

# General Terms and Conditions of Repair and Installation

(based on the Terms and Conditions recommended by the German Engineering Federation [German abbreviation: VDMA])

## Article 1 General

1.1 These General Terms and Conditions of Repair and Installation and any separate contractual agreements shall form the basis for all repair and installation work. Any divergent customer's terms and conditions of purchasing shall be deemed to become part of the contract neither via acceptance of order nor via lack of any express rejection. These General Terms and Conditions of Repair and Installation shall apply only in cases in which the customer is an entrepreneur (see Article 14 German Civil Code [BGB]), a legal entity under public law or a special fund under public law.

1.2 Any and all references to the applicability of legal provisions shall be deemed to have only clarifying significance. The legal provisions shall therefore be deemed to apply without such clarification where they are not directly amended or expressly excluded in these General Terms and Conditions of Repair and Installation.

1.3 In the absence of any separate agreement, a contract shall be deemed to come into existence upon written confirmation of order by the Contractor. The use of telecommunications and, in particular, of Telefax, shall be deemed to satisfy the requirement for written form provided the copy of the signed confirmation of order is thus transmitted.

## Article 2 Statement of costs, cost estimates for repairs

2.1 Wherever possible, the foreseeable probable cost of the repair will be stated to the customer; the customer can, otherwise, state cost limits. Where the repair cannot be performed at these costs and/or where the Contractor in the course of the repair ascertains the necessity for performance of additional work, the customer's agreement must be obtained if the now foreseeable costs exceed the quoted costs by more than 15%.

2.2 The customer must expressly state prior to performance of the repair whether he requires a cost estimate containing binding cost rates. Where no agreement to the contrary is made, such a cost estimate shall be binding only if submitted in writing.

## Article 3 Prices and terms of payment

3.1 The Contractor shall be deemed entitled to require an appropriate downpayment upon making of the contract.

3.2 Where no fixed price is expressly agreed, installation work will be charged on a time basis in accordance with the Annex.

3.3 The prices for the components used, materials and special supplies and services, and also the prices for labour, travel and transportation costs, shall in each case be stated separately in the repair/installation calculation. Where the repair is performed on the basis of a binding cost estimate, reference to such cost estimate shall be deemed sufficient; only deviations in the scope of supply/work shall then be stated separately.

3.4 The amounts agreed shall be understood as not including Value Added Tax, which must be paid additionally to the Contractor at the rate legally applicable at the relevant time.

3.5 Any correction of the invoice by the Contractor and any complaint by the customer must be lodged in writing not later than four weeks from receipt of the invoice.

3.6 Payment shall be made without deduction upon acceptance and handover or upon receipt of the invoice.

3.7 The withholding of payments on the grounds of any counterclaims by the customer, such counterclaims being disputed by the Contractor, shall be deemed not to be permissible.

3.8 The setting-off by the customer of any counterclaims arising from other legal relationships, such counterclaims being disputed by the Contractor, shall be deemed not to be permissible.

## Article 4 Obligation to provision of information; impossibility of repair

4.1 Where the item to be installed or to be repaired has not been supplied by the Contractor, the customer shall be deemed obliged to draw attention to any industrial property rights attaching to the item; where the Contractor is not guilty of any negligence, the customer shall indemnify and hold harmless the Contractor from any third-party claims on the grounds of industrial property rights.

4.2 Where the repair, for reasons for which the Contractor is not responsible, cannot be performed, for the following reasons, in particular, the documented expense incurred (diagnosis time = working time) shall be charged to the customer:

- a) the alleged fault did not occur during the inspection;
- b) spare parts are not obtainable;
- c) the customer failed without reasonable cause to meet the agreed appointment;
- d) the contract was terminated during the performance of the work.

4.3 Except where the work performed was not necessary, the item to be repaired shall be restored to its original condition only at the express wish of the customer and against reimbursement of the relevant costs.

4.4 In cases in which repair is not possible, the Contractor shall not bear liability for damage to the item to be repaired, for infringement of subsidiary contractual obligations or for any loss or damage not occurring directly to the item to be repaired, irrespective of the legal grounds cited by the customer. The Contractor shall, on the other hand, bear liability in case of intent or gross negligence on the part of the Contractor's owner/representative bodies and/or managerial staff and in case of culpable infringement of material contractual obligations.

Except in the case of intent or gross negligence on the part of the Contractor's owner/representative bodies or managerial staff the Contractor shall in case of culpable infringement of material contractual obligations bear liability for reasonably foreseeable loss or damage of a type typical for such contracts.

