

General Terms and Conditions of ATL Anlagentechnik Luhden GmbH, Planung - Fertigung - Montage, (hereinafter „Supplier“) for the Repair of Machines and Equipment (hereinafter „Repair Conditions“)



For use in business transactions with:

1. persons acting, with the conclusion of the contract, in the exercise of a commercial or independent professional occupation (business persons);
2. legal persons of public law or a public law special fund (hereinafter "Customer").

I. Conclusion of Contract, General

1. If a confirmation of a written order confirmation has been issued and it has not been objected to, such order confirmation shall be authoritative for the content of the contract and the scope of the repair.
2. If the item to be repaired has not been delivered by the Contractor, the Customer shall indicate any existing industrial property rights with regard to the item; insofar as the Contractor is not liable for fault, the Customer shall indemnify the Contractor against any possible claims of third parties due to industrial property rights.
3. All performances by the Contractor in connection with repairs of machines and equipment shall be subject to these Repair Conditions as well as any separate contractual agreements. Contrary general purchase or business conditions of the Customer are objected to by the Contractor; such purchase or business conditions of the Customer shall not become part of the contract even upon acceptance of the order and shall apply only if confirmed in writing by the Contractor.
4. These Repair Conditions shall apply in their respective current version also to all subsequent business transactions, without such fact having to be expressly stated or agreed upon at the conclusion of such subsequent business transactions.
5. In the absence of separate agreement, a contract shall come into full force and effect only upon written order confirmation by the Contractor. Offers of the Contractor made previously are, in principle, subject to change without notice.
6. All agreements between the Contractor and the Customer regarding the performance of the contract have been made in writing, including within these Repair Conditions. The written contract shall resemble the complete understanding between the parties regarding the contract matter. Oral statements by the Contractor prior to the conclusion of the contract shall not be considered binding and oral understandings between the parties shall be replaced by the written contract between the parties, insofar it is not expressly agreed that they shall continue to be effective.

II. Repairs Not Capable of Being Performed

1. Any services performed to provide a cost estimate as well as additionally accruing time expenditures to be proved (fault localization time period equals work hours) shall be invoiced to the Customer if the repair cannot be performed by the Contractor for reasons which are not its fault, in particular, because
 - the fault objected to did not appear during the inspection,
 - spare parts cannot be procured,
 - the Customer culpably failed to meet the agreed due date,
 - the contract is terminated during the performance unless the Customer terminated justifiably for cause.
2. The repair item only has to be put back in the original condition at the express request of the Customer and against reimbursement of costs, unless the work undertaken was unnecessary.

III. Specifications of Costs, Estimate of Costs

1. Insofar as possible, the foreseeable repair price shall be specified to the Customer at the conclusion of the contract. Otherwise, the Customer may set cost limits. If the repairs cannot be performed at these costs or if the Contractor deems the performance of additional work to be necessary during the repair work, the Customer's agreement thereto is to be obtained if the stipulated costs shall be exceeded by more than 20 %.
2. If a cost estimate with binding price rates is desired prior to performance of the repairs, such shall be expressly requested by the Customer. Insofar as not otherwise agreed, such cost estimate is only binding if made in writing. Services performed to make the estimate of costs shall not be invoiced to the Customer insofar as these can be used with the carrying out of the repairs.

IV. Prices and Payment Terms

1. The Contractor shall be entitled to request a reasonable advance payment at conclusion of the contract.

In invoicing the repair/maintenance, the prices for materials and special services used as well as the prices for labor, travel and transport costs, respectively, shall be stated separately.

If the repair is undertaken on the basis of a binding cost estimate, reference to the cost estimate shall be sufficient, whereby only deviations in the scope of performance are to be listed separately.

3. Value added tax in the respective statutory amount shall be invoiced in addition and charged to the Customer.

4. Any correction of an invoice by the Contractor and any objection by the Customer must be made in writing at the latest four weeks after receipt of the invoice.

