

TERMS AND CONDITIONS FOR REPAIRS ON MACHINES AND PLANTS

In the domestic business of Aerzener Maschinenfabrik GmbH in Aerzen, valid from 01.06.2016.

For use towards:

1. a person, at the time the contract is concluded, undertaking commercial or independent professional activity (entrepreneur);
2. legal persons under public law or a public fund.

I. Conclusion of contract, general

1. If there is an uncontested written order confirmation, this is binding in respect of the content of the contract and the scope of repairs.
2. If the object to be repaired is not delivered by the contractor, then the customer has to indicate the industrial property rights that exist with respect to the object, to the extent that the contractor has no responsibility, the customer indemnifies the contractor from possible claims of third parties on the grounds of industrial property rights.

II. Impossible repair work

1. The work performed for the submission of an estimate as well as for any and all further documented expenses (fault locating time equals working time) should the repair/maintenance be unable to be performed for any reason, if the repair cannot be carried out due to reasons for which the contractor is not responsible, especially because
 - the claimed fault did not occur during the inspection
 - spare parts cannot be purchased,
 - the customer has culpably failed to meet the agreed date,
 - the contract was terminated during the course of performance.
2. The item being repaired only needs to be returned to its original condition at the express wish of the customer and with reimbursement of the costs, unless the work carried out was not necessary.
3. In case the repair cannot be carried out, the contractor shall not be liable for damage to the item being repaired, the infringement of contractually agreed secondary obligations or for damage that did not occur to the item to be repaired, regardless of counterclaims put forward by the customer.

The contractor shall only be liable in the event of premeditation or gross negligence on the part of the company owner/executive bodies or executives, as well as in the event of a culpable fundamental breach of contractual obligations. In the event of a culpable fundamental bre-

ach of contractual obligations, the contractor shall only be liable, except in cases of intent and gross negligence of the owner or executives, for typical damages, which could reasonably be foreseen.

III. Information on costs and cost estimates

1. As far as possible, estimated costs for repairs will be given to the customer on conclusion of the contract, or else the customer may set cost limits. If the repairs cannot be carried out within these costs or, according to the contractor, additional work during the repairs is necessary, the customer's approval shall be obtained, if the indicated costs are exceeded by more than 15 %.
2. Should the customer wish to obtain a cost estimate with binding prices prior to performance of the repairs, this must be expressly requested by the customer. Such a cost estimate shall, unless otherwise agreed, only be binding if given in writing. It must be paid for. The customer shall not be charged for any and all work performed in conjunction with submission of the cost estimate, if said work can be utilized in connection with the performance of the repairs.

IV. Price and payment

1. The contractor is entitled to request a reasonable advance payment.
2. In the computation of the repair cost, the prices for parts and materials to be used and for special services as well as the prices for work, costs of travel and transportation are stated separately. If the repair is carried out on the basis of a binding cost estimate, reference to the cost estimate is sufficient, so that only deviations in the scope of services have to be mentioned.
3. In addition, the Value Added Tax is charged to the customer at the legally applicable rate.
4. Possible adjustment of the account on the part of the contractor, and any objection lodged on the part of the customer, must be made in writing, at the latest 4 weeks after receipt of the invoice.
5. Payment shall be made upon acceptance and receipt of the invoice, without discount.
6. Retention of payments, or the set-off of possible counterclaims of the customer contested by the contractor, are not allowed.

V. Transport and insurance in case of repairs undertaken at the contractor's premises

1. Unless otherwise agreed in writing, shipment and return at the customer's request of the item to be repaired, including any required packing and loading, is carried out for the customer's account, otherwise the item being repaired shall be delivered to the contractor at the customer's expense and collected again by the customer following completion of the repairs at the premises of the contractor.
2. The customer shall bear all risks associated with transportation.
3. At the option of the customer, transport to and, if applicable, from the contractor's premises will be insured, at the customer's expense, against the perils of theft, breakdown and fire.
4. During the repair period at the contractor's premises, there shall be no insurance provided by the contractor. The customer has to provide for the maintenance of the existing insurance protection for the item under repair, e.g. with respect to insurance against fire, water damage and breakdown of machinery. Insurance coverage for these perils shall be obtained by the contractor only at the customer's express request and expense.
5. If the customer delays acceptance of the item after repair, the contractor may access warehousing charges for storage at its place of business. The repaired item may also be stored at a different location at the discretion of the contractor. The costs and risks associated with storage are for the account of the customer.

