

Terms and Conditions for **ENGEL protect - service**

(effective date: February 21st, 2022)

A. General

1. Scope

These Terms and Conditions shall apply to the provision of services under **ENGEL protect**. As specified herein, **ENGEL protect** grants Customer access to comprehensive rectification of defects by professional technicians of ENGEL Sales and Service Organizations beyond applicable warranty provisions and periods.

2. Definitions

For the purpose of these Terms and Conditions the following definitions shall apply:

- a. **ENGEL** – ENGEL AUSTRIA GmbH and all affiliates of ENGEL Holding Gesellschaft m.b.H. (<https://www.engelglobal.com/en/at/company/engel-worldwide.html>);
- b. **Customer** – purchaser of Equipment produced by ENGEL including **ENGEL protect**;
- c. **Equipment** – an injection molding machine including any peripheral device purchased from ENGEL, uniquely identifiable by an ENGEL serial number;
- d. **Supplying plant** – the ENGEL production plant upon which the Equipment is directly delivered to Customer;
- e. **Shipment** – irrespective the agreed terms of delivery, the handover of the Equipment at the respective supplying plant to a forwarding company for the purpose of further transportation to the agreed place of delivery;
- f. **Sales and Service Organization** – all direct ENGEL sales and service subsidiaries as well as all contractually authorized sales and service representatives which have received the required training and gained the experience to provide service on products sold by ENGEL;
- g. **e-connect.24** – a remote maintenance tool developed and distributed by ENGEL, enabling the respective Sales and Service Organization to provide failure analysis and rectifications online;
- h. **Coverage** – the defect covered by **ENGEL protect** as defined in Section 7;
- i. **Defect** – the technical condition of the Equipment as a whole or in part triggered by a technical failure, including but not limited to signs of wear exceeding the tolerance levels defined by ENGEL, irrespective its coverage by **ENGEL protect**
- j. **Machine documentation** – the technical description including all schematics, maintenance lists, bill of material and instruction manuals that are provided with the equipment in electronic form.

B. Conditions

1. Fees

All fees for ENGEL **protect** are subject to the respective order confirmation. Invoicing is made on a monthly basis, starting with the month the order confirmation is issued.

2. Term of ENGEL protect

The term of ENGEL **protect** shall be agreed individually and starts with receipt of first partial invoice from the relevant Sales and Service Organization, subject to full payment thereof.

3. Scope of Service

- a. Services provided under ENGEL **protect** include rectification of all defects of the respective Equipment, unless not explicitly excluded of coverage under Section B.7.lit.
- b. All cost incurred for rectification of a defect covered by ENGEL **protect**, such as for required spare parts including package, standard transportation, installation and commissioning shall be borne in full by ENGEL. Delivery of all required spare parts is organized by ENGEL and shall be made with standard means of transportation as defined by ENGEL. All costs incurred for standard- as well as express-transportation within the European Union shall be borne by ENGEL. Any special- or express transportation outside the European Union are not covered by ENGEL protect and are charged separately.
- c. All services under ENGEL **protect** are provided by the nearest ENGEL service technician or a qualified third party.
- d. ENGEL **protect** covers all travelling costs within the country the respective Equipment is installed, unless this country is not a member state of the European Union. Cost incurred for travelling cross border or (with)in countries outside the European Union are not within the scope of ENGEL **protect**.
- e. For all services within the scope of ENGEL **protect** no additional costs incur to the Customer.

4. Service-Hours

- a. All services for identification and rectification of defects under ENGEL **protect** are provided on regular working days (Monday to Friday, except legal holidays) and during regular working hours as stated in the ENGEL service tariffs as amended from time to time (the "Service-Hours").
- b. Any service call beyond the Service Hours as stated in Section B.4. lit. a. will be charged separately.

5. Place of Service

- a. Services under ENGEL **protect** are, without exemption, provided and performed at the Place of delivery agreed with Customer for the respective Equipment.
- b. Notwithstanding Section B.5. lit a. a place other than the place of delivery may be specified in the purchase contract or order (confirmation) for the respective Equipment.
- c. Customer shall notify ENGEL of any transfer of the Equipment to a place other than the former place of delivery. ENGEL shall be entitled to adjust applicable fees based upon the additional costs incurred by such transfer/relocation. If performance of services under ENGEL **protect** become unfeasible due to the transfer/relocation of the respective Equipment, ENGEL may terminate ENGEL **protect** for this Equipment with immediate effect.

