

# On the basis of VDMA General Conditions for Repair Work to Machinery and Plant

as of August 2012 – V2

## To be used with respect to:

- 1 a person acting, at the time of the conclusion of the contract, as a tradesperson in a commercial or professionally independent capacity (“Unternehmer”);
- 2 corporate bodies under public law or a special asset under public law.

## I CONCLUSION OF CONTRACT, GENERAL

- 1 The contents of the contract and the scope of repair work shall be determined by the undisputed written confirmation of the order, if any.
- 2 In the event that repair items are not supplied by the Contractor, the Customer shall refer to any industrial property right (IPR) pertaining to the item; where no fault can be attributed to the Contractor, the Customer shall hold the Contractor harmless for any claims brought forward by a third party in connection with IPR.

## II IMPOSSIBLE REPAIR WORK

- 1 All items and services provided in connection with making a cost estimate and other proven expenditure incurred (error detection time is working time) will be invoiced to the Customer if the repair work cannot be performed by the Contractor for reasons for which it is not responsible, including, without limitation, for the following reasons:
  - the error referred to did not occur during the inspection;
  - spare parts cannot be provided;
  - the Customer has negligently failed to adhere to an agreed date; or
  - the contract is terminated during its execution.
- 2 The repair item will not be re-transferred into the original state, unless so expressly requested by the Customer who is to bear the cost thereof, unless the work performed was not necessary.
- 3 If repair work cannot be performed, the Contractor shall not be liable for damage to the repair item, non-compliance with contractual collateral duties and/or damage to items other than the repair item, irrespective of the legal reason brought forward by the Customer. The Contractor shall however be liable in the case of intent, gross negligence of the owners/corporate committees or officers as well as in the case of a negligent breach of a fundamental condition of contract. In the case of a negligent breach of a fundamental condition of contract, the Contractor shall be liable – except in the case of intent and gross negligence of the owners/corporate committees or officers – only for the foreseeable damage intrinsic to the contract.

## III COSTING, COST ESTIMATES

- 1 Wherever possible, the Customer shall receive information on the estimated price of the repair work when the contract is concluded, otherwise the Customer is entitled to set a cost limit. If repair work cannot be performed at this cost or if the Contractor, during the repair process, identifies additional necessary work, it shall seek the Customer's consent if the estimate would otherwise be exceeded by more than 15%.
- 2 If, prior to the start of the repair work, the Customer wishes to receive a cost estimate with binding prices, it shall specifically request so. Unless otherwise agreed, such cost estimate is binding only if made in writing. Such quote is subject to a fee. Items and services provided for making the cost estimate will not be charged if they can be used for carrying out the repair work.

## IV PRICE AND PAYMENT

- 1 The Contractor may demand adequate prepayment upon conclusion of the contract.
- 2 Calculations of repair work shall show the individual prices of parts, materials and extra expenditure as well as costs for work, travel and transport. If repair work is carried out on the basis of a binding cost estimate, reference to the estimate is deemed sufficient and only deviations in the scope of performance are to be listed separately.
- 3 Value added tax is invoiced to the Customer separately at the then applicable rate.
- 4 Any corrections of the invoice made by the Contractor and/or complaints made by the Customer shall be made in writing no later than within four weeks' time upon receipt of the invoice.
- 5 Payment shall be made upon acceptance and physical delivery or receipt of invoice, without any deductions.
- 6 The Customer shall not be entitled to hold back payments due to counterclaims disputed by the Contractor.
- 7 The Customer shall not be entitled to set off payments due to counterclaims that are disputed by the Contractor and relate to other legal relationships.

## V COOPERATION AND TECHNICAL ASSISTANCE BY CUSTOMER IN THE EVENT OF REPAIR WORK OUTSIDE CONTRACTOR'S WORKS

- 1 The Customer shall, at its own cost, support the repair personnel when carrying out repair work.
- 2 The Customer shall provide for any special measures necessary to protect people or property at the place of repair. It shall notify the repair team leader of any existing particular safety regulations, provided that they are relevant for the repair personnel. It shall notify the Contractor of any infringements of the above safety regulations attributable to the repair personnel. In the case of serious infringements and upon agreement with the repair team leader, the Customer may deny infringers access to the place of repair.

