

**General Terms and Conditions
of Repair and Installation
of
Henkelhausen GmbH & Co. KG
with respect to companies**

1. Scope of application / Test drives and runs

(1) These General Terms and Conditions of Repair and Installation apply to corrective maintenance work (repairs) and installation work exclusively with respect to companies within the meaning of Section 14 of the German Civil Code (*BGB*) i.e. natural persons or legal entities and partnerships having legal capacity that purchase the goods or service for commercial or professional purposes.

(2) Deviations from these General Terms and Conditions shall only apply if they were confirmed by us to the contractor in writing. Differing terms and conditions of the principal - hereinafter referred to as "**customer**" - shall only apply if and in so far as they are expressly acknowledged by us in writing. Our silence regarding such differing terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts.

(3) Unless the terms and conditions below include special regulations, our respective General Terms and Conditions of Contracts and Delivery at the time the order is placed shall additionally apply, which we shall respectively provide to the customer free of charge at first request, and furthermore the provisions of the *BGB* concerning the contract for work (Sections 631 et seq. *BGB*).

(4) Upon transmission of the repair order, the customer undertakes to grant us permission to carry out test runs and trial applications to the extent that this is necessary and appropriate to achieve the outcome of performance owed by us under the contract.

2. Estimates of cost / Prices

(1) Estimates of cost shall only be binding when expressly designated in writing as binding and the corrective maintenance can begin immediately. They can be exceeded by 10% if the execution of additional work or the use of additional parts or materials proves necessary when starting or executing the order and we could not foresee this circumstance when preparing the estimate of cost.

(2) If the customer terminates the contract, whether due to the estimate of cost being exceeded or for other reasons, the customer must pay for work and costs incurred until then including the expenses for spare parts ordered and already procured. Section 648 *BGB*, sentence 2 - 2nd half sentence, remains unaffected.

(3) All prices exclude value added tax which shall be added at the respective legally valid rate applicable

at the time of invoicing. This shall be invoiced to the customer separately.

3. Due date and payment of the invoice amount / Set-off and retention

(1) The invoice amount shall be due upon acceptance of the repair/installation. The invoice amount must be paid without deduction.

(2) Payment instructions, cheques and bills of exchange shall be accepted only by special agreement and only on account of payment, not in lieu of settlement. All bill of exchange and discount fees shall be charged. Their passing on and prolongation shall not be considered as settlement.

(3) If the customer defaults in its payments, we shall have the right to charge default interest of 9% p.a. above the respective base rate. This shall not apply if we prove that we have incurred higher damage as a result of default in payment. This shall also not apply if the customer proves that no damage or a materially more minor damage was incurred as a result of default.

(4) Complaints in respect of an invoice must be made in writing or text form and within 14 calendar days after receipt of the invoice. Timeliness shall be determined by the date of our receipt of the complaint. If the time limit is not complied with, complaints about the invoice shall be excluded.

(5) The set-off or exercise of a right of retention in respect of our claims shall only be admissible if the counterclaim or right of retention has been acknowledged by us in writing or recognised by declaratory judgment. This shall not affect Section 354a *HGB* [German Commercial Code] (admissibility of the assignability of pecuniary claims arising from commercial transactions).

4. Time limit for performance of the repair

(1) Time limits for performance shall not begin until all particulars concerning the execution of the order have been clarified and all other requirements to be fulfilled by the customer are met, in particular advance payments agreed have been paid or securities provided in full. They shall be extended reasonably if the originally agreed volume of work subsequently increases.

(2) If events of force majeure occur of significant duration (i.e. of longer than 14 calendar days), we shall notify our customer in writing or text form in due time. In such case, we shall have the right to postpone the delivery for the duration of the obstruction, or to rescind the contract in whole or in part for

that part of the contract not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk or a performance guarantee. Events of force majeure are strikes, lock-outs, official intervention, energy shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions through no fault of our own e.g. due to fire, water and damage to machinery and any other obstructions which, when considered objectively, were not caused by our negligence.

(3) If a date for delivery/service or a period for delivery/service is agreed with binding force and the agreed date for delivery/service or the agreed period for delivery/service is exceeded due to events according to para. (2) above, the customer shall have the right, after a reasonable extension of time has elapsed without result, to rescind the contract for that part not yet fulfilled.

The customer shall have no further claims, especially claims for damages, in this case. The above provision shall apply accordingly if, for the reasons stated in para. (2), also without contractual agreement of a fixed date for delivery/service, the customer cannot be objectively expected to adhere further to the contract.

