

Terms of Service

I. Scope of Application

1. The following conditions of KAESER Kompressoren SE – hereinafter referred to as "KAESER" – shall apply to all repair, maintenance, inspection and other services provided by KAESER to companies within the meaning of Section 14 BGB (German Civil Code) – hereinafter referred to as the "Customer". All present and future legal relationships between KAESER and the Customer that pertain to the abovementioned services, as performed by KAESER, shall be governed by KAESER's Terms of Service as amended from time to time. Where the services include the delivery of maintenance parts and spare parts for compressed air systems, unless stipulated otherwise in the present terms, the applicable version of KAESER's General Terms of Delivery shall be considered secondary and supplementary to the former. These may be downloaded and printed under www.kaeser.de/agb/.
2. Any deviating General Terms and Conditions of the Customer, even if used by the Customer at a later date, shall become an integral part of the contract without the written approval of KAESER only if these do not conflict with the present Terms of Service.
3. All Service Agreements and any associated Framework Agreements concluded between KAESER and the Customer shall take precedence over the Terms of Service. The provisions of the original agreement shall invariably apply to the Customer's subsequent orders under existing Service Agreements, provided no new arrangements have been agreed in writing.

II. Conclusion of the Contract

1. Quotations issued by KAESER are subject to change without notice, to the extent they are not limited in time.
2. Unless otherwise agreed, KAESER only enters into a contractual obligation with regard to repair, maintenance, inspection and service contracts on issuance of the written order confirmation.

III. Services performed by KAESER; Machine Data

1. KAESER shall render the services specified in the corresponding service contract pertaining to the products registered therein in accordance with the type of service stated in the order. Unless otherwise provided in the service contract, service includes
 - The agreed inspection, maintenance, retrofit and refurbishment works;
 - The correction of system malfunctions via teleservice, provided the Customer has the appropriate facilities available;
 - Where necessary, the onsite repair or replacement of complete product units by KAESER technicians;
 - The provision of maintenance parts, wear and spare parts, as well as consumables.
2. Except as otherwise agreed in the underlying service contract, the service price shall not include:
 - Dismantling and assembly services, such as pipe installations, electrical and mechanical connections, removal of ventilation ducts, etc.
 - The disposal of used parts, waste materials and consumables
 - Recurring inspections and replacement documentation, e.g. pressure vessels
 - Other appliances and worn parts
 - The provision of media such as electricity, water, etc.
 - Safety briefings at the operation site of the compressed air station

- Services provided by technical experts
- The call-out fees or replacement services
- Costs incurred for the storage or temporary storage of systems and spare parts

Services that are not included in the service price shall be invoiced separately. Except where agreed to the contrary, KAESER's service billing rates and list prices shall apply.

3. For the performance of the services under items 1 and 2 and/or the improvement and development of the products and range of services, KAESER also processes the (non-personal) machine data of the product in question, provided the Customer grants KAESER access. Depending on the type, access to the machine data is obtained via the output interface of the electronic system controller (e.g. Sigma Control, SAM etc.), by exchanging or copying the storage medium (e.g. USB memory) or by means of teleservice. The processing authorisation includes the right to collect, read, store, edit and reproduce the machine data for the abovementioned purposes, or to use them in any other manner. KAESER shall be granted these rights irrevocably and without restriction in terms of time and place. The processing of machine data shall be free of charge for both parties.
4. Subject to the type of service selected in the underlying service contract, the following KAESER service times shall apply:

Regular working hours:

The services shall be provided by appointment during KAESER's business hours (Mondays – Fridays from 7 am to 5 pm), exclusive of any overtime surcharges.

24-hour service:

In cases of emergency, KAESER shall also provide services outside business hours; the Customer may request such services by calling 08000-523737. These shall be charged at the service billing rates according to the current price list.

