

Terms and Conditions of Repair and Assembly of H.G.S. GmbH

1. General provisions

- (1) These Terms and Conditions apply for repair, maintenance and assembly works.
- (2) Conditions of the customers contradictory to, deviating from or extending beyond our General Terms and Conditions of Sale and Supply shall not form part of the contract. This also applies even in the event that, without renewed objection being made, we sign a contract, provide goods or services contracted and in particular accept payments towards the purchase price, in the knowledge that a customer has terms and conditions that contradict or deviate from our own.
- (3) Insofar as the following conditions do not contain any special arrangements, our General Terms and Conditions of Sale and Supply followed by the regulations of the German Civil Code (BGB) relating to the service contract (§ 631 BGB) apply analogously.
- (4) Upon the repair order being made, the permission to carry out test runs and test uses is considered as granted at the same time, as far as this is necessary and appropriate under the circumstances.
- (5) As far as the client is a merchant, the place of performance is Krefeld. Under this condition – at our discretion – either Krefeld or the court competent in view of the domicile of our contractual partner shall also be decisive. This also expressly applies to summary proceedings, cheque and bill of exchange proceedings.
- (6) All prices specified verbally and in writing are exclusive of statutory VAT. This is charged to the customer separately.
- (7) The personnel is not authorised to execute any work other than that which has been contractually agreed upon.
- (8) The law of the Federal Republic of Germany shall apply.

2. Cost estimate

- (1) Written cost estimates are only binding if they are explicitly referred to as binding in writing and repair work can be effected immediately. They may be exceeded by 10%, if the execution of additional work or the use of additional parts or materials proves to be necessary at the time of initiating or carrying out the order.
- (2) If the customer cancels the contract, whether because the cost estimate has been exceeded or for other reasons, he has to pay the work and costs incurred until that point including expenditures for spare parts ordered and already procured. We reserve the right to claim for damages and/or lost profit.

3. Maturity date and payment of the invoice amount

- (1) Upon the completion or acceptance of the repairs, and no later than on the day of invoice receipt, the invoice amount is due. The invoice amount is to be paid without deduction.
- (2) Payment orders, cheques and bills of exchange are only accepted upon special agreement and only on account of payment, not instead of payment, invoicing all bill and discount charges. Renegotiation and prolongation are not considered as performance.
- (3) If the customer falls behind with his payments, we are entitled to charge interest at the respective rates in force in terms of the German Civil Code (BGB, § 288, Sections 1 and 2). This does not apply if we can prove that we incurred a higher damage due to the delay of payment. This does also not apply if the customer can prove that no damage whatsoever or a considerably lower damage has been caused by the delay.
- (4) Any objections to an invoice must be made in writing and within 14 days following the invoice date.

- (5) The offset or the execution of a right of reduction or retention vis-à-vis our claims is only permissible if the counterclaim or the right of reduction or retention is acknowledged by us in written form or has been legally established as final and absolute.

4. Period for the execution of repairs

- (1) A period given as binding does not begin unless all questions concerning the order have been completely clarified. It is extended appropriately, if the original scope of work increases.
- (2) In the event of unforeseeable operational obstacles, e.g. stoppages of work, legal strikes or lockouts as well as any other event for which we are not liable, the contractual periods are extended appropriately.
- (3) If the contractor falls behind, he is obligated to pay to the customer a compensation for delay of 0.5% of the invoice amount per full week of delay, although no more than 5%. This shall not affect the right to proof of lesser damages. If the customer, after the contractor has fallen behind, resigns from the contract under the prerequisites of § 323 BGB (German Civil Code), he is only entitled to assert claims for damages due to non-performance or claims for compensation of futile expenditures if the delay in delivery was down to intent or gross negligence. The customer is also entitled to assert claims for damages due to non-performance or claims for compensation of futile expenditures in the case of intent and gross negligence of the contractor, if the underlying contract is a firm deal pursuant to § 376 HGB (German Commercial Code). The same applies if, as consequence of the delay, the customer is no longer interested in the repairs. The rights of the orderer in accordance with § 637 BGB (German Civil Code) remain unaffected. The limitations above do not apply in case of liability due to injury to life, limb, or health.
- (4) Force majeure of not just a temporary nature entitles the contractor to resign from the contract. Such case shall take effect no later than 60 days after commencement of the circumstances constituting the force majeure.

5. Acceptance of repair and assembly

- (1) The contractor has to notify the customer of the completion of repair, maintenance or assembly. Sending the invoice is also considered as notification. The acceptance has to take place within one week after receipt of the notification.
- (2) In general, the acceptance takes place in the workshop of the contractor or wherever the work has been carried out. When handed over and received without objection, the object of services is considered as accepted.
- (3) If the repair was not objected to by the customer at the time of acceptance or the acceptance did not take place on time, the contractual object is considered as having been duly accepted if the customer has begun using it without objections.
- (4) If the acceptance / collection did not take place on time, the contractor is entitled to charge the customer storage costs.

