

Terms and Conditions of Repair and Installation Services (Domestic/International)

(on the basis of the terms and conditions recommended by Verband Deutscher Maschinen- und Anlagenbau eV. (VDMA) (= German Machine and Plant Engineering Association))

August 2020

- 1. To be applied to any agreement with:**
 - 1.1. any person acting in performance of her/his commercial or independent professional business (entrepreneur) when entering into any respective agreement,
 - 1.2. any public legal entity or any public separate estate. The following terms and conditions shall apply to any repair of machines and plants to be performed by us or on account of our order, regardless of whether the work is to be performed on any respective customer's premises (within the country or abroad), such customer being our Client, or in our works, us being our Client's Contractor. These Terms and Conditions of Repair and Installation shall also apply to all future repair and installation orders. Any incorporation of terms and conditions to the contrary is hereby expressly and finally objected to.
- 2. Scope of performance**
 - 2.1. Contractor's written acknowledgment of any respective order shall determine the content of any respective agreement and the scope of any respective performance.
 - 2.2. There are no oral ancillary agreements.
 - 2.3. Any ancillary agreement and any modification of any respective agreement shall be subject to Contractor's written acknowledgment thereof.
- 3. Cost estimate**

If the Client requests the Contractor to draw up a written estimate of the cost before placing an order, the Contractor is entitled to invoice to the Client the expenses incurred. The Contractor's "field assembly rates" in effect at the relevant time shall be the basis thereof.
- 4. Duty to give information**
 - 4.1. If any respective repair item does not originate from Contractor, Client shall point out any possibly existing industrial property rights in that item. Client shall hold Contractor harmless from any third party claims in case Contractor innocently infringes any industrial property right of any third party.
 - 4.2. If any respective repair item is not owned by Client at all or if it is not solely owned by Client, the Client shall inform the Contractor hereof. As between Client and Contractor, however, Client shall be liable to pay the price due for services performed regardless of the ownership of any respective repair item. Client shall hold Contractor harmless from any third party claims.
- 5. Restoration of the original state**

If any respective repair item must be disassembled for the purpose of making a cost estimate, Contractor shall only be obligated to reassemble that item upon Client's explicit request and against payment of the reassembly costs. This shall not apply if the work performed by Contractor was unnecessary or if an order is placed on the basis of such a cost estimate.
- 6. Cost limit overrun**

If no request for making a written and reliable cost estimate is made prior to placing an order, and Client does, however, set a cost limit, and if subsequently the repair cannot be made within that cost limit, or if Contractor deems additional repair work necessary or desirable to be done, then Contractor shall obtain Client's prior consent for such cost limit overrun or additional repair work if the cost limit is expected to be probably overrun by more than 15 %.
- 7. Price**

The prices agreed upon or payable under law shall be in euros, and, in the absence of any specific agreement, ex works pursuant to Incoterms 2010, including lading but excluding packaging and customs clearance, plus the respective applicable sales tax and, if services are performed abroad or destined for a location abroad, plus any other fees and taxes, plus any necessary freight and traveling expenses. If no individual agreement has been made, the Contractor's "field assembly rates" shall apply.
- 8. Advance Payment**

Contractor may demand a reasonable advance payment prior to commencing work.
- 9. Invoices for Partial Performance**

