

URACA Terms for Repairs on Machines and Systems

Issue 09/2019

1. Conclusion of Contract, General

- 1.1. If an undisputed order confirmation has been submitted in writing, this shall be conclusive for the content of the contract and the scope of the repairs.
- 1.2. If the item for repair is not delivered by us, the Customer shall refer to the existing industrial property rights with respect to the item; unless we are at fault, the Customer shall exempt us from any possible claims of third parties based on industrial property rights.
- 1.3. The Customer must in writing notify us in good time of any contamination, possible health-endangering residues in the items to be repaired, as well as transport risks and other repair-related measures to be taken.
- 1.4. The “**URACA General Terms and Conditions**” shall apply additionally.

2. Unrealizable Repairs

- 2.1. The work performed for submitting an estimate as well any further proven expense (fault-seeking time equals working time) shall be charged to the Customer if the repair cannot be carried out for reasons for which we are not responsible, particularly if:
 - The fault complained about did not occur during inspection,
 - Spare parts cannot be procured,
 - The Customer culpably failed to keep the agreed deadline,
 - The contract was cancelled during the execution of the work.
- 2.2. The repair item needs to be restored to its original state only at the Customer’s express request against reimbursement of the costs, unless the executed work was not necessary.
- 2.3. In the case of unrealizable repairs we shall not be liable for damage to the repair item, violation against additional contractual obligations and for damage which did not occur on the repair item itself, whatever the legal reason put forward by the Customer.

Provisions of Section 11.3 of these Terms shall apply accordingly.

3. Details of Costs, Estimate

- 3.1. As far as possible the Customer shall at the conclusion of the contract be quoted the expected price for the repair, otherwise the Customer may fix cost limits. If the repair cannot be carried out at these costs or if during the repairs we consider additional work to be necessary, the agreement of the Customer shall be obtained if the costs already indicated are exceeded by more than 15 %.

- 3.2. If prior to carrying out the repairs an estimate is required with binding prices, this shall be expressly requested by the Customer. Such an estimate shall – unless otherwise agreed – only be binding if it is given in writing.
- 3.3. The expense and work performed for submitting the estimate shall not be charged to the Customer if it can be used when carrying out the repairs.

4. Price and Payment

- 4.1. We shall be entitled at the conclusion of the contract to demand an appropriate down payment.
- 4.2. Value Added Tax shall be charged additionally to the Customer at the respective legal rate.
- 4.3. Any correction of the invoice from our side and any objection from the Customer's side shall be made in writing four weeks at the latest after receiving the invoice.
- 4.4. Payment without cash discount shall be made at acceptance and handing over or sending of the invoice.
- 4.5. Holding back payments or setting-off because of any counterclaims of the Customer disputed by us shall not be permitted.

5. Collaboration and Technical Assistance by the Customer for Repairs Outside of our Factory

- 5.1. The Customer shall support the repair personnel at his expense when carrying out the repairs.
- 5.2. The Customer shall carry out the special precautions required for the protection of persons and property. He shall also inform the repairs supervisor of any existing special safety regulations if they are of relevance to the repair personnel. He shall notify us of any violations by repair personnel against such safety regulations. In case of serious violations he may refuse the offender, after consulting the repairs supervisor, admission to the repair site.
- 5.3. The Customer shall be obliged at his expense to provide technical assistance, especially by:
 - 5.3.1. Providing the necessary, suitable additional workers at the number required for the repairs and for the time required; the additional workers shall follow the instructions of the repairs supervisor. We shall assume no liability for the additional workers. If a defect or damage is caused by the additional workers because of instructions given by the repairs supervisor, the clauses in Sections 10 and 11 shall apply accordingly.
 - 5.3.2. Executing any building, bedding and scaffolding work including the acquirement of the necessary building materials.
 - 5.3.3. Providing the necessary devices and heavy-duty tools as well as the required commodities and materials.
 - 5.3.4. Providing heating, lighting, operating power, water, including the necessary connections.
 - 5.3.5. Providing necessary dry and lockable rooms for keeping the tools of the repair personnel.