5. Acceptance of the repair and installation

(1) We shall notify the customer when a repair or installation has been completed. Dispatch of the invoice shall also be deemed such notification. Acceptance must take place within one week of receipt of the notification, acceptance involving an engine test bench run within three calendar days after the customer has received the above-mentioned notification of completion.

(2) Unless otherwise agreed, acceptance shall take place where the work covered by the contract has been carried out according to the contract.

(3) Where the customer has made no complaint about the repair during acceptance or if acceptance has not taken place within the time stipulated, the object of the contract shall be deemed duly accepted also if the customer has used the work result on a permanent basis without complaint i.e. for more than 14 calendar days.

(4) If acceptance/collection does not take place within the time stipulated, the contractor shall have the right to charge the customer for any storage costs incurred.

6. Risk of loss and transport

(1) The transport and return transport of the object of repair shall, unless otherwise agreed by contract, be a matter for the customer who shall also bear the risk of loss or damage during transport.

(2) If the transport is undertaken according to the contract by the customer and not by us, this shall be for the account and at the risk of the customer, even if the transport is carried out by our vehicles.

7. Retention of title, right of retention and right of lien

(1) Title to the installed units, spare parts and accessories shall remain with us until all orders from the business relationship have been paid in full.

(2) If parts subject to retention of title are combined or mixed with other objects of the customer, the customer shall transfer co-ownership to us, the contractor, in the amount of the net invoice amount provided that the principal object belongs to the customer. The customer undertakes to hold this object in safe custody for us free of charge. If processing is carried out, this shall always occur on our behalf.

(3) An existing retention of title is for the purpose of securing all trade accounts receivable arising from the business relationship with the customer, including receivables arising in the future from contracts concluded at the same time or at a later date. This shall also apply if individual or all of our receivables were included in a current invoice (current account) and the balance has been determined and recognised. If the value of the securities existing for us exceeds the customer's liabilities by more than 10%, we shall be obliged at the customer's request to release securities in this respect at our option.

(4) We can exercise a right of retention to the object of the contract until the remuneration owed according to Article 3 is paid and payments for earlier deliveries and services by us to the customer have also been paid in full.

(5) We are entitled to a right of lien on the object of repair and/or installation. If we avail ourselves of our right to sell the pledged property, we shall warn the customer about the realisation of the pledged property and notify the customer thereof in due time as far as this is feasible and possible under the circumstances.

(6) The customer herewith assigns, unless the customer is owner of the object/product to be repaired, its claim to the transfer of title (expectancy) to us in order to secure the remuneration claim under the contract. The purpose of the expectancy is to secure our receivables according to para. 1.

8. Warranty and liability

(1) Notification and identification of defects must be given in writing or text form immediately they are recognisable for the customer and also where advance notification has been given verbally or by telephone. If the customer culpably violates this obligation, claims against us for violation of duty due to defective performance shall be excluded.

(2) In respect of material defects, we shall provide a warranty for a period of 12 months, unless otherwise expressly agreed in writing or text form, calculated from the date of acceptance. This shall not apply to damage claims arising from a guarantee,

the assumption of a procurement risk, due to injury to life, limb or health, an intentional, grossly negligent or fraudulent act, or, in the case of Section 438 (1) No. 2 (buildings and objects for buildings) and Section 634 a (1) No. 2 *BGB* (building defects), a longer period is stipulated by law. Section 305b *BGB* (the precedence of an individual agreement in verbal, text or written form) remains unaffected. There is no connection between the reversal of the burden of proof and the foregoing provision.

(3) If the customer alleges defective performance, the customer must give us the opportunity within 14 calendar days of receipt of this allegation to examine the complaint relating to the object of repair and/or maintenance at our registered office. Otherwise the customer shall no longer have claims for the defective performance for which notice was given. We shall bear the costs and risk of transporting the object of repair/maintenance to our registered office if the complaint proves to be justified. Otherwise the customer shall bear the costs.

(4) Our liability for defects shall not cover such damages that are attributable to the fact that defective parts have been modified or processed by the customer or third parties and the defect is based thereon. This shall also apply if, at the customer's request, parts in need of replacement are not exchanged or used parts are fitted and the defect is based thereon.

(5) Subject to the exceptions specified below, we shall *not* be liable either in the case of breach of duty arising from the obligation or unlawful acts, in particular not for claims by the customer for damages or reimbursement of expenses, for whatever legal reason.

