

§ 1 General information – scope

- (1) These General Terms and Conditions of Warranty ("GTC") apply to all offers and services provided by RSP GmbH & Co. KG ("us", "we"). The GTC apply in particular to contracts for the sale and delivery of new and used movable goods ("goods") by us. This applies irrespective of whether we purchase the goods from suppliers or manufacture or process these ourselves or adapt these to the needs of the customer.
- (2) The GTC apply exclusively to entrepreneurs within the meaning of Section 310 Para. 1 German Civil Code [*Bürgerliches Gesetzbuch - BGB*] in conjunction with Section 14 BGB, legal entities under public law or special funds under public law.
- (3) By concluding the first contract in which these GTC are included, the customer acknowledges at the same time their validity for all future contracts that it concludes with us (also verbally or by email). For the sale and delivery of movable goods, these GTC in their respective version shall also apply as a framework agreement for similar future contracts without us having to refer hereto again in each individual case, unless explicitly agreed otherwise by the contractual partners. The current version of the GTC is available for download on the RSP GmbH & Co. KG website (www.rsp-germany.com).
- (4) Our GTC apply exclusively to the business relationship between us and the customer. Any deviating, conflicting or additional Business Terms and Conditions of the customer shall not become part of the contract. This also applies if we perform the service for the customer without reservation in the knowledge of their Business Terms and Conditions.
- (5) Our employees are not authorised to amend the content of the GTC (in writing or verbally). This requires written confirmation from the management of the acting company. The written confirmation shall only be effective if it has been signed by the authorised representatives listed in the current entry in the commercial register. The customer has to verify the validity of the power of representation.
- (6) References to the validity of statutory regulations are exclusively for the purpose of clarification. Even without such clarification, the statutory regulations shall therefore apply unless they are amended or explicitly excluded in the contract or in these GTC.
- (7) All contracts concluded with the customer are subject to the law of the Federal Republic of Germany. International sales law on movable objects (UN Sales Convention; CISG, Vienna Sales Convention) is excluded, unless explicitly agreed otherwise in writing.

§ 2 Warranty period for newly manufactured goods and for parts installed in the course of repairs and for conversion parts and new spare parts

- (1) The legal statute of limitations shall apply for the warranty claims of the customer for newly manufactured goods and for parts installed in the course of repairs and for converted parts and new spare parts, unless otherwise specified in this § 2. New goods are goods that have not yet been put into operation (except for testing or demonstration purposes or in the course of implementation or transport). Demonstration purposes are defined as follows for spare parts and accessories: Used to present spare parts without visible signs of use. For suction excavators, demonstration purposes are defined as follows: Maximum 50 operating

hours for the fan, 15 operating hours for the compressor, 2,000 km for the chassis, suction of material (except: contaminated substances, clay). The year of manufacture of an item is not decisive for its qualification as a new item. For the P series, the demonstration purpose is defined as follows: Maximum 15 working hours for the vacuum pump, 15 working hours for the water system, 2,000 km for the chassis, suction of material (except: contaminated substances, hazardous substances). The year of manufacture of an item is not decisive for its qualification as a new item.

- (2) Warranty claims for newly manufactured goods and for parts installed in the course of repairs and for conversion parts as well as new spare parts shall in principle become statute-barred after twelve (12) months. The warranty shall begin upon delivery.

For newly produced suction excavators, the following applies in deviation from this with regard to the delivery date as the beginning of the warranty period:

- a) If RSP GmbH & Co. KG delivers the suction excavators itself to the end customer on the basis of a contract concluded directly with the end customer, the warranty period shall in principle begin upon delivery. In the event of a sale by delivery, the warranty period shall begin upon transfer to the transport company.
- b) If RSP GmbH & Co. KG delivers the suction excavator to an authorised dealer who delivers to the end customer on the basis of a contract concluded with the end customer, the warranty period only begins upon delivery to the end customer if:
 - a. the delivery to the authorised dealer's end customer takes place within a period of 12 months after delivery by us to the authorised dealer, and
 - b. the authorised dealer provides evidence that the maintenance has been carried out in accordance with the maintenance instructions sent by RSP at the latest with the order confirmation and completed in full by the authorised dealer and returned to RSP, and
 - c. under the verifiable condition that the fan has run for a maximum of 50 operating hours and
 - d. the authorised dealer informs us in writing when the suction excavator was handed over to the end customer.

Reference is explicitly made to the warranty exclusion in § 5 Para. (3) in the event of failure to carry out maintenance work during the transfer periods.