- 5.3.6. Protecting the repair site and materials from harmful influences of any kind, cleaning of repair site.
- 5.3.7. Providing appropriate, secure recreation rooms and workrooms (with heating, lighting, washing and sanitary facilities) and First Aid for the repair personnel.
- 5.3.8. Providing the materials and execution of any actions necessary for the adjustment of the repair item and for carrying out a test provided for in the contract.
- 5.4. The technical assistance of the Customer must guarantee that the repair can be started immediately after the arrival of the repair personnel and carried out without delay until acceptance by the Customer. If special plans or our instructions are required, we shall make them available to the Customer in good time.
- 5.5. If the Customer does not fulfil his obligations, we shall be entitled after fixing a time limit, yet not obliged, to execute the actions incumbent on the Customer in his place and at his expense. Moreover, our legal rights and claims shall remain unaffected.

6. Transportation and Insurance for Execution of Repairs at our Factory

- 6.1. Unless otherwise agreed in writing, transportation of the repair item to and from the factory of the Contractor executed at the Customer's request – including any packing and loading – shall be carried out at his expense, otherwise the repair item shall be delivered to us by the Customer at his expense and collected from us by the Customer after the repair has been carried out.
- 6.2. The Customer shall bear the transportation risk.
- 6.3. At the Customer's request transportation to and from the Supplier's factory shall be insured at his expense against insurable transportation risks, e.g. theft, breakage, fire.
- 6.4. During the time of repair at our factory there is no insurance protection. The Customer shall provide for the maintenance of the existing insurance protection for the repair item, e.g. with regard to fire, water, storm and machinery breakage. Only at the express request and at the expense of the Customer can insurance protection for these risks be provided for.
- 6.5. In case of delay by the Customer in acceptance we may charge storage fees for storage in our factory. At our discretion the repair item may also be kept somewhere else. Costs and risk of storage shall be borne by the Customer.

7. Time Limit for Repair, Delay in Repair, Liquidated Damages

- 7.1. Particulars about time limits for repairs are based on estimates and are therefore non-binding.
- 7.2. The Customer may only demand an agreement on a binding repair time limit, which must be described as binding, if the scope of the work has been exactly defined.
- 7.3. The binding repair time limit has been kept if by its expiry the repair item is ready for acceptance by the Customer for carrying out a test if this has been provided for in the contract.

- 7.4. In the case of subsequently placed additional and follow-up orders or necessary additional repair works, the agreed repair time limit shall be extended correspondingly.
- 7.5. If the repair is delayed by actions within the context of industrial action, especially strikes and lockouts, as well as the occurrence of circumstances which are not our fault, an appropriate extension of the repair period shall begin if such obstructions are proven to have a substantial effect on completing the repair; this shall also apply if such circumstances occur after we have caused a delay.
- 7.6. In case the repair is delayed for reasons exclusively attributable to us and the Customer is caused damages by this, the Customer shall be entitled to liquidated damages for delay amounting 0.5% for each full week of delay to a maximum of 5 % of the repair price for the part of the repair item to be repaired by us, which due to the delay cannot be used in time.

If, after the deadline, the Customer – taking the legal exceptions into account – sets us a reasonable time limit to carry out the repair and if this time limit is not kept, the Customer shall be entitled to terminate the contract within the framework of the legal regulations.

Any further claims due to delay shall be defined exclusively according to Section 11.3 of these Terms.

8. Acceptance

- 8.1. The Customer shall be obliged to accept the repair work as soon as he has been notified of its completion and any test of the repair item provided for in the contract has taken place. If the repair turns out to be not in accordance with the contract, we shall be obliged to remove the defect. This shall not apply if the defect is insignificant for the Customer's interests or is based on a circumstance which is attributable to the Customer. If there is an insignificant defect, the Customer may not refuse acceptance.
- 8.2. If acceptance is delayed through no fault of our own, acceptance shall be regarded as completed after the expiry of two weeks following notification of the completion of the repair.
- 8.3. With acceptance, liability of the Contractor for obvious defects shall come to an end unless the Customer has reserved the right to assert a particular defect.

9. Right of Ownership, Extended Right of Distraint

- 9.1. We shall reserve the right of ownership of all used accessories and spare parts and substitute systems until all payments from the repair contract have been received. Further security arrangements may be made.
- 9.2. Our claim from the repair contract shall entitle us to a right of distraint upon the Customer's repair object, which, because of the contract has passed into his possession. Right of distraint may also be asserted because of works, spare parts deliveries and other services which were performed earlier if they are connected with the repair item.
For any other claims from the business association right of distraint shall only apply if they are indisputable or legally valid.