(6) The above exclusion of liability shall not apply if statutory liability is obligatory, and:

- in the case of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- in the case of violation of material contractual obligations. "*Material contractual obligations*" are obligations, the fulfilment of which defines the contract and on which the customer may rely;
- in the event of injury to life, limb and health, also caused by legal representatives or vicarious agents;
- in the case of default if delivery and/or service by a fixed date was agreed;
- where we have assumed a guarantee for the quality of an outcome of performance or the existence of an outcome of performance or a procurement risk within the meaning of Section 276 *BGB*;
- in the case of liability under the *Produkthaftungsgesetz* [German Product Liability Act] or other mandatory statutory liability.

(7) If we or our vicarious agents are responsible only for slight negligence and none of the cases specified in bullet points 1, 3, 4, 5 and 6 of para. (5) above exist, we shall be liable in the case of violation of material contractual obligations as well only

for damage typical for the contract and for foreseeable damage.

(8) Our liability is limited for each individual case of damage to a maximum liability coverage of EUR 300,000.00. This shall not apply if we or our vicarious agents are responsible for fraudulent intent, intent or gross negligence, for claims due to injury to life, limb or health, and in the case of a claim based on an unlawful act or an express, additional guarantee or the assumption of a procurement risk or in cases of different higher liability coverage prescribed by law. Any further liability shall be excluded.

(9) Exclusion resp. limitation of liability according to para. (6) to (8) above shall apply to the same extent for the benefit of our bodies, our executive and non-executive employees and other vicarious agents as well as sub-contractors.

(10) There is no connection between the reversal of the burden of proof and the foregoing stipulations.

9. Invoicing for the repair / installation

(1) Hourly rates as remuneration shall be charged, unless otherwise agreed, according to our respectively valid price list on the date the contract is concluded which we shall provide immediately to the customer in each case free of charge at first request.

We shall have the right at our equitable discretion (Section 315 *BGB*) to increase the remuneration unilaterally and reasonably where material production and/or procurement costs, wage and ancillary wage costs as well as energy costs and costs due to environmental charges, fluctuations in the exchange rate and/or currency regulations and/or public charges are increased, if these have a direct or indirect impact on the costs of our contractually agreed services and if more than 4 months elapse between conclusion of the contract and performance. Section 315 III *BGB* (right to judicial review of our price increase) remains unaffected. An increase as mentioned above shall be excluded if the increase in costs for the mentioned factors is set off by a reduction in costs for other of the mentioned factors with respect to the overall cost burden for performance. If the above-mentioned cost factors are reduced without the reduction in costs being set off against the increase in other of the above-mentioned cost factors, we shall pass on this reduction in costs through a price reduction.

(2) If company vehicles (customer service vehicles) are used or installation personnel use their own vehicles to travel to and from the site, kilometre rates shall be charged according to our price list valid on the date the contract is concluded which we shall provide immediately to the customer in each case free of charge at first request.

(3) Other costs such as accommodation allowance, travel and hotel expenses, freight etc. shall be charged separately.

Kommentar [SC1]: Wirksamkeitserfordernis ist in jedem Fall hier den branchentypischen Durchschnittsschaden einzusetzen – Bitte Höhe überprüfen!

10. Customer's duties to cooperate

(1) Where repairs and installation work are not performed at our workshop, the customer shall be obliged to provide the energy required for the repair (lighting, electricity, consumable fuels, water) as well as auxiliary tools and lifting gear at its expense and risk.

(2) The customer shall provide, free of charge, in time and without being requested to do so, (i) all other cooperation required from its sphere and (ii) shall provide us with the necessary information fully and accurately to enable us to render the services owed to the customer in accordance with the contract.

11. Place of performance / Jurisdiction / Choice of law

(1) Any disputes shall be settled, if the customer is a business person within the meaning of the *Handelsgesetzbuch* [German Commercial Code], exclusively before a court of law having jurisdiction over our company's registered office. We shall also have the right, however, to bring an action against the customer at its general legal venue.

(2) The law of the Federal Republic of Germany shall apply exclusively to all legal relations between the customer and ourselves, to the exclusion of international conflict of laws provisions, in particular to the exclusion of the UN Sales Convention (CISG).

12. Written form

All agreements, collateral agreements, assurances and contract amendments shall only be valid when given in writing. This shall also apply to cancellation of the written form requirement. This shall not affect the precedence of an individual agreement in written, text or verbal form (Section 305 b *BGB*).

Krefeld, July 2018