6. Provision of Service

- a. Upon occurrence Customer shall report a defect to the relevant Sales and Service Organization of ENGEL without undue delay. By mutual agreement with the Customer and based upon the given facts, the Sales and Service Organization will define a suitable solution, and provide Customer with an appropriate schedule. Considerable urgency will be taken into account and service calls prioritized accordingly.
- b. For the purpose of a comprehensive and technically flawless solution, rectification of defects may be, at ENGEL's sole discretion, carried out by
 - i. exchange the affected components;
 - ii. repair or overhaul of the affected components;
 - iii. replacement of the affected components with technically at least equivalent components, as necessary due to technical or logistical reasons.

7. Coverage of ENGEL protect

- a. ENGEL **protect** covers all defects of the respective Equipment, unless otherwise defined under the following Section B.7. lit. b. Notwithstanding the foregoing, any coverage under ENGEL protect for Equipment operated above 2000 metres/6500 feet over sea level is explicitly excluded.
- b. Expressly excluded from coverage under ENGEL **protect** are:
 - Operating materials such as hydraulic oil, lubricants, coolants and coolant additives;
 - Wear and tear or process related defects to components of plasticizing units, including but not limited to nozzles, shut off nozzles, plasticizing screws and plasticizing cylinders;

- Exchange of hoses, unless caused by a specific defect;
- Implementation of technical modifications to improve the performance, the output and the lifetime of the plant ("Retrofits");
- Defects caused by external force, influence of weather, forces of nature, temperatures out of tolerance as defined in the machine documentation, fire, explosion, war, acts of terrorism, nuclear radiation or any other nuclear incident, strikes, vandalism, robbery or theft, rental to a third party, operation at non-agreed locations, acts of God, improper repair or alterations, leakage of plastics, liquids or compressed air, operation of a faulty system (unless approved in writing by ENGEL) or lack of cleanliness and maintenance;
- Defects including consequential defect and damages caused by non-compliance with technical provisions/requirement specified in the machine documentation, improper use of the Equipment or a change in the location of the Equipment not carried out or coordinated by ENGEL;
- Defects to attached or retrofitted components, unless expressly included to the coverage by ENGEL in the order confirmation;
- Defects to the Equipment or its components due extension or modification of components and assemblies ensuring Equipment's operation, not being performed by ENGEL or a third party commissioned by ENGEL;
- General operational wear and tear, corrosion and optical flaws;
- Defects otherwise covered, such as by insurance;
- Defects excluded from coverage due to specific agreement with ENGEL;
- Costs for repairs not performed or authorized by ENGEL;
- Assemblies and components that have not been initially serviced and/or are not subject to continuous maintenance;
- Inspections (ENGEL care) and consequential maintenance services, including related wear and tear respectively spare parts, commissioned before coverage of the respective Equipment under ENGEL protect;

8. Limitation of Service

- a. All services under ENGEL **protect** are limited with 30% of the gross purchase price of the respective Equipment.
- b. Subject to an agreement on a fee adjustment, ENGEL reserves the right to terminate ENGEL **protect** to the end of the month before expiry of the agreed term, if the costs for rectification of all defects covered exceed the amount defined under Section B.8. lit. a.

9. Contractual Claims

ENGEL **protect** and any claim arising out or in connection with ENGEL **protect** do not affect any of Customer's claims connected to the respective Equipment purchase contract.

10. Duties of Care and Proper Use

- a. Equipment must be operated in accordance with the machine-documentation.
- b. Customer shall handle the Equipment with due care in accordance with the machine-documentation and ensure the so required cleanliness of the Equipment and the operating environment.

11. (Regular) Maintenance

- a. Preventive maintenance of the Equipment and its components by the relevant Sales and Service Organization once per year is mandatory for coverage under ENGEL **protect**; whereas ENGEL **protect** entails the maintenance package ENGEL **care complete** package (inspection, safety check, fluids service, calibration incl. measurement and testing).
- b. For the purpose of performance of the required maintenance work Customer shall grant ENGEL's employees access to the Equipment upon prior notice.

12. Remote Maintenance (e-connect.24)

- a. Installed and ready-to-operate ENGEL remote maintenance tool e-connect.24 is mandatory for ENGEL **protect** and any service thereunder. e-connect.24 is provided with the Equipment and enables fast and efficient failure analysis as well as planning and minimizing of downtimes. Moreover, e-connect.24 ensures optimized preparation of the service technician and entails a 24/7 access to the ENGEL Support Hotline.
- b. Customer is responsible for providing and maintaining the IT infrastructure which is required to perform the under e-connect.24., including providing internet access corresponding to the respective system specifications by ENGEL. In all other respects the **General Terms and Conditions for Remote-Services under e-connect.24** as amended from time to time shall apply. Current version is available under <https://www.engelglobal.com/en/at/gtc.html>.