- (3) Warranty claims for parts that have been installed in the course of a repair shall lapse after expiry of the statute of limitations for warranty claims with regard to the goods.
- (4) This § 2 applies accordingly to conversion parts, which are defined as components that are newly installed at the request of the customer, and to new spare parts.
- (5) The regulations in § 2 Para. (2) to (4) do not apply if and as far as we have fraudulently concealed a defect. They do not apply insofar as claims for recourse are asserted according to Sections 478, 479 BGB. The legal statute of lim-

itations for claims for defects relating to buildings (Section 438 Para. (1) No. 2 BGB) or third-party claims for surrender of property (Section 438 Para. (1) No. 1 a BGB) also remains unaffected.

§ 3 No warranty for used goods (e.g. used replacement, exchange or conversion parts)

- (1) Unless otherwise agreed, used goods (e.g. used replacement, exchange or conversion parts) are sold in the condition and with the quality they have at the time of transfer to the customer. A warranty is excluded.
- (2) The contractual quality of used goods includes, in particular, typical damage due to age, previous wear and tear and previous use of the goods (so-called "wear and tear damage"). No warranty is provided for this.
- (3) Replacement parts are also considered used goods within the meaning of these GTC. These are used spare parts that have been reconditioned and regenerated by the manufacturer or by us, but have a reduced remaining service life.

§ 4 Warranty period for used suction excavators, for used P-series vehicles or used suction superstructures, exceptions

- (1) Used suction excavators, used P-series vehicles or used suction superstructures ("purchased items") are sold as seen, excluding any warranty and in the condition in which they are at the time of transfer, unless otherwise specified in § 4 Para. (2).
- (2) We grant a six-month (6) warranty - subject to the provisions of § 4 Para. (3) and § 4 Para. (4) - covering the functionality of the suction unit. In this respect, the warranty exclusion for used goods specified in § 3 Para. (1) of these GTC does not apply. The chassis, consumables and wear parts are specifically excluded from the warranty obligation. Consumables and wear parts include, in particular, suction and hydraulic hoses, filter cartridges, liquid filters and other filters, oils, bolts, bushings and sealing elements.
- (3) The warranty period specified in this § 4 begins on the day of the transfer of the purchased item. Any remaining warranty or guarantee claims relating to the chassis must be addressed to the manufacturer. We assign any existing claims arising from liability for material defects against the manufacturer, its seller or other third parties to the customer. In all other respects, Para. (1) applies.
- (4) The above warranty exclusion (§ 4 Para. (1) or the six-month warranty period (§ 4 Para. 2)) does not apply if the purchased item is an item manufactured by us and is still within the original warranty period agreed upon at the time of sale. In this case, the original scope of warranty remains fully valid until the expiry of the warranty period, and the warranty referred to in § 4 Para. (2) (limited to the scope specified therein) begins on the day after the expiry of the original warranty period, whereby the following applies: If the original warranty period is exactly or more than six (6) months, § 3 shall apply exclusively and the original warranty period still in progress shall remain unaffected. If the original warranty period is less than six (6) months, the original warranty period shall be extended by the period until it reaches a duration of six (6) months (example: if the original warranty period is still four (4) months, the customer shall receive an additional warranty period of a further two (2) months within the scope of § 4 Para. (2).

§ 5 Scope of the warranty claims of the customer, obligations

- (1) The scope of our liability for material defects and defects of title shall be governed by the statutory provisions, unless otherwise specified in the provisions of this § 5. The provisions in § 7 apply to claims for defects by the customer that are directed towards compensation for damages or reimbursement of futile expenses.
- (2) The scope of warranty claims for newly manufactured goods and for parts installed in the course of repairs and for conversion parts (cf. § 2) is governed by Para. (3) to (9). The scope of warranty claims for used suction excavators, used P-series vehicles and used suction superstructures (cf. § 4) shall be governed by para. (3) to (5) and (10) and for new spare parts (cf. § 2) by para. (3) to (5) and (11). Para. (12) to (16) apply to all warranty claims that are not excluded, irrespective of the goods in question.
- (3) Insofar as the quality has not been agreed, the existence of a material defect shall be assessed in accordance with the statutory regulation. Damage caused by wear and tear or damage resulting from previous use does not constitute a material defect. Furthermore, circumstances and damage attributable to the fact that
 - a. the goods were incorrectly commissioned or operated by the customer or third parties, or incorrectly assembled (in particular, not according to the operating instructions), or incorrectly or not maintained or serviced, do not constitute a material defect; or
 - b. if the goods were used incorrectly, improperly or excessively; or
 - c. if they were caused by obstruction of air flows or disregard of the instructions for operation or maintenance; or
 - d. if there is a case of force majeure or if they were caused by an act of violence; or
 - e. if there is normal wear and tear; or
 - f. the goods have been previously modified or improperly repaired by the customer or a third party; or
 - g. in consultation with the customer, only a temporary repair has been carried out and defects occur beyond the temporary nature of the repair; or
 - h. the goods have been previously modified or repaired without our prior consent or not by us or a service partner authorised by us; or
 - i. incorrect (in particular, incompatible or not intended by us or the manufacturer) spare parts have been installed or attachments have been added, or unauthorised operating materials, oils, etc. have been used by the customer; or
 - j. unsuitable operating materials have been used or the goods have been exposed to damaging influences (e.g. physical, chemical, electrical or extreme meteorological or geographical influences); or
 - k. previous defects or damage were not reported to us in good time; or
 - l. the components or spare parts triggering the warranty

