

I. Validity, defence clause, ownership/copyright and secrecy

1. All repair works, maintenance works and comparable services (hereinafter: maintenance) of the Peter Huber Kältemaschinenbau SE (contractor) shall be exclusively subjected to these general terms of maintenance and conditions (conditions) and any possible special contractual agreements. Other conditions of the client (client) shall not become a part of the contract, even if not specifically rejected in the order confirmation.
2. Insofar as our services include deliveries and the like, our "General business terms and conditions" and "General terms Liability for defects and Warranty" shall apply.
3. These conditions shall also be valid for all future contractual relations between the client and contractor, even if not explicitly agreed.
4. The contractor reserves all owner rights and copyright to all prototypes, drawings, models, tools, cost estimates as well as to all information, physical and non physical (also in electronic form). Information shall not be given or made available to any third party without prior permission of the contractor. In the event of an order not being requested, then the information must be immediately returned to the contractor by the client on request.
5. The parties to the contract shall undertake that all non evident business or technical details, known of through the business relationship be classed as confidential. If it becomes known to either of the parties that any confidential information has reached an unauthorised third party, or any confidential documentation has been lost, then he must immediately instruct the other party to the contract in this connection. The contractor explicitly reserves himself the right to take legal action (civil or, if need be, criminal) in the event of a breach of the confidentiality, business secrecy or similar obligations.

II. Non-binding cost estimates

1. Insofar as possible, the client will be provided, at the moment of conclusion of the contract, with a non-binding estimate of the repair costs.
Insofar as the maintenance cannot be effectuated at this cost or in case the contractor deems it necessary to perform further works as part of the repair service, the consent of the client has to be asked for, in case the estimated costs are superseded by more than 15%.
2. If the client wishes to obtain prior to the maintenance a binding cost estimate, he has to specify this in writing. If not stipulated to the contrary, such an estimate is only binding if provided in written form. The contractor is bound by one month by the estimate. Services which are effectuated by the contractor for the client in order to provide the estimate can be charged on the client, if there is no contract following the cost estimate, if the services cannot be used for the repairs or if the repair cannot be effectuated (see also IV. below).
If, in the course of maintenance, difficulties arise or when the contractor deems it necessary to carry out further works, the contractor can depart from the costs stipulated in the estimate if the client, having been duly informed by the contractor, consents.

III. Scope of services

1. Repair and maintenance works are to be carried out in due diligence, in conformity with the agreement when the contract was signed.
The contractor reserves himself the right to carry out works which were not agreed upon in the order, if they are necessary in order to restore the full serviceability of the repair good or if they are necessary for the maintenance; in such a case, the consent of the client must be given, if the costs exceed 15% of the indicated costs.
2. If the client wishes to change or extend the original repair order, a separate order has to be concluded.
3. Other works, which had not been determined at the time of the order or its confirmation, nor in a separate order are not covered by the repair order. The same applies to other defect parts of the repair good which do not stand in any relation to the repair order. There is no liability of the contractor in such cases.
4. In the absence of any agreement to the contrary, parts which are removed in the course of maintenance works, parts which are replaced and parts which are left as samples, become the property of the contractor.

IV. Repair works which are impossible to carry out

1. Services which have been provided in order to provide a cost estimate as well as other works necessary (detecting a fault equals working time) are to be factored to the client, if the repair works cannot be effectuated by the contractor for reasons outside his scope. This is especially the case if the fault which is invoked did not appear during the inspection, if spare parts cannot be obtained, if the client has culpably failed to meet an agreed date or if the contract has been recalled during the repair works.
2. The repair good only has to be put into its original, if expressly wanted by the client against payment of the costs. This is not the case if the works effectuated were not necessary.
3. If the repair works prove impossible, the contractor does not incur any liability for damages on the repair good, the violation of secondary contractual rights or any damage which has

not occurred on the repair good itself. This is independent of the legal reasons which the client invokes. In addition XII. (Liability exclusion) is applicable.

