

**Standard Terms of Business for Services and Spare Part Deliveries of HOPPECKE Service GmbH & Co. KG**

**1. General, scope of application and conclusion of contract**

1.1 The conditions set out below shall apply to all customer services provided by our company ("contractor") – also in the future – in connection with maintenance, repair, servicing and other services (altogether described below as "services" or "repairs", and for the supply of spare and replacement parts.

1.2 Our Standard Terms of Business shall apply exclusively. Divergent, conflicting or supplementary Standard Terms of Business of the customer shall be an integral part of the contract only if, and to the extent that, we have expressly agreed to their validity. This consent requirement shall apply in every case, for example even if we, with knowledge of the Standard Terms of Business of the customer, make delivery to him without reservation.

1.3 Individual agreements with the customer (including subsidiary agreements, supplements and amendments) made in a specific case shall in every case take precedence over these Standard Terms of Business. For the content of such agreements, a written contract or our written confirmation shall be decisive.

1.4 Our offers are subject to confirmation and non-binding. This shall also apply when we have handed over to the customer catalogues, technical documentation (e.g. drawings, plans, calculations, costings, references to DIN standards), other product descriptions or documents – also in electronic form), in which we retain rights of ownership and copyright.

The ordering of service provision by the customer shall be a binding offer of contract. If nothing else arises from the order, we shall be entitled to accept this offer of a contract within 14 days of its receipt by us.

The acceptance shall be made by written acknowledgement of the order from the contractor by letter, fax or email.

**2. Involvement of and technical assistance from the customer**

2.1 The customer shall provide, at his own cost and risk, support staff (in the number and for the time required) and, if agreed, tools, lifting gear with operating personnel, plus all materials and equipment required for smooth execution of the service. In addition, the customer shall provide the contractor's personnel with a dry, lockable room suitable for the safe keeping of delivered parts, tools, items of clothing and other property of the service personnel. The customer shall at his own cost make available to the contractor the necessary supplies and auxiliaries (e.g. electricity, water, compressed air, etc.) to carry out the service work ordered, and shall also meet the costs of disposal (e.g. effluent, etc.). The customer shall ensure that his support staff follow the instructions of the service manager; the contractor shall however accept no liability for the support staff. If the support staff cause damage due to instructions of the service manager, then the provisions of section 13 shall apply accordingly.

2.2 If tools or fixtures are damaged or go missing on site, then the customer shall be obliged to provide replacements, where the loss or damage is attributable to him.

2.3 The customer shall undertake to ensure the safety of the workplace, the observance of safety regulations and provision of proper working conditions, in particular for the cleaning of machines on which work is being carried out. He shall draw the attention of the contractor's personnel to special safety regulations in force on his premises.

2.4 Any necessary internal work approvals, access authority, passes, etc. shall be procured by the customer at his own expense.

2.5 Unless otherwise agreed in writing for a specific contract, the customer shall ensure on his own responsibility the observance of the responsibilities of the employer under the Accident Prevention Regulations "DGUV Vorschrift 3", in particular the duties laid down in sections 3 to 5 of these regulations.

**3. Prices and terms of payment**

3.1 The remuneration invoiced by the contractor, unless otherwise agreed in writing, shall be calculated on the basis of the schedule of prices and performance of the contractor for service work, as applicable at the time of conclusion of the contract, which the customer may obtain from the contractor at any time.

The contractor shall be entitled to invoice the customer for progress payments amounting to 90% of the value of the service work performed in each case.

3.2 Parts and materials used, and special services provided, also travel and accommodation costs for the service personnel of the contractor to be reimbursed, shall be shown separately in the invoice. If the service work has been carried out on the basis of a cost estimate, then reference to the cost estimate shall be sufficient, with special reference to any variations in the work performed.

3.3 In the absence of any special agreement in writing, prices shall apply ex works (Incoterms 2010) excluding packaging. Value-added tax at the relevant statutory rate shall be added to the prices.

3.4 If the customer becomes in arrears with his payment obligations, then he shall pay interest on arrears amounting to 8% p.a. above base rate.