Furthermore, the Contractor is entitled to make out partial invoices corresponding to the progress of his performance. Such partial invoices shall be payable immediately upon their receipt.
- 10. Time of Payment**
 - 10.1. The Client will grant acceptance of repair work or assembly upon being given notice of its completion and upon completion of a possibly stipulated test of the respective repair item or of the respective assembled ordered item. If any respective repair or assembly proves to be noncompliant with its underlying agreement, the Contractor is under obligation to remedy the defect. This shall not apply if such defect is irrelevant to the Client's interests or if it is to be ascribed to a circumstance imputable to the Client. In case of a non-substantial defect, the Client shall not be entitled to refuse acceptance of the Contractor's performance if the Contractor expressly recognizes his obligation to remedy that defect.
 - 10.2. If acceptance of the Contractor's performance is delayed without the Contractor's fault, such acceptance shall be deemed to have been granted two weeks after notice of completion of any respective repair or assembly has been given.
 - 10.3. The Contractor's liability for recognizable defects shall lapse upon acceptance of his performance unless the Client has reserved its right to complain of a particular defect.
- 11. Payments**
 - 11.1. The Contractor shall be apprised of any objection to an invoice no later than 2 weeks following receipt of that invoice by the Client.
 - 11.2. Unless otherwise agreed upon by the parties, any payment shall be made net cash and free of charges at the Contractor's place of business. In any case of its default of payment, Client shall be charged with default interest in the amount provably incurred, no less, however, than 8 % above the basic interest rate of the European Central Bank and without prejudice to Contractor's right to claim damages in excess of such amounts of interest. If Client fails to make payment subsequently to receiving a dun letter from Contractor after its claim for remuneration has become due, Client shall come into default of payment. Irrespective thereof, however, Client shall come into default of payment if it fails to make any payment at the payment time determined under any respective agreement either by reference to the calendar or by contractual stipulation. The legal provision under which any debtor, subsequently to the expiration of 30 days and following receipt of an invoice, is automatically in default of payment at the latest, shall remain applicable without prejudice to the foregoing provisions.
- 11.3. Any right to withhold payment may only be exercised if it is based on claims by the Client arising from the same transaction between the parties and if it is either acknowledged by the Contractor or legally established. Client shall not be entitled to set off any claims against Contractor's claims unless such claims are either acknowledged as meritorious by Contractor or declared to be meritorious by a final and unappealable judicial decision.
- 12. Client's Participation and Technical Assistance in the Performance of Repair and Assembly Outside the Contractor's Plant**
 - 12.1. The Client shall, at his own expense, assist the Contractor's staff in performing such work.
 - 12.2. Client shall take any necessary special measures for the protection of persons and items at the workplace. Furthermore, the Client will also inform the Contractor's repair or assembly foreman of any existing special safety regulations to the extent to which they are relevant for the Contractor's personnel. The Client will give the Contractor immediate notice of any violation of such safety regulations by any of the Contractor's personnel.
 - 12.3. The Client shall, at own cost, perform preparatory work and provide technical assistance while the Contractor performs the work, in particular:
 - 12.3.1. Clarification of the combination of any respective items ordered by the Contractor with accessory parts or external machinery.
 - 12.3.2. Unpacking of any respective machine and machine parts as well as taking them to the place of their installation.
 - 12.3.3. Provision of sufficient quantities of all the products to be processed and of the respective packaging materials prior to the installation of any respective machine.
 - 12.3.4. Provision of qualified auxiliary personnel for any respective repair in the required number and for the required time. The Contractor's repair foreman shall have the right to issue instructions to such auxiliary personnel without prejudice to the rights of such auxiliary personnel's superiors of issuing instructions to them as well.
 - 12.3.5. Provision of the Client's future machine operating staff for the purpose of being introduced to the operation of the machine by the Contractor's staff during the regular working hours of the Contractor's staff.
 - 12.3.6. Provision of any required devices and heavy tools and of any required items and materials.
 - 12.3.7. Provision of heating, lighting, electricity, water and of the connections required respectively.
 - 12.3.8. Provision of dry and lockable rooms for storage of the Contractor's tools and for the Contractor's staff; these rooms must therefore also be heatable, lightable and equipped with washing and sanitary facilities.
 - 12.3.9. Protection of the workplace and of the working materials from detrimental impact of any kind as well as cleaning of the workplace.
 - 12.3.10. Provision of materials and performance of any act necessary for breaking in the repaired item and for performing a contractually stipulated test. The Client's technical support shall warrant that repair/ installation can be started immediately after arrival of staff and can be performed without delay until acceptance by the Client.
 - 12.4. Should the Client fail to meet his obligations despite being requested to do so, the Contractor may meet the Client's obligations in the Client's place and at the Client's expense after giving the Client notice of his intent to do so.
 - 12.5. The Client shall make the technical data required for any respective repair or installation as well as his operating logs and control books and corresponding documents available to the Contractor.
- 13. Transport, Transport Risk and Insurance**
 - 13.1. In the absence of any written agreement to the contrary, any transport of the repair item to and from the place of its repair at the request of the Client, including possible packaging and lading, shall be carried out at the Client's expense and risk.
 - 13.2. No repair item will be covered by any insurance from the Contractor's side during the time of its repair at the Contractor's works. It is the duty of the Client to ensure the preservation of an existing insurance coverage for the repair item including for the time of its transfer to the Contractor's premises.
 - 13.3. In any case of the Client's default in taking over any respective repaired item, the Contractor is entitled to charge the Client 50 % of the cost that would be charged by a forwarder for storing the object at his works. The Contractor is also entitled to have a forwarder warehouse the respective repair item at the Client's expense and risk.
- 14. Time of Performance**
 - 14.1. The obligatory time of performance shall be deemed to have been observed if the respective repair item or the machine or plant to be installed is ready and made available for takeover by the Client or if, where a test has been contractually stipulated, the item is kept available for performing that test, upon the expiration of that time.
 - 14.2. The time of performance shall be adequately extended if any additional order or extension of an order is placed or if any additional repair or installation work is necessary.
 - 14.3. The time of performance shall be adequately extended in any case of industrial action, particularly strike and lock out, as well as in any case of the occurrence of major, unforeseeable obstacles beyond the Contractor's control, provided that such obstacles are proven to substantially affect the completion of the Contractor's performance.
 - 14.4. Should the Client fail to fulfill any of his obligations and should completion of the Contractor's performance be delayed as a result, the time of performance shall be extended corresponding to the delay caused by the Client's conduct.
- 15. Retention of Title, Extended Service or Work Contractor's Lien**
 - 15.1. To the extent possible under law, the Contractor shall retain title to all accessory parts, replacement parts and replacement units until he has received all payments due under any respective agreement.
 - 15.2. If property rights cannot be validly retained in a foreign country or state, provided that the laws of such country or state are applicable, the Client shall be bound to cooperate in taking all measures, including without limitation to give any declaration required from his side, in order to provide the Contractor with securities equivalent to retention of property rights.
 - 15.3. The Contractor shall have a work contractor's lien for its claims arising from any respective agreement between the parties on any repair item it has acquired possession of under any such agreement. This work contractor's lien may also be enforced for claims of the Contractor arising from prior contracts entered into by the parties, or from prior deliveries of replacement parts, or from prior other performances, provided that such claims are related to the respective repair item. Any other claims of the Contractor arising from the business connection with the Client shall only be secured by that work contractor's lien if they are uncontested or legally established.