V. Prices and charging

1. The contractor can ask for an adequate advance payment or provision of a security at the time of conclusion of the contract or before sending-back the repair good.
2. Unless otherwise agreed, the price is ex works, not including packing, transport, insurance, customs costs and other various incidental expenses accruing. In addition to the price, the sales tax must be added at the appropriate legally valid rate.
3. Payment is due on acceptance and delivery or upon sending of the bill, immediately and without rebate.
4. The client's right to withhold payment or to charge up a counterclaim, is only possible when a counterclaim is not disputed or is legally binding.
5. The whole claim of the contractor is immediately payable if the client stops payment, in case of over-indebtedness, if bankruptcy-proceedings, settlements or comparable procedures have been filed or if the client runs into default when cashing in a cheque. The same applies for any other aggravation of the economic circumstances of the client. The contractor can in such cases ask for adequate securities or can step down from the contract.

VI. Repair on the work of the contractor

1. The client must send the contractor's product at his own risk and cost (transport etc.) to the contractor's registered office (Offenburg), or other address given by the contractor the repair work, in an orderly manner.
All extraneous products, accessories, additional products, programs, data or storage mediums which are not a part of the contractor's machine must be removed. The contractor bears no responsibility for items which have not been removed, or were damaged before they reached the contractor. All products must be correctly prepared for shipping by the client (fully emptied, cleaned activated transport locks etc.) and must be packed in a customary manner. The client (sender) is bound to remove completely and without residues, all dangerous, poisonous or other substances damaging to health, which may have come into contact with the machine, so that the machine is without danger to the receiver (contractor).
Following the repair works, the client is under to obligation to collect the repair good at his own legal risk and own costs (transport etc.).
2. The legal risk pertaining to the transport is borne by the client.
3. During the period of repair, it is for the client to obtain insurance for the repair good (e.g. against fire, water damage, storms, breaking of the machine). An insurance for these types of danger can be obtained for the client only at his express wish. In such a case, the costs for the insurance are to be borne by him.
4. In case of late acceptance by the client, the contractor can charge the client storage costs which are typically charged. The repair good can also be stored at a different place. This is at the discretion of the contractor and costs and the risk of storage are to be borne by the client.

VII. Repair on the work of the client

1. When repair work is being carried out at the site of the client, the client is obliged to support the personnel carrying out the repairs of the contractor at his cost.
2. The client is obliged to take all measures for the protection of persons and goods at the place of repair. He has to inform the responsible for the repairs of the contractor about existing special security provisions, insofar as such provisions are of importance to the personnel carrying out the repairs.
3. The client is obliged to provide technical aid, at is cost, in particular:
 - Providing for the necessary and appropriate personnel, as regards the necessary numbers and time; the personnel is bound by the instructions of the responsible for the repairs. The contractor does not incur any liability as regards this personnel. If the personnel act upon the instructions of the responsible for the repairs and this leads to a fault or damage, numbers XI. (Liability for defects) and XII. (Liability exclusion) apply.
 - Making available the necessary appliances, tools, utensils and substances.
 - Making available heating, illumination, operating personnel, water, including the necessary connections.
 - Providing for the necessary, dry and closable rooms for storing the tools of the personnel.
 - Protecting the place of repair as well as the materials necessary to carry out the repair of any damaging influences, cleaning the place of repair.
 - Providing for the necessary and burglary-proof working and break rooms (including heating, illumination, sanitary installations) and first aid for the personnel carrying out the repairs.
 - Making available the materials and effectuating all other actions necessary for regulating the repair good and carrying out trial-runs as stipulated in the contract.

4. The client is obliged to ensure, via the technical aid, that the repair works are started immediately upon arrival of the personnel carrying out the repairs and without any delay, until the acceptance of the good.
5. Insofar as the client does not comply with his duties, the contractor can (but is not under an obligation to) effectuate the requisite actions himself and at the cost of the client. This has no bearing on the legal rights and claims of the contractor.

