

General Terms and Conditions of Repair

I. Conclusion of Contract, General Information

1. If an uncontradicted written order confirmation has been received, it is decisive for the content of the Contract and the scope of Repair.
2. If the subject of the Repair (item to be repaired) was not supplied by the Contractor, the Customer shall point out any existing industrial property rights regarding the item; insofar as the Contractor is not at fault, the Customer shall indemnify the Contractor against any claims made by third parties due to industrial property rights.

II. Infeasible Repair

1. The Customer will be invoiced for the services provided for the submission of a cost estimate and any other costs incurred and to be documented (fault search time is counted as work time), if the Repair cannot be carried out for reasons for which the Contractor is not responsible, in particular because
 - the complained of fault did not occur during the inspection,
 - spare parts cannot be procured,
 - the Customer is responsible for missing an agreed appointment,
 - the Contract was terminated during implementation.
2. The item to be repaired must only be restored to its original condition at the explicit wish of the Customer and reimbursement of the costs by the Customer, unless the work carried out was not necessary.
3. In case of infeasible repair the Contractor is not liable for damage to the item to be repaired, breach of secondary contractual obligations and for any damage other than damage to the item to be repaired, regardless of which legal reason the Customer cites.

The Contractor on the other hand is liable in case of wilful intent, gross negligence of the owner/corporate bodies or executives of the Contractor company, and in case of culpable breach of fundamental contractual obligations.

In case of culpable breach of fundamental contractual obligations – except in cases of wilful intent and gross negligence of the owner/corporate bodies or executive of the Contractor company – the Contractor is liable only for the reasonably foreseeable damage and losses typical for the Contract.

III. Cost Information, Cost Estimate

1. Where possible the Customer will be informed of the foreseeable Repair price on concluding the Contract, otherwise the Customer can set cost limits. If the Repair cannot be carried out at these costs or if the Contractor considers additional work to be necessary during the Repair, the Customer's consent shall be obtained, if the given costs will be exceed by more than 15 %.
2. If the Customer requires a cost estimate with binding prices (quotation) before the Repair is carried out they must explicitly request one. Such a quotation – unless agreed otherwise – is only binding if given in writing. The Customer will not be charged for services provided in submitting the cost estimate or quotation, provided they can be used in the carrying out of the repair.

IV. Price and Payment

1. The Contractor is entitled to demand a reasonable advance paying on concluding the Contract.
2. The invoice for the Repair shall show the separate itemised prices for the parts and materials used and special work and services as well as the prices for labour, travel and transport expenses. If the Repair is carried out on the basis of a binding quotation, reference to the quotation suffices, whereby only differences in the scope of work and services are to be listed separately.
3. The Customer will be charged for VAT at the respective current rate in addition to the invoiced costs.
4. Any correction to the invoice by the Contractor and objection by the Customer shall be made in writing four weeks following receipt of the invoice at the latest.
5. The payment shall be made without discount on acceptance and issue or sending of the invoice.
6. The retention of payments of offsetting any counterclaims of the Customer disputed by the Contractor is not permissible.
7. Offsetting any counterclaims of the Customer disputed by the Contractor from other legal relationships is not permissible.

V. Participation and Technical Assistance of the Customer for Repairs Outside the Contractor's Factory Premises

1. The Customer shall assist the Repair personnel in carrying out the Repair at their own cost.
2. The Customer shall take any necessary special measures required to protect persons and property in the place of Repair. They shall also instruct the repair supervisor of any special safety regulations that may exist, insofar as they are significant for the Repair personnel. They shall notify the Contractor of any breaches of such safety regulations by the Repair personnel. In case of serious breaches, in consultation with the Repair supervisor, they can refuse to allow the offender to access to the place of Repair.
3. The Customer is obliged to provide technical assistance, in particular, they shall:

