

### **I. Conclusion of contract**

The Contractor's written order confirmation is exclusively definitive for the content of the contract and the repair to be carried out.

Unless otherwise agreed, the Contractor is also entitled to use a sub-contractor for the repair to be completed.

### **II. Repairs that cannot be completed**

The services provided for issuing an estimate of costs and the other costs incurred and documented (time searching for faults is the equivalent to working time) shall be charged to the Customer if the repair cannot be carried out for reasons for which the Contractor is not responsible.

### **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 begin the repair before the advance payment has been received.
2. Prices are understood to be plus VAT at the statutory rate; invoices are due for payment on receipt, regardless of any other written agreements.
3. Retention and offsetting against the Contractor's claims is permissible only if the claims are uncontested and legally established.
4. The Customer is entitled to exercise a right of retention only if the counter-claim is based on the same contractual relationship.

### **IV. Cooperation and technical assistance from the Customer in the case of repairs away from the Contractor's premises**

1. The Customer shall support the repair personnel in completing the repair at his cost.
2. The Customer shall take the special measures required to protect personnel and property at the repair location. He shall also inform the repair foreman of any existing safety regulations, insofar as these are relevant to the repair personnel. He shall notify the Contractor of breaches of such safety regulations by the repair personnel. In the case of serious breaches, he may, in consultation with the repair foreman, refuse entry to the repair location to the person who is at fault.
3. The Customer is obliged to provide technical assistance at his cost, in particular:
  - a. Provision of suitable auxiliary personnel in the numbers
4. required for the repair and for the time required; the auxiliary personnel shall follow the instructions of the repair foreman. The Contractor cannot accept any liability for the auxiliary personnel. If a defect or damage is caused by the auxiliary personnel as a result of instruction given by the repair foreman, the regulations under Sections VIII and IX shall apply accordingly.
  - a. Execution of all construction, bedding and scaffolding work, including procurement of the building materials required.
  - b. Provision of the equipment and heavy tools required and the necessary consumables and other materials.
  - c. Provision of heating, lighting, operating power, water, including the connections required.
  - d. Provision of dry, lockable rooms as required for storage of the repair personnel's tools.
  - e. Protection of the repair location and materials against harmful factors of any sort, cleaning of the repair location.
  - f. Provision of suitable, theft-proof rest rooms and work rooms (with heating, lighting, washing and toilet facilities) and first aid for the repair personnel.
  - g. Provision of the materials and carrying out of all other actions required for adjustment of the repair item and performance of a contractually agreed test.
5. The technical support provided by the Customer must ensure that the repair can begin as soon as the repair personnel arrive and continue without delay until acceptance by the Customer can be completed. If special plans or instructions from the Contractor are required, the latter shall make them available to the Customer in good time.
6. If the Customer does not meet his obligations, the Contractor is entitled but not obliged to carry out the actions required of the Customer in his place and at his cost on expiry of a notice period. Otherwise, the statutory rights and claims of the Contractor remain unaffected.

## **V. Transport and insurance in the case of repair on the Contractor's premises**

1. Unless otherwise agreed in writing, transport of the repair item to and from the Contractor's premises – including any packaging and loading – shall be carried out at the request of the Customer at his expense, otherwise the repair item shall be delivered to the Contractor by the Customer at his cost and picked up again from the Contractor on completion of the repair by the Customer.
2. The Customer shall bear the risk of transport.
3. At the request of the Customer, transport to the Contractor's premises and, if required, return transport shall be insured against insurable transport risks, e.g. theft, breakage, fire.
4. There is no insurance protection during the period of the repair on the Contractor's premises. The Customer shall arrange for continuation of the existing insurance protection for the repair item, e.g. fire, water and storm damage, machine breakage insurance cover. Only at the express request of the Customer and at his cost can insurance cover be arranged for these risks.
5. If there is a delay in the Customer collecting the item, the Contractor may charge a storage fee for storage on its premises. At the discretion of the Contractor, the repair item may be stored elsewhere. The costs and risk of storage shall be borne by the Customer.

## **VI. Acceptance**

1. The Customer is obliged to accept the repair work as soon as he is notified of its completion and any contractually agreed testing of the repair item has taken place. If the repair proves not to be as contractually agreed, the Contractor is obliged to rectify the defect. This does not apply if the defect is insignificant in relation to the Customer's interests or is the result of a circumstance for which the Customer is responsible. If there is a minor defect, the Customer may not refuse acceptance.
2. If acceptance is delayed through no fault of the Contractor, acceptance shall be deemed to have been given two weeks after notification of completion of the repair. 3. On acceptance, the Contractor's liability for recognisable defects comes to an end, unless the Customer has reserved the right to assert a claim for a specific defect.

## **VII. Reservation of title, extended lien**

1. The Contractor shall reserve title to all accessories, spare parts and replacement assemblies used until receipt of all payments due under the repair contract. Further collateral agreements may be made.
2. The Contractor has a right of lien in respect of its claim under the repair contract to the repair item which belongs to the Customer and is in its possession on the basis of the contract. The right of lien may also be asserted in respect of claims for work completed previously, deliveries of spare parts and other services, insofar as they are connected with the repair item. The right of lien shall apply to other claims under the business relationship only insofar as they are uncontested or legally established.