13. Condition Monitoring

ENGEL reserves the right to check Equipment covered under ENGEL **protect** at any time at its own expense for proper operating conditions as defined in the machine documentation. Customer shall grant ENGEL's employees access to the Equipment within a reasonable period following prior notification.

14. Correction of Deficiencies

- a. ENGEL shall provide Customer with a written report on any deficiency in operation conditions of the Equipment, being revealed by condition monitoring according to Section B.13.
- b. Customer shall correct all failures that have been reported in accordance to Section B.14. lit. a. within reasonable time.

15. Substantial Deficiencies

ENGEL reserves the right of immediate termination of ENGEL **protect**, if condition monitoring (according to Section B.13.) reveals substantial deficiencies concerning operation conditions, where correction of this deficiencies is not foreseeable or consequential damages are to be expected due to the revealed failures/deficiencies.

16. Notification and Reporting

- a. Defect of the Equipment shall be reported to ENGEL without undue delay. Subsequent defects, including but not limited to those resulting from failed or late reporting, are excluded from coverage under ENGEL **protect**.
- b. For the assessment of a timely report, the point in time shall be decisive at which the customer recognized the defect or could have recognized it if due care had been applied.

17. Preservation and Returns

Unless otherwise agreed, Customer shall keep available all defective components for further inquiry. Upon request by ENGEL the defective components shall be returned to ENGEL respectively properly prepared for shipping at customers expense.

C. Miscellaneous

1. Termination

Notwithstanding the right of termination according to Sections B.5. lit. c., B.8. lit. b. and B.15., ENGEL may terminate ENGEL **protect** with immediate effect, if:

- a. Customer fails to pay the agreed fees for ENGEL **protect** on time despite a reminder and the setting of a reasonable grace period;
- b. bankruptcy or comparable proceedings are commenced against Customer;
- c. an application for insolvency against Customer is dismissed due to the lack of cost-covering assets;

- d. Customer is unable to fulfil his payment obligations when due, generally ceases payments to his creditors or announces cessation of payment, or offers or makes a general debt settlement;
- e. a circumstance attributable to Customer occurs, that causes continuation of ENGEL **protect** to be unreasonable for ENGEL.

2. Liability

- a. ENGEL will at its own expense obtain and maintain during the whole term of any contractual relationship from a qualified and licensed insurance carrier a commercial general liability insurance with a minimum coverage of 5 Mio. EUR any one occurrence and in the annual aggregate for bodily injury and damage to property.
- b. Except as expressly provided herein to the contrary, whereupon a party is entitled to receive profit, neither ENGEL nor Customer shall be liable to the other by way of indemnity or by reason of any breach of these Terms and Conditions, any contract formed hereunder or of statutory duty or by reason of tort (including but not limited to negligence) for any loss of profit, loss of use, loss of production, loss of contracts or for any financial or economic or for any indirect or consequential damage whatsoever that may be suffered by the other. In no circumstances whatsoever shall ENGEL's liability to the Customer under these Terms and Conditions or any contract formed hereunder for any one act or default exceeding 50,000 EUR or the corresponding amount in the currency of the Customer's country.

3. Data Protection

Any processing of Customer's personal data by ENGEL shall be in compliance with the applicable provisions of data protection law, such as, in particular, the European General Data Protection Regulation.

4. Applicable Law

This Terms and Conditions shall be governed by and construed in accordance with the laws of the state where the respective Sales and Service Organization has its registered office to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

5. Dispute Resolution

All disputes, disagreements or any claim arising out of or in connection with these Terms and Conditions and any contract formed hereunder including any issue regarding its existence or validity shall be referred to the court having jurisdiction under applicable statutory provisions.

6. Waiver

The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself unless approved in writing by the parties.

7. Independent Contractor

Neither Party will be deemed to be the employee, representative, agent, joint venturer or partner of the other Party for any purpose. Neither Party has the authority to obligate or bind the other, or to incur any liability on behalf of the other, nor to direct the employees of the other.

8. Written Form

All amendments to this Agreement shall be in writing.

9. Severability

The contract concluded subject to these Terms and Conditions shall remain effective, even if any term or other provision thereof is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of the contract shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, it is also the intention of the parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of the respective contract a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.