obligation have been opened or dismantled and therefore the existence of a warranty case can no longer be proven; or

- m. the damage is due to transport, provided that the transfer of risk took place upon handover to the carrier;
- n. damage is exacerbated by commissioning before completion of a repair or further operation despite the damage that has occurred; or
- o. there is a breach of foreign industrial property rights or copyrights; or there are circumstances in which
- p. the goods do not comply with foreign regulations that have not been explicitly agreed by us in writing; or
- q. there are deviations within the usual tolerances.

Insofar as the warranty period pursuant to § 2 Para. (2) of these GTC only begins upon transfer to the end customer, the maintenance instructions must be observed in the period between transfer to the reseller and transfer to the end customer. If they are not observed, there shall be no warranty claim if the material defect is attributable to the failure to perform maintenance. The customer bears the burden of proof for compliance with the maintenance instructions.

(4) If the customer is an entrepreneur, claims for defects against us are also subject to the following restrictions in this Para. (4). However, these restrictions do not apply insofar as claims for damages or reimbursement of expenses are asserted pursuant to § 7 or claims for recourse are asserted according to Sections 478, 479 BGB.

- a. If a third party has assumed a guarantee for certain properties or the quality of the goods, the customer is in principle entitled to the rights arising from the guarantee in addition to and irrespective of its warranty claims against us. However, in case of material defects or defects of title covered by the guarantee, the customer undertakes to first assert its claims under the guarantee against the third party. As long as this has not been carried out, we may refuse to fulfil the warranty claims of the customer. However, the customer is not obligated to take legal action against the third party. We are rather obligated to fulfil the warranty claims of the customer if and as far as the third party does not voluntarily fulfil the claims asserted against it under the guarantee or if the claims of the customer are not completely satisfied hereby.
- b. We shall not assume any liability for public statements (e.g. advertisements or promotional statements) made by third parties. Third parties in this sense also include the respective manufacturer of the goods, insofar as we have not manufactured the goods ourselves.

(5) We are in principle not liable for defects that the customer is aware of at the time when the contract is concluded or at the time of acceptance, or is unaware of due to gross negligence (Section 442 BGB). Furthermore, the claims for defects of the customer require that it has fulfilled its statutory obligations to inspect and report (Sections 377, 381 HGB). In the case of goods intended for installation or further processing, an inspection must in any case be carried out immediately before installation or processing. In any case, obvious defects must be reported in writing (by email, fax, letter or similar) within five (5) working days of delivery and

defects that are not apparent during the inspection must be reported within the same deadline after discovery. If the customer fails to carry out the proper inspection and/or notification of defects, our liability for the defect that was not reported or not reported in a timely or proper manner is excluded according to the statutory regulation. The timely dispatch of the notification is sufficient to meet the deadline. In the case of goods intended for installation, attachment or fitting, this shall also apply if the defect only became apparent after processing as a result of a breach of one of these obligations; in this case, the customer shall have no claims for reimbursement of the corresponding costs ("removal and installation costs").

