

Standard Terms and Conditions

for repair services for machinery, equipment and consumer goods – last updated April 2022

I. General

1. The following terms and conditions for repair services ("Terms and Conditions") shall govern all contractual agreements and other services, including all consulting services, which are not governed by a stand-alone consulting agreement and provided they are not amended or excluded with the express written consent of the contractor. Agreements between the customer and the contractor shall be binding if the customer signs an order form containing these Terms and Conditions or advising that they can be viewed on the company's website. The foregoing shall also apply if the customer has received the written order confirmation containing these Terms and Conditions prior to the commencement of the work.
2. Any agreements deviating from these Terms and Conditions are to be included in the order form/confirmation.
3. The order form/confirmation must contain at least a brief keyword description of the services to be performed. Changes or additions to the repair order may also be made orally. If the change or addition would exceed 10% of the original estimated cost of the order, the contractor shall send a confirmation letter if the original agreement was made orally. Unless otherwise agreed, the repair work shall be carried out in the contractor's workshop (place of performance). The order shall include the authorisation to subcontract the work, carry out test drives and, where necessary, inspection drives.
4. Where the item to be repaired is registered under the German Road Traffic Licensing Regulation (*Straßenverkehrs-Zulassungs-Ordnung*, "StVZO"), the customer shall submit the vehicle registration certificate (*Zulassungsbescheinigung Teil I*) to the contractor when the order is placed.
5. The contractor does not participate in any consumer conciliation proceedings under the German Consumer Alternative Dispute Resolution Act (*Verbraucherstreitbeilegungsgesetz*, "VSBG").

II. Cost estimate, costs for orders not executed

1. If a cost estimate with binding prices is requested prior to executing the order, this must be expressly stated. Such a cost estimate shall only be binding if it is submitted in writing and designated as binding. The services rendered for the purpose of submitting a cost estimate may be charged to the customer; this shall apply in particular if work was carried out in this context on the equipment to be repaired (troubleshooting, etc.). If the order is confirmed, services charged in connection with submitting the cost estimate will not be charged again.
2. The customer will be invoiced for the work required and documented (troubleshooting time = working time). If an order cannot be executed for reasons for which the contractor is not responsible, the expenses incurred shall nevertheless be borne by the customer. This applies in particular where:
 - the error complained of did not occur during the inspection;
 - the customer culpably misses the agreed appointment;
 - the order was terminated during performance in accordance with section 649 of the German Civil Code (*Bürgerliches Gesetzbuch*, "BGB") without this being caused by circumstances for which the contractor is responsible.
3. If the customer is a **consumer**, the prices stated in the order form and in the cost estimate shall be inclusive of statutory VAT. If the customer is a merchant, the stated prices in the order form and in the cost estimate must include VAT.

III. Completion

1. The contractor shall be required to comply with any completion date designated in writing as being binding. However, if orders are subsequently placed for additional or more extensive work or if additional repair work is necessary, the deadline shall be extended accordingly, provided that this is reasonable for the customer. The contractor shall notify the customer of the new completion date.
2. A binding completion date agreed in writing shall only constitute a fixed deadline under section 323 (2) no.2 BGB if the customer indicates in its order confirmation that it would no longer have any interest in performance after the agreed date.
3. No liability for damages shall attach if the completion date cannot be met due to an event of force majeure or major disruptions in operations for which the contractor is not responsible and which are unforeseen, such as lawful strikes, lockouts, lack of workers or supplies. However, the contractor must notify the customer of such delays to the extent this is possible and reasonable. The foregoing shall also apply if completion is substantially delayed due to orders for additional or more extensive work or if additional repair work is necessary. These provisions do not constitute any limitation of the contractor's obligation to select skilled workers and upstream suppliers with due care. Nor do they affect any statutory right of rescission.