## Article 5 The customer's cooperation in work not performed at the customer's works

5.1 The customer shall at his own expense support and assist the Contractor's personnel in performance of the repair or installation.

5.2 The customer shall also implement the special provisions necessary for the safety of persons and property at the repair/installation site. The customer shall also inform the repair/installation manager concerning any existing special safety regulations where these are of importance for the Contractor's personnel. The customer shall further also notify the Contractor concerning any and all infringements of such safety regulations by the repair/installation personnel. In case of serious infringements, access to the repair/installation site may, by agreement with the repair/installation manager, be denied to the infringing person(s).

#### **Article 6 Technical assistance by the customer**

6.1 The customer shall at his own expense provide technical assistance in the form, in particular, of:

- a) Provision of the necessary suitable auxiliary staff (skilled personnel, manual workers/assistants) in the numbers necessary for the repair or installation and for the necessary time; the auxiliary staff shall obey all instructions given by the repair/installation manager. The Contractor shall be deemed to bear no liability for the auxiliary staff. Sections 11 and 12 shall apply in cases in which a defect or loss/damage is caused by the auxiliary staff as a result of instructions given by the repair/installation manager.
- b) Performance of all excavation and earthworks, construction, bedding and scaffolding work, including procurement of the necessary building materials.
- c) Provision of the necessary equipment and heavy-duty tackle (e.g. lifting equipment, compressors) and of the necessary requisites and utilities (e.g. timber, wedges, underlay elements, cement, plaster and sealing materials, lubricants, fuels, endless drive ropes and drive belts).
- d) Provision of heating, lighting, operational power, and water, including the necessary connections.
- e) Provision of the necessary dry and lockable rooms for the purpose of storage of the repair/installation personnel's tools and equipment.
- f) Handling of the components at the repair/installation site, protection of the repair/installation site and materials against harm of any and all types, cleaning of the repair/installation site.
- g) Provision of suitable theftproof amenity rooms and workrooms (complete with heating, lighting and washing/sanitary facilities) and of First Aid facilities for the repair/installation personnel.
- h) Provision of materials and the performance of all other activities necessary for integration/adjustment of the item to be repaired or installed and for the performance of any contractually agreed testing.

6.2 The customer's technical assistance must be such that the work can be started immediately upon the arrival of the Contractor's personnel and continued without interruption up to acceptance inspection by the customer. The Contractor shall provide to the customer in good time any necessary special plans or instructions.

6.3 Where the customer fails to meet his obligations the Contractor shall, after setting a suitable period for performance, be deemed entitled but not obliged to himself perform in place of the customer the customer's obligatory activities at the customer's expense. The Contractor's legal rights and entitlements shall in all other instances be deemed to remain unaffected and without prejudice.

#### **Article 7 Transportation and insurance in case of repair at the Contractor's works**

7.1 Where no written agreement to the contrary has been made, any removal and return of the item for repair - including any packing and loading/unloading necessary - accomplished

at the request of the customer shall be performed at the customer's expense; otherwise, the item for repair shall be delivered by the customer at his expense to the Contractor and shall be collected at the Contractor's premises by the customer after completion of the repair.

7.2 The customer shall bear the transportation risk.

7.3 Insurance for insurable transportation risks, e.g. theft, breakage, fire, can at the customer's wish be provided at the customer's expense for the outward and, where appropriate, the inward transport journey.

7.4 No insurance cover will be provided during the repair period at the Contractor's works. The customer is therefore responsible for maintaining his existing insurance cover for the item to be repaired, for risks such as, for example, fire, water damage, storm, machine breakage. Insurance cover for these risks can be obtained only at the express request of the customer and only at the customer's expense.

7.5 The Contractor shall be deemed to be entitled to charge storage fees for storage at his works where the customer incurs delay in acceptance and collection. The item for repair may also be differently kept in store at the Contractor's discretion. All storage costs and risks shall be borne by the customer.

#### **Article 8 Deadlines, delay**

8.1 Any and all statements concerning repair/installation deadlines are based on estimates and shall therefore not be deemed binding.

8.2 The customer may require agreement of a binding repair or installation deadline, which must then be designated to be binding, only once the precise scope of the necessary repair/installation work is known.

8.3 Additional and/or expanded orders subsequently placed at a later date and/or additional necessary repair/installation work shall result in corresponding extension of the agreed repair/installation deadline.