IV. Execution Periods and Delays

1. Statements issued by KAESER regarding the duration of the work shall be strictly non-binding as they are primarily based on estimates and general principles. The agreement on a mandatory deadline, which must be confirmed in writing and expressly designated as binding, may only be requested by the Customer once KAESER has specifically determined the scope of the work.
2. Should the work be delayed due to circumstances beyond KAESER's control, the period of performance shall be reasonably extended. The same shall apply to any additional or supplementary orders placed by the Customer or to necessary additional work that could not have been foreseen by KAESER at the outset. The reasonable extension of the time limit shall also apply if the circumstances necessitating the extension only occur after KAESER has fallen behind with the execution/completion of the work.
3. Where KAESER has submitted a cost estimate prior to rendering the services, the contract shall initially be limited to the services and materials specified in detail therein. Should it be established during performance of the work that further tasks and materials not included in the cost estimate are required in order to render the service, KAESER shall only be obligated to continue executing the work if expressly commissioned to do so by the Customer. While carrying out the work, should it become apparent that said work is not feasible for practical and/or legal reasons, e.g. because
 - The error detected during the inspection has not occurred since
 - The spare parts required to carry out the work can no longer be obtained
 - The contract was terminated during performance of the work etc.

KAESER shall only be required to restore the machine or components thereof to their original state at the express request of the Customer and against reimbursement of the costs.

V. Cooperation of the Customer/Acceptance

1. In cases where work is not performed on KAESER's premises, the Customer undertakes to assist KAESER by providing personnel and technical support upon request. The technical support provided by the Customer must ensure that work can begin promptly on the arrival of KAESER's personnel and be carried out without delay until such time as it is accepted by the Customer. Where plans and/or instructions are required from the Customer, these shall be made available to KAESER in good time and free of charge. KAESER assumes no liability for the personnel assigned by the Customer.
2. In particular, the Customer's duties of cooperation, which are to be made available to KAESER free of charge, include
 - a) The provision of the required labour, and transportation tools
 - b) The execution of all building, bedding and scaffolding work, including procurement of the required components
 - c) The provision of heating, lighting, power, water and electricity, including the necessary connections
 - d) The provision of dry and lockable rooms for the storage of tools belonging to KAESER's personnel, as required
 - e) The provision of suitable recreation and working areas (including washing and sanitary facilities) for KAESER personnel
 - f) The provision of any and all materials and actions as may be required for the adjustment and the test run
 - g) The provision of a functioning modem device (a telephone socket near the compressor station with a dedicated telephone number and line, together with an ISDN adapter for the purpose of telediagnosics), should the Customer request remote diagnosis per modem
 - h) The assurance of insurance coverage for the object being serviced, particularly against risks such as fire, water damage, storm and mechanical breakdown.
3. If the Customer fails to meet its duties of cooperation, after stipulating a reasonable grace period, KAESER shall be entitled, but is under no obligation, to undertake the work for which the Customer itself is responsible or have it carried out by third parties, on behalf of and at the Customer's expense.
4. The Customer shall be obliged to accept the work upon notification of its completion. In the absence of significant deficiencies, the Customer may not refuse acceptance. Acceptance shall be confirmed on KAESER documentation (e.g. on the service contract).
5. If the Customer culpably fails to comply with its acceptance obligation, despite a reasonable grace period, acceptance shall be deemed to have taken place after such grace period has expired fruitlessly, unless the Customer is entitled to refuse acceptance on account of significant deficiencies in the performance and has reported any known defects to KAESER on expiry of the grace period at the latest. The foregoing notwithstanding, acceptance may be inferred as a result of conclusive behaviour on the part of the Customer, e.g. by the use of repaired or serviced machines and/or components thereof. If acceptance is excluded according to the condition of the work, completion thereof shall be deemed as acceptance.

