

## **I. Conclusion of Contract**

The written order confirmation of the contractor is exclusively decisive for the contents of the contract and the extent of the repair being made.

## **II. Repairs Which Cannot Be Completed**

The services provided to submit a cost proposal, as well as additional expenses incurred (troubleshooting time equal to labour time) shall be documented and charged to the customer, if the repair cannot be completed due to reasons for which the contractor is not responsible.

## **III. Price and Payment**

1. The contractor has the right to stipulate a reasonable down payment at conclusion of contract; the contractor is not obligated to begin the repairs before the down payment has been received.
2. Prices are understood to be plus the legally stipulated amount of value added tax; invoices are payable upon receipt, notwithstanding other possible written agreements.
3. Withholdings and offsets against the contractor's claim are only permissible with indisputable claims or claims determined to be legally binding.  
The customer is only entitled to exercise its right to withholding insofar as the counterclaim is based on the same contractual relationship.

## **IV. Cooperation and Technical Assistance of the Customer During a Repair outside the Contractor's Plant**

1. The customer must support the repair personnel during the repair work at its own costs.
2. The customer must undertake special measures at repair site to protect people and property. The customer must also inform the repair foreman about any existing special safety regulations which are relevant for the repair personnel. The customer shall inform the contractor if the repair personnel violate such safety regulations. In the event of serious violations, the customer can, in consultation with the repair foreman, forbid the violating worker from entering the repair site.
3. At its own cost, the customer must provide the following technical assistance in particular:
  - a) It must provide the necessary number of suitable assistants required for the repair and for the required time; the assistants must follow the instructions of the repair foreman. The contractor accepts no liability for the assistants. If the assistants cause a defect or damage as a result of the instructions of the repair foreman, the provisions of Section VIII and IX apply accordingly.
  - b) It must perform all construction, ballast, and scaffolding work, including procuring the necessary building material.
  - c) It must supply the required equipment and heavy tools, as well as the required utensils and materials.
  - d) It must supply heating, lighting, operating power and water, including the required connections.
  - e) It must supply the necessary dry and lockable rooms for storing the tools of the repair personnel.
  - f) It must protect the repair site and materials against damaging influences of all types, and it must clean the repair site.
  - g) It must supply suitable theft-proof break rooms and work rooms (with heating, lighting, washing facilities and sanitation) and first aid for the repair personnel.
  - h) It must supply materials and take all other actions necessary to adjust the object of the repair and to carry out the test stipulated in the contract.
4. The technical assistance of the customer must ensure that the repair can be started immediately after the repair personnel have arrived on site and can be carried out without delay until the repair has been accepted by the customer. If special plans or instruction manuals of the contractor are required, the contractor shall provide them to the customer in good time.
5. If the customer does not meet its obligations, the contractor is entitled but not obligated, after a deadline has lapsed, to carry out the actions incumbent upon the customer in customer's stead and at the customer's cost. In other cases, the legal rights and claims of the

## **V. Transport and Insurance during Repair Work at the Contractor's Plant**

1. Unless agreed otherwise in writing, transport of the object of repair to and from the plant at the request of the customer – including any necessary packaging and loading – is carried out at the customer's expense; otherwise the object of repair is delivered to the contractor by the customer at the customer's expense and then picked up again at the contractor's plant by the customer.
2. The customer bears the transport risk.
3. At the customer's request, transport to and from the plant will be insured against insurable transport risks, e.g., theft, breakdown and fire, at the customer's expense.
4. There is no insurance protection during the repair time at the contractor's plant. The customer must ensure that existing insurance protection, e.g., fire, mains water, storm and machine breakdown insurance, remains in place for the object of repair. Insurance against these risks can only be provided at the express requests of the customer and at the customer's expense.
5. If the customer delays acceptance, the contractor can charge a storage fee for storing the object of repair in its plant. The object of repair can also be stored in a different manner at the discretion of the contractor. The customer bears the costs and risks of storage.

## **VI. Acceptance**

1. The customer is obligated to accept the repair work as soon as it has been informed that such work has been completed and that any contractually stipulated testing of the object of repair as been carried out. If the repair has not be performed according to contract, then the contractor is obligated to remedy the defect. This does not apply, if the defect is insignificant to the interests of the customer or is based on a circumstance which is attributed to the customer. The customer cannot refuse acceptance due to an inconsequential defect.
2. If acceptance is delayed at no fault of the contractor, the object of repair is considered accepted two weeks after the customer was informed that the repair is complete.

3. With acceptance, the contractor's liability for noticeable defects lapses, unless the customer has reserved the right to make a claim for a specific defect.

