

**General Terms and Conditions of Service****CarboTech AC GmbH, Essen, Germany****1. General information**

- 1.1. These General Terms and Conditions of Service govern all service-related transactions of CarboTech AC GmbH ("CARBOTECH"), in particular in relation to repairs, refurbishments, reconfigurations, servicing, inspections and other customer services ("Services") for customers who are registered traders, legal entities under public law, or special assets governed by public law.
- 1.2. Depending on the agreed scope, Services are performed on products ("Products").
- 1.3. These General Terms and Conditions of Service govern all agreements for repeat performances of Services.
- 1.4. These General Terms and Conditions of Service apply exclusively. They come into force latest upon acceptance of a Service or goods from CARBOTECH. CARBOTECH herewith explicitly states that it will not be bound by contractual terms in the General Business Terms of Conditions of the customer, unless such terms have been accepted in writing by CARBOTECH.
- 1.5. Information in technical and commercial documents, and details regarding weights, performance, operating costs, etc. are only binding if explicitly agreed in writing.
- 1.6. These General Terms and Conditions of Service govern all contracts for repeat performances of Services as part of continuing obligations ("Service Contracts"). In this respect, reference is made to Clause 5 of these General Terms and Conditions of Service.

**2. Conclusion of contract, general information**

- 2.1. Quotes, drawings and other documents – in printed or electronic format – made available by CARBOTECH remain the property of CARBOTECH and are protected by copyright law. Such documents must not be disclosed or otherwise made available to third parties. On request or in cases where no contract is entered into, they must be returned to CARBOTECH without delay.
- 2.2. All offers of CARBOTECH are non-binding and without obligation. An order by the customer constitutes a binding offer.
- 2.3. A contractual relationship is only deemed established after CARBOTECH has confirmed the order in writing. A written order confirmation is issued within four weeks from the date of receipt of the order. The order confirmation might be in the form of an invoice, a delivery note, a delivery of goods or the performance of a Service.
- 2.4. Contractual agreements and amendments to orders must be made in writing.
- 2.5. Verbal agreements, including amendments to these General Terms and Conditions of Service, are only valid if explicitly confirmed in writing by CARBOTECH.
- 2.6. Where a Service is performed on a Product not supplied by CARBOTECH, the customer

must make CARBOTECH aware of any industrial property rights that might affect the Product. This notification must be made at the time of signing of the contract. Provided that CARBOTECH is not at fault, the customer shall indemnify CARBOTECH against any claims by third parties arising in connection with industrial property rights.

- 2.7. The Products on which Services are to be performed must not pose a health risk to CARBOTECH personnel (e.g. NBC contamination).
- 2.8. CARBOTECH is entitled to engage third parties for the fulfilment of its contractual obligations.
- 2.9. Sales of spare parts and other goods that are not directly related to Services by CARBOTECH to the customer are governed by the General Sales Terms and Conditions of CARBOTECH.

### **3. Performance of Services**

- 3.1. The scope and content of a Service are generally determined by the specifications in the written order confirmation by CARBOTECH and these General Terms and Conditions of Service. Insofar as it is deemed necessary in order to fulfil an order, CARBOTECH shall be entitled to amend the scope of the Service within the limits laid down in Clause 6.6 of these General Terms and Conditions of Service.
- 3.2. Under these General Terms and Conditions of Service, CARBOTECH performs maintenance work as a Service, and according to the maintenance instructions and specifications of the manufacturer of the Product, and following the relevant VDMA Guidelines. The following routine maintenance tasks are covered by these General Terms and Conditions of Service and other contractual agreements: general inspection of Product; function testing; adjustments; submission of offers for purchase and replacement of wear parts, based on their availability; cleaning and lubrication.
- 3.3. Should malfunctions or special defects in the Product become apparent during a Service, CARBOTECH shall notify the customer of these findings. If the value of the small parts replaced during a Service exceed €100, additional work and the costs for spare parts shall be invoiced separately based on the actual costs. The above flat fee of €100 is included the service charge and covers the replacement of seals and similar small parts.
- 3.4. The costs for auxiliary materials and consumables, as well as for wear and spare parts that are not covered by the €100 flat fee per Service are invoiced separately. The exchange or replacement of module parts and components that have to be exchanged or replaced due to wear or for other reasons, and other necessary repair work are not part of the standard scope of a Service. If CARBOTECH detects that such repairs and/or replacements are necessary as part of a Service, it shall notify the customer. The work is carried out after agreement between the parties on the course of action, and labour and material costs shall be invoiced separately.
- 3.5. If repairs have become necessary as a consequence of improper handling or the use of unsuitable consumables or tools, the customer shall be informed of the respective additional costs. Any extra work for such repairs shall be invoiced according to the actual costs.

