

**General Terms and Conditions  
of Terex MHPS GmbH, Port Solutions Würzburg  
Section „Maintenance and Repair Conditions“**

**1 Scope, Conclusion of Contract, General**

1.1 These General Terms and Conditions apply only, if the customer is a public law entity, a special property under public law or an entrepreneur, who is acting by conclusion of the contract in the performance of his commercial or self-employed duty.

1.2 If an undisputed written order confirmation of the contractor is on hand, then it is controlling for the content of the contract and the scope of the repair. As far as maintenance work has to be carried out according to it, these conditions also are applicable. The term „Repair“ used in these conditions is in this case to be replaced with „Maintenance“. Subsidiary agreements and notifications of the contract require a written confirmation by contractor.

1.3 If the repair object is not delivered by the contractor, then the customer has to advise of existing industrial property rights concerning the object; in case the contractor is not at fault, the customer indemnifies the contractor from possible claims of third parties regarding industrial property rights.

**2 Inexecutable repairs**

2.1 Rendered performances for issuing of an estimation of costs as well as incurred and documented expenses (time for fault diagnostics counts as labor time) will be charged to customer, if the repair can not be executed due to reasons the contractor is not responsible for, particularly if

- the complained defect did not emerge during the inspection,
- the customer culpable missed the agreed date,
- the repair object was not available on the agreed date,
- the contract has been terminated during the execution.

2.2 The repair object only needs to be transferred back to its original state on specific request of the customer against reimbursement of costs, unless the executed work had not been necessary.

2.3 The contractor is not liable in case of inexecutable repairs a) for damages on the repair object b) infringement of contractual accessory obligations and c) for damages which have not occurred on the repair object itself, in each case irrespective of the legal ground the customer relies on. This exclusion of liability does not apply in cases of intent, gross negligence of owner or executive employees, as well as in case of culpable infringement of essential contractual obligations. In cases of culpable infringement of essential contractual obligations the contractor is liable – except in cases of intent or in cases of gross negligence of owner or executive employees – only for contract typical, reasonably foreseeable damages.

**3 Cost declaration, Estimate of Costs**

3.1 If a statement of account according to actual adduced hours is agreed, then the customer is given the hourly rates as well as the estimated number of hours at the conclusion of contract. Invoicing takes place according to actual rendered hours.

3.2 If prior to the execution of the repair, the customer wishes an estimate of costs with binding quotations, he has to request such explicitly. Such estimate of costs is only binding, if it is made in writing and identified as binding. Unless otherwise agreed in an individual contract, performances for submission of the estimate of costs will not be charged to the customer, if they can be used for the execution of the repair; otherwise section 2.1 applies.

#### **4 Price and Payment**

4.1 Unless otherwise agreed, contractor receives at the conclusion of the contract an advance payment in the amount of 30% of the estimated repair price. As far as the execution of the repair takes longer than one (1) month, the contractor is entitled to demand monthly installment payments in the amount of the incurred part performances.

4.2 By calculation of the repair the prices for parts and materials used, special services as well as prices for workmanship, transportation and shipping costs have to be shown separately, unless otherwise agreed on an individual contract basis. If the repair is carried out on the basis of a binding estimate of costs, then reference to the estimate of costs is sufficient, in which only deviations in the scope of services have to be specified.

4.3 Value added tax or comparable taxes in other countries will be charged to the customer additionally in the respective legal amount. Other taxes, customs duties, charges and fees, which are imposed direct on the performance of the contractor and for which the contractor is liable externally, will be charged additionally to the customer.

4.4 An objection to the invoice on the part of the customer has to be made in writing at the latest four weeks after receipt of the invoice. The invoice of the contractor and the therewith charged amounts are considered accepted, if the customer does not object within a period of four weeks after receipt of the invoice. Contractor will inform the customer at the beginning of the time-limit for lodging an objection of the destined approval by undisputed expiry of the time-limit.

4.5 Final payment has to be made by acceptance.

4.6 Customer can only set off against claims of contractor or exercise a right of retention, if customer's counter claim is undisputed or a non-appealable title is existent; beyond this, a right of retention can only be exercised as far as it is based on claims in connection with the repair contract.

4.7 All invoices are due for payment within 14 days after delivery or remittance of the invoice without a cash discount deduction.

4.8 In case of delay of payment the contractor is entitled to charge for each demand for payment dunning costs in the amount of 5,00 EUR as well as default interest in the amount of eight (8) percentage points over the current base rate as per section 247 BGB (German Civil Code).

#### **5 Technical Basics for the Repair Object**

5.1 If contractor has delivered the repair object, the origin documentation of the contractor regarding the repair object together with all changes made by the contractor are considered as technical basics. Same applies if a legal predecessor of the contractor has delivered the repair object.

