

General Terms and Conditions of Repair of stela Laxhuber GmbH

I. Conclusion of contract

The written order confirmation of the contractor is solely definitive for the content of the contract and the scope of the repair to be provided. Unless agreed otherwise, the contractor is also entitled to use a subcontractor to carry out the repair.

II. Repairs that cannot be carried out

If the repair cannot be carried out for reasons for which the contractor is not responsible, the customer shall be charged for the services rendered in drawing up an estimate of costs and for any other work demonstrably carried out (troubleshooting time is equivalent to working time).

III. Price and payment

1. The contractor is entitled to agree an appropriate advance payment on conclusion of contract; the contractor is not obliged to start the repair before receipt of the advance payment.
2. Prices are plus VAT at the statutory rate; invoices are due for payment on receipt, notwithstanding any other written agreements.
3. Retention and offsetting against the contractor's claim are permitted only against uncontested or legally established claims.
4. The customer is entitled to exercise a right of retention only insofar as the counter-claim is based on the same contractual relationship.

IV. Cooperation and technical assistance of the customer for repairs outside the contractor's works

1. The customer shall support the repair personnel in carrying out the repair at its own cost.
2. The customer shall take any special measures necessary to protect persons and property at the repair location. It shall also notify the repair supervisor of any special safety regulations that are in place, insofar as these affect the repair personnel. It shall notify the subcontractor of breaches of such safety regulations by the repair personnel. In the case of serious breaches, it may deny access to the repair site to the person guilty of the breach in consultation with the repair supervisor.
3. The customer is obliged to provide technical assistance at its own cost, in particular to:
 - a) provide the necessary and appropriate assistants in the number
 - b) required for the repair and for the requisite time; the assistants shall follow the instructions of the repair supervisor. The contractor shall not be liable for the assistants. If a defect or damage is caused by the assistants as a result of the repair supervisor's instructions, the provisions of Sections VIII and IX apply accordingly.
 - c) carry out all construction, bedding and scaffolding work, including procurement of the necessary construction materials.
 - d) provide the necessary equipment and heavy tools and the necessary supplies and consumables.
 - e) provide heating, lighting, power and water, including the necessary connections.
 - f) provide the necessary dry, lockable rooms for storage of the tools of the repair personnel.
 - g) protect the repair site and materials against harmful effects of any sort and keep the repair site clean.
 - h) provide suitable, theft-proof common and work rooms (with heating, lighting, washing and toilet facilities) and first aid for the repair personnel.
 - i) provide the materials and carry out any other actions required for adjustment of the repaired item and for completing a contractually agreed test.
4. The technical assistants of the customer shall ensure that the repair can start immediately on arrival of the repair personnel and can be carried out up to the point of acceptance by the customer without delays. If special plans or sets of instructions of the contractor are required, the latter shall provide them to the customer in good time.
5. If the customer fails to meet its obligations, the contractor is entitled but not obliged on expiry of a grace period to carry out the actions required of the customer in its place and at its cost. Otherwise, the statutory rights and claims of the contractor remain unaffected.

V. Transport and insurance for repairs at the contractor's works

1. Unless agreed otherwise in writing, at the request of the customer transport of the item to be repaired shall be arranged in both directions, including any packaging and loading, at the customer's cost; otherwise, the customer shall deliver the item to be repaired to the contractor at its own cost and collect the item from the contractor again after the repair has been completed.
2. The transport risk is borne by the customer. The risk of accidental destruction or deterioration of the item to be repaired during transport is transferred to the customer on handover to the transporter. This applies notwithstanding any other written agreements between the parties.
3. At the request of the customer, transport to and/or from the contractor shall be insured at its cost against insurable transport risks, e.g. theft, breakage, fire.
4. There is no insurance protection during the period of the repair in the contractor's works. The customer is responsible for maintaining the existing insurance cover for the item to be repaired against e.g. fire, water damage, storm damage and mechanical breakage. Insurance cover for these risks can only be arranged at the express request and at the cost of the customer.
5. In the event of default of collection by the customer, the contractor may charge a storage fee for storage in its works. At the discretion of the contractor, the repaired item may also be stored elsewhere. The costs and risk of storage shall be born by the customer.

VI. Acceptance

1. The customer is obliged to accept the repair work as soon as it receives notification that the work has been completed and any contractually agreed test of the repaired item has taken place. If it transpires that the repair is not in accordance with the contract, the contractor is obliged to rectify the defect. This does not apply if the defect is insignificant for the interests of the customer or results from circumstances attributable to the customer. If there is a minor defect, the customer cannot refuse acceptance.
2. If acceptance is delayed through no fault of the contractor, acceptance is deemed to have been given on expiry of a two-week period from notification of completion of the repair.
3. On acceptance, the contractor is no longer liable for identified defects unless the customer has reserved the right to claim for a specific defect.

VII. Retention of title, extended right of lien

1. The contractor retains title to all accessories, spare parts and replacement units used until all payments under the repair contract have been received. Additional security agreements may be made.
2. The contractor has a right of lien to the customer's item to be repaired that has come into its possession under the repair contract in relation to its claim under that contract. The right of lien may also be asserted on the grounds of claims for work, spare parts deliveries and other services carried out previously, in so far as they are related to the item to be repaired. The right of lien applies to other claims under the business relationship only in so far as such claims are uncontested all legally established.

