



General Repair Terms and Conditions 08/05

Any legal relationship between the Customer and us in relation to repairs of engines and plants shall – unless otherwise explicitly agreed in writing – exclusively be governed by our General Terms and Conditions for Sales and Deliveries in its latest version and by these General Repair Terms and Conditions. In case of contradictions between both terms and conditions these General Repair Terms and Conditions shall prevail. Any terms and conditions of the Customer shall only apply from time to time in case of our prior explicit agreement in writing.

I. Object of Repair

In case the object of repair has not been manufactured and/or delivered by us, the Customer shall inform us in writing without undue delay about any existing industrial property rights concerning the object of repair; as long as not our fault is involved, the Customer shall indemnify us from any claims of third parties arising from the violation of industrial property rights.

II. Repair Period

1. Indications concerning the repair period are based upon estimates and are therefore not binding.
2. An agreement of a binding repair period needs to be designated as binding in writing and may be requested by the Customer only in case the scope of the repair works is exactly defined. The repair period shall commence at the time the Customer actually provides us with the object of repair and the necessary documentation in such a way that it is possible to carry out the contractually agreed repair works, but not earlier than the date of our written order confirmation concerning all order/contract elements as per no. IV.1. of our General Terms and Conditions for Sales and Deliveries.
3. A repair period agreed to be binding by us shall be deemed met if the object of repair is ready for take-over by the Customer – in case of a contractually agreed test run: for the performance of such test run - before expiry of the repair period. In case of further additional or extension orders being placed by the Customer after commencement of the repair period or in case of necessary additional repair works, the agreed repair period shall be extended accordingly.
4. In case of delay of the repairs due to measures within the course of industrial disputes – in particular strikes and lock-outs – or the occurrence of other circumstances which are not our fault or are beyond our influence and which affect the completion of the repair works, a reasonable extension of the repair period shall apply; this shall also apply in case of such circumstances occurring after we got into default.
5. In case a delay of the contractual repair works occurs without our fault, the Customer shall bear all time extensions and additional costs incurred by such delay, in particular costs of waiting times, second travels, storage and refreshment costs.

III. Cost Indications, Cost Estimation

1. As far as possible, we will indicate the estimated repair price to the Customer at the time of conclusion of the contract, otherwise the Customer may set cost limits. In case the repair cannot be carried out at this costs or in case we deem additional repair works to be necessary during the repairs, we will obtain the approval of the Customer if the indicated costs will be exceeded by more than 15 per cent.
2. If the Customer requests a cost estimation with binding price indications prior to commencement of the repairs, he shall do so by means of prior explicit written request. Such a cost estimation shall only be binding if it has been given in writing and expressly marked to be binding.

IV. Prices, Costs

1. As far as not fixed prices have been agreed, we shall charge the actual efforts rendered at the prices applicable at the time of invoicing. Taxes, customs duties, travel, transport and packaging costs shall be borne by the Customer. The same applies to used parts, materials and special services. In case the repairs are carried out away from our premises, the Customer shall also bear all travel costs of our staff including ancillary costs – such as insurance costs, visa, vaccinations (if applicable) – incurred in relation to the contract.
2. We shall be entitled to ask the Customer for a reasonable payment in advance for the repair works to be carried out.

V. Securities

1. We shall have a lien on the object of repair in our possession for any of our claims arising from the repair contract. The lien may also be exercised for any claims arising from former works, spare part deliveries or other services, as long as they are related to the object of repair. The lien shall be effective to any other claim arising from the business relationship only in case such claim is undisputed or has been determined *res iudicata*.
2. The retention of title as per our General Terms and Conditions for Sales and Deliveries shall apply to parts delivered under repair contracts.

VI. Costs and Liability in Case of Repairs not Carried Out

1. If repairs cannot be carried out for reasons which are not our fault, in particular because
 - the defect/fault to be repaired has not (re-)occurred during our examination/inspection,
 - spare parts are not available, or
 - the object of repair has – before the repairs have been carried out and without the fault of either party - perished or been damaged to such extent that the intended repair is not of interest for the Customer any more,the Customer shall be invoiced the costs and expenses actually incurred by efforts for rendering the offer/cost estimation as well as further costs and expenses incurred, in particular time for searching the fault/defect, inspection and material supply.
2. If repairs are not being carried out or completed due to reasons which are the fault of the Customer, in particular because
 - the Customer terminates the contract prior to or during the repairs being carried out, or
 - the Customer fails to comply with his obligation to cooperate,the Customer shall have to pay – in case a fixed price having been agreed – the contract price deducted by any saved expenses, or in any other case to pay the costs for the services, expenses and costs rendered by us. We reserve the right to further claims, in particular damages for non-performance.