- 3 The Customer shall, at its own cost, give technical support, including, but not limited, to the following:
  - (a) provide necessary number of suitable unskilled labour for the required repair work; the workers shall follow the instructions given by the repair team leader. The Contractor shall not be liable for any such unskilled workers. Where unskilled workers cause a defect or damage attributable to instructions given by the repair team leader, Articles X and XI shall apply mutatis mutandis.
  - (b) do all construction, ballasting and scaffolding work, including provision of required construction materials.
  - (c) provide the required apparatus and heavy tools as well as required items and consumables.
  - (d) provide heating, lighting, operating power, water, including the required connections.
  - (e) provide necessary dry and lockable rooms where the repair team can store its tools.
  - (f) protect the repair site and repair materials from harmful influences of all kinds, cleaning of the repair site.
  - (g) provide suitable burglary-resistant recreation rooms and working rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for the repair personnel.
  - (h) provide materials and additional measures necessary to adjust the repair item and carry out the tests agreed in the contract.
- 4 Technical assistance by the Customer is to ensure that the repair team can start work immediately upon its arrival and carry on without delay up until Customer's acceptance. Special plans or instructions to be provided by the Contractor shall be made available to the Customer in good time.
- 5 If the Customer fails to fulfil its duties within a grace period set by the Contractor, the Contractor shall be entitled (but not obliged) to carry out the acts incumbent on the Customer by itself and for the Customer's account. Any other statutory rights or claims by the Contractor shall remain unaffected.

## **VI REPAIR WORK AT CONTRACTOR'S PREMISES: TRANSPORT AND INSURANCE**

- 1 Unless otherwise agreed in writing, any transport of the repair item from or to the site – including any required packing and loading – that is performed upon request of the Customer, shall be for its own account, otherwise the repair item shall be delivered to the Contractor at the expense of the Customer and picked up and returned by the Customer upon completion of the repair work.
- 2 The Customer shall bear the risk of transport.
- 3 Upon request and for the expense of the Customer, the Contractor will take out insurance cover for the transport of the item against the insurable risks, e.g. theft, breakage, fire.
- 4 No insurance coverage exists during the repair period in the works of the Contractor. The Customer shall ensure that any existing insurance cover of the repair item is maintained with respect to the risk of fire, tap water, windstorm, machine breakage, etc. Insurance cover against the aforementioned risks can only be provided upon the express request and for the account of the Customer.
- 5 If the Customer defaults in taking back the item, the Contractor shall be entitled to charge a storage fee for storage in its works. The repair item may also be stored at some other place at the discretion of the Contractor. Cost and risk of storage are for the account of the Customer.

## **VII REPAIR PERIOD, DELAY**

- 1 Information on the repair period are based on an estimate and are therefore not binding.
- 2 Until the exact scope of work has been determined, the Customer may not demand agreement on a binding repair period, which must be designated as binding to be valid.
- 3 A binding repair period is deemed adhered to if, upon its expiry, the repair item is ready to be taken over by the Customer, or, in the case of contractual test runs, for the test runs to commence.
- 4 An agreed repair period shall be extended appropriately in the case of additional or subsequent orders placed or necessary additional repair work.
- 5 If the agreed repair work is delayed by circumstances attributable to industrial action, including, but not limited to strike, lock-out, or other circumstances for which the Contractor cannot be held responsible, the work period shall be extended appropriately, providing such hindrances can be proven to have a significant influence on the completion of the repair work.
- 6 In the event that the customer incurs damage as a result of a delay attributable to the Contractor, the Customer may claim a lump-sum compensation. It shall be fixed at 0.5% of the repair price for each completed week of delay, but is capped at a limit of no more than 5% of the repair price of the part of the item to be repaired by the Contractor which, as a result of the delay, could not be used in time.  
If, after the due date and taking into account the legal exceptions, the Customer fixes a reasonable period for performance, and if this period is not observed, the Customer shall be entitled to withdraw from the agreement according to the applicable statutory provisions. Upon the Contractor's request, the Customer is obliged to declare in due time whether or not it will exercise its right to withdraw from the contract.  
Any other claims with respect to default shall be settled in accordance with Article XI. No. 3 of these Conditions.

## **VIII ACCEPTANCE**

- 1 The Customer is obliged to take acceptance of the repair work as soon as it has been notified of its completion and any contractual test runs of the repair item have been carried out. The Contractor undertakes to remove any defects if the repair work is shown not to be in compliance with the contract. This does not apply if a defect is insignificant for the interest pursued by the Customer or which is due to circumstances attributable to the Customer. In the case of a non-material defect, the Customer is not entitled to refuse acceptance.
- 2 If acceptance is delayed through no fault of the Contractor, acceptance is considered to have taken place two weeks following receipt of the notification of completion of the repair work.
- 3 When the repair work is accepted, Contractor's liability for recognisable defects expires, provided that the Customer has not reserved for itself the right to assert a specific defect.