- (6) If there is a material defect or defect of title, we shall initially be entitled, at our discretion, to perform subsequent performance by remedying the defect (repair) or delivering a defect-free item (replacement delivery) or exchanging it for a defect-free item or defect-free parts. The customer has no right of choice in this respect. We may make subsequent performance contingent upon payment of the purchase price. However, the customer is entitled to retain a proportionate part of the purchase price, taking into account the existing defect.
- (7) If the conditions for a claim for subsequent performance are met, the customer must grant us a deadline of at least 21 days for subsequent performance; this deadline shall be extended appropriately if our operating conditions so require.
- (8) If we are not obligated to install the goods under the contract, we shall not be obligated to remove the defective goods or install non-defective goods or to bear the associated costs, even in the context of a replacement delivery.
- (9) The customer is entitled to reduce the purchase price or, at their discretion, to rescind the contract and claim damages or reimbursement of expenses pursuant to § 7 if the subsequent performance has failed after at least three attempts or is unreasonable for the customer and a reasonable deadline for subsequent performance set by the customer in writing, accompanied by a notice of their intention to reduce the purchase price or to rescind the contract, has expired without success or is dispensable according to the law. The same applies if we justifiably refuse subsequent performance or if subsequent performance is impossible for us. However, there is no right of rescission due to an insignificant defect.
- (10) The warranty for used suction excavators, used P-series vehicles and used suction superstructures refers to their functionality. If a defect occurs during the warranty period, we will grant free repair within the scope of the warranty. The cases of warranty exclusion according to Para. (3) letters a. to q. apply accordingly.
- (11) If a defect occurs in the new replacement parts during the warranty period, we shall either repair the goods free of charge or replace these within the scope of this warranty. The cases of warranty exclusion according to Para. (3) letters a. to q. apply accordingly.
- (12) Our right to refuse subsequent performance according to the statutory regulations remains unaffected. This applies in particular if subsequent performance is only possible at disproportionate cost.
- (13) If the customer demands that we remedy a defect and it turns out that there was in fact no defect, the customer is

obligated to reimburse us for the costs and expenses incurred as a result.

- (14) Subsequent performance shall only extend to those parts of the service that are defective or that have been inevitably damaged by the defect despite proper handling. Replaced parts shall become our property. We shall not reimburse the costs of rectification of defects carried out by the customer or a third party.
- (15) Any further liability for material defects or defects of title is excluded. This does not apply if we have fraudulently concealed a material defect or defect of title or have assumed a guarantee for the quality of the item.
- (16) The customer shall not be entitled to remedy any defects themselves and to demand reimbursement from us for the necessary expenses. In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the customer shall be entitled to remedy the defect themselves and to demand reimbursement from us for the objectively necessary expenses incurred in doing so. We must be notified without delay, if possible in advance, of any such self-remedy. The right to self-remedy does not exist if we would be entitled to refuse corresponding subsequent performance according to the statutory regulations.

§ 6 Place of performance for warranty claims; notification of warranty claims

- (1) The place of subsequent performance is our production site (Saalfeld/Saale) and our service location (Langenfeld/Rheinland), unless otherwise agreed in writing. We shall not bear the transport costs if the defect could have been remedied at the location (where the goods are located) and the goods were transported to the production site. We reserve the right to determine where the defect will be remedied after the customer has reported the defect to us or our authorised service partner. Warranty claims can also be handled by our authorised service partner workshops, to which the terms and conditions of these GTC also apply. If, at our request, the subsequent performance is carried out at the premises of the customer, the customer must grant us the necessary access to the goods.
- (2) If the customer is based outside the European Union, warranty claims against us are limited to the delivery of replacement parts by conventional shipping. Any work required by our service personnel on site will be charged separately on the basis of the applicable labour rates plus any travel expenses incurred.
- (3) The following conditions must be met in order to make a warranty claim:
 - a. After the defect has occurred, it must be reported to us in writing without delay (by email, fax, letter or similar). The specific defect and the circumstances in which it occurred must be described. If this is not done or is not done in good time, warranty services are excluded.
 - b. All further information requested by us must be provided in writing (by email, fax, letter or similar) within five (5) working days. If this is not done or is not done in good time, warranty services are excluded. We will make a decision on the warranty claim based on this information.
 - c. At our request, the affected parts must be returned.

Care must be taken to ensure that damage during transport is avoided by using appropriate packaging.

- d. If the warranty claim is justified, the warranty will be processed carriage paid. Any shipping costs incurred by the customer will then be reimbursed by us.