5. Payment without deduction is to be made upon acceptance and hand delivery or dispatch of the invoice.

6. Payment shall be deemed to have been made upon receipt by the Contractor; in case of checks only after encashment. Should the Customer fail to effect payment as per due date, the outstanding amounts shall accrue interest at 8% p.a. over the respective base lending rate of the European Central Bank; the possibility to claim higher interest and additional damages in cases of default shall remain unaffected.

7. The Customer shall only be entitled to retain payments or to set-off such with counterclaims insofar as its counterclaims are undisputed or have final, res judicata effect.

V. Cooperation and Technical Assistance of the Customer with Repairs Outside the Contractor's Premises

1. The Customer shall provide support, at its own cost to the repair personnel during the performance of the repairs.

2. The Customer shall undertake any special measures necessary for the protection of persons and objects at the site of repairs. It shall also notify the repairs manager with regard to existing special safety regulations, insofar as these are of significance for the repair personnel. It shall notify the Contractor regarding violations by the repair personnel against such safety regulations. In cases of serious violations, in consultation with the repairs manager, it can refuse access to the repairs site to the person acting in violation.

3. The Customer is obligated to give technical assistance at its own cost, in particular by:

- a) Providing the necessary and suitable support staff in the number necessary for the repair and for the necessary time period; the support staff shall follow the instructions of the repairs manager. The Contractor shall assume no liability for the support staff unless the support staff has caused a defect or damage due to actions undertaken on the instructions of the repairs manager. In such case, the regulations of Sections X. and XI. hereof shall apply accordingly.
- b) Undertaking all construction, bedding and scaffolding work including the procurement of the necessary building materials,
- c) Providing the necessary apparatus and heavy tools as well as the necessary commodities and materials,
- d) Providing heating, lighting, fuel, water, including the necessary connections,
- e) Providing necessary dry and lockable rooms for the storage of tools of the repair personnel,
- f) Protecting the repair site and materials against damaging influences of all kinds, cleaning of the repair site,
- g) Providing suitable, theft-proof common rooms and workrooms (with heating, lighting, washing facilities, sanitary facilities) and first-aid for the repair personnel,
- h) Providing materials and undertaking all other actions necessary for the adjustment of the repair item and performance of a contractually foreseen testing.

4. The technical assistance by the Customer must guarantee that the repair may be commenced without undue delay after arrival of the repair personnel and may be carried out without delay up until acceptance by the Customer. Insofar as special plans or instructions by the Contractor are necessary, the Contractor shall provide these to the Customer in due time.

5. Should the Customer fail to meet its obligations, the Contractor shall be entitled but not obligated, after the unsuccessful expiration of a reasonable deadline set for the Customer to perform its obligations, to undertake the actions incumbent upon the Customer in its stead and at its cost. Otherwise, the statutory rights and claims of the Contractor shall remain unaffected.

VI. Transport and Insurance with Repairs on the Contractor's Works Premises

1. If not otherwise agreed in writing, the shipping and return shipping of the repair item undertaken upon the request of the Customer – including any packaging and loading – shall be performed on its account. Otherwise, the repair item shall be delivered by the Customer at its cost to the Contractor and

again picked up by the Customer at the Contractor's works premises after performance of the repair.

2. The Customer shall bear the transport-risk.

3. At the request of the Customer, the shipping and, if applicable, return shipment shall be insured at its cost against such transport-risks which may be subject to insurance, e.g. theft, breakage, fire.

4. There shall be no insurance coverage in force during the period of repair/maintenance at the suppliers premises. The Customer shall maintain its existing insurance protection for the repair item, e.g. with regard to damage caused by fire, water, storm and machinery breakdown. Insurance protection for these risks shall be obtained only upon the express request and at the cost of the Customer.

5. In the case of the default of the Customer to take possession of the repair item, the Contractor shall be entitled to a storage fee for storage on its premises. The repair item may also be stored in another manner at the discretion of the Contractor. The costs and risk of storage shall be borne by the Customer.