5.2 In addition to section 5.1 the customer forthwith has to inform contractor of any deviations and changes from the original design of a repair object delivered according to section 5.1 and has to provide the current valid documentation.

5.3 For repair objects which have not been delivered according to section 5.1, customer has to submit to the contractor the current documentation immediately free of charge. Same applies if contractor does not have a documentation of the repair object anymore and contractor is requesting customer for submission.

#### **6 Involvement and Technical Support of Customer during Repair outside Contractor's premises**

6.1 The customer has to support the repair personnel during the repair at his own expense.

6.2 Customer has to take necessary special measures for protection of people and objects at the repair place. He has to advise the repair supervisor of existing special safety regulations, as far as such are of importance for the repair personnel. He informs the contractor of any violations of such safety regulation by the repair personnel. In cases of severe violations he can deny the offender access to the repair place after consultation with the repair supervisor.

6.3 Customer is obliged to provide technical support at his own expense, in particular:

- a) If agreed on an individual contract basis, provision of necessary adequate support staff in the number required for the repair and for the required time; support staff has to follow the instructions of the repair supervisor. Contractor does not assume liability for the support staff. If the support staff causes a defect or damage by following the instructions of the repair supervisor, then the stipulations in section 11 and 12 apply accordingly.
- b) Provision of necessary devices, hoists and heavy tools, as well as necessary articles and materials of daily use.
- c) Provision of heating, lighting, operating power and water, including the necessary connections.
- d) Provision of required, dry and lockable rooms for storage of tools of the repair personnel.
- e) Provision of an area sufficient large enough for conducting of performances to be carried out by the contractor („Repair Site“), protection of the Repair Site and repair materials against harmful influences of any kind, and cleaning of Repair Site.
- f) Provision of adequate, theft proof lounge rooms and work rooms (with heating, lighting, washing and sanitary facilities) and first aid for the repair personnel.
- g) Provision of materials and performance of all other actions which are necessary for the adjustment of the repair object and for the execution of a contractually intended testing.

6.4 Technical support of customer has to ensure that the repair work can begin immediately after arrival of the repair personnel and can be carried out without delays until acceptance by the customer. As far as special plans or instructions of the contractor are necessary, the contractor will provide such to customer in a timely manner. Customer provides contractor with all information which is relevant with regard to the work to be carried out. Standby times have to be compensated to contractor as agreed, or if such agreement is missing, according to common hourly rates of the contractor, unless the contractor is responsible for the standby time.

6.5 Should customer not comply with his obligations then contractor is after setting of a deadline entitled, but not obliged, to carry out actions incumbent upon customer on customer's behalf and cost. The statutory rights and claims of the contractor remain unaffected hereby.

## **7 Transportation and Insurance in case of Repair at Contractor's premises**

7.1 Unless otherwise agreed in writing, delivery or removal of the repair object – including any packaging and loading – on customer's demand will be carried out at customer's cost; otherwise the repair object will be delivered to contractor by customer and will also be picked up from contractor by the customer after execution of the repair each at customer's cost.

7.2 Customer bears the risk of transport. On written request of customer, the outgoing and return transport will be insured at his cost against i.e. theft, breakage, and fire.

7.3 During the repair time at contractor's premises there will be no insurance coverage. Customer has to ensure maintenance of existing insurance coverage for the repair object, i.e. regarding fire, tap water, storm and machinery break down insurance. Only on written demand of customer and at his cost insurance coverage for these risks can be obtained.

7.4 Contractor can charge a demurrage for storage at his premises, if customer is in delay with taking-over. At contractor's discretion the repair object can also be stored elsewhere. Cost and risks for storage are for customer's account.

## **8 Repair Period**

- 8.1 Statements regarding the repair period are based on estimations and are therefore non-binding.
- 8.2 Customer can only request an agreement of a binding repair period, which has to be declared as binding in writing, if the scope of the work is exactly determined.
- 8.3 The binding repair period is adhered if before its expires, the repair object is ready for taking over by customer or in case a test has been contractually agreed if the repair object is ready to be tested.
- 8.4 In case of later instructed additional orders and expansion of orders or for necessary additional repair work, the agreed repair period is extended accordingly.
- 8.5 If repair is delayed due to measures within the scope of industrial disputes, in particular strike and lock-out, as well as due to occurrence of circumstances, which are not encumbered by the contractor, then the possible agreed repair time limit extends adequately as far as such hindrances evidently have no considerable effect on the conclusion of the repair work; this also applies if such circumstances occur after the contractor is in delay.
- 8.6 If customer accrues a damage due to delay of contractor, which has been caused by contractor due to slight negligence, then the liability of the contractor is limited to the amount of 5 % of the part of the repair price for the respective repair object, which cannot be used timely due to the delay. Apart from that, section 12.3 applies. If customer grants the contractor in delay an adequate period of time for performance and if such period of time is not kept or the setting of a deadline is not necessary according to statutory exceptional cases, then customer is within the scope of statutory provisions entitled to rescission of the contract. Section 12.3 applies for further claims.