IV. Cooperative and technical assistance for repair work performed at the customer's site

1. The contractor shall make available the item to be repaired on the agreed date. The service technician shall be ensured full access to the item to be repaired for the duration of contractually agreed work to be performed.
2. While the work is being performed at the customer's site, the customer shall in particular:
 - a) provide the facilities and existing equipment necessary to perform the work. The customer shall at its expense provide technical assistance, including in particular sufficient auxiliary personnel, resources, requisite vehicles for transport as well as electricity, water and other necessary operating equipment, including the corresponding connections for the time required. The auxiliary personnel must follow the service technician's instructions. No liability is assumed for the auxiliary personnel provided;
 - b) enable the agreed work to be started immediately upon the service technician's arrival and carried out without delay until accepted by the customer;
 - c) take the measures necessary to protect persons and property at the site where the work is performed. The customer shall advise the service technician of existing safety regulations,

insofar as these are relevant to the service technician's work.

V. Acceptance

1. Unless otherwise agreed, formal acceptance by the customer of the ordered item shall take place at the contractor's premises or, in the case of repair, at the customer's premises/on the field at that site. If the customer requests delivery, this shall be at their expense and risk. However, the contractor shall exercise due care in executing the transfer. In the case of delivery, acceptance shall take place upon handover of the item.
2. The customer shall be deemed in default of acceptance (section 293 BGB) if they fail to collect the ordered item within one week of receipt of the notice of completion and invoice. In the case of repair work contracted to be performed within one working day, the aforementioned period shall be shortened to two days.
3. If the customer is in default of acceptance, the contractor may charge the customary local storage fee for the ordered item. The ordered item may also be stored elsewhere at the contractor's discretion under the customary conditions. The customer shall bear the costs and risk of storage.

VI. Order billing and payment

1. The contractor shall be entitled to request a reasonable advance payment upon confirming the order. The amount of the advance payment shall be based on the expected time required and the value of the materials to be procured.
2. When billing repairs, the prices for spare parts, materials and special services used as well as the prices for labour shall be shown separately both in the cost estimate and in the invoice. If the order is executed on the basis of a binding cost estimate, a reference to the cost estimate shall suffice, and only additional work need be specifically listed.
3. Statutory VAT shall be borne by the customer.
4. In the case of a term service agreement (contract for the performance of a continuing obligation (*Dauerschuldverhältnis*)), the contractor may reasonably adjust the respective prices to account for changing market conditions no more than once per quarter. The foregoing shall apply in particular in the case of substantial changes in the cost of procuring spare parts, materials, and labour, VAT or changes in the customer's conditions for use. If the contractor increases the price on the basis of the above provision and prior negotiations on the price increase fail, the customer shall have a right to rescind the agreement.
5. Unless otherwise agreed, remuneration for the repair work shall be due and payable immediately upon acceptance; if the customer is a consumer, however, it shall be due and payable at the latest within one week of receipt of the notice of completion and invoice.
6. The customer may only set-off counter-claims which are uncontested, have been acknowledged by the contractor or declared final and binding by a court of law. Excepted herefrom are claims and counter-claims of the customer arising from the same order.
7. If the customer is in default of payment, the contractor shall be entitled to charge default interest on the invoice amount due; if the customer is a consumer, default interest will be charged at the rate of 5 percentage points p.a. above the base interest rate and if the customer is a merchant, at the rate of 9 percentage points p.a. above the base interest rate (section 247 BGB, section 288 BGB). The amount of default interest shall be set higher if the contractor can show that the interest rate charged was higher. The amount of default interest shall be set lower if the customer can show that the interest rate charged was lower.

VII. Right of lien

1. The contractor shall hold a lien on the ordered item on the basis of its claim under the order (section 647 BGB). The contractual lien may also be asserted on the basis of claims arising from work previously carried out, deliveries of spare parts and other services to the extent that they have a material connection with the ordered item.
2. For other claims arising from the business relationship, the contractual lien shall only apply to the extent that they are undisputed or have been declared final and binding by a court of law and the customer owns the ordered item.