VI. Prices and Terms of Payment

1. The Customer shall be obliged to pay the amounts charged by KAESER for the services rendered, without discount, within a period of 14 days after the date of invoice. The fees for the individual services shall be based on the service agreements. Where the fees have not been explicitly stipulated in the contract, the service charges shall be governed by KAESER's list prices, which were valid at the time of providing the service, for the supply of materials and the deployment of the necessary personnel. Estimated costs indicated prior to carrying out the work shall be non-binding. If the Customer requires a binding cost estimate, KAESER shall be entitled to charge the Customer separately for the costs thereof; if the order is subsequently placed, these costs shall be taken into account in favour of the Customer with regard to the price payable by the Customer.
2. The costs of delivery and removal of the object to be serviced (including packaging and loading etc.) shall be borne by the Customer, unless otherwise specified in the service contract or the Customer organises the transport at its own risk and expense.
3. In the event of delay on the part of the Customer in receiving the object being serviced on KAESER's premises, KAESER shall be entitled to store said object on its own premises or entrust it to a third party for storage, at its sole discretion. In this case, the Customer shall bear the costs and risk of storage.
4. The Customer shall only have the right to withhold payments or offset them with counterclaims to the extent that its rights or counterclaims have not been contested or have been determined by a court of law.

VII. Retention of Title/Extended Lien

KAESER shall retain title to all accessories, spare parts, replacement and retrofit assemblies until such time as the corresponding invoices have been paid in full. Should ownership of the components supplied by KAESER nonetheless be transferred prematurely to the Customer by means of combination and/or commingling, prior to payment of the invoice in full, at such time, KAESER shall acquire co-ownership of the modified item in proportion to the value of the contractual object, without replacement of the defective parts or the services rendered, compared to the value of the spare parts used and the work performed. Should KAESER come into possession of the contractual object for servicing purposes, KAESER shall be entitled to a right of lien on the contractual object due to outstanding claims arising from the contractual relationship. Said right of lien shall also extend to claims arising from earlier work, spare parts delivered and other services performed insofar as they are related to the contractual object.

VIII. Warranty for Defects

1. In the event of a justified defect under warranty, KAESER shall first be entitled at its own discretion to remedy the defect by subsequent improvement and/or replacement of defective components. Should KAESER make two unsuccessful attempts at subsequent performance/rectification or delay the required subsequent performance/rectification work for a period of longer than three weeks, the Customer shall be entitled, in the case of minor defects, to reduce the consideration or alternatively to withdraw from the contract.
2. The Customer undertakes to notify KAESER promptly in writing of any known defects. The warranty obligation shall expire in respect of known defects, for which the Customer does not reserve the right of warranty at the time of acceptance. The objection of belated notification of defect shall not be waived.
3. Moreover, warranty claims for defects shall expire if any amendments or repairs have been carried out on the contractual object without the written approval of KAESER. This does not apply if the Customer is able to prove that this is not the cause of said defect. Ultimately, KAESER shall not assume any warranty for defects that

are solely due to wear. KAESER shall keep replaced parts for two weeks following acceptance of the work. Should the Customer assert no claims to ownership within this period, the parts shall become the property of KAESER. KAESER shall assume warranty for the subsequent improvement or rectification of defects to the same extent as for the original work.

4. The warranty period for servicing shall be 12 months, for servicing of a building 30 months, commencing on the day of acceptance in each case.
5. Any warranty claims arising from the purchase contract with regard to the service object shall remain unaffected thereby.

IX. Liability

1. KAESER shall be liable without limitation in cases of intent or gross negligence. In the case of ordinary negligence, KAESER shall only be liable
 - a) For damage arising from wrongful death, personal injury or health impairment;
 - b) For damage resulting from the violation of a material contractual obligation, limited to the compensation of the typical, foreseeable damage. Material contractual obligations are those obligations, the very fulfilment of which is deemed to be necessary for due and careful completion of the contract and which may with good reason be permanently relied on by the contractual partner.
2. The aforementioned limitations of liability shall also apply to the personal liability of employees, representatives and organs of KAESER as well as its vicarious agents.
3. Insofar as KAESER provides technical information or consultancy services and if said technical information or consultancy services do not fall within KAESER's contractually agreed scope of services, said information or services are rendered free of charge and shall be exempt from any liability.
4. The aforementioned limitations of liability shall not apply insofar as KAESER has fraudulently concealed a defect or assumed warranty for the condition of the work or in case of liability in accordance with the regulations of the Product Liability Act.
5. KAESER assumes no liability and shall not accept any warranty for services, including maintenance, repair, retrofit and refurbishment works, provided in respect of machines or machine components not manufactured by KAESER, should the manufacturer, quasi manufacturer or a third party assert violations of intellectual property rights due to work conducted by KAESER. It shall be the sole responsibility of the Customer to ensure by means of diligent research of said rights, objective restriction of the service order or licence agreements with the respective beneficiary that the commissioned work, which is to be conducted by KAESER, does not lead to violations of intellectual property rights. In particular, the Customer shall prevent any violations of intellectual property rights through its own actions (e.g. by reselling the machines or machine components that have been processed, modified or retrofitted by KAESER in the ordinary course of business etc.).
6. Should legitimate third-party claims for violations of intellectual property rights be brought against KAESER due to culpable non-compliance with the aforementioned duties of cooperation on the part of the Customer, the Customer shall be obliged to release KAESER from all claims, including the costs of taking legal action.