- a. provide the necessary number of suitable assistants for the required period; the assistants shall follow the instructions of the Repair supervisor. The Contractor does not accept any liability for the assistants. If a defect or damage caused by the assistants arose due to instructions given by the Repair supervisor, the provisions of Clauses X and XI shall apply accordingly.
 - b. Carrying out all construction, bedding and scaffolding work including procurement of the necessary construction materials.
 - c. Provision of the required jigs and fixtures and heavy tools as well as any items and materials required.
 - d. Provision of heating, lighting, operating power, water, including the required connections.
 - e. Provision of the necessary dry and lockable rooms for storage of the Repair personnel's tools.
 - f. Protection of the place of Repair and Repair materials against harmful effects of any kind whatsoever, cleaning the place of Repair.
 - g. Provision of suitable, theft-proof recreation rooms and workrooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for the Repair personnel.
 - h. Provision of the materials and carrying out all other actions necessary to adjust the item to be repaired and to carry out contractually planned testing.
4. The technical assistance of the Customer shall ensure that the repair can be started immediately following arrival of the Repair personnel and can be carried out without delay up to acceptance by the Customer. Where particular plans or instructions of the Contractor are required the Customer shall provide them in good time.
 5. If the Customer fails to fulfil their obligations, after setting a deadline, the Contractor is entitled; however, not obliged, to carry out the actions for which the Customer is responsible in their place and at their cost. Otherwise the legal rights and claims of the Contractor remain unaffected.

VI. Transport and Insurance in Case of Repair in the Contractor's Factory Premises

1. Unless agreed otherwise in writing, transport to and from the Contractor's premises at the request of the Customer – including any packaging and loading – shall be carried out at the Customer's cost, otherwise the Customer will deliver the item to be repaired to the Contractor at their own cost and collect it again from the Contractor after the Repair has been carried out.
2. The Customer bears the transport risk.
3. At the request of the Customer the outgoing transport and if applicable the return transport will be insured against the insurable transport risks, e.g. theft, breakage, fire.
4. There is no insurance cover during the Repair period in the Contractor's factory. The Customer shall ensure that the existing insurance cover for the item to be repaired, e.g. against fire, piped water (burst pipe), storm and machinery breakage, is maintained during this period. Insurance cover for these risks can only be procured at the express wish and cost of the Customer.
5. In the event of delay in taking of delivery by the Customer the Contractor can charge for storage in their factory. The item to be repaired can also be stored elsewhere at the Contractor's discretion. The costs and risks of storage are borne by the Customer.

VII. Repair Period, Repair Delay

1. Any Repair periods given are based on estimates and are therefore not binding.
2. The Customer cannot demand that a binding Repair period be agreed, which must then be called binding, until the precise scope of work required is known.
3. The binding Repair period is met if the item to be repaired is ready for the Customer to take delivery, where testing is provided for contractually, ready for it to be carried out, by the time the Repair period expires.
4. In case of subsequently issued additional or extending orders or in case of necessary additional Repair work the agreed Repair period is extended accordingly.
5. If the Repair is delayed due to measures within the scope of labour disputes, especially strike or lockout, and in the event of circumstances for which the Contractor is not responsible, provided such obstacles verifiably have a substantial influence on completion of the Repair, a reasonable extension of the Repair period applies.
6. If the Customer incurs losses as a result of the Contractor's delay, they are entitled to demand lump sum compensation for delay. Such compensation shall be charged at 0.5 %, but not more than 5 % in total, of the Repair price of that part of the item to be repaired by the Contractor, which cannot be used on schedule as a result of the delay.

If – taking into account the legal exceptional cases – following the due date, the Customer sets the Contractor a reasonable period to complete their performance and extended deadline is not met, the Customer is entitled to

withdraw from the Contract within the scope of the legal provisions. They undertake, at the request of the Contractor, to declare within a reasonable period, whether they will be making use of their right to withdraw. Further claims due to delay are solely determined according to Clause XI. 3 of these Terms and Conditions.

VIII. Acceptance

1. The Customer is obliged to accept the Repair work as soon as they have been notified of its completion and any contractual testing of the item to be repaired has taken place. If the Repair proves to be not in accordance with the Contract, the Contractor is obliged to correct the defect. This does not apply if the defect is insignificant for the Customer's interests or is based on a circumstance attributable to the Customer. The Customer cannot refuse acceptance due to an insubstantial defect.
2. If acceptance is delayed through no fault of the Contractor the acceptance shall be deemed to have taken place after two weeks since notification of the completion of the Repair.
3. With the acceptance the Contractor's liability for detectable defects expires, provided the Customer has not reserved the right to claim for a specific defect.

