

SUPPLEMENTARY CONDITIONS FOR THE REPAIR OF MACHINES AND FACILITIES IN DOMESTIC TRANSACTIONS

- I. Conclusion of contract, general
- II. Infeasible Repairs
- III. Cost indication, cost estimate
- IV. Price and payment
- V. Cooperation and technical assistance by the client during repairs outside our plant
- VI. Transport and insurance during repairs in our plant
- VII. Repair period
- VIII. Acceptance
- IX. Reservation of ownership, extended lien
- X. Warranty claims
- XI. Liability and exclusion of liability
- XII. Period of limitation
- XIII. Indemnification by customer
- XIV. Applicable law, place of jurisdiction

General, for use with:

1. A person who acts during the conclusion of the contract in a commercial or independent capacity (entrepreneur);
2. Legal persons under public law or a public-law special fund.

I. Conclusion of contract, General

1. If there is an uncontested written order acknowledgment, it shall be the qualifying factor for the content of the contract and the scope of repairs.
2. If there are industrial property rights with regards to the object to be repaired, the client must notify us of them. The client shall indemnify us from any third party claims arising out of industrial property rights.

II Infeasible Repairs

1. If the repair cannot be carried out for reasons for which we are not responsible, in particular if it cannot be carried out because
 - o the reported fault did not occur during the inspection,
 - o spare parts cannot be procured,
 - o the client has culpably failed to meet an agreed deadline,
 - o the contract was terminated during the performance,any services rendered in connection with the submission of a cost estimate as well as any further expenditure incurred or to be incurred respectively (time for fault identification is work time), will be charged to the client's account.
2. The object to be repaired shall be returned to its original state only on the client's explicit request, the cost of which shall be paid by the client, unless the work carried out was not necessary.
3. In the case of a culpable breach of material contractual obligations, we shall be liable - with the exception of intent or gross negligence - only for the typical, reasonably foreseeable damage.

III. Cost indication, cost estimate

1. In as far as possible, the client will be given the estimated repair costs on the time of signing the contract, otherwise, the client may set cost limits. If the repair cannot be carried out for this price, or if we think in the course of the repair work that additional work is necessary, we shall obtain the client's permission if the costs indicated are exceeded by more than 15%.
2. If a cost estimate with binding price rates is required before the execution of a repair, the client shall request this explicitly. Such a cost estimate shall - if not agreed otherwise - be binding only if it was made in writing. The services rendered for the preparation of the cost estimate shall not be debited to the client if they can be used in the performance of the repair work.

IV Price and payment

1. We shall be entitled to request a reasonable payment in advance on conclusion of the contract.
2. The invoice will detail prices for parts and material used, any special services as well as prices for labour, mileage and transport. If the repair is carried out on the basis of a binding cost estimate, a reference to the cost estimate shall suffice, and only deviations, if any, shall be itemised in the invoice.
3. VAT will be charged in the applicable amount, on top of the invoice, and shall be borne by the customer.
4. If the client has complaints regarding the invoice, he shall submit them not later than 4 weeks after receipt of the invoice.
5. Payment without any discount shall be made on acceptance and handing over or on receipt of a sent invoice.
6. The client shall only be entitled to offsetting or retaining any amount, if he has a legally enforceable claim, which is uncontested and acknowledged by us. In addition, the client shall only be entitled to exercise the right to retain money if his counterclaim is based on the same contractual relationship.