VIII. Warranty claims

The contractor gives a warranty for the work commissioned as follows:

1. If the customer accepts the work ordered despite knowledge of a defect, it shall only be entitled to warranty claims to the extent described below provided that it reserves these upon acceptance.
2. If the customer is a merchant, the warranty period shall be 12 months from the date of acceptance. If the customer is a **consumer**, the statutory warranty periods shall apply.
3. Apparent defects must be reported to the contractor in writing without undue delay after they are identified and must be precisely described.
4. No warranty is given for loss or damage incurred for the following reasons: unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, failure to carry out manufacturer-recommended servicing, normal wear and tear (in particular of wearing parts), faulty or negligent handling, unsuitable operating equipment, replacement materials, faulty construction work, unfit building foundation, chemical, electronic or electrical interferences, provided that they are not due to fault on the part of the contractor.
5. Defects covered by warranty shall be remedied at the contractor's premises at its expense. If the customer is a merchant, towing costs shall not be covered.
6. In the event of repeated (as a rule two) failed attempts to remedy the defect, the customer may claim a reduction of the contract price or rescind the agreement.
7. A defect covered by warranty may only be remedied in another specialist workshop subject to the contractor's prior consent. An exception will be made in dire emergencies, in which case the contractor must be notified without undue delay, stating the name and address of such specialist workshop. In any case, the customer must have it noted in the order form that the work involves the repair of defects under warranty of the contractor and that the parts removed in the process are to be kept available for a reasonable period of time. The contractor shall be required to reimburse the documented repair costs incurred by the customer. The customer shall attempt to keep the costs for remedying the defect as low as

- possible.
8. If the customer is a merchant, no warranty is given for loss or damage which was not promptly reported by the customer in derogation of section VIII. 3.
 9. The customer must assert claims for defects in quality against the contractor; where reports of defects are made orally, the contractor shall provide the customer with a written confirmation of receipt of the report.

IX. Liability in connection with test drives

1. The contractor's liability shall be governed by the statutory provisions. However, liability (regardless of the legal grounds) shall be excluded to the extent that the breach committed involves a non-material breach of duty and is not due to wilful or grossly negligent conduct. The foregoing shall not apply in cases of injury to life, limb or health or if the contractor is covered by liability insurance. In such case, the contractor shall assign its claims against the insurer to the customer.
2. If the contractor is liable under the statutory provisions for loss or damage caused by ordinary negligence, the contractor's liability shall be limited: Liability shall only attach in the event of a breach of material contractual obligations such as those which the contractor specifically intends to impose based on the spirit and purpose of the agreement or the satisfaction of which is essential to the due and proper performance of the agreement and on which the customer generally relies and may rely. Liability shall be limited to loss or damage that was reasonably foreseeable at the time of contracting.
3. The risk of a test drive shall be borne by the customer if the customer themselves or their agent steers the vehicle during the test drive.

X. Liability for other loss or damage

1. Liability for the loss of money and valuables of any kind, which are not expressly taken into custody, shall be excluded.
2. Other claims of the customer not governed by section VIII "Warranty claims" shall become time-barred within the regular limitation period.
3. Claims for damages against the contractor shall be governed *mutatis mutandis* by the provisions in section IX "Liability in connection with test drives" no. 1 and 2.

XI. Retention of title and replaced parts

1. The contractor shall retain title in all installed replacement parts and accessories as well as replacement units which have not become material components of the ordered item until such time as all repair invoices have been paid in full.
2. Unless otherwise agreed, replaced parts shall become the property of the contractor.

XII. Place of performance and jurisdiction

1. Place of jurisdiction for any and all disputes arising out of the legal relationship between the customer and the contractor shall be the place where the repair work is performed (place of performance, section 29 of the German Code of Civil Procedure (*Zivilprozeßordnung*, "ZPO").)
2. Where the customer is a merchant, the same place of jurisdiction shall apply if the customer does not have a general place of jurisdiction in Germany, relocates their place of residence or habitual abode outside of Germany after the date of contracting or if their place of residence or habitual abode is unknown at the time the action is brought.

XIII. Data protection

Data processing is carried out for the purpose of performing a contract and the legal basis is Article 6(1)(b),(f) of the EU General Data Protection Regulation (GDPR). Data shall only be disclosed to third parties within the scope and for the purpose of submitting credit history inquiries to corresponding credit reporting agencies. The data shall be deleted as soon as they are no longer required for the intended purpose. The customer shall be entitled to request information about the data stored at the contractor and require data to be deleted. The customer shall furthermore have the right to lodge a complaint with the supervisory authority (State Commissioner for Data Protection (*Landesbeauftragter für Datenschutz*)).