- 3.6. Services are performed during normal office hours, i.e. Monday to Friday between 8 am and 4 pm. If the customer requests that a Service be performed outside normal office hours, the additional costs (out-of-hours work rates) shall be invoiced separately.
- 3.7. All Services on the Product are documented. The customer receives a detailed list of all work performed, including information of observed defects and irregularities.
- 3.8. The customer shall inform CARBOTECH without delay and in writing of any changes concerning the Product, its operation or actions by the customer or third parties that might affect the contractual obligations of CARBOTECH.
- 3.9. If CARBOTECH provides advice or consulting services, these are based on its best knowledge.
- 3.10. All statutory charges (taxes, fees, customs duties, etc.) arising in connection with the conclusion or fulfilment of a contract outside the Federal Republic of Germany shall be borne by the customer.

#### **4. Services that cannot be performed**

- 4.1. If a Service cannot be performed by CARBOTECH for reasons outside its control, the costs for the submission of the initial quote and other documented expenditure (time for fault location as work time) shall be invoiced separately. This applies in particular in the following situations:
  - 4.1.1. The defect was not apparent during the inspection
  - 4.1.2. Spare parts cannot be obtained
  - 4.1.3. The customer missed an agreed appointment
  - 4.1.4. The contract was terminated during the performance of the Service
- 4.2. The Product is only returned to its original state at the express wish of the customer, unless it becomes apparent that the modifications made to the Product were not necessary.

#### **5. Additional clauses concerning continuing obligations (service contracts)**

- 5.1. A service contract comes into force upon signing of the contract by both parties and remains valid for the period specified in the contract. A service contract may be terminated by either party with six months' notice to the end of a contractual year, but not before the end of the first contractual year.
- 5.2. In the case of a service contract, CARBOTECH is entitled to unilaterally change the service charge with one month's notice in writing to the customer. If the customer does not agree to the changed service charge, he is entitled to terminate the service contract within four weeks from the date of receipt of the notification.
- 5.3. The service charges incurred under a service contract are invoiced annually, monthly, quarterly or six-monthly, depending on the actual agreement. Invoices are issued at the start of the billing period.
- 5.4. Either party is entitled to terminate the service contract without notice for good cause. In

particular, good cause for one party shall be deemed to exist if the other party has breached a material obligation under the service contract and fails to remedy the breach of obligation

within fifteen days of receipt of a written warning.

- 5.5. Good cause for the termination of a service contract on the part of CARBOTECH shall exist:
- 5.5.1. if the other party is in default by more than thirty days and payment is not made within fifteen days after receipt of a written reminder; or
  - 5.5.2. if there are additional service costs, in particular labour and material costs, due to the fact that
    - 5.5.2.1. the Product has been used by a person who has not been properly instructed; or
    - 5.5.2.2. the customer has failed to meet his obligations under Cause 8 of these General Terms and Conditions of Service; or
    - 5.5.2.3. modifications have been made to the Product, incompatible or unapproved components have been used or connected to the Product, or the Product has been moved to a different location without the prior consent of CARBOTECH.
- 5.6. A termination of contract, for whatever cause, must be made in writing.

## 6. Prices and cost estimates

- 6.1. Where appropriate, CARBOTECH shall provide the customer upon signing of the contract with a cost estimate for the Service. Otherwise, the customer may set price limits.
- 6.2. If the customer wishes to receive a cost estimate with binding prices prior to the performance of a Service, he must explicitly request such an estimate. Unless agreed otherwise, cost estimates are only binding, if they are made in writing. Cost estimates are provided free of charge to the customer, provided that the information can be used for the performance of a Service.
- 6.3. In the invoices for Services, the prices of parts, materials and special services, as well as for labour, travel and transport costs are itemised. For Services performed on the basis of a binding cost estimate, a reference to the cost estimate shall suffice, and only items that deviate from the agreed scope of the Service are listed separately.
- 6.4. The customer shall be charged value-added tax at the applicable rate.
- 6.5. If a Service cannot be performed at the price determined as per the preceding clauses, or if CARBOTECH deems it necessary to perform additional work beyond the agreed scope of service so that the actual price is more than 15% higher than the quoted price, CARBOTECH shall first seek the consent of the customer before proceeding.
- 6.6. If a Service is performed at a flat rate according to a written agreement, the agreed flat rate shall not be binding if the customer obstructs CARBOTECH in performing the Service, in particular if the customer fails to fulfil his obligations under Clause 8 of these General Terms and Conditions of Service, or if there is a material aggravating circumstance through no fault of either party.