VIII. Deadline for repair

1. Indications as to the deadline for repair are based on estimates and are therefore not legally binding.
2. The agreement of a deadline for repair has to be done in writing and to be stipulated as binding. The client can ask for such an agreement only when the scope of the works is clearly determined. Compliance with deadlines presupposes a timely receipt of all information and documents which the client has to provide for, such as necessary authorisations clearing and clarifications as well as a timely compliance with obligations to co-operate of the client.
3. The legally binding deadline for repair is complied with, if at the end of the deadline the repair good is ready for acceptance by the client or if minimal accessory works are necessary, which have no bearing on the functioning of the repair good.
4. The deadline for repairs is extended insofar as the scope of the contract has been broadened.
5. If non adherence to the delivery time is due to force majeure, industrial dispute, or other occurrences that lie outside the influence of the contractor, the delivery time may be appropriately extended. The same is valid in the case of late, defective or incorrect delivery by contractors, or in case of a reasonable delay requested by the client.
6. If the shipping of goods for delivery is delayed due to representations by the client, then the additional costs incurred will be calculated starting one week after the goods are available for shipping.
7. Further claims by the client (damages etc.) due to late delivery shall be excluded, unless it is a case regulated under XII. (Liability exclusion).

IX. Acceptance

1. The client is legally obliged to accept the repair works, as soon as the termination thereof has been indicated to him and a trial-run of the repair good, as stipulated in the contract, has been effectuated.
2. If the repair works turn out to be insufficient and not comply with the contract, the contractor is obliged to remove any faults. This does not apply, when a fault is immaterial or if it imputable to the client.
In case of a non-essential fault without any bearing on the functionality of the repair good, the client cannot refuse acceptance.
3. If there is a delay in acceptance, independent of negligence of the contractor, the acceptance is deemed to have taken place two weeks after indication of termination of the repair works.
The same applies when the client has used (even partially), set into motion or integrated the repaired good into his production process or has otherwise put it into service.
4. As from the moment of acceptance, the contractor is no longer liable for identifiable faults, if the client has not reserved himself the right to assert a particular fault.
5. The client bears the costs of acceptance.
6. If the client is late in accepting, the contractor has a legal claim for storage of the repair good, in particular in the form of a fee for storage, customarily in place. The repair good can also be stored in another place, at the discretion of the contractor. For the rest, in case of non-acceptance, the statutory rules apply.

X. Retention of ownership

1. The goods remain the property of the contractor (title is retained) until the fulfilment of all outstanding financial claims against the client.
2. In addition to the statutory security right, the contractor has a security rights pertaining to his contractual claim. The security right can also be exercised in relation to contractual claims of works and services effectuated earlier.

XI. Liability for defects

1. Following acceptance of the repair works, the contractor is liable for faults of the repair works, under exclusion of all other claims of the client – notwithstanding the following numbers 5. and 6. and XII (Exclusion for liability) – in the sense that he has to remove the faults. The client has to immediately notify any faults to the contractor.
2. If at all, and in so far as the complaint is justified, of the direct costs incurred for the rectification of defects or replacement, the contractor carries only the costs of the replacement part (and if applicable, inland transport costs).
If however the complaint turns out to be unfounded, or is a case concerning number 7., the client carries all the costs incurred by the contractor.

3. The place of supplementary performance (improvement) is exclusively decided by the contractor. Normally, the repairs take place at the registered office of the contractor (Offenburg), or at another place deemed suitable by the contractor.
4. The client must deliver the goods to the contractor at the place named in number 3. in an orderly manner, and at his own cost (transport etc.) and risk.
In particular, all external products, accessories, additional products, programs, data, and storage media that are not a part of the delivered goods must be removed before shipping. The contractor hereby bears no responsibility for anything not removed by the client, or that was damaged before arrival at the contractor. Also, the goods to be delivered must be prepared for shipping in an orderly way (cleaned, fully emptied, transport locks activated etc), and suitably packed. The client, as shipper, is obliged to fully remove without residues, any dangerous or poisonous products, or products otherwise dangerous to health with which the machine has been in contact, so that there is no danger to the client as receiver.
5. Only in urgent cases does the client have the right to repair faults himself or to let this be effectuated by others and to claim from the contractor the corresponding costs. Such urgency is only given when the security of the good is endangered and a disproportionately high damage is foreseeable. The contractor must be notified or the deadline given to the contractor to remove the fault must have expired.
6. If the contractor lets the deadline for removing the fault expire (due account taken of the statutory exceptions), then the client can reduce the price (due account taken of the statutory framework).
The client can only step down from the contract if the maintenance is despite the reduction of price without interest to him.
7. Further demands (damages etc) from the client are excluded (exempt from XII. (Liability exclusion)). Especially in the following cases, there can be no liability for defects:
 - Minor variations from the agreed appearance and workmanship, or only minor impairments to usability; also unsuitable, incorrect, excessive and other non intended use of the delivered goods; Unsuitable or faulty installation or commissioning by the client, or any third party; natural wear and tear, faulty or careless handling, incorrect servicing, unsuitable operating materials (such as non allowed thermal fluids), bad building work, unsuitable foundation, chemical, electrochemical, electrical, thermal and other effects that cause interference to the correct operation of the delivered goods, due to special external influences which were not foreseen in the contract and non-reproducible software errors.
 - The contractor is not liable for any problems resulting from any inappropriate rectification of defects made by the client or any third party. The contractor is also not responsible for any alterations to equipment which have not been authorised in writing in advance.
 - Repairs which have not been authorised in writing by the contractor, outsourced work and modifications of any kind, non intended use, the changing or removal or manipulation of the machine label or the serial number. All rule out contractor liability for defects.
 - The contractor is not under any circumstances liable for damages to the client or end customer caused by the non availability of parts or through production stoppage (e.g. due to late parts deliveries).