3.5 In the absence of any special agreement, payment shall be made both for servicing and for spare part deliveries 10 days after receipt of invoice, without discount, to the bank account of the contractor.

3.6 The customer may only offset and/or assert a right of retention if his counterclaim is established as undisputed or legally valid.

**4. Repairs and service orders which cannot be implemented**

4.1 The fault diagnosis made to supply an offer and any further expense incurred, which shall be documented, shall also be charged to the customer if the repair services cannot be provided for reasons which are not the responsibility of the contractor, in particular because

- the alleged fault did not appear during examination
- the customer culpably missed the agreed service appointment
- the order was cancelled by the customer during implementation
- spare parts required could not be obtained within reasonable period of time
- the result of the fault diagnosis called for a different repair service (the charger, not the battery, was affected).

4.2 The repair/service item need only be restored to its original condition at the express request of the customer against reimbursement of costs, unless the work undertaken was not necessary.

**5. Travel expenses**

5.1 The travel expenses of service personnel include in addition to rail and air fares the costs of transport and travel insurance for personal luggage and tools which they carry or are sent to them, and will be charged to the customer according to expenditure incurred. This shall also include any costs for obtaining visas, and for prescribed medical and public health examinations, also

for duties, provision of security and other costs incurred in international travel.

5.2 Travel expenses shall also include the costs of travel home for service personnel, in accordance with their terms of employment, falling within the period of duty.

5.3 If a motor vehicle is used, car mileage/kilometres will be calculated according to the relevant current cost rates, which may be obtained from the contractor at any time. The means of conveyance used shall be a matter for the reasonable discretion of the contractor.

5.4. If the accommodation of the service personnel is more than 2 km from the site of work, daily travel costs and travelling time shall be counted as travel time.

## 6. Service costs

6.1 The contractor shall calculate travel time and the time spent by his service personnel on site on the basis of the price and performance schedule applicable at the time the contract was signed, and which may be obtained from the contractor at any time.

6.2 Interruptions to work and any extension of working time beyond an expressly agreed finishing time, which are not due to circumstances for which the contractor is responsible, shall be charged to the customer.

6.3 On completion of the service work, but no later than the end of each working week, the customer shall certify the hours spent, on the certificates of work presented by the service personnel.

## 7. Working time and delays involved in service activity

7.1 Details of repair/service times are based on estimates and shall therefore not be binding. The agreement of a binding repair/service time limit may be called for by the customer only when the extent of the work has been determined exactly, the spare or replacement parts likely to be required are available on the customer's premises or can be provided by him promptly, agreement has been reached on the extent of the customer's involvement in the conduct of the service work, and any necessary official approvals have been obtained by the customer. The binding repair/service time shall commence on the date on which, in the joint opinion of the customer and the contractor, the above preconditions are satisfied, the contractor has free access to the site of the repair/service work, the start of the repair/service work has been cleared by the customer, and in addition a protocol has been drawn up specifying the date of the start of the repair or service work, and has been signed by the customer and the contractor.

7.2 In the event of additional and extension orders placed by the customer or additional repair/service work being necessary, the repair/service time shall be extended accordingly.

7.3 The binding repair/service time limit is maintained when, on its expiry, the repair/service item is ready for acceptance by the customer or, in the case of a contractually provided trial, for its performance.

7.4 If any failure to observe the binding repair/service time limit is due to force majeure, industrial disputes, or other events lying outside the sphere of influence of the contractor, then the repair/service time limit shall be extended accordingly.

7.5 If the customer sets the contractor after the due date – taking into account the statutory exceptions – a reasonable time limit for performance, and if this deadline is not maintained, then the customer shall be entitled to withdrawal, within the framework of the statutory provisions. He shall be obliged, at the request of the contractor, to state within a reasonable time whether or not he intends to make use of his right of withdrawal.

Other claims of the customer on account of delayed performance shall be determined solely in accordance with section 15 of these terms and conditions.

## 8. Acceptance

8.1 The customer shall be obliged to accept the service work as soon as he has been notified of its completion, or a trial of the repair/service item contractually provided for in the specific case has taken place. If the repair/service work turns out to be not in accordance with contract, then the contractor shall be obliged to rectify the defect. This shall not apply if the defect is insignificant for the interests of the customer, or if it is due to a circumstance attributable to the customer. If there is no significant defect, then the customer may not refuse acceptance.