## 7. Payment terms

- 7.1. CARBOTECH is entitled to demand an advance payment due upon signing of the contract.
- 7.2. Payment for a Service is due in full after completion of the Service and handling over or

sending of the invoice.

- 7.3. Objections to the invoice on the part of the customer must be made in writing no later than four weeks after receipt of the invoice.
- 7.4. The customer shall not be entitled to set off amounts owed by CARBOTECH against invoices from CARBOTECH, unless the claim against CARBOTECH is undisputed or has been legally awarded. The customer may only assert a right of retention if it is based on claims under the same contract.
- 7.5. In the event of default, CARBOTECH may, without prejudice to any other rights or claims, suspend the performance of Services until payment has been made in full.
- 7.6. CARBOTECH reserves the right to set off any amounts owed by the customer to CARBOTECH against amount owed by CARBOTECH or companies of the CARBOTECH Group to the customer, whether or not the counterclaims are due for payment and irrespective of the contractual basis of the counterclaims.

## **8. Cooperation of customer in connection with services performed away from CARBOTECH premises**

- 8.1. The customer must assist CARBOTECH service personnel in the performance of the Services. This assistance must be provided free of charge to CARBOTECH. Upon arrival of the CARBOTECH service personnel at the premises of the customer, the Product must be ready for repair or maintenance.
- 8.2. The customer is obliged to take all necessary measures to protect persons and property at the location at which a Service is to be performed.
- 8.3. The customer must inform the CARBOTECH service personnel of all relevant special safety regulations and rules that apply at the site. The customer must notify CARBOTECH of any non-compliance with these safety regulations and rules by its service personnel. In the event of a serious violation of the safety rules and regulations on the part of CARBOTECH personnel, the customer shall be entitled to refuse access to the service site.
- 8.4. The customer is obliged to assist CARBOTECH service personnel, in particular through:
- 8.4.1. Deployment of an appropriate number of suitable auxiliary workers for the time required to perform the Service. These auxiliary workers must follow the instructions of CARBOTECH service personnel. CARBOTECH accepts no liability for auxiliary workers. If a defect or damage is caused by an auxiliary worker who followed the instructions of CARBOTECH service personnel, the provisions of Sections 13 and 14 of these General Terms and Conditions of Service shall apply.
- 8.4.2. Performance of structural work and provision of scaffolding, including procurement of all necessary materials.
- 8.4.3. Provision of general equipment and heavy tools, consumables and other devices necessary for the performance of the Service (e.g. transport gear, lifting equipment, compressors, scaffolding, props and support frames, lubricants).
- 8.4.4. Provision of heating, lighting, power, including all necessary connecting points.
- 8.4.5. Provision of dry and lockable rooms for the storage of tools brought to the site by



CARBOTECH service personnel.

- 8.4.6. Protection of the site at which the Service is performed, and of materials stored there, against harmful influences of any kind.
  - 8.4.7. Cleaning of site at which the Service is to be performed.
  - 8.4.8. Provision of suitable break rooms and work rooms (with heating, lighting, washing and toilet facilities) that are theft-proof, and provision of first aid to service personnel.
  - 8.4.9. Provision of materials and completion of preparatory work required for the performance of the Service.
- 8.5. The assistance provided by the customer must ensure that CARBOTECH service personnel can start working without delay upon arrival at the site, and are able to complete their tasks without undue interruption.
- 8.6. If there are special plans, schedules or instructions for the performance of the service work, CARBOTECH shall make these available to the customer in due course.
- 8.7. For the commissioning of a Product, the customer must ensure that the Product is fully assembled and wired, unless this work has been contracted to CARBOTECH. The above clauses regarding the obligation of assistance by the customer apply also to commissioning tasks.
- 8.8. If the customer fails to meet his obligations, CARBOTECH shall, after setting a deadline, be entitled to perform the work incumbent upon the customer in his place and at his expense. The statutory rights of CARBOTECH remain unaffected.

