

MMM Terms and Conditions for Repairs and Retrofits (03/2024)



I. Conclusion of contract, general information

1. All repairs and retrofits (hereinafter "Repairs" for short) shall be based on these Terms and Conditions as well as any separate contractual arrangements. Differing purchasing conditions of the customer shall not become part of the agreement, even when an order is accepted.

2. If there is no opposition to a written order confirmation of the contractor, then said confirmation shall constitute definitive criteria for the contents of the contract and the scope of the Repair. All additional agreements and amendments require written confirmation from the contractor.

II. Repairs that cannot be completed

1. Travel times and other expenses incurred, which must be documented (troubleshooting time shall be deemed hours worked), shall be invoiced to the customer if the Repair cannot be completed due to reasons for which the contractor is not responsible, in particular because:

- the reported error did not occur during the inspection,
- the media required to operate the system are not available,
- replacement parts cannot be obtained,
- the customer negligently missed the scheduled appointment,
- the contract was terminated while the Repair was being performed.

2. Only at the express request of the customer, and with the associated costs being reimbursed, shall it be necessary to restore the object being repaired to its original condition, except where the work performed was not necessary.

3. For Repairs that cannot be completed, the contractor shall not be liable for damage to the object being repaired, for the breach of secondary contractual obligations, or for damage which does not occur to the actual object being repaired, regardless of the legal grounds invoked by the customer.

This disclaimer of liability shall not apply in the event of wrongful intent or gross negligence on the part of the owner or managerial staff.

III. Statement of costs, cost estimates

1. The contractor may, at its own discretion, state the estimated price of the Repair to the customer when the contract is concluded. If it is not possible to complete the Repair at said cost, or if the contractor should consider the performance of additional work to be necessary while the Repair is in progress, then consent must be obtained from the customer where the stated costs are exceeded by more than 15%.

2. If a cost estimate with binding rates is desired before the Repair is performed, said estimate must be explicitly requested by the customer. Such a cost estimate shall only be binding if it is submitted in writing and is designated as binding. The contractor may demand a general processing fee of 5% to 20% of the (net) order amount for the submission of a binding cost estimate.

IV. Price and payment

1. The contractor shall be entitled to request reasonable advance payment upon conclusion of the contract.

2. For Repair billing, the prices for the parts and materials used, special services, labor, and travel and transport costs shall each be stated separately. If the Repair is performed on the basis of a binding cost estimate, reference to said cost estimate shall be considered sufficient, wherein only deviations in the scope of work shall be listed separately.

3. Costs for travelling to and from the location of the object being repaired, including mileage allowance, shall be invoiced at the agreed or currently valid flat rates according to expenditure, any parking fees shall also be invoiced without special proof.

4. Value added tax shall additionally be charged to the customer at the applicable legal rate.

5. Any correction of the invoice by the contractor or objection by the customer must occur in writing no later than four weeks after receipt of the invoice.

6. Unless other terms of payment have been agreed upon with the customer, payment shall be due, without any early payment discount, upon completion of the acceptance inspection and the presentation or sending of the invoice.

7. The withholding of payments and offsetting of any customer counterclaims that are contested by the contractor shall not be permitted.

V. Cooperation and technical assistance by the customer for Repairs outside of the contractor's facility

1. The customer shall, at its own expense, assist the Repair personnel with the completion of the Repair.

2. The customer shall take such special measures as are necessary to protect people and objects at the site of the Repair. The customer shall also instruct the person responsible for completing the Repair about special safety precautions in place wherever said precautions are relevant to the Repair personnel.

3. The customer shall provide technical assistance at its own expense; in particular, the customer shall:

- Make available the number of qualified (if possible, trained by the contractor) technicians needed for the Repair for the required amount of time; the technicians shall follow the instructions of the person responsible for completing the Repair. The contractor shall not be liable for the customer's technicians. If a defect or damage is caused by the customer's technicians as a result of instructions from the person responsible for completing the Repair, the provisions in Articles IX and X shall apply *mutatis mutandis*.
- Make available the required devices and heavy tools, as well as the necessary implements and materials.
- Provide heat, lighting, operating power, and water, including the necessary connections.
- Provide necessary dry and lockable spaces for storing the tools of the Repair personnel.
- Protect the Repair site and materials against harmful influences of any kind and clean the Repair site.
- Provide appropriate, theft-proof break and work spaces (with heating, lighting, washing facilities, sanitary facilities) and first aid for the Repair personnel.

4. The customer's technical assistance must ensure that the Repair can begin promptly upon arrival of the Repair personnel and can be performed without delays up to the acceptance inspection by the customer. Where special diagrams or instructions from the contractor are required, the contractor shall provide the customer therewith in a timely manner.

5. If the customer fails to perform its duties, the contractor shall, after setting a deadline, be entitled, but not obligated, to carry out the actions required of the customer in the customer's place and at the customer's expense. In all other respects, this shall have no effect on the contractor's rights and claims under law.

VI. Transport and insurance for Repairs at the contractor's facility

1. Unless stipulated otherwise in writing, a transport of the object being repaired to and from the contractor's facility at the request of the customer—including any packaging and shipping—shall be performed at the customer's expense; otherwise, the object being repaired shall be delivered to the contractor by the customer at the customer's expense and, upon completion of the Repair, picked up again from the contractor by the customer.

2. The customer shall bear the transport risk.

3. There shall be no insurance coverage at the contractor's facility for the duration of the Repair. The customer shall bear all responsibility for the continuity of existing insurance coverage for the object being repaired.

4. If the customer delays its receipt of the object being repaired, the contractor may charge a storage fee for storage at its facility. The cost and risk of said storage shall be borne by the customer.