8.2 If acceptance is delayed, with no fault of the contractor, the acceptance shall be considered as effected after the expiry of 1 week following notification of completion of the service work, and no later than with the start-up of the machine or equipment.

8.3 With acceptance of the repair/service work, the contractor shall no longer have liability for visible defects, unless the customer has reserved the right to claim a specific defect.

## 9. Warranty for repair and other services

9.1 After acceptance of the repair/service work, the contractor shall be liable for defects in the repair/service work, excluding all other claims of the customer, without prejudice to the rulings in clause 9.4 and section 15, in the sense that he shall rectify the defects. The customer shall notify the contractor immediately in writing of any defect discovered. There shall be no liability of the contractor if the defect is insignificant for the interests of the customer, or if it is due to a circumstance attributable to the customer. This shall apply especially in respect of parts ordered in by the customer.

To rectify a defect which it is the contractor's responsibility to correct, the customer shall grant the contractor the necessary time and opportunity. Replaced parts shall become the property of the contractor.

9.2 In the event of incorrect alterations or repairs made by the customer or by third parties, the liability of the contractor for the consequences of such actions shall be annulled. Only in urgent cases of risk to operational readiness and to fend off excessively severe damage (regarding which the contractor should be informed immediately), or if the contractor – taking into account the statutory exceptions – has a allowed a reasonable period of time set for him to rectify the defect to elapse without effect, shall the customer have the right within the framework of the statutory provisions to rectify the defect himself or to have it rectified by third parties, and to demand reimbursement of the necessary costs from the contractor.

9.3 The costs of installation and removal shall be borne by the customer, except where the contractor has to meet these costs under the provisions of section 15. If however a demand by the customer for defect rectification turns out to be unjustified, the contractor may demand reimbursement by the customer of the costs thereby incurred.

9.4 If the contractor – taking into account the statutory exceptional cases – allows a reasonable period of time set for him to rectify defects to elapse without effect, then the customer shall have, under the statutory regulations, a right to reduce the price. Only if the defect is not insignificant may the customer withdraw from the contract. Further claims shall be determined solely in accordance with section 15 of these terms.

9.5 Excluded from any warranty shall be (i) defects caused by damage, incorrect connections or operation, also failure to observe manufacturer's information on the part of the customer, (ii) damage from incorrect use or use for other

than the intended purpose, (iii) damage caused by acts of God (e.g. lightning), (iv) defects caused by dirt or wear involving the overstressing of mechanical and/or electronic parts, together with (v) damage caused by exceptional mechanical, chemical or atmospheric effects.

**10. Repair and overhaul of defective parts in the contractor's works**

- 10.1 In the case of repair orders which necessitate the bringing of the item for repair into the works of the contractor or one of his subcontractors, the transport of the item for repair in both directions shall be at the cost of the customer.
- 10.2 The customer shall carry the risk of transport. At the request of the customer and at his expense, the transport in both directions will be insured against insurable transport risks, e.g. theft, breakage, fire.
- 10.3 During the repair in the works of the contractor or one of his subcontractors there will be no insurance cover. The customer shall ensure maintenance of the existing insurance cover for the item under repair, e.g. in respect of fire, mains water damage, storm and machinery breakdown insurance. Only at the express wish and at the expense of the customer will the contractor arrange insurance cover for these risks.
- 10.4 If the customer is late in taking back the item for repair, the contractor may charge storage fees for storage in his works or the works of his subcontractor. At the discretion of the contractor, the item for repair may also be stored elsewhere. The costs and risks of storage shall be borne by the customer.

