the parties shall take precedence. They shall be supplemented by these General Service Conditions unless special rules have been agreed.

SECTION 2 FORMATION AND FORM OF SERVICE CONTRACTS

1. All offers and cost estimates from VULKAN are subject to change and are non-binding unless they are expressly designated as binding. This written form requirement can only be waived by written agreement.
2. Decisive for the time and date or period set for the provision of the services, the type and scope of the services and the respective price shall be what is set out in the written order confirmation, if issued, from VULKAN.
3. All service contracts and any guarantees must be confirmed by VULKAN in writing to be valid. This written form requirement can only be waived by written agreement.
4. A contract regarding the provision of services is only formed upon receipt of an order confirmation from VULKAN, or when VULKAN provides the services ordered.

SECTION 3 PRICES AND PAYMENT

1. All services shall be provided at the prices and on the terms set out in the order confirmation from VULKAN. The prices stated in the order confirmation shall be binding. VAT shall be added at the rate applicable on the invoice date.
2. Except to the extent otherwise agreed in writing, all invoices from VULKAN shall be payable within 30 days without any deductions. A payment shall be deemed made as soon as VULKAN can dispose of the amount.
3. In the event of late payment, a reasonable rate of default interest, but at least the rate customary in banking or, at VULKAN's option, the statutory rate (Sections 288, 247 German Civil Code (BGB)), shall be payable. VULKAN reserves the right to assert further claims for damages. If VULKAN decides to accept bills of exchange, such bills shall only be accepted on account of performance and not in lieu of performance. VULKAN may, at any time, revoke the respite it has granted by accepting a bill of exchange and demand immediate payment. If bills of exchange are accepted, the bank's discount and collection charges shall be calculated from the expiry date of the invoice and shall be payable immediately in cash.
4. Any counterclaims on the part of the customer shall only entitle the customer to reduce VULKAN's claims by the amount of the customer's counterclaims (set-off) or assert a right to retain if these counterclaims have been established in a judgment that cannot be appealed against or are undisputed. Furthermore, the customer may only assert a right to retain if its counterclaim is based on the same contractual relationship.
5. VULKAN shall be entitled to provide any outstanding services only in return for payment in advance, or upon the provision of security, if circumstances become known after the contract has been entered into which are suitable to significantly reduce the customer's creditworthiness and which jeopardise payment by the customer of VULKAN's outstanding claims under the respective contract. This shall apply accordingly if the customer refuses and/or fails to pay any outstanding claims of VULKAN even though there are no undisputed objections or defences against VULKAN's claims or any objections or defences which have been established in a judgment that cannot be appealed against.
6. In deviation from Section 195 German Civil Code (BGB), VULKAN's claims for payment of the remuneration shall become time-barred after five years.

SECTION 4 WARRANTY

For any defects in services within the meaning of section 1.2 above, except advisory services, which have been properly and timely reported, VULKAN warrants to the exclusion of any other claims, without prejudice to section 5 below, as follows:

1. VULKAN warrants that the services will always be provided in accordance with the current state of technology. This shall also include any spare parts installed. The warranty period shall be one year from the commencement of the statutory limitation period. The same shall apply to spare parts, where the warranty period shall commence upon termination of the provision of the services.