VII. Repair time

1. Information about Repair times is based on estimates and shall therefore not be binding.

2. The customer may not request the agreement on a binding Repair time, which must be designated in writing as binding, until the scope of work has been established.

3. The binding Repair time shall be deemed complied with if the object being repaired is ready for the acceptance inspection by the customer by the end of the Repair time.

Compliance with the Repair time is conditional on the timely supply of materials to the contractor. In the event of a delayed supply of materials to the contractor, subsequently placed add-on orders or orders that expand the scope of work, or if additional Repair work is required, the agreed-upon Repair time shall be extended accordingly.

4. If the Repair is delayed due to measures occurring as part of labor disputes, in particular strikes or lockouts, or the presence of circumstances for which the contractor is not at fault, then there shall be a reasonable extension of the Repair time, provided that said impediments can be demonstrated to have a significant impact on the completion of the Repair; this shall also apply where circumstances of this nature occur after the contractor has become delayed.

5. If the contractor is in delay and the customer grants the contractor a reasonable deadline for performance—with due regard for the exceptions provided for under law—and the contractor fails to comply with said deadline, the customer shall be entitled to rescission within the scope of legal provisions. Without prejudice to Article X, section 3, there are no further claims.

VIII. Acceptance process

1. The customer shall conduct an acceptance inspection of the Repair work as soon as the customer has been notified of its completion. Acceptance shall be issued by means of the customer's signature on the service report, acceptance report, or the like, or shall be deemed issued after the customer receives the service report by email or in another appropriate manner and, after a period of three working days, has not raised any objections to the work performed by the contractor. If the Repair does not conform to the contract, the contractor shall eliminate the defect. This shall not apply if the defect is immaterial to the interests of the customer or is based on a circumstance which can be attributed to the customer. Immaterial defects shall not constitute grounds for refusal of acceptance by the customer.

2. If the acceptance process is delayed through no fault of the contractor, then acceptance shall be deemed issued—without prejudice to section 1—two weeks after notification of completion of the Repair.

3. Upon acceptance of the Repair, the contractor shall no longer be liable for identifiable defects, unless the customer has reserved the right to make claims for a specific defect.

IX. Claims for defects

1. Upon acceptance of the Repair, the contractor shall be liable for Repair defects which occur within 12 months of acceptance—to the exclusion of all other claims of the customer, without prejudice to section 5 and Article X—such that the contractor shall eliminate said defects. If a defect is identified, the customer shall promptly notify the contractor thereof in writing.

2. The contractor shall not be held liable if the defect is immaterial to the interests of the customer or is based on a circumstance which can be attributed to the customer. This shall apply in particular to operating errors, technical and chemical influences, the use of genuine spare parts not recommended by MMM, media supply that does not conform to ISO/EN/DIN, force majeure, or the failure to observe installation requirements. Furthermore, liability shall not include device-specific wear parts and parts with a limited service life (e.g., door seals, inserts for condensate drains) and consumables (e.g., sterile ventilation filters, batteries).

3. If any improper modifications or repair work are carried out by the customer or third parties without the prior consent of the contractor, liability for the ensuing consequences shall be excluded. Only in urgent situations where operating safety is compromised or for the sake of preventing disproportionately large damage, in which cases the contractor shall be notified immediately, or if the contractor has allowed a deadline granted to the contractor for the elimination of defects to pass, shall the customer have the right to have the defect eliminated internally or by third parties and to demand restitution of the necessary costs from the contractor.

4. Of the direct costs incurred for the elimination of defects, MMM shall—provided that the complaint proves to be justified—bear the costs of the replacement parts, including shipping, and the reasonable cost for removal and installation.

5. If the contractor allows a reasonable deadline granted to the contractor for the elimination of defects to pass without result, the customer shall have the right to a reduction in price due to defects within the scope of legal provisions. The right to a reduction in price shall also apply in other cases where the elimination of defects is ineffectual. Only if the Repair is demonstrably of no interest despite the customer's price reduction may the customer rescind the contract.

X. Contractor liability, disclaimer of liability

1. If parts of the object being repaired are damaged through the fault of the contractor, the contractor shall, at its discretion and at its own expense, repair said parts or supply new parts. The amount of compensation to be rendered shall be limited to the contractual Repair price. In all other respects, Article X, section 3 shall apply *mutatis mutandis*.

2. If, through the fault of the contractor, the object being repaired cannot be used by the customer as agreed upon as a result of the neglected or improper implementation of recommendations or advice issued before or after conclusion of the contract, or of other additional obligations under the contract—in particular instructions for operation and maintenance of the object being repaired—the provisions of Article IX and Article X, sections 1 and 3 shall apply *mutatis mutandis* to the exclusion of other claims of the customer.

3. The customer may not assert against the contractor any claims for compensation beyond those granted to the customer by the provisions contained herein, in particular claims for damages, including claims arising from non-contractual liability, or any other rights on account of any harm related to the Repair, no matter what legal grounds the customer invokes.

4. However, the contractor shall be liable in the event of:

- wrongful intent,
- gross negligence on the part of the owner/executive organs or managerial staff,
- culpable injury to life or limb or impairment of health,
- defects which MMM has maliciously concealed, or the absence of which MMM has guaranteed, or
- to the extent that liability is mandatory for personal injury and property damage involving privately used objects in accordance with product liability laws.

XI. Applicable law and legal venue

1. All legal relations between the supplier and the customer shall be governed by the law of the Federal Republic of Germany, without reference to its rules of conflict of law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

2. The Regional Court of Munich shall have jurisdiction to adjudicate any and all disputes arising out of this Agreement, unless mandatory statutory provisions require otherwise. However, the contractor shall be entitled to take legal action at the location of the customer's head office.