XII. Liability exclusion

1. If parts of the repair good are damaged due to the culpability of the contractor, then he has to either repair them at his cost or provide for a new delivery. Such an obligation is limited by the price agreed for the repairs in the contract. Number 2. is applicable.
2. The contractor is exclusively liable for defects which have not occurred on the delivery item itself, – irrespective of the legal reasons – when this defect has occurred
 - 2.1 by intention,
 - 2.2 by gross negligence of the owner/ his organs or leading employees,
 - 2.3 by culpable injury to life, body or health,
 - 2.4 by defects which were fraudulently hidden.

In the event of a culpable infringement of major contractual obligations, the contractor is also responsible for gross negligence of non leading employees and also for slight negligence. In this latter case, this is limited to the damage that is typical for the contract and reasonably foreseeable damage.

3. Any further claims are expressly excluded.

XIII. Statute of limitation

1. All claims of the client – irrespective of the legal reasons – become prescribed in 12 months, beginning at the statutory rules.
2. For all claims for damages according to XII. 2.1 – 2.4 the statutory deadlines apply.

XIV. Compensation to be borne by the client

If during the repair works the appliances, tools and other utilities of the contractor are damaged or lost (without his culpability), the client is obliged to compensate any such damage.

XV. Software usage

1. As far as the delivery contains software, the client is granted a non exclusive right to use the software and its documentation. It is given for use on the suitable delivery item. A use of the software on more than one system is prohibited.
2. The client may copy the software only within the legally allowed quantities. He may not re-work, translate or convert from the object code to the source code. The client is obliged not to remove or to change manufacturer's markings (e.g. copyright notices) without the previous explicit permission of the contractor.
3. All other rights to the software and the documentation including the copies remain with the contractor or the software supplier. The granting of sub-licences is not allowed.

XVI. Returns according to the (German) electrical and electronic equipment regulation (Elektro- und Elektronikgerätegesetz (ElektroG))

1. The sale price excludes the cost for return and disposal of old equipment. The client is considered to be different than private households in the sense of this regulation (ElektroG).
2. If required, the contractor can organise the return and recycling or disposal of such equipment as is distributed by the contractor, on payment of all charges so arising.

XVII. Contract changes, legal jurisdiction Offenburg, contract language, choice of law and severability clause

1. For unforeseeable occurrences which lie outside the influence for the contractor, which largely change the business meaning or the contents of the delivery, or have a large influence on the business of the contractor, the contract would be adjusted paying attention to the principle of equity and good faith; where it is not commercially presentable, the contractor has the right of rescission from the contract.
2. In the event of a dispute between the contractor and the client, the legal jurisdiction is agreed as D-77656 Offenburg. The contractor has simultaneously the right to bring action at the head office of the client.
3. The language of this contract is German. In the event of the parties of the contract use another language as well and in the event of a conflict the German wording shall take precedence.
4. All legal relationships between the contractor and the client shall be governed by the law of the Federal Republic of Germany applicable to domestic legal relationships, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
5. If a clause in these conditions is invalid, it does not change the validity of the other clauses. If a clause is partially invalid, then the other parts of the clause remain valid. The parties shall replace the invalid clause with a valid replacement clause, which comes as close as possible to the economic purpose of the invalid clause.