2. All services that turn out to be defective as a result of a circumstance which existed at the time the risk passed to the customer shall be rectified or, at the option of VULKAN, be replaced free of charge. Any parts replaced shall become the property of VULKAN.
3. The quality of the services shall be determined exclusively by the information about the quality set out in the contract. Public statements, promotional statements or advertisements from the manufacturer or third parties shall not constitute any additional contractual information about the quality.
4. The customer's rights arising from defects shall be contingent upon the customer performing its obligations to inspect and give notice of defects according to Sections 377, 381 German Commercial Code (HGB), applied analogously, in particular, upon the customer inspecting the repaired item without undue delay upon receipt and giving VULKAN without undue delay written notice of any obvious defects and of any defects that could have been identified during such inspection. Hidden defects must be notified to VULKAN by the customer in writing without undue delay after these defects have been discovered. A notice shall be deemed given without undue delay if it is given within 8 working days; this deadline is met if VULKAN receives the notice before the expiry of the aforesaid period. If the customer fails to carry out a proper inspection and/or to give notice of defects, VULKAN shall not be liable for the defect. When giving VULKAN notice of defects, the customer must provide a written description of the defects. The customer shall bear the burden of proof in relation to all the requirements that need to be met in order for a claim to exist, in particular, the defect itself, the time of discovery of the defect and timely notice of the defect.
5. A claim for rectification or replacement shall not exist in the case of negligible deviations or deviations that the customer can reasonably be expected to tolerate.
6. Upon agreement with VULKAN, the customer shall give VULKAN the time and opportunity needed to carry out all the rectifications and/or replacement deliveries deemed necessary by VULKAN; otherwise, VULKAN shall be released from liability for any consequences this may have. Only in case of urgency where operational safety is at risk and/or in order to prevent disproportionate damage, in which cases VULKAN must be notified immediately, shall the customer have the right to remedy the defect itself or have it remedied by a third party and demand to be reimbursed by VULKAN for all necessary expenses.
7. If any notice of defects is unjustified, VULKAN may demand to be reimbursed by the customer for the expenses incurred, unless the customer proves that the unjustified notice of defects was not due to any fault on the part of the customer.
8. As regards the direct costs incurred through the rectification and/or replacement delivery carried out by VULKAN, VULKAN shall bear the cost of the replacement part, including the cost of sending it to the original destination, to the extent that the notice of defects turns out to be justified. If the goods are no longer at the place of delivery, the customer shall bear all additional costs that VULKAN incurs as a result of this fact when remedying the defect unless the goods were relocated in accordance with their agreed use.
9. If the customer chooses to rescind the contract because of a defect in title and/or in quality after an attempt at rectification or replacement has failed, the customer shall not be additionally entitled to damages due to the defect. If the customer chooses to claim damages after the rectification or replacement has failed, the goods shall remain with the customer unless this would be unreasonable for the customer. In this case, the damages shall be limited to the difference between the purchase price and the value of the defective item. This shall not apply if VULKAN caused the breach of contract maliciously.
10. No warranty is given in particular in the following cases: unsuitable or improper use, faulty assembly, in particular, assembly not in line with the current state of technology, commissioning and/or improper use by the customer or third parties, natural wear and tear, incorrect or negligent treatment, no proper servicing, unsuitable operating equipment, defective construction work, unsuitable subsoil, chemical, electro-chemical or electrical influences, unless VULKAN is responsible for them. Furthermore, no warranty is given for consumables, normal wear and tear and damage resulting from inadequate storage of the products, or for adverse changes in the products which are not due to manufacturing defects but rather to natural ageing processes of the products.
11. As a rule, VULKAN will not provide the customer with any guarantees in the legal sense. This shall not affect any guarantees from other manufacturers.
12. Any modifications or repair work that have been improperly carried out by the customer, or by a third party commissioned by the customer, without prior approval from VULKAN shall lead to VULKAN being released from liability for any consequences that may result from these modifications or the repair work. In such cases, VULKAN's warranty obligation shall entirely cease to exist unless the customer proves that the modifications or the repair work cannot have caused the damage.

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SECTION 5 LIABILITY

1. VULKAN shall be liable without limitation, on whatever legal grounds, in the event of a breach of guarantee or death, bodily injury or damage to health. The same shall apply in the event of wilful misconduct or gross negligence on the part of any directors, board members or executive employees. To the extent permitted by law, all liability for persons employed by VULKAN in a non-executive function in the performance of its obligations (Section 278 German Civil Code (*BGB*)) shall be excluded.
2. In the event of simple negligence, VULKAN shall, subject to section 5.1 above, only be liable if cardinal obligations are breached. Cardinal obligations are obligations that need to be fulfilled as an indispensable prerequisite for the proper performance of the contract and the observance of which is generally relied upon – and can be relied upon – by the other party to the contract.
3. The customer guarantees that it is authorised to commission services within the meaning of section 1 above and must indemnify VULKAN against any claims asserted due to an infringement of third-party rights, in particular, property rights. The customer further guarantees that when services are performed on site, all statutory provisions regarding health and safety at work will be complied with, as well as that VULKAN's staff will be provided with work places that correspond to the current state of technology. The customer must indemnify VULKAN on the basis of the above obligations against any claims asserted against VULKAN by third parties (employees, public authorities responsible for health and safety at work).
4. In the event of force majeure, VULKAN shall be released from its obligation to perform without this giving rise to any liability whatsoever. Events of force majeure are natural disasters, war, pandemics and epidemics, acts of terrorism or acts of state, such as embargo orders, which prevent or would significantly impede the provision of the services. If the impediment is of a temporary nature only, all deadlines for performance that may have been agreed shall be extended appropriately; if the impediment lasts longer than one month, each of the two parties shall have the right to terminate the contract.