## **IX RESERVATION OF TITLE, EXTENDED LIEN**

- 1 The Contractor reserves title to all equipment and spare parts and replacement units until all monies due from the repair work contract have been received. Further security agreements may be arranged.
- 2 Its claim relating to the repair contract entitles the Contractor to a lien to the Customer's repair item it has in its possession as a result of the contract. The lien may be enforced also with respect to earlier work performed, deliveries of spare parts or other supplies and services, provided that there is a connection to the repair item. Liens are also enforceable with respect to other claims resulting from the business relationship, provided that they are undisputed or no legal recourse is possible.

## **X CLAIMS FOR DEFECTS**

- 1 Notwithstanding the provisions of No. 5 and 6 and Art. XI below, the Contractor's liability for defective repair work following acceptance is such that the Contractor shall remove the defects and all other claims on the part of the Customer shall be excluded. The Customer shall without undue delay notify the Contractor in writing of any defect that appears.
- 2 The Contractor shall not be liable if a defect is insignificant for the interest pursued by the Customer or which is due to circumstances attributable to the Customer. This shall apply in particular with respect to parts supplied by the Customer.
- 3 The Contractor shall be released from its liability for consequences resulting from inappropriate modifications or repair work by the Customer or a third party for which no prior consent has been obtained from the Contractor. Only in urgent cases putting at risk the safety of the works or, as the case may be, for the purpose of combating disproportionate damage – whereupon the Contractor shall be notified forthwith – or where the Contractor has not remedied the defect within a reasonable time period set, taking into account the statutory exceptions granted, shall the Customer be entitled to remove the defect by itself or have it removed by a third party as provided for by law and claim from the Contractor compensation for the necessary cost incurred.
- 4 In the case of a justified complaint, the Contractor shall bear the direct cost incurred for the removal of the defect, provided that doing so would not be unreasonably onerous for the Contractor.
- 5 If the Contractor does not remedy the defect within a reasonable period set by the Customer – taking into account the existing statutory exceptions – the Customer shall have the right to demand a reduction of the repair price, as provided for by law. The Customer shall not be entitled to withdraw from the contract unless it can prove that the repair is of no interest for the Customer, despite the reduction granted.
- 6 Any other claims shall be settled in accordance with Article XI. No. 3 of these Conditions.

## **XI CONTRACTOR'S LIABILITY, EXCLUSION OF LIABILITY**

- 1 If damage to parts of the repair item is attributable to the Contractor's negligence, the Contractor may choose whether it will either repair or replace these parts at its own cost. In the case of slight negligence and gross negligence of non-executive staff, the cost thus incurred shall be limited to an amount equal to contractual repair price. Furthermore, liability for damage to the repair item shall be governed by Art. XI.3 below.
- 2 If the Customer cannot use the repair item for the contractual purpose due to a fault of the Contractor attributable to omitted or incorrect proposals or advice given prior to or following the conclusion of the contract or by reason of the breach of other collateral contractual obligations, including but not limited to, instructions for the operation and maintenance of the repair item, the provisions of Art. X and Art. XI No.s 1 and 3 shall apply mutatis mutandis, and any other claims of the Customer shall be excluded.
- 3 The Contractor's liability for damage that has not occurred to the repaired item itself – based on whatever legal grounds - is limited to:
  - (a) cases of intent;
  - (b) gross negligence on the part of the owner/corporate committees or executives of the Contractor;
  - (c) where the Supplier negligently causes damage to life, body or health;
  - (d) defects it has fraudulently concealed;
  - (e) guarantee undertakings;
  - (f) in the case of liability for death, injuries or damage to items used privately pursuant to the German Product Liability Act ("Produkthaftungsgesetz");

In the case of a negligent breach of a fundamental condition of contract, the Contractor shall also be liable for gross negligence on the part of its non-executive staff and slight negligence, whereas in the latter case liability is limited to reasonably foreseeable damage that is intrinsic to the contract. Further claims are excluded.

## **XII PRESCRIPTION**

All claims of the Customer shall – irrespective of the underlying legal reasons – be subject to a prescription period of twelve months. Claims for damages pursuant to Art. XI No. 3 lit. (a) to (d) and (f) shall be subject to the statutory prescription periods. The statutory time limits shall also apply if the Contractor performs repair work on a building and thereby causes its defectiveness.

## **XIII REPLACEMENT DUTIES OF THE CUSTOMER**

If, in the course of repair work outside the Contractor's works, devices or tools provided by the Contractor are damaged or lost on site through no fault of the Contractor, the Customer shall be obliged to replace the damage occurred. Damage attributable to normal wear and tear shall be excluded.

## **XIV APPLICABLE LAW, VENUE**

- 1 The legal relationship between the Contractor and the Customer shall be solely governed by the relevant law of the Federal Republic of Germany.
- 2 The venue shall be the court competent at the place of the Contractor's domicile. The Contractor, however, shall be entitled to bring an action against the Customer at the main domicile of the Customer.

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