## **9. Transport and insurance for Services performed by CARBOTECH**

- 9.1. Unless otherwise agreed in writing, the transport of the Product at the request of the customer to and from the customer's premises – including packaging and loading/unloading – shall be carried out by CARBOTECH at the expense of the customer. Otherwise, the Product shall be shipped to CARBOTECH by the customer at the customer's expense and, after performance of the Service by CARBOTECH, collected by the customer, or at the customer's expense.
- 9.2. The risk of accidental loss or accidental damage shall be borne by the customer.
- 9.3. Upon prior written request by the customer, CARBOTECH shall insure the transport of the Product against insurable transport risks such as theft, damage and fire. The insurance costs are payable by the customer.
- 9.4. During the performance of the Service at the premises of CARBOTECH, the Product is not insured by CARBOTECH. The customer is obliged to arrange for continuous insurance

cover for the Product against risk such as fire, water damage, storm and machine breakdown. Insurance cover for these risks is only purchased by CARBOTECH at the express request by the customer and at his expense.

- 9.5. If there is a delay on the part of the customer in accepting the Product, CARBOTECH shall be entitled to charge an appropriate storage fee for storage at its own premises, or to

arrange for storage elsewhere, including storage against a fee. In all cases, the costs and risk of storage shall be borne by the customer.

## **10. Acceptance**

- 10.1. The customer shall be obliged to accept the Service as soon as he has been notified of the completion of the work and testing of the Product as agreed in the contract.
- 10.2. If the acceptance inspection reveals that the Service is not in accordance with the contract, CARBOTECH shall be obliged to eliminate the defect according to Section 12 of these General Terms and Conditions of Service, provided that this is possible. This does not apply to insignificant defects or to defects caused by circumstances for which the customer is responsible. Unless there is a major defect, the customer shall not be entitled to refuse acceptance.
- 10.3. If acceptance is delayed for reasons outside of the control of CARBOTECH, the Service is deemed accepted after two weeks from the date of notification of completion of the Service.
- 10.4. Upon acceptance, CARBOTECH's liability for obvious defects shall cease, unless the customer has made a complaint about a specific defect.

## **11. Retention of title, extended lien**

- 11.1. CARBOTECH retains title in all accessories, parts and materials used for the performance of the Service until all payments arising from the respective contract are made in full. Further security agreements may be made.
- 11.2. CARBOTECH shall be entitled to a lien on the Products that have come into its possession on account of its claims arising from the respective contract. The right of lien may also be asserted on account of claims from work, partial deliveries and other services performed at an earlier date, provided that they are related to the Product. For other claims arising from the business relationship, the right of lien shall only apply in relation to claims that are undisputed or have been legally awarded.

## **12. Claims for material defects**

- 12.1. After acceptance of the Service, CARBOTECH shall be liable for defects in the Service to the exclusion of any other claims by the customer, without prejudice to Clause 12.3.1 and Section 13 of these General Terms and Conditions of Service, in such a way that CARBOTECH shall remedy the defects. The customer shall notify CARBOTECH in writing and without delay of a defect, latest within one week from the detection of the defect.
- 12.2. CARBOTECH shall not be liable for minor defects or for defects caused by circumstances

for which the customer is responsible. This applies in particular in relation to parts made available by the customer.

- 12.3. Where CARBOTECH is contractually obliged to produce a work so that works contract law is applicable, the following applies in the event of a defect:

- 12.3.1. In the event of a defective Service, CARBOTECH shall initially be obliged to provide remedy at its own discretion.