V Cooperation and technical assistance of client during repair outside our plant

1. The client shall assist the repair personnel in the performance of the repair, at his own expense.
2. The client shall take the necessary specific steps for the protection of people and objects at the place of repair. He shall also inform the leader of our assembly team about any special safety prescriptions if they are relevant for the repair team.
3. The client shall be obliged to render technical assistance at his own expense, in particular he shall be responsible for the provision of necessary and suitable helpers, in the numbers required for the repair and for the required period of time; the helpers shall follow the instructions given by our repair team leader. We shall not be liable for helpers. If a defect or damage is caused by helpers because of instructions given by the repair team leader, paragraphs X and XI shall apply accordingly.
 - carrying out of all building and scaffolding work, including purchasing of necessary building material
 - provision of heating, lighting, operating power, water, incl. the required connections.
 - provision of necessary, dry and lockable rooms for the storage of the repair staff's tools
 - Provision of suitable, theft-protected staff rooms and work rooms (with heating, lighting, washing accommodation, sanitary equipment) and First Aid for the repair staff.
 - Support during performance of testing if and as stipulated in the contract

4. Technical assistance by the client must ensure that the assembly can start immediately after the arrival of the repair staff and can be carried out without any delay until the acceptance of the equipment by the client. If special plans or instructions from our side are necessary, we will make them available to the client in due time.
5. If the client fails to meet his obligations, we shall, after having set a period of grace, be entitled, but not obliged, to carry out the actions which are the client's duty in his stead and at his expense. As for the rest, our legal rights and claims shall remain unaffected.

VI Transport and insurance for repairs carried out in our plant

1. If not otherwise agreed in writing, transport of the goods to be repaired to and from our plant - including any packaging and loading - on the client's request, shall be carried out by us at the client's expense. Otherwise, the goods to be repaired shall be transported to our place by the client, at his own expense, and shall, after completion of the repair work, be collected by the client.
2. The client shall bear the risk of transportation
3. On the client's request, transport of the goods to be repaired to and from our plant shall be insured against insurable transport risks, theft, breakage, fire, at the client's expense.
4. During the repair in our plant, the goods to be repaired shall not be covered by insurance. The client shall make sure that the goods to be repaired will be covered by fire, water, storm and machine breakage insurance. We shall arrange for such insurance cover only at the client's explicit request and at the client's expense.
5. If, upon completion of the repair work, the client is late in taking delivery, we shall be entitled to charge the client with storage fees. We may, at our discretion, also store the repaired goods in some other place. The cost and risk of storage shall be borne by the client.

VII Duration of repair

1. Any indication made with regards to the duration of repair work is an estimate and therefore not binding.
2. The client shall only be entitled to demand a binding repair period, which must be indicated as binding, if the scope of the work at hand has been determined in detail.
3. A binding repair period shall be deemed met if the goods to be repaired are ready to be taken by the client upon the expiry of the period of repair, or, in the case of a contractually agreed testing, if they are ready for testing.
4. If the client adds any additional orders or extends the existing repair order, or if any additional repair work becomes necessary, the repair period agreed upon shall be extended accordingly.
5. If the repair work is delayed by labour disputes, particularly by strike and lock-out, as well as any event for which we are not responsible, the repair period shall be reasonably extended, provided that such obstacles can be proven to have a substantial impact on the completion of the repair, even though such events may occur after the contractor was in delay.
6. If the client suffers any damage owing to a delay on our side, he shall be entitled to demand a lumpsum compensation for such delay. This compensation shall be a maximum of 5% of the repair price for that part of the goods to be repaired by us, which could not be used in due time as a consequence of such delay.

7. If the client sets a reasonable period of grace after we are in default - taking into account any legal exceptions, and if we fail to meet this period of grace, the client shall be entitled to withdraw from the contract, within the scope of legal provisions.

Any further claims because of delay shall exclusively be subject to para. XI 3 of the conditions herein.

VIII Acceptance

1. The client shall be obliged to take delivery of the repair work as soon as he has been notified of its completion and testing of the repaired object has taken place, if contractually provided for. If the repair proves to be nonconforming, we shall be obliged to remedy the defect. This shall not apply if the defect is unessential for the interests of the buyer or is based on circumstances for which the client is responsible. In the case of an unessential defect, the client may not refuse the acceptance of the repair.
2. If the acceptance is delayed due to no fault of ours, the acceptance is deemed to have taken place two weeks after the completion of the assembly was advised.
3. Upon the acceptance, we are no longer liable for any recognizable defects, provided that the client has not reserved the assertion of a specific defect.