## **VIII. Claims for defects**

1. On acceptance of the repair, the Contractor shall assume liability for defects in the repair, with exclusion of all other claims by the Customer regarding the way in which the defects are to be repaired. The Customer shall notify the Contractor, immediately and in writing, of any defect identified.
2. If any improper modifications or repair work are carried out by the Customer or a third party without the prior consent of the Contractor, the Contractor's liability for the consequences thereof is cancelled. Only in urgent cases in which operational safety is at risk or to prevent disproportionate additional damage, in which case the Contractor shall be notified immediately, or if the Contractor – taking account of the statutory exceptions – has allowed an appropriate period set for it to rectify the defect to pass without having done so, does the Customer have the right within the statutory provisions to rectify the defect himself or to arrange for this to be done by a third party and to demand reimbursement of the costs from the Contractor.
3. The Contractor shall meet the costs incurred directly by rectification of the defect – provided that it transpires that the complaint is legitimate – together with the costs for the replacement part, including shipping. It shall also bear the costs of disassembly and installation, and the costs of provision of any fitters and auxiliary staff required, plus travel costs, provided that the burden on the Contractor is not disproportionate.
4. If the Contractor allows an appropriate period set for it to rectify a defect to elapse without having done so – and taking account of the statutory exceptions – the Customer has a right to a price reduction within the framework of the statutory regulations. Only if the repair is demonstrably of no interest to the Customer despite the price reduction may the Customer withdraw from the contract.

Further claims are regulated exclusively by Section IX.3 of these Terms & Conditions.

### **IX. Liability of the Contractor, exclusion of liability**

1. If the Contractor is responsible for damage to parts of the repair item, the Contractor shall repair them or replace them, at its discretion. The compensation obligation is restricted in amount to the contractual cost of the repair.
2. If, through the fault of the Contractor, the Customer's repair item cannot be used in accordance with the contract as a result of a failure to implement suggestions and advice given before or after conclusion of contract, of having done so improperly, or of failure to fulfil other ancillary contractual obligations – in particular, the obligation to follow instructions for operation and maintenance of the repair item – the provisions of Section VIII shall apply, to the exclusion of any other claims by the Customer.
3. The compensation obligation under (1) shall not apply if statutory liability is mandatory, and:
  - in the case of the Contractor's own intentional or grossly negligent breach of obligation or intentional or grossly negligent breach of obligation by its legal representatives or vicarious agents;
  - in the case of breach of material contractual obligations; "*material contractual obligations*" are obligations that protect the legal rights of the Customer which are granted to the Customer by the subject matter and purpose of the contract; contractual obligations are material if their fulfilment makes proper performance of the contract possible in the first place, and if the Customer normally relies and may expect to rely on them;
  - in the event of physical injury, loss of life, and damage to health, including if this is caused by legal representatives or vicarious agents;
  - in the event of default if service by a fixed date has been agreed;
  - insofar as the Contractor has assumed the guarantee of the success of the repair or successful performance of the service;
  - in the case of liability under the German Product Liability Act (*Produkthaftungsgesetz*) or other statutory grounds for liability that are mandatory.
4. If the Contractor or its vicarious agents are guilty of only minor negligence and none of the cases specified under paragraphs 4, 5, and 6 above obtains, the Contractor shall be liable only for foreseeable damage typical of this type of contract, even in the case of breach of material contractual obligations.
5. The Contractor's liability shall be limited to each individual case of damage in the amount of the respective order value. This shall not apply if the Contractor is guilty of fraudulent intent, intentional or gross negligence, to claims due to physical injury, loss of life or damage to health, to any claim arising from tort, to a guarantee expressly provided, or to cases of higher liability amounts prescribed by law.
6. Any further liability shall be excluded.
7. The liability exclusions and restrictions pursuant to the above sections 1 to 5 shall apply to the same extent in favour of the Contractor's bodies, executive and non-executive employees and other vicarious agents and of the sub-contractors employed by the Contractor.
8. Claims by the Customer for compensation arising from this contractual relationship may be asserted only within a preclusion period of one year from commencement of the statutory limitation period. This shall not apply if the Contractor is guilty of malicious intent or gross negligence, to claims due to physical injury, loss of life or damage to health, to a claim arising from tort, to guarantee expressly provided, or to cases where a longer limitation period is prescribed by law.

### **X. Limitation period**

The statutory limitation periods shall apply to compensation claims under section V, including if the Contractor carries out the work on a building and causes damage to the building as a result.

Other claims by the Customer, whatever the legal grounds, shall expire in 12 months.

### **XI. Customer's compensation obligation**

If, during repair work away from the Contractor's premises, the equipment or tools provided by it are damaged at the repair location or if they are lost through no fault of the Contractor, the Customer is obliged to compensate for this damage or loss.

Damage that results from normal wear cannot be considered.

### **XII. Applicable law, place of jurisdiction**

1. The law of the Federal Republic of Germany covering the legal relations between domestic parties shall apply exclusively to all legal relations between the Contractor and the Customer.
2. The place of jurisdiction is the court with jurisdiction over the Contractor's registered office. The Contractor is, however, entitled to take legal action at the location of the Customer's main office.
3. All agreements between the Contractor and Customer shall be made in writing; the written form requirement shall also apply to all changes and/or ancillary agreements before or after conclusion of the contract.
4. If individual provisions prove invalid, the rest of the contract shall remain valid; the invalid provision shall be replaced by a provision that comes as close as possible to the original commercial intention.