

General Terms and Conditions of Repair and Service

May 2021

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I. General Information

1. All services provided by Vecoplan AG (hereinafter referred to as "Vecoplan") are subject to these General Terms and Conditions of Service (hereinafter referred to as "GTCS"). These GTCS shall apply exclusively. Conflicting, deviating or additional conditions of the customer shall only become part of the contract if Vecoplan has expressly agreed to this in writing. This requirement of consent applies in any case even if, in knowledge of conflicting, or additional conditions of the customer that deviate from these GTCS, Vecoplan delivers to the customer without any reservations. Unless otherwise agreed, the GTCS, that are valid or as amended and reported to the customer in writing at the time of the order are deemed to be the framework agreement for similar future contracts too, without Vecoplan having to refer to them again in each individual case.
2. The term "Service" includes all repairs and maintenance work, which is provided by Vecoplan in conjunction with machinery supplied by Vecoplan (hereinafter referred to as "Service object"). Warranty obligations for equipment supplied by Vecoplan as well as spare part deliveries are not covered by these GTCS. They also do not apply to provision of remote services.
3. These GTCS shall only apply to companies as defined by § 310 Para. 1 BGB (German Civil Code).
4. Information on the validity of statutory provisions is for clarification purposes only. Even without such clarification the statutory provisions shall therefore apply, unless they have been directly amended in these GTCS or expressly excluded.
5. Statements and notices of legal relevance of the customer (e.g., deadlines, notice of defects, reminders, rescission or reduction), must at least be made in writing (e.g., letter, e-mail, fax). Statutory formal requirements and further evidence especially in the case of doubt about the legitimation of the declaring party remain unaffected.
6. Individual agreements made on case-by-case basis with the customer (including ancillary agreements, supplements and amendments) have priority over these GTCS in any case. For the content of such agreements a written contract or written confirmation from Vecoplan is definitive.

II. Conclusion of contract

1. Quotations from Vecoplan are subject to change and non-binding. This also applies to the handing over of any product specifications or other documents, (e.g., catalogues, calculations, plans and drawings), to which Vecoplan reserves any and all ownership rights and copyright rights.
2. The order of the service provision by the customer is deemed to be a binding offer of contract. Vecoplan may accept this offer in writing or in text form (e.g., by means of order confirmation) or may imply acceptance by providing the service.

III. Scope of service

1. In the case of repair work the service generally includes troubleshooting, procurement and installation of necessary spare parts and functional tests. The specific scope shall however be agreed on an individual basis with the customer.

2. Maintenance includes the work agreed between the parties on an individual basis for the maintenance and servicing of the equipment.
3. Unless expressly commissioned by the customer, the checking of the status of equipment safety and implementation of any necessary recertification (e.g., CE) is not covered by the service contract.

IV. Deadlines, delayed performance

1. Provisional details on deadlines for the provision of services by Vecoplan are based on estimates and are therefore not binding.
2. The agreement of a binding service or repair date which must be explicitly specified as "binding", may only then be requested by the customer if the scope of the work is fully and finally set out.
3. The binding deadline is met if the service object is ready to be approved (if applicable) by the customer by the time the deadline expires.
4. In the case of subsequent supplementary and upgrade orders or in the case of additional necessary service work the agreed deadline may be extended accordingly.
5. The occurrence of delay in delivery is determined in accordance with the statutory provisions. In any case a reminder by the customer is necessary.
6. If Vecoplan cannot meet binding deadlines for reasons which are beyond its control (e.g., due to a force majeure event), Vecoplan shall inform the customer of this delay immediately and indicate provisional new deadlines at the same time. A force majeure event is unforeseeable and beyond the control of Vecoplan (e.g., war, strike, pandemic, epidemic, natural disaster).