## **VII. Retention of Title, Extended Right of Lien**

1. The contractor retains title to all accessory parts, spare parts and replacement units used until all payments arising from the repair contract have been received. Additional security agreements can be made.
2. On account of its claims arising from the repair contract, the contractor has right to lien on the object of repair which has come into its possession as a result of the contract. The right to lien can also be asserted on account of claims from previously performed work, supplies of spare parts and other services, provided they are connected to the object of repair. The right to lien applies for other claims arising from the business relationship only inasmuch as they are indisputable and legally binding.

## **VIII. Claims for Defects**

1. After acceptance of the repair, the contractor is liable for repair defects to the exclusion of all other claims of the customer in such a manner that it shall remedy the defects. The customer must report a discovered defect to the contractor in writing without undue delay.
2. If an improper modification or maintenance work is performed by the customer or a third party without the prior consent of the contractor, the liability of the contractor for the consequences resulting therefrom is annulled. Only in cases of emergency in which operational safety is at risk and to prevent unreasonably large losses, whereby the contractor must be notified immediately, or if the contractor – in consideration of the legal exceptions – has fruitlessly allowed a reasonably set deadline for remedying the defect to lapse, does the customer have the right in accordance with valid legislation to remedy the defect itself or to commission a third part to remedy the defect and to demand compensation for the necessary costs from the contractor.
3. Of the immediate costs incurred to remedy the defect, the contractor – provided the claim proves to be justified – bears the cost of the replacement part including shipping. In addition, the contractor bears the costs for removal and installation, as well as any costs required to supply the necessary fitters and assistants, including travel costs, provided this does not pose a disproportionate burden to the contractor.
4. If the contractor – in consideration of the legal exceptions – fruitlessly allows a reasonably set deadline for remedying the defect to lapse, then the customer has a right of reduction in accordance with valid legislation. The customer can only withdraw from the contract if the repair is demonstrably uninteresting to the customer despite the right to reduction.  
Additional claims are governed exclusively by Section IX. 3 of these Terms and Conditions.

## **IX. Liability of the Contractor, Exclusion of Liability**

- a) If parts of the object of repair are damaged at the fault of the contractor, the contractor must, at its own discretion and expense, repair the parts or supply them new. The replacement obligation is limited to the amount of the contracted repair price.
- b) If the object of repair cannot be used by the customer as contractually defined as a result of omissions or errors made by the contractor in the course of recommendations or consultations or other auxiliary contractual obligations performed before or after conclusion of contract – in particular instructions for operating and maintaining the object of repair – then the provisions of Section VIII apply to the exclusion of additional claims of the customer.
- c) If parts of the object of supply are damaged at the fault of the supplier, the supplier must, at its own discretion and expense, repair the parts or supply them new.  
For additional losses which did not occur on the object itself, the contractor bears unrestricted liability for losses from injury, loss of life and damage to health, which result from negligent or deliberate breach of duty by the contractor or also from a deliberate or negligent breach of duty by a legal representative or employee. Furthermore, the contractor bears unrestricted liability for other losses which result from a grossly negligent breach of duty or from a deliberate or grossly negligent breach of duty of a legal representative or employee.  
The contractor also bears liability where this is stipulated by law, such as the product liability law.  
In the event of other negligently caused property damage and financial losses, the contractor also bears liability for legal representatives and employees only in the event of a material contractual obligation; material contractual obligations are those whose fulfilment shape the contract and on which the purchaser can rely.  
In the case of liability for material contractual obligations, the amount of the loss is limited to the contract-typical loss foreseeable at conclusion of contract.  
In other cases, liability – regardless of the legal reason concerned – is excluded; the provisions above also apply for claims arising from fault at conclusion of contract.

## **X. Limitation of Actions**

Legal periods apply for loss compensation claims as per Section V.; this is also true if the contractor performs its work on a structure and thus causes defects to the structure.

Other claims of the purchaser, on whatever legal grounds, lapse in 12 months.

## **XI. Indemnification of the Customer**

If, during repair work outside the contractor's plant, equipment made available by the contractor or tools at the repair site are damaged or lost at no fault of the contractor, then the customer is obligated to provide compensation for these losses. Losses which are the result of normal wear are not taken into consideration.

## **XII. Applicable Law, Legal Venue**

1. The law of the Federal Republic of Germany governing legal relationships between domestic parties applies exclusively for all legal relationships between the contractor and the customer.
2. The legal venue is the court with jurisdiction at the domicile of the contractor. The contractor, however, has the right to bring a case before court at the main domicile of the customer.
3. All agreements between the contractor and the purchaser must be made in writing; all amendments and/or auxiliary agreements before or after contract conclusion must also be made in writing.
4. If individual provisions of this contract become ineffective, the other provisions remain in effect. The ineffective provision shall be replaced by a provision which comes closest to the business intentions of the original provision.