6. Risk assumption and transport

- (1) The transport of the repair object in both directions is strictly the customer's responsibility, who also bears the risk of destruction or damage during transport.
- (2) If the transport is assumed by the contractor as per agreement, this is carried out at the risk and expense of the customer, even if the transport is carried out with vehicles of the contractor.

7. Right of ownership, retention and lien

- (1) The ownership on the assembled aggregates, spare parts and accessories remains, as far as it can be reserved, with the contractor until complete payment.
- (2) In the case of the parts subject to retention of title being compound or mixed with other objects of

the customer, the latter transfers co-ownership in the scope of the total invoice amount plus value added tax to the contractor, as far as the main object belongs to him. He commits himself to keep it safe for the contractor free of charge. As far as processing takes place, this always takes place to the benefit of the contractor.

- (3) An existing retention of title extends to protect all accounts receivable from supplies and services which arise from the business relationship with the customer, including future claims from contracts concluded at the same time or subsequently. This also applies if some or all of our accounts receivable have been taken up in an open account and the balance has been set up and acknowledged. If the value of the existing securities for the contractor exceeds the liabilities of the customer by more than 15%, the contractor is obliged in this respect to release securities upon the customer's request.
- (4) The contractor may exercise a right of lien on the contractual object until payment is made in accordance with Section 3 and payments for earlier supplies and services from similar transactions have also been effected.
- (5) The contractor is entitled to a right of lien on the contractual object. If the contractor makes use of his right to sale of a pledge, he shall threaten the customer with the sale of the pledge and shall notify him in a timely manner, as far as this is feasible and possible under the circumstances.
- (6) As far as he is not the owner of the equipment or machine to be repaired, the customer hereby assigns his right to transfer of title (remainder) to the contractor. The remainder serves for the protection of accounts receivable of the contractor in the framework of Paragraph 1.

8. Guarantee and liability

- (1) Defects are to be communicated and described without delay and in writing, even in the case of advance notice verbally or by telephone.
- (2) The warranty expires no later than 12 months following acceptance.
- (3) If the contractor is liable for material defects, the customer at first only has the right to demand rectification. If we are not prepared or not able to perform a rectification / replacement, in particular if the rectification / replacement is delayed beyond appropriate periods which have been set for us or if we refuse to perform the rectification / replacement or if this fails for other reasons, the customer is entitled, pursuant to § 634, No. 3 BGB (German Civil Code), to resign from the contract or to demand reduction of the remuneration.
- (4) The contractor shall decide on the necessary rectification works. He is entitled to an appropriate period of time to effect the rectification works.
- (5) The liability for damages lapses, if these damages are directly connected with the customer not making a defective object available within 14 days after request by the contractor.

The contractor's liability for material defects does not cover damage which results from the fact that parts affected by the damage have been altered or processed by the customer or third parties. The same applies if the defect is due to the customer having requested that the parts requiring renewal are not exchanged or that used parts are installed. Articles supplied to the contractor by the customer for the fulfilment of contractual duties (provided goods) will be assembled and fitted under exclusion of all warranty and liability, unless their deficiency or unsuitability is evident or apparent to the contractor.

- (6) The contractor shall be liable solely and exclusively for culpable or grossly negligent misconduct on the part of employees and vicarious agents in the course of fulfilling the contractual services. In the case of simple negligence, the contractor shall only be liable for damages
 - arising from injury to life, limb, or health, and/or
 - arising from the breach of essential contractual duties (cardinal duties), in which cases, however, the liability of the contractor shall be limited to compensation for foreseeable damages which might typically occur.
- (7) The limitation of liability arising from this section shall not apply in cases where the contractor has

withheld or concealed a defect or assumed a guarantee for the quality of the services, besides claims in terms of the Product Liability Act.

9. Invoicing of repair / assembly

- (1) The invoicing of the hourly rates is carried out in accordance with the price list of the contractor valid on the day of work commencing.
- (2) If travelling to and from the site is done with company-owned motor vehicles (customer service car) or the assembly personnel's own vehicles, rates per kilometre are charged in accordance with the price list.
- (3) Other costs such as daily allowance, travel and accommodation expenses, freight rates, etc., are charged for separately.

10. Assistance by the customer

- (1) In the case of repairs and assembly carried out outside the garage of the contractor, the customer is obliged to provide the energy necessary for the repair (especially lighting, electricity, operating fuels, water) as well as auxiliary and lifting tools at his own risk and expense.