VII. Repair Time Period

1. Any statements made regarding the time periods required for repairs are based on estimates and are, therefore, basically non-binding.

2. Binding repair time periods must be agreed upon separately in writing.

3. Any binding repair time period is deemed to be complied with if, up to its expiration, the repair item is ready to be picked up by the Customer in the case of a contractually agreed testing, once the repair item is ready for the undertaking of the testing.

4. With subsequently granted additional or expansion contracts or with necessary additional repair work, the agreed repair time period shall be extended accordingly.

5. Should the repair be delayed due to measures within the framework of labor disputes, in particular, strikes and lock-outs, as well as the occurrence of circumstances which are not the fault of the Contractor, insofar as such hindrances can be proved to materially influence the completion of the repair, an adequate extension of the repair time period shall occur; this shall also apply if such circumstances occur after the Contractor is in default.

6. Should the Customer incur damage as a consequence of the Contractor's default, it shall be entitled to a lump sum compensation, equaling 0.5 % of the repair price for each full week of the delay, but, however, in total not exceeding 5 % of the repair price for the respective part of the repair item in total which cannot be used in a timely manner as a consequence of the delay.

Should the Customer set a reasonable time period for performance by the Contractor after the due date – taking into account the statutory exemptions – and should such time period pass without performance, the Customer shall be entitled to rescind the contract within the framework of the statutory provisions. The Customer is obliged to inform the Contractor upon its request within an adequate time period whether it intends to exercise its rescission right.

Additional claims due to default are determined exclusively pursuant to Section XI., No. 3 of these General Terms and Conditions of Repair.

VIII. Acceptance

1. The Customer shall be obligated to accept the repair work as soon as it is notified of the completion of the repair and any contractually foreseen testing of the repair item has occurred.

Should the repair prove not to be in accordance with the contract, the Contractor shall be obligated to remedy the defect. This shall not apply in the case that the defect is immaterial for the interests of the Customer or attributable to the Customer. In case of non-material defects, the Customer shall not be entitled to refuse acceptance.

2. Acceptance shall be deemed to have occurred if the Customer fails to accept the repair work within two weeks after notification of the completion of the repair even though it is obligated to do so.

3. Upon acceptance, the liability of the Contractor for apparent defects is cancelled, insofar as the Contractor has not reserved its rights regarding certain defects.

IX. Retention of Title, Extended Lien

1. The Contractor retains title to all accessories, spare parts and replacement units up until the receipt of all payments from the repair contract. Additional security agreements may be made.

2. In respect of its claims from the repair contract the Contractor shall be entitled to a lien on the repair item of the Customer in its possession. The lien may also be claimed due to claims from previous work, spare parts deliveries and other

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performances, insofar as connected with the repair item. The right of lien shall only exist for other claims from the business relationship insofar as these are undisputed or have final, res judicata effect.

X. Defect Claims

1. After acceptance of the repair, the Contractor must remedy defects of the repair under exclusion of all other claims of the Customer, but without prejudice to provisions pursuant to Section X. No. 4 and Section XI. The Customer shall give notice to the Contractor of determined defects without undue delay in writing.
2. The Contractor shall not be liable if the defect is immaterial to the interests of the Customer or attributable to the Customer. In addition, the Contractor shall not be liable if the claimed defect was caused by parts provided by the Customer or by improper alterations or repair work undertaken without the prior consent of the Contractor by the Customer or third parties. Only in urgent cases where operational safety is endangered and to avoid disproportionately large damages (with the Contractor to be notified immediately) or if the Contractor has allowed a reasonable deadline to remedy defects to pass, shall the Customer shall have the right within the statutory provisions to remedy the defect itself or to have such remedied by third parties and to demand the reimbursement of the costs necessary therefore from the Contractor.
3. Out of the direct costs accruing from the remedy of the defects, the costs of the replacement item including shipment shall be borne by the Contractor, insofar as the objection is shown to be justified. In addition, the Contractor shall bear the costs for the disassembly and installation as well as the costs for the necessary furnishing of necessary fitters and assistants including travel costs, insofar as no unreasonable burden on the Contractor shall occur hereby. The subsequent performance shall occur, at the option of the Contractor, either at its own premises or by means of return shipment of the repair item in exchange for reimbursement of the shipment costs or by remedy of the defect at the site of use of the repair item.
4. Should the Contractor allow a reasonable deadline period within which to undertake the remedy of the defect to pass – taking into account the statutory exemptions – without remedying the defect, the Customer shall have a right of reduction of the purchase price within the framework of statutory law. Only if the repair despite the reduction is verifiably useless for the Customer, the Customer may rescind the contract.