§ 7 Claims for damages and reimbursement of expenses by the customer, statute of limitations

- (1) Our liability for damages and reimbursement of expenses shall be governed by this § 7. This applies both to our contract liability and to our liability arising from tort or other legal grounds.
- (2) For damages resulting from an intentional or grossly negligent breach of obligations on our part, on the part of our legal representatives or vicarious agents, we shall be liable according to the statutory provisions.
- (3) Unless otherwise specified in the following provisions, we shall only be liable for damages resulting from a negligent breach of duty on our part, on the part of our legal representatives, or on the part of our vicarious agents if:
 - a. significant contractual obligations are breached, but limited in amount to the damages foreseeable at the time of conclusion of the contract and typical for the contract. These are obligations whose fulfilment is significant for the proper execution of the contract and on whose compliance the customer regularly relies and may rely. Obligations arising from the nature of the contract and whose breach jeopardises the achievement of the purpose of the contract are also significant.
 - b. Obligations to respect the rights, legal interests and interests of the customer are breached and the customer can no longer be expected to accept our performance.
- (4) Otherwise, our liability for simple negligence is excluded. If we are liable on the merits pursuant to § 7 Para. (3), our liability is limited to the amount of the foreseeable damage typical for this type of contract. If the customer is an entrepreneur, this limitation of liability also applies to cases in which we are liable pursuant to § 7 Para. (2) for breaches of obligations by simple vicarious agents (who are not our legal representatives or executive employees). Compensation for consequential damages, such as lost profits, is excluded in each case. Claims for damages in lieu of performance are excluded in cases of slight negligence.
- (5) If we are liable (even without fault), liability is also limited to the foreseeable damage typical for this type of contract. § 7 Para. (4) sentences 3 and 4 also apply in this case. We shall not be liable for personal injury, loss of profit, loss of use, loss of production, loss of contracts, or any other financial or economic loss or any other indirect or consequential damage incurred by the client due to a breach of contract or a statutory obligation or due to a tortious act (including, but not limited to, negligence), loss of contracts, or for any other financial or economic losses or for any other indirect or consequential damages incurred by the client. These limitations of liability also apply to all tortious and non-contractual claims. Product liability claims are excluded from this.
- (6) Claims for damages under contract and non-contractual claims by the customer based on a defect in the goods and

claims under this § 7 shall become statute-barred after twelve months, unless the application of the regular legal statute of limitations (Sections 195, 199 BGB) would lead to a shorter statute of limitations in individual cases.

conomic and legal intent of the provision in a legally permissible manner. The same applies if a loophole requiring supplementation should become apparent.

- (7) Claims by the customer for reimbursement of expenses pursuant to Section 445a Para. 1 BGB are excluded, unless the last contract in the supply chain is a consumer goods purchase (Sections 478, 474 BGB) or a consumer contract for the provision of digital products (Sections 445c S. 2, 327 Para. 5, 327u BGB). Claims by the customer for damages or reimbursement of futile expenses (§ 284 BGB) shall also only exist in the event of defects in the goods according to the provisions of this § 7.
- (8) The above exclusions and limitations of liability in § 7 Para. (3) to (7) do not apply to the following damages and claims, insofar as these have been excluded to the extent permitted by law:
 - a. Damages resulting from injury to life, limb or health;
 - b. Claims by the customer under the German Product Liability Act [*Produkthaftungsgesetz*];
 - c. Claims due to fraudulently concealed defects or arising from a quality guarantee assumed by us;
 - d. All other cases in which the statutory liability rules are mandatory.
- (9) If, while we are in default, delivery becomes impossible by chance, we shall be liable with the liability limitations agreed above. We shall not be liable if the damage would have occurred even if delivery had been made on time.
- (10) The regulations in this § 7 also apply to any personal liability of our organs, representatives and vicarious agents.
- (11) Claims based on data protection law are not covered by this liability regulation.

§ 8 Final provisions

- (1) If the customer is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for both parties and for all current and future claims arising from the business relationship is our registered office or, at our discretion, the registered seat of the branch that concluded the contract.
- (2) We reserve the right to change these GTC effective for the future insofar as this is deemed necessary to eliminate any subsequent imbalances or to adapt to changed legal or technical conditions. The customer will be informed in writing of any changes to significant parts of the GTC. The changes shall become part of the contract and shall be deemed approved if the customer does not object to the changes in writing. This consequence shall be pointed out separately in the letter of notification. An objection must be received within six weeks of receipt of the notification. If the customer objects to a change, we reserve the right to refrain from continuing the contractual relationship.
- (3) Should individual provisions of the GTC be or become invalid or unworkable in full or in part, this shall have no effect on the validity of the remaining provisions. The parties shall replace the invalid or unworkable provision with an agreement that shall as far as possible correspond to the eco-