V. Payment terms

1. Payment, unless otherwise agreed between Vecoplan and the customer, must be made without any deduction within 14 days from date of invoice and acceptance of service provided to Vecoplan's account specified on the invoice. The payment is deemed as paid when it shows in Vecoplan's account. Vecoplan is entitled to provide a service in full or in part only upon payment in advance.
2. If the above payment deadline passes the customer is in delay with payment. During the period of delay, the price will incur interest at the respective standard statutory delay interest rate. The assertion of any further damages caused by delay is hereby reserved.
3. The customer is only entitled to exert their right to withhold payments or offset them with counterclaims when their claims are undisputed or legally established. This does not apply to the reciprocal rights of the customers where there are defects in the performance, such rights shall remain unaffected.

VI. Customer obligations

1. The customer shall carry out the necessary checks and measures on the service object, which are specified by law, or by other provisions or on the basis of the technical documentation of the service object (Operator duties).

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2. The customer must report to Vecoplan any structural changes which alter the function of the service object as well as partial upgrades in good time. The customer is also obliged to report in good time and document all disruptions and damages as well as any changes in the operating conditions that it becomes aware of.
3. Insofar as the service is provided at the customer's site, the latter must also fulfil the conditions below before the agreed service call, unless otherwise agreed.
4. The customer must take the necessary measures to protect people and property at the site of operation. In particular it must inform the service manager about specific safety provisions if these are of significance for the service staff. It immediately informs Vecoplan about breaches of service staff of such safety regulations.
5. The customer is obliged to provide the technical support agreed on an individual basis at its own expense, for example to:
 - a) provide the necessary qualified support staff in the numbers required for the service provision and for the time required; the support staff must follow the instructions of the service manager. Vecoplan does not assume any liability for this support staff. If a defect or damage is caused by the support staff due to the service manager's instructions, then the regulations of sections IX and X of these conditions shall apply accordingly.
 - b) Undertaking of all construction, bedding and scaffolding work including the procurement of necessary spare parts for this.
 - c) Provision of necessary devices and heavy tools as well as the necessary commodities and materials.
 - d) Provision of heating, lighting, operating power, water including the necessary connections.
 - e) Provision of necessary, dry and lockable premises for the storing of tools belonging to service staff.
 - f) Protection of site of operation and the equipment available there from any kind of harmful influences.
 - g) Cleaning the site of operation.
 - h) Provision of suitable, theft-proof recreational rooms and work premises (with heating, lighting, washroom facilities, sanitary facilities) and First Aid for the service staff.
 - i) Provision of materials and undertaking of all other actions, which are required for the implementation of testing as per the contract.
6. The afore-mentioned support services of the customer are to ensure that the service provision can be started immediately after the arrival of the service team and can be implemented without delay until acceptance by the customer. If plans or instructions by Vecoplan are required, these will be made available to the customer in good time.
7. If the customer does not fulfil its obligations, then after setting a deadline, Vecoplan is entitled to, although not obliged to, undertake the actions that are incumbent on the customer on its behalf and at its cost. Moreover, the statutory rights and claims of Vecoplan remain unaffected.

VII. Acceptance

1. The customer is obliged to accept the service provided as soon as it has been notified of its finish and any agreed testing of the service provision has taken place.
2. If the service provided does not meet the conditions of the contract, then Vecoplan is obliged to remedy the defect. This does not apply if the defect is based on circumstances which can be attributed to the customer or a third party. If it is not a significant defect, then the customer may not refuse acceptance.
3. The customer shall sign the service installation report after carrying out a successful acceptance process.
4. If the acceptance process is delayed through no fault of Vecoplan, then acceptance is deemed as granted after two weeks from the date of notification of the end of the service provision.
5. If the customer accepts a defective performance in knowledge of the defectiveness, then it is only entitled to make defect claims if the customer has reserved the assertion of a specific defect.

VIII. Reservation of title

Vecoplan reserves the ownership of all accessories, spare parts and system replacements until all payments from the service contract are received. Supplementary security agreements may be made.