XI. Liability of the Contractor, Preclusion of Liability

1. The liability of the Contractor for damages, regardless of the legal grounds, in particular, due to impossibility of performance, default, defective performance, breach of contract, breach of obligations with contractual negotiations and tort, is excluded. In addition to direct damages to the repair item this exclusion of liability shall also encompass any consequential, incidental or indirect damages, such as in particular, but not limited to damages for loss of use or loss of production due to defects of the repair item, lost profits, lost turnover, costs of experts, frustrated expenses (e.g. costs for the disassembly and reassembly caused by a defect of the repair), costs for replacements, legal liabilities to pay compensation pursuant to an on-sale of the repair item.
2. Insofar as the Contractor gives technical information or acts as adviser and such advice or information is not within the scope of the contractual obligations of the Contractor, this shall occur at no charge and under exclusion of any and all liability.
3. In particular the Contractor shall not be liable according to No. 1 of this Section XI. in case of ordinary negligence of its company organs, statutory representatives, employees or other vicarious agents, insofar as such does not concern damage from the culpable breach of a material contractual obligation. In the case of culpable breach of a material contractual obligation, the Contractor shall also be liable in the case of gross negligence of non-management employees and with ordinary negligence; in the latter case limited to damage which is typical for this type of contract and reasonably foreseeable.
4. The afore-mentioned limitations of liability of this Section XI. shall not apply to the liability of the Contractor
 - insofar as the Contractor maliciously fails to disclose a defect of quality or assumed a guarantee for the quality,
 - for claims according to the German Product Liability Act (Produkthaftungsgesetz),
 - for damages due to culpable injury to life, limb and human health,
 - for damages based on wrongful intent, or
 - in the event of gross negligence of its company organs or senior executives.Further claims by the Customer against the Contractor are excluded.

XII. Statute of Limitations

All claims of the Customer – regardless of the legal grounds – shall be time-barred after 12 months. The statutory statute of limitation periods shall apply for damage claims pursuant to Section XI., No. 3 hereof. Should the Contractor perform the repair work on a structure and cause its defectiveness thereby, the statutory statute of limitation periods shall also apply.

XIII. Reimbursement by the Customer

Should the equipment or tools on the repair site be damaged or lost without the fault of the Contractor during repair work outside the premises of the Contractor, the Customer shall be obligated to reimburse such damage. Damages caused by normal wear and tear shall not be taken into account.

XIV. Applicable Law, Jurisdiction

1. All disputes between the Customer and the Contractor arising out of or in connection with these Repair Conditions and agreements concluded on the basis thereof shall exclusively be governed by the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (UN Sales Law, CISG).
2. The place of jurisdiction for all disputes arising out of or in connection with these Repair Conditions shall be – as far as legally permissible - the court responsible at the registered office of the Contractor. The Contractor shall be entitled, however, to file actions at the courts having jurisdiction at the headquarters of the Customer.
3. Should a provision of these Repair Conditions be or become invalid, void or unenforceable, the legal validity or the enforceability of all other provisions of these Repair Conditions or other agreements shall not be affected thereby. Invalid, void or unenforceable provisions of these Repair Conditions shall be deemed to be replaced by such valid and enforceable provisions which come as close as possible to the commercial purpose of the cancelled regulation.

Luhden, in February 2020