3. The object of repair shall only be brought back into its initial state upon explicit request of the Customer and against reimbursement of the costs by the Customer, if not the works carried out having been unnecessary.
4. In case of impossible repairs, we shall not be liable for any damage to the object of repair, the violation of ancillary contractual obligations and for damages not directly to the object of repair, regardless of which legal basis the Customer argues. This exclusion of liability shall not apply in case of intention and gross negligence of our organs and executive staff as well as in case of faulty violation of material obligations under the contract. In case of material violations of obligations under the contract, we shall



only be liable – if not a case of intention or gross negligence of our organs and executive staff is given - for damages being typical for the contract and being reasonably foreseeable.

VII. Cooperation and Technical Support by the Customer in Case of Repairs away from our Premises

1. The Customer shall support us in carrying out the repairs at his cost.
2. The Customer shall take care of all measures necessary for the protection of persons and property at the place of repair and shall inform our supervisor about existing special safety provisions as far as such provisions apply to the repair staff. The Customer shall report to us any violations of such safety provisions by the repair staff.
3. The Customer shall be obliged to render technical support at his own cost, in particular to:
 - a) supply the necessary and eligible support staff for the time and in the number necessary for the repair; the support staff shall follow instructions of our supervisor. We shall not be liable for this support staff. In case of any damage or defect being caused by such support staff upon instruction of our supervisor, nos. XI. and XII. of our General Terms and Conditions for Sales and Deliveries shall apply accordingly.
 - b) supply the necessary devices and heavy tools, lifting gear and cranes as well as the necessary supply items and materials.
 - c) supply of heating, light, electric energy, water including the necessary connections.
 - d) supply necessary dry and locked rooms for storing the tools of our repair staff.
 - e) protect the place and material of repair against any detrimental influence, clean the place of repair.
 - f) supply eligible, theft-proof accommodation and workplace (with heating, light, washing facilities, sanitary installations) and First Aid for the repair staff.
 - g) supply material and taking any other measures which are necessary to adjust the object of repair and to carry out a test run – if contractually agreed.
4. The Customer shall render all acts of preparation and support within his obligation in such a way that repairs may commence immediately upon arrival of our repair staff and can be performed smoothly without delay and without any risk to persons or property until the acceptance (*Abnahme*). We shall – if necessary – provide the Customer in time with any particular plans or instructions required.
5. In case the Customer fails to comply with his obligation to cooperate or with his obligation to bear the costs in this respect, we shall – after notification of the Customer – be entitled but not obliged to take the measures being the obligation of the Customer or have them taken by third parties instead of the Customer and at his cost. Apart from that, our statutory rights and claims remain unaffected.

VIII. Transport and Transfer of Risks in Case of Repairs in Our Works

1. The Customer shall generally be obliged to deliver the object of repair at his own cost and risk to our premises and to collect the object of repair after completion of the repair. If we have undertaken – upon request of the Customer - the picking-up and the sending-back of the object of repair, the transport forth and back of the object of repair including any packing and loading shall be – if nothing else has been agreed in writing – carried out at the cost and at the risk of the Customer.
2. The Customer shall bear the risk of transport as well as the risk of loss or damage to the object of repair during the stay of the object of repair on our premises.
3. No insurance coverage does exist for the object of repair during the repair time on our premises. The Customer shall take care of maintaining existing insurance coverage for the

object of repair, e. g. regarding fire, water, storm, breakage. We shall take care of insurance coverage only upon prior explicit written request of the Customer at his cost.

4. If the Customer gets in default with taking back the object of repair, we shall be entitled to claim storage charges for the storage on our premises or to have the object of repair stored otherwise at the cost and risk of the Customer.

IX. Liability of the Customer

In case of damage or loss of any installations or tools provided by us during repairs at the place of repair away from our premises without our fault, the Customer shall be liable to compensate us for such damage or loss. This shall not apply to damages which are the result of ordinary wear and tear.