VI. Time of repair, delay in repair

1. Specifications for the time period for repairs are based on estimates and are therefore not binding.
2. The customer may not demand agreement on a binding time period for repairs, or specify a period that may be designated as binding, until the scope of the work has been precisely determined.
3. Given a contractually prescribed checkout (test run) for acceptance, the binding deadline for repair is adhered to if, when the time has elapsed, the item to be repaired is ready for acceptance by customer.
4. In the event of subsequently placed additional or extension orders or for necessary additional repairs, the agreed repair period shall be extended accordingly.
5. If repairs are delayed as a result of measures taken during labour disputes, in particular in the case of strikes and lockouts, as well as the occurrence of circumstances for which the contractor is not responsible, a reasonable extension of the repair deadline shall be granted, as far as such hindrances are proven to considerably affect the completion of the repair.

6. If the customer sustains a loss as a consequence of the contractor's delay, then the customer is entitled to demand a compensatory allowance. This allowance amounts to 0.5 % for each week of delay, up to a maximum of 5 % of the cost of the repairs for each part of the item to be repaired by the contractor which, as a consequence of the delay, cannot be used in good time. If the customer sets the contractor a reasonable deadline for performance after the due date, taking account of the statutory exemptions, and that time limit is not subsequently observed, the customer shall be entitled to rescission within the scope of the statutory provisions. If so requested by the contractor, the customer is obliged to state, within an appropriate period, whether he is repudiating the contract due to the delivery or performance delay. Further claims arising from delay are determined exclusively according to Paragraph X. 3 of these terms and conditions.

VII. Testing / inspection

1. The tests performed by us include the necessary material, clearance and dimensional checks in the production area. Where necessary, pressure tests of the housings for strength and leak tightness with water and air according to the nominal pressure load of the finished parts and crack inspections are carried out. If the customer requests and orders a functional test this is carried out under overload. The test procedure is selected based on knowledge gained from trials and practical experience. For special machines, testing procedures considering the individual requirements to material, machine and, if applicable, the packaged unit, are applied. We prepare, at a charge, performance test certificates, material certificates and acceptance test certificates of the tests performed upon customers' request. Prior to dispatch, the final inspection division performs design, completeness and packing checks. For reasons of manufacturing flow connecting a possibly required inspection by the customer with our works test is not possible. If, despite our inspections and our works tests, the customer requests inspections or such inspections are indispensable, another test run on our test bench is possible upon scheduled appointment. The resulting costs are to be borne by the customer. Normal acceptance tests are performed based on works test procedures with available measuring devices without observing special standards. As far as the volume measurement is concerned, the measuring devices are open orifices considering the stipulations in EN ISO 5167-1 but do not comply with EN ISO 5167-1 due to the missing pipe run-in distance. Concerning three-phase current motors, the power required at the coupling is measured according to the two wattmeter method, and concerning gimbal

motors by directly reading the indicated value on the balance. Special acceptance tests must be agreed upon separately. An inspection of installations after the test run for positive displacement blowers and screw compressors is not possible, as this would result in a reassembly and, due to the check of the proper setting for operating condition after assembly, in another test run. Further acceptance tests, such as final inspection, completeness check, etc. are free of charge, unless any extraordinary expenditure should arise. The processes of the individual inspections are defined in our inspection regulations according to DIN EN ISO 9001.

2. The customer is obliged to accept the repair work as soon as he has been shown its completion, and testing of the repaired item as provided for in the contract has taken place. If the maintenance proves not to be in line with the contractual agreement, the contractor shall be obliged to remedy the defect. This does not apply if the deficiency is irrelevant to the customer's interests, or is based upon a circumstance that is attributable to the customer. Provided that no major defect or deficiency pertains, the customer cannot refuse to provide acceptance.
3. If acceptance is delayed through no fault of the contractor, acceptance shall be deemed to have occurred after a period of two weeks has elapsed since notification of the completion of the repairs.
4. Upon acceptance, the contractor shall no longer be liable for obvious defects, unless the customer has reserved the right to claim a certain defect.