X. Non-Disclosure

1. The contracting parties mutually undertake to disclose neither the commercial secrets of the contractual partner nor any confidential information. This obligation shall remain in place for a period of two years after obtaining said confidential information.

2. Confidential information includes all information and documentation pertaining to the other contractual party that is marked as confidential or that may be deemed to be confidential under the circumstances, particularly information on operational procedures, business relationships, expertise and work results.
3. The following confidential information shall be exempt from the confidentiality obligation pursuant to X.1,
 - a) Any such information of which the recipient was verifiably aware on conclusion of the contract or that was subsequently made available by a third party, without thereby violating a non-disclosure agreement, statutory regulations or official directives;
 - b) Any information that was in the public domain on conclusion of the contract or became public knowledge thereafter, provided that this is not due to a violation of this contract;
 - c) Information that must be disclosed by virtue of statutory obligations or by order of a court or an authority. To the extent possible and legally permissible, the recipient required to disclose such information shall notify the other party in advance and give it the opportunity to pursue remedies against the disclosure.
4. The parties shall disclose confidential information exclusively to such advisors who are bound by professional secrecy or were first made aware of the relevant obligations of confidentiality arising from this contract. Furthermore, the parties shall only disclose the confidential information to those employees who require said information for the execution of this contract and shall place employees under an obligation to maintain confidentiality – even after their duties have ceased – to the extent legally permissible under labour law.

XI. Termination with Immediate Effect

1. Irrespective of the ordinary grounds for termination specified in the respective underlying service contract, each contracting party shall have the right to extraordinary termination without prior notice if
 - a) The other contractual party violates serious contractual obligations and fails to cease such violations within a reasonable grace period;
 - b) The other contractual party liquidates its business or files and/or institutes composition or insolvency proceedings concerning its assets;
2. If the contractual obligations of both parties cannot be fulfilled due to force majeure, both contractual partners shall have the right to extraordinary termination of the contract without prior notice once six weeks have elapsed after the breach of the contract.
3. Terminations shall require the written form to be effective.

XII. Succession

The contracting parties undertake to agree on the assumption of rights and obligations arising from this contract with potential legal successors.

XIII. Data Protection

KAESER collects, processes and uses the Customer's personal data solely in compliance with the relevant data protection regulations. Accordingly, the Customer's personal data shall only be used in the event of statutory authorisation or where consent has been obtained.

XIV. Place of Jurisdiction/Applicable Law/Miscellaneous

1. It is agreed that the place of jurisdiction shall be the competent court for KAESER's registered office, even if repairs, deliveries or services have been provided by a subsidiary of KAESER that is not registered there. However, KAESER may also sue the Customer in any

other local court of competent jurisdiction in accordance with statutory provisions.

2. The law of the Federal Republic of Germany shall apply exclusively with the exception of the regulations of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. No ancillary verbal agreements have been made. Amendments shall require the written form to be effective.
4. Should one or more of the above conditions become invalid, in full or in part, this shall not affect the validity of the remaining Terms of Service. The invalid condition shall be replaced by the statutory provisions. The same shall apply in the event of an omission.