8.4 Repair/installation deadlines shall be deemed to have been met provided the repair/installation is ready by the time of their expiry for acceptance inspection by the customer or, in the case of any contractually agreed test/trial, for the performance of such test/trial.

8.5 Where the repair or installation is delayed by action in the context of labour disputes and, in particular, by strike and/or lockout, or as a result of Force Majeure, such as natural disasters, epidemics, terrorism, sabotage, atomic/nuclear accidents and/or other occurrences beyond the control of the Contractor, the Contractor shall be deemed to be exempt from his obligations to performance for the duration of the occurrence and the repair/installation deadline to be appropriately extended. The Contractor hereby undertakes to notify the customer at the earliest possible juncture concerning the start and cessation of such circumstances.

8.6 The customer shall in cases in which the Contractor incurs delay and the customer as a result incurs loss or damage be deemed to be entitled to require a non-recurring payment in compensation for delay. Such payment in compensation for delay shall per complete week of delay be 0.5% of the repair or installation price of that part of the item to be repaired or installed by the Contractor which cannot be used as scheduled as a result of the delay, but not more than a maximum of 5% of such price.

Where the customer - taking account of the legal exceptions - grants the Contractor incurring delay an appropriate period for performance and where the Contractor fails for reasons for which he is responsible to perform satisfactorily within such period, the customer shall be deemed to be entitled to withdraw from the contract within the scope of the legal provisions. The customer hereby undertakes to declare within an appropriate period after request by the Contractor whether he intends to make use of his right of withdrawal.

Any and all other claims and entitlements on the grounds of delay shall be governed solely by Section 12.3 of these Terms and Conditions.

#### **Article 9 Acceptance**

9.1 The customer shall be deemed to be obliged to acceptance inspection of the repair/installation as soon as the completion of such has been notified to him and any contractually agreed testing of the item repaired/installed has taken place. Where the repair or installation proves not to be conformant with the contract, the Contractor shall be deemed obliged to eliminate the defect. This provision shall not apply in cases in which the defect is of no major significance for the customer's interests or is the result of a circumstance for which the customer is responsible. The presence of a non-significant defect shall be deemed not to entitle the customer to refuse acceptance.

9.2 Where acceptance is delayed for reasons for which the Contractor is not responsible, acceptance shall be deemed to have taken place upon the expiry of two weeks from notification of completion of the repair or installation.

9.3 Where the customer has not reserved the right to reject a specific defect the Contractor's liability for easily recognisable defects shall be deemed to terminate upon acceptance.

#### **Article 10 Retention of title, enlarged scope of lien**

10.1 The Contractor hereby reserves title to all accessories, spare parts and replacement units used until such time as all payments due under the contract have been received. More extensive agreements on securities may also be made.

10.2 The Contractor shall on the basis of his entitlements arising from the contract be deemed to enjoy a lien on the customer's item for repair passed into his possession as a result of the contract. Such lien may also be derived from entitlements from work previously performed, supplies of spare parts and other supplies/services where such are associated with the item for repair. The lien shall be deemed to apply in the case of other claims arising from the business relationship only where and to the extent that they are undisputed or are legally enforceable.

#### **Article 11 Liability for defects (guarantee)**

11.1 The Contractor shall after acceptance of the repair/installation be deemed to bear liability for defects in the supply/service with the exclusion of all other claims on the part of the customer and without prejudice to Sections 5, 6 and 12, such that the Contractor shall be required to rectify the defects. The customer undertakes to notify the Contractor in writing immediately when a defect is ascertained.

11.2 The Contractor shall be deemed not to bear liability in cases in which the defect is of no major significance for the interest of the customer or is the result of a circumstance for which the customer is responsible. This shall apply, in particular, to any and all parts provided by the customer.

11.3 The Contractor shall be deemed not to be liable for the consequences of any modifications and/or repair work performed incorrectly and without the prior approval of the Contractor by the customer or by third-parties. The customer shall be deemed to possess the right to himself rectify the defect or have it rectified by third-parties and to require reimbursement by the Contractor of the costs thus necessarily incurred only in urgent cases of the endangerment of operational safety and reliability and for the prevention of otherwise excessive loss or damage, in which circumstances the customer must inform the Contractor immediately, and/or where the Contractor - taking account of the legal exceptions - has allowed a period set to him for rectification of defects to expiry without satisfactory result.