VIII. Retention of title, extended lien

1. The contractor retains title to all accessories, spare parts and equipment assemblies used until receipt of all payments arising from the contract for repairs. More extensive security agreements may be agreed upon.
2. Because of its claim arising from the contract for repairs, the contractor is entitled to a lien on the customer's item to be repaired which came into the contractor's possession as a result of the contract. The lien can also be asserted on account of claims arising from work performed earlier, deliveries of spare parts and other services, to the extent that they are associated with the item to be repaired. The right of lien applies to other claims relating to this business relationship, only if such claims are uncontested or legally binding.

IX. Claims for defects

1. After acceptance test of the repairs, the contractor is liable for defects in respect of the repairs, excluding all other claims of the customer and irrespective of paragraph IX. 5 below and section X in such a way that he has to remove

the defects. The customer shall inform the contractor in writing of any defects detected without undue delay.

2. The contractor is not liable if the deficiency is not relevant to the customer's interests or is based on a circumstance that is attributable to the customer. This applies particularly with reference to parts supplied by the customer.
3. In the event that the customer, or a third party, shall perform defective modification or repair work without the contractor's prior written permission, the contractor's liability is no longer applicable. Also, in cases of emergency where reliability of service is at risk or where disproportionately large damage needs to be averted, the contractor must be informed immediately. If the contractor, taking account of the statutory exceptions, allows a reasonable deadline it has been set to expire without taking any necessary action, the customer shall have a right within the statutory provisions to rectify the defect either by himself or to have it rectified by a third and to claim reimbursement of the reasonable costs incurred from the contractor.
4. To the extent that the complaint proves justified, the contractor bears the costs arising directly from remedying the deficiencies, such as the costs of replacements, including any shipment costs. In addition, the contractor shall bear the cost of disassembly and reassembly and the cost of providing the required mechanics and assistants, including travel expenses, provided this is not an unreasonable burden imposed on the contractor.
5. If the contractor, taking account of the statutory exceptions, allows a reasonable deadline it has been set to expire without taking any necessary action, the customer shall have the right within the statutory provisions to reduce the remuneration. Only if said repair shall be evidenced not to be in the interests of the customer, in spite of said reduction in remuneration, shall the customer be entitled to withdraw from the contract. Further claims are determined exclusively according to section X. 3 of these terms.

X. Contractor's liability, disclaimer

1. If parts of the object to be repaired are damaged through the contractor's actions, the contractor must repair them at its cost, or deliver new ones, at its option. The duty of replacement is limited in amount to the contractual repair price. In all other respects, section X. 3 applies.
2. If the customer cannot use the repaired item through fault of the contractor as a consequence of negligent or deficient execution of suggestions and advice provided by the customer before or after the conclusion of contract, as well as other ancillary obligations, particularly

manuals for service and preventive maintenance of the repair object, then the provisions of paragraphs X and XI apply, respectively, to the exclusion of further claims of the customer.

3. For damage or loss incurred not on the delivery item itself, the contractor is liable - no matter on what grounds - only
 - a) in the case of intent,
 - b) in the case of gross negligence on the part of the owner/committees or company executives,
 - c) in the case of culpable injury to life, limb or health,
 - d) in the case of defects concealed fraudulently,
 - e) within the scope of a guarantee promise,
 - f) to the extent the contractor is liable for personal injury or damage to property for private use under the Product Liability Act. In the event of a culpable fundamental breach of contractual obligations, the contractor shall also be liable in the event of gross negligence of non-managerial employees, and slight negligence, in the latter case limited to reasonable, foreseeable typical contract damage. Any and all other claims shall be excluded.

XI. Limitation period

Claims of the buyer because of material defects come under the statute of limitations in one year from delivery of the purchase object to the customer. Except for any damage claims of consumers as well as claims for damages for injury to life, body or health and/or damage claims due to gross negligence or damage intentionally caused by the supplier. In such cases the statutory limitation periods shall apply.

XII. Applicable law, court of jurisdiction

1. All legal relations between the contractor and the customer shall be governed exclusively by the laws of the Federal Republic of Germany with the exclusion of the UN Convention on Contracts for the International Sale of Goods.
2. The place of jurisdiction will be the court in charge for the contractor's domicile. The contractor shall however be entitled to institute legal proceedings in the location of the head office of the customer.