- 12.3.2. If such remedy is not successful, the customer shall be entitled to withdraw from the contract, demand a discount or claim damages in accordance with the relevant statutory provisions. The customer is not entitled to claim compensation for expenses arising from the defect.
- 12.3.3. Claims for material defects under warranty shall become statute-barred after 12 months from acceptance of the work, unless otherwise stipulated in Section 14 of these General Terms and Conditions of Service.
- 12.3.4. In all other respects, Section 3 of these General Terms and Conditions of Service shall apply.
- 12.4. For Services governed by service law, the following applies:  
In the event of a defective Service, CARBOTECH shall initially be obliged to provide remedy by reworking. If this is not successful, the customer shall be entitled to compensation in accordance with Sections 13 and 14 of these General Terms and Conditions of Service.
- 12.5. Not covered by warranty are damages caused by normal wear, inadequate maintenance performed by a party other than CARBOTECH, non-compliance with instructions regarding consumables, excessive stress, improper construction or assembly work carried out by third parties, or external influences and causes for which CARBOTECH is not responsible.
- 12.6. Any work carried out on the Product by the customer or a third party without the prior consent of CARBOTECH shall void the warranty.
- 12.7. CARBOTECH is entitled to scrap replaced parts, unless the customer expressly requests the return of these parts in his order. The shipping costs for such parts are payable by the customer.
- 12.8. In urgent cases of danger to operational safety and in order to prevent disproportionate damage, the customer shall be entitled to remedy a defect himself or have it eliminated by a third party. In such cases, the customer must notify CARBOTECH without delay of the defect, and is entitled to reimbursement of the costs by CARBOTECH.
- 13. Liability, limitation of liability**
- 13.1. Unless stipulated otherwise in Section 12 or Clauses 13.3 and 13.4, claims by the customer in connection with material defects or defects of title – irrespective of the legal grounds – are excluded.
- 13.2. If the Product has been damaged through a fault on the part of CARBOTECH, CARBOTECH shall, at its own discretion, repair or replace the Product free of charge to the customer. The liability of CARBOTECH is however limited to the agreed price for the respective Service. In all other respects, Clause 13.3 of these General Terms and Conditions of Service applies.
- 13.3. For damages to property other than the Product, CARBOTECH shall only be liable in the following cases:
- 13.3.1. In the event of intent, or
- 13.3.2. in the event of gross negligence on the part of a legal representative, a governing body or a senior employee of CARBOTECH, or



- 13.3.3. in the event of non-accidental damage to health, including serious or fatal injury,  
or
- 13.3.4. in the event of defects that have been fraudulently concealed by CARBOTECH or  
where CARBOTECH has guaranteed that they do not exist, or
- 13.3.5. where CARBOTECH is liable under the German Product Liability Act for personal  
injury or damage to privately used objects.
- 13.4. In the case of culpable breach of a material contractual obligation, CARBOTECH shall also  
be liable for damages caused by gross negligence on the part of any of its staff members,  
and for damages resulting from minor negligence. In the case of the latter, claims shall be  
limited to the reasonably foreseeable damages typical for the contract.
- 13.5. Any further liability of CARBOTECH is excluded. In particular, CARBOTECH shall not be  
liable to the customer for lost profits or other financial losses.

#### **14. Period of limitation**

All claims by the customer against CARBOTECH – for whatever legal reason – shall be-  
come statute-barred 12 months after the start of the statutory warranty period, unless  
longer periods of limitation are prescribed in the German Product Liability Act or other ap-  
plicable laws, in particular § 438 para. 1 no. 2 German Civil Code BGB (buildings and  
goods for buildings), § 445b BGB (rights of recourse along supply chain) or § 634a para. 1  
no. 2 BGB (defects in construction).

The period of limitation for claims for damages arising from injury to life, limb or health  
resulting from negligent or intentional breach of duty by CARBOTECH or one of its legal  
representatives or vicarious agents, and for other damages resulting from intentional or  
grossly negligent breach of duty by CARBOTECH or one of its legal representatives or  
vicarious agents are governed by the relevant statutory provisions.

If CARBOTECH performs a Service on a building and thereby causes it to become defective,  
the statutory periods of limitation shall apply.

#### **15. Substitute performance by customer**

If, in the case of a Service performed outside the premises of CARBOTECH, the equip-  
ment or tools provided by CARBOTECH become damaged at the place where the Service  
is to be performed, or if they are lost through no fault of CARBOTECH, the customer shall

be obliged to compensate CARBOTECH for the damage. This applies not to damage due  
to normal wear and tear.

#### **16. General provisions**

- 16.1. The place of performance is the place where the Service is to be provided according to the  
order.
- 16.2. Without the prior express written consent of CARBOTECH, the customer may not transfer  
his contractual rights to a third party.

- 16.3. The decision or declaration that one or more of the clauses of these General Terms and Conditions of Service or of any related agreements are null and void shall have no effect on the remaining clauses of these General Terms and Conditions of Service. The parties agree to replace the invalid clause with a clause that best reflects the commercial purpose of the original one.
- 16.4. The contractual relationships between the customer and CARBOTECH shall be governed exclusively by German law to the exclusion of the conflict of laws and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 16.5. The place of jurisdiction for all legal disputes arising directly or indirectly from a contractual relationship based on these General Terms and Conditions of Service shall be Essen. CARBOTECH shall be entitled, at its option, to sue the customer at the court of the customer's registered office or branch office, or at the court of the place of performance.

Version of 8 November 2022

\* \_ \* \_ \* \_ \*