10. Claims for Defects

- 10.1. After acceptance of the repair we shall be liable for defects of the repair excluding any other claims by the Customer without prejudice to Section 10.5 and Section 11 in a way that we shall remove the defects. The Customer shall notify us immediately in writing of a detected defect.
- 10.2. Defect claims shall not arise as a result of causes for which we are not at fault, for example: Natural wear and tear, cavitation, freezing, corrosion, undue stress, improperly executed operations, repairs or maintenance works on the part of the Purchaser or third parties, incomplete or faulty information by the Purchaser, unsuitable or improper use, faulty operating, assembling or commissioning, faulty or negligent handling, improper servicing, use of unsuitable operating/substitute materials, faulty building works, unsuitable building ground, harmful ambient conditions unknown to us, chemical, electro-chemical or electrical influences, alterations to the delivered item not authorized by us.
- 10.3. We shall bear no liability if the defect is insignificant for the Customer's interests or is based on a circumstance that is attributable to the Customer. This shall apply particularly with regard to parts provided by the Customer.
- 10.4. In the case of alterations or maintenance works improperly executed on the part of the Customer or third parties without our prior authorization, our liability for any consequences arising from these shall come to an end. The Customer shall have the right to remove or have third parties remove the defect and demand reimbursement of the necessary costs only in urgent cases of danger to operating safety and to prevent excessively serious damage, in which case we shall be notified immediately, or if we have let a reasonable deadline elapse which was fixed for us to remove the defect.
- 10.5. In the case of justified complaint, we shall bear the costs necessary to remedy the defect, insofar as this does not give rise to a disproportionate burden.
- 10.6. If we let – taking into account the legal exceptions – a reasonable deadline fixed for us to remove the defects elapse unsuccessfully, the Customer shall be entitled within the legal regulations to have a reduction. The Customer's right to have a reduction shall also apply in other cases of failure to remove the defects. The Customer may only withdraw from the contract if the repair despite the reduction is proven to be insignificant for the Customer.
- 10.7. Any further claims shall be defined exclusively according to Section 11.3 of these Terms.

11. Liability, Exclusion from Liability

- 11.1. If parts of the repair item are damaged through our fault, we shall at our discretion repair them or deliver new ones at our expense. The obligation to pay damages is limited to the level of the repair price defined in the contract. Moreover, Section 11.3 shall apply accordingly.
- 11.2. If the repair item cannot be used by the Customer as defined in the contract through our fault because of nonperformance or poor execution of proposals and deliberations as well as of other secondary contractual obligations undertaken before or after conclusion of the contract – particularly instructions for operating and servicing the repair item –, the respective arrangements in Sections 10, 11.1 and 11.3 shall apply.

11.3. We shall be liable for damage which has not occurred on the repair item itself – for whatever the legal reasons – only in case of:

- willful intent and gross negligence,
- culpable harm to life, body or health,
- if we have fraudulently concealed defects or guaranteed their absence,
- if there is liability according to the German Product Liability Act for damage to persons or property on privately used objects.

In the case of negligent breach of a fundamental condition of the contract we shall also be liable for slight negligence, but limited to the reasonable foreseeable damage which is intrinsic to the contract.

Any other claims are excluded.

12. Term of Limitation

Any claims on the part of the Customer – for whatever legal reasons – shall elapse after 12 months. For claims for damages arising from culpable harm of life, body or health; gross negligence, willful intent or malicious behavior; as well as according to the German Product Liability Act, the legal periods shall apply. If we carry out repairs on a building and cause it to be damaged, the legal time limits shall likewise apply.

13. Compensation by the Customer

If during repair works outside our factory the devices or tools provided by us are damaged through no fault of our own or get lost through no fault of our own, the Customer shall be obliged to compensate for these damages. Damages that are attributable to normal wear and tear shall not be considered.

14. General

These “URACA Terms of Repairs on Machines and Systems” are a translation of the original “URACA Reparaturbedingungen”. In case of any differences between the German and the English version, the German version shall have binding force.

15. Applicable Law, Place of Jurisdiction

15.1 If the Purchaser’s head office is in the Federal Republic of Germany, the place of jurisdiction shall be at our head office. We reserve the right to file an action at the legal place of jurisdiction of the Purchaser.

15.2 If the Purchaser’s head office is based outside the Federal Republic of Germany, all disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrator appointed in accordance with the said Rules. Arbitration shall take place in Stuttgart, Germany. The language of arbitration shall be English. The collaboration of our insurer in line with the possibilities of collaboration in the ordinary course of law shall be possible.

- 15.3 The contract shall be governed and construed according to the laws of the Federal Republic of Germany without regards to its conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.