IX. Claims for defects

1. For quality and legal defects of the service provision Vecoplan is liable pursuant to the statutory provisions, unless otherwise agreed below.
2. Once the service provision has been accepted, Vecoplan is liable for defects of the service provision without prejudice to no. 6 and 7 and section X of these conditions in that Vecoplan must remedy the defects. The customer must immediately report an established defect to Vecoplan and must give Vecoplan the time and opportunity required to render supplementary performance.
3. Vecoplan is not liable if the defect is based on a circumstance which can be attributed to the customer or a third party. This applies especially in regard to any components provided by the customer.
4. In the case of changes or servicing undertaken by the customer or third parties improperly or without prior consent of Vecoplan, Vecoplan is not responsible for the consequences that ensue. Only in urgent cases where workplace safety is at risk and to safeguard against disproportionately big losses, which must be reported to Vecoplan immediately, or if Vecoplan has been granted a reasonable deadline to remedy defects, which expires without success, then the customer also has the opportunity to remedy the defect itself or have a third-party remedy it and to demand that Vecoplan reimburse the necessary costs incurred.
5. In the case of a justified complaint about a defect, Vecoplan shall bear the costs required to remedy the defects to the extent provided for by law.

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6. If Vecoplan – is granted a reasonable deadline to remedy defects which expires without success, then the customer also has the opportunity to reduce the price or rescind from the contract within the scope of the statutory provisions.
7. The right of Vecoplan to refuse supplementary performance in accordance with the legal requirements, remains unaffected.
8. Any further claims of the customer for damages or reimbursement of costs incurred, also with regards to defects, shall be limited to Clause X and shall otherwise be excluded.

X. Liability and liability exclusion

1. If nothing to the contrary emerges from these GTCSS including the following conditions, Vecoplan is liable in the breach of contractual duties and obligations under any other theory of law in accordance with statutory provisions.
2. Vecoplan is liable for damages caused by intent or gross negligence, irrespective of the legal grounds.
3. In addition, Vecoplan is liable in the case of simple negligence -subject to statutory limited liability (e.g., diligence exercised for own matters)- for
 - a) damages arising from injury to life, body or health,
 - b) damages arising from breach of material contractual obligations (i.e., contractual obligations, fulfilment thereof facilitates the proper execution of the contract overall and the contractual partner regularly relies on and is entitled to rely on the compliance of the other contractual partner with such duties); however, in the case of simple negligent breaches of material contractual duties, the liability is limited in amount to the damages typical and foreseeable in this type of contract.
4. The liability due to the mandatory statutory provisions of the product liability act or any other mandatory strict liability remains unaffected. Limited liability does not apply either if a defect was concealed deliberately or a guarantee for the quality of the goods was given.
5. Otherwise, the liability of Vecoplan is excluded.
6. The above limited liability restrictions apply to liability of the legal representatives and vicarious agents of Vecoplan accordingly.

XI. Statute of limitation

All claims by the customer relating to quality and legal defects become time-barred after 12 months from acceptance. For claims in accordance with Section X of these conditions as well as for claims in accordance with the German Product Liability Act the statutory deadlines apply. If Vecoplan provides a service on a building site and as a result causes defectiveness thereof, the statutory deadlines shall also apply. Further mandatory statutory regulations on the statute of limitation shall also remain unaffected.

XII. Termination

The customer is entitled to ordinarily terminate the order at any time. In the case (and in all other cases, in which (partial) non-performance of service cannot be attributed to Vecoplan) Vecoplan is entitled to invoice any services provided up to this point, including the fee for any cost estimate (if and to the extent such fee was agreed between the parties) as well as any other documented expenses incurred (time spent seeking errors as well as working time).

XIII. Final provisions

1. For these GTCS and the contract between Vecoplan and the customer, the law of the Federal Republic of Germany shall apply with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG), if applicable.
2. Exclusive – including international - place of jurisdiction for all disputes arising directly or indirectly from the contract is the registered office of Vecoplan in Bad Marienberg. Vecoplan is however in all cases also entitled to take legal action at the place of performance pursuant to these GTCS or an- individual agreement taking precedence over these GTCS, or at the general place of jurisdiction of the customer. Mandatory statutory provisions, in particular on exclusive places of jurisdiction, remain unaffected.
3. Should individual provisions of any contractual agreement between Vecoplan and the customer including these GTCS be or become ineffective in full or in part, then the validity of the remaining provisions shall not be affected. The whole or partially ineffective regulation is to be replaced by a regulation which comes as close as possible to the economic intent of the ineffective one.