16. Defective Performance

For any defect in his performance, including but not limited to any lack of warranted qualities, the Contractor shall be liable as follows:

- 16.1. The Contractor is under obligation to remedy any defect. This shall not apply if the defect is irrelevant to the Client under an objective point of view or if it is to be ascribed to a circumstance imputable to the Client. In particular, the Contractor has no obligation to remedy defects in parts supplied by the Client himself or to remedy defects in the repair item caused by such parts.
- 16.2. The Contractor is entitled to make up to three attempts to remedy a defect, to replace a part up to two times or to make two replacement deliveries for a defective part.
- 16.3. If the Client again complains of defects in the rework performed or in the replacement of parts or the replacement delivery, he may at his discretion either demand that the repair price be reduced or that the repair order be rescinded as to the defective part of the Contractor's performance.
- 16.4. The Client may only remedy a defect himself and at the Contractor's expense if the Contractor defaults in performing any rework owed under a repair order and in order to avert imminent and disproportionately serious damage.
- 16.5. Unless otherwise stipulated in the respective order, the warranty period (period of limitation for all defect-related claims) shall be one year from the start of the statutory limitation period.
- 16.6. The statutory periods shall also apply in any case of intentional misconduct and in any case of intentional misrepresentation.
- 16.7. Provided that the Client's complaint proves to be justified, the share of the immediate cost resulting from any rework, replacement delivery and installation of replacement parts under a warranty to be borne by the Contractor shall be limited to the cost of the replacement item including its shipment and to such costs for removal and installation as the parties shall stipulate in advance.
- 16.8. Should the necessity arise that a Contractor's mechanic is made available, the cost hereof shall be borne by the Contractor to the extent to which this does not entail an unreasonable burden for the Contractor.
- 16.9. In any case of timely notice of a defect, the Client's right to assert claims arising from defective repair work shall expire 6 months after such notice has been given, but no sooner than upon the expiration of the warranty period. The warranty period shall commence upon completion of the repair work in the case of a repair carried out at the Client's place of business and upon the dispatch of a repaired item in the case of a repair carried out at the Contractor's works.
- 16.10. If it becomes necessary for the Contractor to perform any rework to remedy a defect, the warranty period shall be extended by the downtime of the respective repair item caused by such rework.