X. Acceptance (*Abnahme*)

1. The Customer shall be obliged to accept the repair works as soon as we have notified him of the completion of the repair and a test run – if contractually agreed – has been carried out. In case a repair proves to be not as contractually agreed, we shall be obliged to remedy such defect. This shall not apply if the defect does not materially affect the interests of the Customer or results from circumstances not attributable to us. The Customer may not refuse acceptance in case of immaterial defects.
2. In case the acceptance is delayed without our fault, the acceptance shall be deemed effected after expiry of two weeks as from our notice of completion of repairs, but in any case at the moment of taking possession of the object of repair by the customer or other persons instructed by him.
3. With acceptance we shall be released from liability for visible defects, as far as the Customer has not explicitly reserved his right in writing upon acceptance to claim particular defects.

XI. Liability for Defects

1. After acceptance of the repairs, we shall be liable for defects of the repair, all other claims of the Customer being included - notwithstanding no. XI.6. of this Terms and Conditions and no. X. of our General Terms and Conditions for Sales and Deliveries - in such manner that we have to remedy the defects. The Customer shall notify us of any determined defect without undue delay.
2. By means of negotiations about complaints, we shall not waive our rights of objection due to untimely and/or insufficient notice of defect.
3. We shall not be liable for a defect if such defect does not materially affect the interests of the Customer or results from circumstances not attributable to us. This shall particularly apply to acts of cooperation and supply to be carried out by the Customer as per no. VII. of these General Repair Terms and Conditions.
4. In case of inappropriate changes, maintenance or repairs being carried out by the Customer or third parties without our prior approval, we shall be released from liability for any consequences resulting from such changes, maintenance or repairs. Only in case of urgent danger to the safety of operation and for the purpose of avoiding unreasonably high damages – which shall be reported to us immediately – or if we have failed to meet a period set to us to remedy a defect, the Customer shall be entitled to remedy the defect himself or have it remedied by a third party and to claim the necessary costs for that from us. If the Customer remedies the defect himself, we shall only bear such reasonable costs which would have been incurred in case of necessary remedy of the defect by us.
5. Within the liability for defects, the Customer may initially – if a case of warranty is given – request only the rectification of the repair works from us. We shall bear the costs for any spare part becoming necessary only within the scope of no. XII.1. of these Terms and Conditions. We



shall bear the costs – if applicable – of a necessary disassembling and re-assembling of the object of repair to a reasonable extent and only to such extent as such work cannot be done by staff available on location. Any further costs incurred – in particular costs for getting access to the object of repair as well as indirect and consequential costs, such as stoppage costs, docking costs, costs for substitutional energy – shall be borne by the Customer – if not a case of intention or gross negligence of our organs or executive staff is given.

6. In case we fail to meet a period for remedy of defects set to us – taking the statutory exceptions into account – the Customer shall be entitled to reduce the price within the scope of the statutory provisions. The Customer's right to reduction of the price shall also exist in other cases of failure to perform the remedy of defects. Only if the repair is – despite reduction of the price - evidently not of interest to the Customer anymore, the Customer shall be entitled to rescind from the contract.
7. In case the Customer fails to comply with his obligations to more than a neglectable extent, we shall not be obliged to remedy defects during the time of non-performance of such obligations.
8. The Customer's claims for defects shall become time-barred after expiry of 12 months as from acceptance of the repair works as per no. X. of these Terms and Conditions.
9. We shall not be liable for repairs which we carry out *ex gratia*.
10. Apart from that, the provisions of no. IX. and X. of our General Terms and Conditions for Sales and Deliveries shall apply. Further claims shall not exist, if nothing else may be taken from no. XII. of these Terms and Conditions.

XII. Other Liabilities, Exclusion of Liability

1. If parts of the object of repair are damaged due to our fault, we shall – in our option - be obliged to repair or replace such parts at our cost. Our liability shall be limited to the repair price contractually agreed. Apart from that, no. X.2. of our General Terms and Conditions for Sales and Deliveries shall apply.
2. As far as our staff does not carry out the repair works themselves but – as instructed – merely supervises works carried out by personnel supplied by the Customer or third parties, our liability shall be limited to the supervision activities. In this respect, we shall only be liable for exercising customary duty of care and such liability shall be limited to the amount of the contractual repair price, any further liability shall be excluded. The aforesaid shall not apply in case of intention or gross negligence of our organs or executive staff.
3. Apart from that, the provisions as per no. X. of our General Terms and Conditions for Sales and Deliveries shall apply.