IX. Retention of Title, Extended Right of Lien

1. The Contractor retains title to all accessories and spare parts used and replacement units until they have received all payments due under the Repair Contract. Further collateral agreements can be made.
2. Due to their accounts receivable under the Repair Contract, the Contractor is entitled to a right of lien over the Customer's item to be repaired in their possession under the Contract. The right of lien can also be claimed for accounts receivable for previously carried out work, spare parts deliveries and other work and services, provided they are related to the item to be repaired. The right of lien only applies to other claims arising out of the business relationship if they are undisputed or legally binding.

X. Defect Claims

1. Following acceptance of the Repair the Contractor is liable for Repair defects excluding all other claims of the Customer notwithstanding No. 5 and 6 and Clause XI in that they shall correct the defects. The Customer shall notify the Contractor in writing immediately on finding a defect.
2. The Contractor is not liable if the defects is insignificant for the Customer's interests or is based on a circumstance attributable to the Customer. This applies especially with regard to parts provided by the Customer.
3. In case of any changes or Repair work carried out by the Customer or third parties, improperly or without the prior consent of the Contractor, the Contractor's liability for any resulting consequences becomes null and void. Only in urgent cases of risk to operating safety and to avert disproportionately large damage, whereby the Contractor is to be notified immediately, or if the Contractor – taking into account the legal exceptional cases - has allowed a reasonable defects correction period set to pass, the Customer has the right within the scope of the legal provisions to correct the defect themselves or have it corrected by third parties and to demand reimbursement of the necessary costs from the Contractor.
4. In case of justified complaint the Contractor bears the direct costs incurred due to the defects correction, provided this does not cause disproportionate costs for the Contractor.
5. If the Contractor – taking into account the legal exceptional cases – allows a reasonable defects correction period set to pass fruitlessly, the Customer has a right to reduce their payment within the scope of the legal provisions. The Customer can only withdraw from the Contract if the repair, despite reduction in payment, is verifiably not of interest to the Customer.
6. Further claims are solely determined according to Clause XI.3 of these Terms and Conditions.

XI. Liability of the Contractor, Legal Disclaimer

1. If parts of the item to be repaired are damaged due to the fault of the Contractor, the Contractor shall, at their own choice, repair them at their own cost, deliver new parts or pay compensation. The amount of the costs incurred for this are limited according to the contractual Repair price in case of slight negligence and gross negligence by non-executive employees of the Contractor. Furthermore, liability for damage to the item to be repaired shall be as stated in Clause XI.3.
2. If the item to be repaired cannot be used by the Customer in accordance with the Contract as a result of suggestions or advice culpably omitted or incorrectly given by the Contractor, before or after the Contract is concluded, or due to culpable breach of other secondary contractual obligations – in particular instructions for operation and maintenance of the item to be repaired – the provisions of Clauses X and XI. 1 and 3 apply under exclusion of any further claims by the Customer.
3. The Contractor – for whatever legal reasons – is liable for damage or losses that occur other than damage to the item to be repaired itself only
 - a. in case of wilful intent,
 - b. in case of gross negligence of the owner/corporate bodies or executives of the Contractor company,

- c. in case of culpable injury to life, body or damage to health,
- d. in case of defects which they have fraudulently concealed,
- e. within the scope of a promise of guarantee,
- f. insofar as liability exists under the Product Liability Law for personal injuries or property damage to privately used objects.

In case of culpable breach of fundamental contractual obligations the Contractor is also liable for gross negligence of non-executive employees and in case of slight negligence; in case of the latter their liability is limited to reasonably foreseeable damage and losses typical for the Contract. All other claims are excluded.

XII. Limitation

All claims of the Customer – for whatever legal reasons – expire after 12 months. The legal limitation periods apply to compensation claims under Clause XI. 3.a – d and f. The legal limitation periods shall also apply if the Contractor carries out Repair work on a structure and causes its defectiveness.

XIII. Compensation from the Customer

If Repair work is carried out outside of the Contractor's factory premises and jigs and fixtures or tools provided by the Contractor in the place of Repair are damaged or lost through no fault of the Contractor, the Customer is obliged to compensate for this damage or these losses. Damage due to normal wear and tear will be disregarded.

XIV. Applicable Law, Place of Jurisdiction

1. All legal relationships between the Contractor and the Customer shall be solely subject to the same German laws relevant to the legal relationships between German contractual parties.
2. The place of jurisdiction is the competent court in the place in which the Contractor has their registered offices. However, the Contractor is entitled to take legal action in the place in which the Customer has their head office.

(Source: VDMA Terms and Conditions for Repairs on Machines and Plants)