**11. Supply of spare parts and replacement parts with or without fitting**

**For spare and replacement parts ("parts") to be supplied and where applicable fitted by the contractor on the basis of a separate order outside a repair/service order, the following conditions shall apply with regard to delivery time, late delivery, claims for defects and passing of risk:**

- 11.1 The customer shall be responsible for the correct ordering and technical description of a spare or replacement part. Any advice or suggestions from the contractor on the suitability of spare or replacement parts chosen by the customer shall be non-binding, since the contractor accepts the order of the spare or replacement part without having examined the item/machine in which the part is to be installed.
- 11.2 Delivery time is set by the agreements of the contracting parties. Adherence to it by the contractor assumes that all commercial and technical questions between the contracting parties have been resolved and that the customer has met all his obligations. If this is not the case, then delivery time shall be extended appropriately. This shall not apply if the contractor is responsible for the delay.
- 11.3 Adherence to an agreed delivery time for a part shall depend on correct and punctual delivery to the contractor by his own suppliers or manufacturers of the parts. The delivery time shall be met if the part, by the specified date, has left the works/sales outlet of the contractor or his supplier (in the case of direct delivery), or if readiness to despatch has been notified. If failure to observe the delivery time is due to force majeure, industrial disputes or other events lying outside the control of the contractor, the delivery time shall be extended appropriately. The contractor shall inform the customer of the start and finish of such circumstances as soon as possible.
- 11.4 If the customer sets the contractor after the due date – taking into account the statutory exceptions - a reasonable time limit for delivery, and if this deadline is not maintained, then the customer shall be entitled to withdrawal, within the framework of the statutory

provisions. He shall be obliged, at the request of the contractor, to state within a reasonable time whether or not he intends to make use of his right of withdrawal. Other claims of the customer on account of delayed delivery shall be determined solely in accordance with section 15 of these terms and conditions.

- 11.5 Risk shall pass to the customer when the parts have left the warehouse or works of the contractor, and specifically even if partial deliveries are made, or if the contractor has accepted other responsibilities such as shipping costs or delivery of the parts.

**11.6 Materials defect liability for new parts**

- a) All new parts which turn out to be defective owing to a circumstance occurring before the passing of risk shall be repaired or resupplied at the discretion of the contractor, free of charge. The discovery of such defects shall be reported to the contractor in writing without delay. Replaced parts shall become the property of the contractor.
- b) The claims for defects of the customer assume that he has met his statutory obligations of inspection and giving notice (§377 German Commercial Code). If a defect is revealed during the inspection or subsequently, then the contractor shall be notified of this fact immediately in writing. The notification shall be considered as immediate if made within 7 working days, with prompt sending of the notification being sufficient for keeping to the time allowed. Irrespective of this obligation of inspection and giving notice of defects, the customer shall report obvious deficiencies (including incorrect and short delivery) in writing within 7 days of delivery, and here too prompt sending of the notification shall be sufficient for keeping to the time allowed. If the customer fails to make proper inspection or to give proper notification of defects, the contractor shall have no liability for the defect not reported.
- c) For the undertaking of all repairs and further deliveries which appear necessary to the contractor, the customer shall give the contractor the necessary time and opportunity; otherwise the contractor shall be exempt for liability for any resultant consequences. The costs of fitting and removal shall be met by the customer, unless the contractor is responsible for these costs under section 15. If however a demand for defect rectification by the customer turns out to be unjustified, the contractor may demand reimbursement by the customer of the costs involved in such circumstances.
- d) Within the framework of the statutory regulations the customer shall have a right to withdraw from the contract if the contractor – allowing for the statutory exceptions – has allowed a reasonable period of time set, for him to make repairs or replacement delivery for a materials defect, to elapse without effect. If the defect is insignificant, the customer shall only have a right to reduce the contract price. Further claims shall be determined solely in accordance with clause 15.3 of these terms.
- e) No liability shall be accepted in particular in the following cases: unsuitable or improper use, incorrect assembly or fitting or commissioning by the customer or by third parties, failure to observe manufacturer's information, natural wear, incorrect or negligent handling, incorrect servicing, unsuitable operating media, defective construction work, unsuitable foundations, chemical, electrochemical or electrical influences, unless they are the responsibility of the contractor.
- f) If repairs are carried out incorrectly by the customer or by a third party, the contractor shall bear no