17. Claims for Damages against the Contractor, Exemptions from Liability

- 17.1. Should any parts of the repair item or, during an installation, any installed parts delivered by the Contractor be damaged through the Contractor's fault, the Contractor will at his discretion either repair such parts or deliver new parts. As to its amount, this liability to pay compensation shall be limited to the price of the repair or installation contractually agreed upon between the parties.
- 17.2. If, without any fault on the Contractor's side, the repair item or the installed item is not used by the Client as provided under any respective agreement between the parties, or if the Client culpably fails to observe operating or maintenance instructions, thus causing defect or damage, the Client shall have no right to have any defects remedied (section 16).
- 17.3. Regardless of the legal basis invoked, the Client can neither assert any compensation claims against the Contractor in excess of the rights conceded under these provisions, including without limitation any claim for damages, even if based on non-contractual liability, nor any other rights because of other possible detriments in connection with any respective repair or installation. This non-liability clause shall, however, neither apply in cases of willful or grossly negligent misconduct by the owner or the Contractor's officers, nor in any case of a culpable breach of essential contractual duties. Nor shall it apply to any case of injury to life, body and / or health.
- 17.4. Except for cases of willful or grossly negligent misconduct by the owner or the Contractor's managers, the Contractor's liability in any case of a culpable breach of essential contractual duties shall be limited to such damage as is typical for the agreement in question and which was reasonably foreseeable.
- 17.5. The damage typical for any respective agreement and reasonably foreseeable shall be assessed as follows:
 - 17.5.1. The maximum amount for damage to a repair item or installation item or inspection item shall be EURO 10,000.00.
 - 17.5.2. The maximum amount for damage to any item not being the item of any respective order or to downstream machinery or to any other plant and equipment or to buildings shall be EURO 1.25 million in each case of damage.
 - 17.5.3. The Client's right to compensation for damage to machinery upstream or downstream of the respective repair item or installation item or to connected machinery and equipment caused by service or work in the course of any repair or installation shall be limited to EURO 25,000.00 in each case of damage.
 - 17.5.4. The maximum compensation for damage to any plant and equipment or to buildings under product liability shall be EURO 1.25 million in each case of damage.
- 17.6. If the Client grants the defaulting Contractor a reasonable period of grace and if the Contractor fails to meet his obligations within such period, the Client shall be entitled to withdraw from the respective agreement.
- 17.7. In the case of a delay in the Contractor's performance, the Client's rights shall be limited to those set forth under sections 17.5 and 17.6.
- 17.8. The non-liability clause shall not apply to cases of liability under the German Product Liability Act (Produkthaftungsgesetz) relating to injuries to persons or damage to items destined for personal use caused by defective repair or installation work. Neither shall it apply to the lack of a quality which has been explicitly warranted, provided such warranty was given with the intent of indemnifying the Client with respect to damage that did not materialize in the repaired or installed item itself. Furthermore, the non-liability clause shall not apply to injury to life, body, and / or health.

18. Client's Liability

If, during any repair work carried out outside of the Contractor's works, any machinery, tools or vehicles provided by the Contractor are damaged either at the location of the repair or at the site made available, or if any such machinery, tools or vehicles are lost through no fault of the Contractor's, the Client shall compensate the Contractor for this damage.

19. Place of Performance, Place of Jurisdiction, Applicable Law, Final Provisions

- 19.1. The place of the Contractor's performance shall be where the repair item is located according to the terms of any respective agreement or where the installation work is to be performed. The place of payment is Schwäbisch Hall.
- 19.2. The exclusive place of jurisdiction, also for summary draft enforcement proceedings, summary check enforcement proceedings and summary proceedings restricted to documentary evidence, shall be the respective court of general jurisdiction over the Contractor's place of business, without prejudice to the Contractor's right to resort to the court of general jurisdiction over the Client's place of business.
- 19.3. The contractual relationship between Contractor and Client shall be solely governed by the laws of Germany, to the exclusion of the United Nations Convention on the International Sale of Goods (CISG) and the provisions of German private international law.
- 19.4. If any particular provision of these Terms and Conditions of Repair and Installation Services is or becomes invalid, this invalidity shall not affect the validity of the remaining provisions. The parties to any respective agreement shall agree upon a new provision which as closely as possible fulfills the intended purpose of the provision that has become invalid.
- 19.5. These Terms and Conditions shall only apply to repair and installation work. Deliveries shall be governed by our "General Terms and Conditions of Sale and Delivery (Domestic/International)".
- 19.6. The above terms and conditions are the Terms and Conditions of Repair and Installation Services (Domestic/International) of
 • EMKON automation GmbH, Bahnhofstraße 8a, 27308 Kirchlinteln

- referred to above as the Contractor -