SECTION 6 INSPECTIONS

1. The scope of the inspection and, in particular, the item to be inspected shall be as set out in the order confirmation from VULKAN. As a rule, inspections include an examination of the condition of the item to be inspected, especially with regard to any damage; to the extent necessary, the item to be inspected will be disassembled for this purpose. As the course of an inspection cannot be foreseen, the stated dates or periods of performance, if any, shall always be non-binding.
2. Inspections shall be completed with an inspection report and recommendations as to the further course of action, which may also include further inspections or examinations, where necessary. Under no circumstances does an inspection include repair work.
3. The customer must provide the item to be inspected in a condition suitable for inspection, which generally means in a functional condition.
4. The customer must grant VULKAN unhindered access to the item to be inspected during normal working hours. A surcharge will generally be charged for inspection services rendered outside normal working hours.
5. The customer shall ensure that there are no risks to the safety and health of VULKAN's staff during the inspection. If there are any special safety regulations that need to be complied with by VULKAN's staff on site, VULKAN must be informed of these regulations before the work commences. The same shall apply to any special safety devices or other safety measures that are required.
6. If the customer fails to fulfil its prescribed responsibilities, VULKAN shall have the right to refuse to perform the inspection services or discontinue their performance; this shall not affect the customer's obligation to pay the remuneration.
7. The customer shall have sole responsibility for ensuring that the inspections are commissioned at the inspection intervals recommended by VULKAN, unless VULKAN has been instructed to carry out the servicing at certain intervals.

SECTION 7 REPAIRS AND OTHER WORK AND SERVICES

1. VULKAN shall submit a cost estimate to the customer on the basis of the inspection report. Any work identified and recommended shall only be performed after a separate order from the customer.
2. Deadlines for the performance of repairs shall only be deemed binding if expressly confirmed by VULKAN as fixed dates.
3. The decision as to whether to install parts shall be made on the basis of necessity, whereby the performance of the work may also make it necessary to replace parts other than those directly affected.
4. As a rule, the customer must ensure that the item to be repaired can be properly uncovered (where applicable, removed and/or transported), to the extent necessary. This shall include providing the assistance requested by VULKAN in any particular case, such as appropriately qualified auxiliary staff, the use of crane systems or scaffolding and the provision of consuma-

ble media, such as electricity or compressed air. Transportation shall be provided as instructed by VULKAN.

SECTION 8 INDUSTRIAL PROPERTY RIGHTS / COPYRIGHT / CONFIDENTIALITY

1. All rights to patents, utility models, designs, trademarks, get-up and other industrial property rights and copyright for the contractual items and services shall remain with the owners of the rights. In particular, this shall also apply to product designations, software and rights to names and signs.
2. The contracting parties undertake to treat as trade secrets all commercial and technical details that are not commonly known and of which they become aware through their business relationship.

SECTION 9 PLACE OF PERFORMANCE AND PLACE OF JURISDICTION

1. The governing law shall be the laws of the Federal Republic of Germany, without regard to the United Nations Convention on Contracts for the International Sale of Goods (CISG). The contractual language shall be German.
2. With contracting parties within the European Union, as it exists from time to time, it is agreed as follows: the place of performance for services within the meaning of section 1 above and the place of jurisdiction for all liabilities and disputes arising out of the contractual relationship shall be the principal place of business of VULKAN or, at the option of VULKAN, the place of its branch responsible for the provision of the services. Alternatively, VULKAN may also file a lawsuit at the customer's principal place of business or at the place of performance.
3. With contracting parties outside the European Union, as it exists from time to time, it is agreed as follows: all disputes arising out of or in connection with the respective contractual relationship on the basis of these General Service Conditions and its formation shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules.

SECTION 10 WRITTEN FORM

As a rule, any ancillary agreements shall only be valid if made in writing. Any changes and/or additions must be made in writing. This shall also apply to any waiver of the written form requirement itself.

SECTION 11 SEVERABILITY

1. Should any provision of these General Service Conditions be or become invalid, or should these General Service Conditions contain a gap, this shall not affect the validity of the remaining provisions.
2. In this case, the invalid provision shall be deemed replaced, or the gap filled, with a valid provision that comes closest to what the parties wanted.