- liability for the resultant consequences. The same shall apply to alterations made to the spare or replacement parts supplied, without the consent of the contractor.
- 11.7 Defects of title**
- If the use of spare parts leads to the infringement of industrial protective rights or copyright in Germany, then the contractor shall at his expense in principle create the right for further use by the customer, or shall modify the item supplied, in a manner suitable for the customer, in such a way that there is no longer any infringement of the protective right. If this is not possible under economically reasonable conditions or within a reasonable time, then the customer shall be entitled to withdraw from the contract. Under the aforementioned conditions, the contractor shall also have a right to withdraw from the contract.
- In addition, the contractor shall exempt the customer from undisputed or legally valid claims of the owner of the protective right concerned. The aforementioned obligations shall be conclusive, subject to section 15 below, in the case of infringement of protective rights or copyright. They shall exist only if the customer informs the contractor immediately of asserted infringements of protective rights or copyright, the customer gives the contractor reasonable support in resisting the asserted claims and/or facilitates the implementation of modifications under the provisions of this paragraph, all measures of resistance including out-of-court settlements remain open to the contractor, the defect of title is not due to an instruction of the customer, and the legal infringement is not due to the customer altering the spare or replacement part without authority or using it in a manner not in accordance with the contract.
- 12. Reservation of ownership**
- 12.1 The contractor shall reserve ownership in all accessory, spare and replacement parts used and/or supplied until the receipt of all payments under the relevant supply contract or service contract.
- 12.2 In the event of behaviour by the customer which is in breach of contract, in particular late payment, the contractor shall be entitled, after giving a reminder, to take back the item supplied, and the customer shall be obliged to surrender the same. The assertion of the reservation of ownership and the attachment of the item supplied by the contractor shall not count as withdrawal from the contract.
- 12.3 The customer may, in the ordinary course of business, sell on the spare and replacement parts supplied to him; he shall however assign to the contractor all claims against his customers or third parties to the amount of the final invoice total (incl. VAT) accruing to him from the resale or use of the parts under a repair or servicing contract, and irrespective of whether or not the parts have been resold before or after their processing. Even after assignment, the customer shall remain empowered to collect this claim. This shall not affect the authority of the contractor to collect the claim himself. The contractor shall however undertake not to collect the claim, so long as the customer meets his payment obligations, does not fall into arrears, no request to open insolvency proceedings is made, or there has been a stoppage of payments. If however this is the case, the contractor may demand that the customer makes known to him the assigned claims and the parties liable, provides all information necessary for collection, hands over the associated documents and informs the parties liable (third parties) of the assignment.
- 12.4 To secure these claims the customer shall assign to the contractor those claims which, through the connection of the parts to a property or a movable item, accrue to the benefit of the customer in respect of a third party.
- 12.5 The contractor shall be obliged, at the request of the customer, to release the securities to the extent that the value of the securities exceeds the claims to be secured by more than 20%. The choice of the securities to be released shall be a matter for the contractor.
- 12.6 A petition to open insolvency proceedings shall entitle the contractor to withdraw from the contract and to demand the immediate return of the item supplied.
- 13. Processing of replacement parts**
- 13.1 Prices for replacement parts quoted by the contractor shall be applicable only on condition that a matching repairable use part is made available and assigned to the contractor as an exchange part. If the exchange part is not received by the contractor within 7 working days after passing of risk of the replacement part to the customer, then the contractor shall be entitled to charge for a corresponding new part, instead of the price for a part being exchanged. Exchange parts shall in principle be sent to the contractor by the customer freight prepaid (CIP Incoterms 2010) from Germany or delivered duty paid (DDP Incoterms 2010) from abroad.
- 13.2 In the absence of a return delivery note, the parts will be returned unidentified to the customer. For parts without a proper description of the fault, the contractor shall charge inspection costs amounting to 250 euro.
- 14. Return by the customer of spare parts not used**
- 14.1 If for the purpose of reducing repair or service time, the customer has ordered various spare parts from the contractor because at the time of ordering it was not clear which spare part would ultimately be needed, then the customer shall within 7 working days of completion of the repair return the spare parts not required, at his own expense and risk (freight prepaid, insured to the storage point of the contractor – CIP Incoterms 2010) to the contractor.
- 14.2 The contractor shall reserve the right to charge the customer for the goods inwards, inspection and re-storage costs incurred, amounting to 5% of the net value of the spare part. Parts with a value of less than 50 euro will in principle not be taken back, and no credit notes will be issued for them.
- 14.3 The customer shall be obliged to return used parts at the request of the contractor.
- 15. Installation and removal**
- 15.1 If the contractor is instructed to carry out the filling, commissioning or installation (with or without the attachment of connection leads) of storage batteries, together with other installation or disassembly work, then the following terms shall apply, unless otherwise agreed in writing when the contract is signed:
- 15.2 Remuneration shall be paid on the basis of the all-in or hourly rate agreed in the contract. If no such agreement is made, then the current schedule of price and performance of the contractor shall apply.
- 15.3 If there are delays in erection, installation, disassembly or commissioning due to circumstances which are not the responsibility of the contractor, then the customer shall accept to a reasonable extent the costs of waiting time and additionally required travel of the contractor's personnel.
- 15.4 Before the start of service provision, the customer shall inform the contractor of the precise conditions on site, drawing the attention of the contractor to any special features. The agreed remuneration shall be based on unobstructed access to the site of work, and to the provision of all required assistance from the customer.
- 15.5 Disposal services occurring in connection with disassembly or the return of storage batteries shall be invoiced by the contractor at his usual rates.