IX Reservation of ownership, extended right of lien

1. We reserve the ownership of all accessories, spare parts and replacement units used, until receipt of all payments from the repair contract. It is possible to conclude further securing agreements.
2. Due to claims out of the repair contract, we shall have a right of lien to the goods to be repaired which came into our possession. The right of lien can also be asserted because of claims from earlier work, spare parts deliveries and other services rendered. For other claims from the business relationship the right of lien shall only apply if it is uncontested or legally binding.

X Warranty

1. After the repair has been accepted by the client, we shall be liable for defects of the repair, excluding all other claims of the client, without prejudice to number 5 and paragraph XI in such a way, that we shall have to remedy any defect. The client shall immediately report to us any defect identified.
2. We shall not be liable if the defect is inessential for the interests of the client or is based on circumstances for which the client is responsible. This shall particularly apply to parts provided by the client.
3. In the case of alterations or repair work carried out inexpertly by the client or a third party, our liability shall be null and void for the consequences from such inexpert work. The client shall be entitled to remedy the fault himself or have it remedied by a third party and demand payment of the necessary cost from us, only if operating safety is at risk or for the prevention of disproportionately high damage - of which we shall, however, be notified immediately - or if we let a reasonable period of grace expire which the client set us for the remedy of the fault
4. Of the direct costs incurred by the remedy of the defect we shall pay - provided that the complaint was justified - the costs of a replacement part including shipping. We shall also pay the cost of removal and re-installation well as the cost of any necessary provision of technical staff and helpers, including travel expenses, if this does not mean an unreasonably high burden for us.

5. If we let expire a reasonable period of grace set by the customer for the remedy of defects - taking into account the legal exceptions - , the client shall, within the scope of legal provisions, have a right to abatement. The client's right of abatement exists also in other cases of failure to remedy a fault. Only if the repair is proven to be without interest to the customer, in spite of the abatement, shall the customer be entitled to withdraw from the contract.

XI Liability and exclusion of Liability

1. If a part of the goods to be repaired gets damaged through a fault of ours, we shall either repair it at our own expense or supply a new one, at our discretion. The duty to provide replacement shall, with regards to its amount, be limited to the contractually agreed repair price. As for the rest, para. XI.3 shall apply accordingly.
2. If through a fault of ours, the repaired object is not used by the client according to its contractual purpose, owing to non-execution or faulty execution of proposals and consultations as well as other contractual ancillary obligations before or after signing of the contract - in particular operating instructions and maintenance instructions of the assembled object, the regulations of paragraphs X and XI.1 and 3 shall apply, excluding any further claims of the client.
3. For damage caused not on the assembled object itself, we shall be liable, for whatever reason, only
 - a) in the case of intent
 - b) in the case of gross negligence
 - c) in the case of culpable injury to life, body and health
 - d) in the case of defects which we maliciously kept silent about or for whose absence we guaranteed
 - e) in as far as liability must be provided under the product liability law for injuries to persons or damage to privately used property
4. We shall only be liable in the case of culpably caused violation of material contractual obligations and in the case of gross negligence and intent, limited to the typical, reasonably foreseeable damage. Any further claims shall be excluded.

XII Period of limitation

All claims by the client - regardless for what legal reason - shall become statute-barred after 12 months. The legal periods applicable shall apply to claims for damages acc. to paragraph XI 3a to e.

XIII Indemnification by client

If the fixtures or tools provided by us are damaged during repair work outside our plant at the place of repair, or if they get lost without any fault of ours, the client shall be obliged to replace them. Damage caused by normal wear and tear shall not be covered by this.

XIV Applicable law, place of jurisdiction

1. Memmingen shall be the place of jurisdiction for all disputes arising directly or indirectly from the contract relationship. We shall however, be entitled to sue the client at his registered seat.
2. All legal relationships between us and the client shall be governed by the Law of the Federal Republic of Germany applying to the legal relations among domestic parties.