11.4 In case of justified complaint, the Contractor shall bear the immediate costs arising as a result of elimination of the defect(s) provided such bearing of costs does not result in an unreasonable burden on the Contractor. Where a request by the customer for rectification of defect(s) proves to be unjustified, however, the Contractor shall be deemed entitled to require reimbursement by the customer of the resultant costs incurred.

11.5 The customer shall, where the Contractor - taking account of the legal exceptions - fails to produce a satisfactory result within a period set for him for rectification of defects, be deemed to possess a right of price reduction within the scope of the legal provisions. The customer may withdraw from the contract only in cases in which the repair/installation would, despite the price reduction, demonstrably not be of interest to the customer.

11.6. Any and all claims and entitlements shall be determined solely in accordance with Section 12.3 of these Terms and Conditions.

#### **Article 12 Contractor's liability, exclusion of liability**

12.1 Where parts of the item for repair or an installation component supplied for installation by the Contractor suffers damage for which the Contractor is responsible, the Contractor shall at his option and at his own expense either repair or resupply the component. The obligation to replacement shall in the case of simple or gross negligence on the part of non-managerial staff be limited to the amount of the contractually agreed price for repair/installation. Section 12.3 shall in all other instances apply correspondingly.

12.2 The provisions of Sections 11, 12.1 and 12.3 shall apply, with the exclusion of further claims on the part of the customer, in cases in which the item for repair or the item installed cannot be used by the customer in the way contractually agreed as a result of proposals and/or advice either culpably omitted by the Contractor or inadequate or incorrect and given prior to or after the signing of the contract or as a result of culpable infringement of other subsidiary contractual obligations and of, in particular, the requirement for provision of instructions (instruction manual) for operation and maintenance of the item repaired or the item installed.

12.3 The Contractor shall be deemed liable for loss or damage not incurred on or to the item to be repaired or installed itself, irrespective of the legal basis, only

- a) in case of intent;
- b) in case of gross negligence on the part of the Contractor's owner/representative bodies or of managerial staff;
- c) in case of culpable harm to life, limb, or health;
- d) in case of defects which the Contractor has knowingly concealed;

e) in the context of promised and guaranteed quality features;

f) where and to the extent that liability is borne for harm to persons and loss/damage of property to privately used items.

In case of his culpable infringement of material contractual obligations, the Contractor shall also bear liability in case of gross negligence on the part of non-managerial staff and in case of simple negligence, restricted in the latter case to reasonably foreseeable loss or damage typical of such contracts. Material contractual obligations shall be defined as obligations, only the fulfilment of which makes trouble-free implementation of the contract as intended at all possible and of the adherence to which the customer may normally be confident.

Any and all other claims shall be deemed to be excluded.

### **Article 13 Barring of claims**

13.1 All claims by the customer shall, irrespective of their legal bases, be deemed barred after twelve (12) months. The periods provided by law shall apply in case of intent and deliberately fraudulent conduct, gross negligence on the part of the Contractor's owner/representative bodies or managerial staff, in case of culpable harm to life, limb and/or health, and in case of claims under the Product Liability Act.

The legally applicable periods shall also apply in cases in which the Contractor furnishes the repair or installation service on a structure.

13.2 Where new rights arise for the customer as a result of material defects in the context of the Contractor's elimination of defects, all claims shall be deemed to be barred not later than twenty-four (24) months from the date of delivery of the original component.

### **Article 14 Customer's obligation to replacement of lost or damaged tools and equipment**

14.1 Where equipment and/or tools provided by the Contractor suffer through no fault of the Contractor damage or are lost without fault on the part of the Contractor, the customer shall be deemed obliged to payment for such loss/damage. Damage resulting from normal wear and tear shall be deemed excluded from the foregoing provision.

### **Article 15 Applicable law, legal venue and miscellaneous provisions**

15.1 All legal relations between the Contractor and the customer shall be governed by the relevant Law of the Federal Republic of Germany.

15.2 The court of jurisdiction for the Contractor's registered office shall be the legal venue. The Contractor shall, however, also be deemed entitled to file suit at the customer's principal domicile.

15.3 Any and all declarations establishing, preserving and/or exercising rights shall require to be in written form. Where written form is not legally prescribed, transmission by telecommunications means and, in particular, by Telefax, shall be deemed to fulfil the requirement for written form, provided the copy of the signed declaration is thus transmitted.

15.4 The customer shall be deemed not to be entitled without the written agreement of the Contractor to assign his contractual rights to third-parties.