**16. Liability of the contractor, exclusion of liability**

- 16.1 If parts of the repair or service item are damaged and the contractor is at fault, then the contractor shall carry out repair at his expense or supply new parts, as he chooses. The obligation of replacement shall be limited to the contractual repair price. In other respects, clause 15.3 shall apply.
- 16.2 If the goods or services provided by the contractor can not be used by the customer in accordance with the contract, due to the fault of the contractor as a result of failure to carry out work or defective workmanship, or to suggestions and advice given before or after signing of the contract, or to the breach of other contractual secondary obligations – in particular instructions for operation and servicing of the service item or the spare parts supplied by the contractor – then the following arrangements shall apply, excluding further claims by the customer:
- 16.3 For damage which has not occurred to the item supplied or the subject of the service activity itself, the contractor shall be liable - for whatever legal reasons – only
- a) for intent
  - b) for gross negligence of the owner/agents or executives
  - c) for culpable injury to life, body or health
  - d) for defects which have been maliciously concealed
  - e) within the context of a written warranty commitment
  - f) if there is liability under the Product Liability Law for personal injury or property damage involving privately used articles.

In the event of culpable breach of contractual obligations (obligations which must be met to allow proper implementation of the contract, and on the observance of which the contracting party may and does regularly trust), the contractor shall also be liable in the event of gross negligence of junior employees, and for ordinary negligence, in the latter case limited to sensibly foreseeable damage typical of the contract. Any other claims shall be excluded.

**17. Limitation of liability in time**

- 17.1 The period of limitation for claims arising from materials defects and defects of title in service and repair work shall be 12 months, commencing with the date of acceptance of commissioning.  
The period of limitation for claims arising from materials defects and defects of title in new parts shall be 12 months, and for spare and exchange parts 6 months. In both cases the period of limitation shall commence with delivery; if the contractor has accepted an obligation to install, then completion of installation shall count as equal to delivery of the new part or of the spare or exchange part.  
The periods provided shall also apply to contractual and non-contractual claims for damages by the customer, which are based on a deficiency in the service or repair performance or on a defect in new, exchange or spare parts.
- 17.2 For claims for damages under clause 16.3 a) to d) and f), the statutory periods apply. They shall also apply in the case of a building, a plant, the success of which lies in the provision of planning or monitoring services, for deliverables which have been used for a building according to their usual manner of use and which have caused its defectiveness, and for claims for surrender in rem by third parties.

**18. Applicable law and place of jurisdiction, personal data**

- 18.1 For all legal relationships between the contractor and the customer, only the law of the Federal Republic of

Germany applicable to the legal relationship of domestic contracting parties shall apply.

- 18.2 The place of jurisdiction shall be the court responsible for the principal place of business of the contractor. The contractor shall however be entitled to institute legal proceedings at the principal place of business of the customer.
- 18.3 The contractor shall be entitled to store and process personal data of the customer by means of electronic data processing.