VIII. Claims for defects

1. On acceptance of the repair, the contractor is liable for defects in the repair in the form of an obligation to rectify said defects, with exclusion of all other claims of the customer. The customer shall report a defect it identifies promptly in writing to the contractor.
2. In the event of any improper modifications or repair work carried out on the part of the customer or third parties without the prior consent of the contractor, the contractor is not liable for the consequences. Only in urgent cases of risk to operational safety and to avert disproportionate damage, in which case the contractor shall be notified immediately, or if the contractor – taking account of the statutory exceptions – has allowed an appropriate grace period for rectification of the defect to expire without performance, does the customer have the right within the framework of the statutory regulations to rectify the defect itself or to arrange for it to be rectified by third parties and to demand reimbursement of the necessary costs from the contractor.
3. Of the direct costs associated with rectification of the defect, the contractor shall meet the costs of the replacement part including shipping, insofar as it transpires that the complaint is legitimate. It shall also bear the costs of disassembly and installation and the cost of any necessary provision of filters and assistants, including their travel costs, provided that the resulting cost to the contractor is not disproportionate.
4. If the contractor – taking account of the statutory exceptions – has allowed an appropriate grace period for rectification of the defect to expire without performance, the customer has a right to reduction of the price within the scope of the statutory regulations. Only if the repair is demonstrably not of interest to the customer despite the reduction in price is the customer entitled to withdraw from the contract.
5. Further claims are governed exclusively by Section IX.3 of these Terms and Conditions.

IX. Liability of the contractor, exclusion of liability

1. If parts of the item to be repaired are damaged through the fault of the contractor, the contractor has the choice either to repair or replace them at its own cost. The replacement obligation is restricted in terms of its amount to the contractual repair price.
2. If, through the fault of the contractor, the customer's item to be repaired cannot be used in accordance with the contract as a result of failure to follow or improper following of suggestions and advice provided before or after conclusion of contract or failure to meet other ancillary contractual obligations – in particular in relation to instructions for the operation and maintenance of the item to be repaired – the provisions of Section VIII apply, with exclusion of any other claims by the customer.
3. The replacement obligation under 1. does not apply if liability is mandatory by law and:
 - in the case of an intentional or grossly negligent breach of obligation by the contractor or an intentional, grossly negligent breach of obligation on the part of its legal representatives or vicarious agents;
 - in the case of a breach of material contractual obligations; "*material contractual obligations*" are those obligations that protect the legal rights of the customer that are essential to the contract and that the contract grants through its content and purpose; contractual obligations are also material if their fulfilment allows proper execution of the contract in the first place and if the customer may normally rely and expect to rely on their fulfilment;
 - in the case of injury to life, limb and health, including by legal representatives or vicarious agents;
 - in the case of default, if a fixed time of performance has been agreed;
 - if the contractor has provided a guarantee for the success of the repair or for achieving a particular level of performance;
 - in the case of liability under the German Product Liability Act or other legally mandatory grounds for liability.
4. If the contractor or its vicarious agents are guilty only of minor negligence and there is no case covered by Sections IV., V. and VI. above, the contractor is liable only for the foreseeable damage typical of this sort of contract, even in the case of a breach of material obligations.
5. The liability of the contract is limited in terms of amount for each individual instance of damage to the respective order value. This does not apply if the contractor is guilty of bad faith, malicious intent or gross negligence, to claims on the grounds of injury to life, limb or health or in the case of a claim based on an unlawful act or a guarantee expressly provided, or in cases where higher amounts of liability are mandatory by law.
6. Any further liability is excluded.
7. The exclusions and restrictions of liability pursuant to 1. – 5. above apply to the same extent in favour of the contractor's executive bodies, its executive and non-executive staff and other vicarious agents and to subcontractors of the contractor.
8. Compensation claims by the customer based on this contractual relationship may only be asserted within an exclusion period of one year from the start of the statutory exclusion period. This does not apply if the contractor is guilty of malicious intent or gross negligence, to claims on the grounds of injury to life, limb or health or in the case of a claim based on an unlawful act or a guarantee expressly provided, or in cases where higher amounts of liability are mandatory by law.

X. Expiry

The statutory expiry periods apply to compensation claims covered by Section V., including if the contractor carries out the work on a structure and defects are caused to that structure as a result.

Any other claims of the customer, irrespective of the legal grounds, expire in 12 months.

XI. Replacement obligation of the customer

If, during repair work outside the contractor's works, the equipment or tools provided by it at the repair location are damaged or lost through no fault of the contractor, the customer is obliged to replace them.

Damage caused by normal wear is not covered.

XII. Applicable law, place of jurisdiction

1. All legal relationships between the contractor and the customer are governed exclusively by the law of the Federal Republic of Germany as it pertains to the legal relationships between domestic parties.
2. The place of jurisdiction is the competent court for the contractor's registered office. However, the contractor is entitled to take action against the customer at the location of its head office.
3. All agreements between the contractor and the customer shall take written form. Written form also applies to all amendments and/or ancillary agreements made before or after conclusion of contract.
4. If individual provisions of the contract are invalid, this does not affect the validity of the rest of the contract. The invalid provision shall be replaced by a provision that comes as close as possible to the economic intention of the original provision.