## **9 Acceptance**

- 9.1 Customer is obliged to accept the repair work as soon as he has been notified about its completion and a possible contractual required test of the repair object has taken place. Should the repair prove not to be according to the contract, then contractor is obliged to remedy the defect. This does not apply if the defect is irrelevant for customer's interest or if the defect is due to a circumstance which is attributable to customer. If a nonessential defect is on hand, then customer cannot refuse acceptance.
- 9.2 If acceptance is delayed without default of contractor, then it is considered that acceptance has taken place after the expiration of two weeks since the notification of completion of the repair.
- 9.3 With acceptance Contractor's liability for visible defects ends as far as customer has not reserved the right to assert a certain defect.

## **10 Reservation of Title, Extended Lien**

- 10.1 Contractor reserves the title on all used accessories, spare parts and exchange units until receipt of all payments in connection with the repair contract. Further security agreements can be made.
- 10.2 Contractor is entitled due to his claim out of the repair contract to a lien on the repair object in his possession due to the repair contract. The lien can also be asserted for claims out of previous executed works, spare part deliveries and other rendered services, as far as they are associated with the repair object. The lien only applies for other claims out of the business connection as far as the claims are undisputed or legally binding.

## **11 Claims based on Defects**

- 11.1 Claims of the Customer due to defects as to quality are subject to a limitation period of one year from acceptance of the repair object. If customer accepts the repair object despite knowledge of a defect, he is only entitled to claims due to defects as of quality in this regard, if he reserves such with acceptance. If the subject of the order is the delivery of assembling or generating chattels, then customer's claims due to defects as of quality are subject to a limitation period of one year from delivery. This restriction does not apply for damage claims, as far as the damage has not been caused merely due to slight negligence as well as in case of injury of life, body and health.

11.2 To the exclusion of all other claims of customer irrespective of sections 11.8, 11.9. and section 12, contractor is at his discretion entitled to supplementary performance in the form of rectification of defects or to deliver a new object free of defect. In case of rectification of defect contractor is obliged to bear all expenditures necessary for the purpose of verification of defect, in particular transportation, shipping, labor and material costs, as far as such do not increase because the repair object or the delivery has been moved to a different place other than the place of performance.

11.3 Customer has to provide contractor adequate and safe access to the repair object for supplementary performance. For further participation of customer in the scope of the supplementary performance, section 6 applies accordingly.

11.4 Customer has to immediately notify contractor in writing of a detected defect. Should it turn out during the examination of the defect, that a defect is not existent or that contractor is not responsible for it, then customer has to reimburse the contractor the costs for the examination and the repair.

11.5 Contractor is not liable if the defect is irrelevant to customer's interest, results from normal wear and tear or is based on a circumstance which is attributable to the customer. This applies in particular for parts provided by customer.

11.6 Contractor's liability is abrogated in cases in which customer or third parties conducted improper changes or repair work without the prior approval of contractor. Only in urgent cases of endangerment of operational, safety and for warding off disproportional large damages, whereupon the contractor has to be notified immediately, or if contractor has let an adequate granted period of time for the verification of defect expired, customer has the right to remedy the defect by himself or through a third party and request compensation from the contractor for the necessary costs.

11.7 Contractor bears from the direct occurred costs for rectification – as far as the objection turns out to be justified – the costs for the replacement including shipping as well as reasonable costs for the disassembly and the assembly, furthermore if this can fairly be requested as the individual case may be, the costs for possible provision of his service technicians and support staff.

11.8 Should contractor – under consideration of statutory exceptional cases – has let expire a written adequate period of time for the rectification of defects, then the customer has within the scope of statutory provision a right to reduction. Customer's right for reduction also exists in other cases of failure to remedy defects. Only if the repair is despite reduction, verifiably without interest to the customer, then customer can withdraw from the contract.

11.9 Further claims for cases of fraudulent concealment of defects or acceptance of a guarantee for the condition remain unaffected.

## **12 Liability of Contractor, Exclusion of Liability**

12.1 If parts of the repair object are damaged due to contractor's fault, then contractor has on his own choice either to repair such at his cost or to deliver them new. Liability to compensate is limited to the amount of the contractual repair price. Apart from this, section 12.3 applies.

12.2 If the repair object cannot be used by customer as agreed due to fault by contractor because of failure to render or faulty conduction of made proposals and deliberations prior to or after conclusion of contract, as well as other contractual accessory obligations – especially instructions for operation and maintenance manual of the repair object – then the stipulations of sections 11 and 12.1 and 12.3 apply accordingly under exclusion of further claims of customer, whereas the liability according to section 12.3 remains unaffected.

12.3 The Customer cannot assert any claims for compensation towards the contractor beyond the claims allowed by these General Terms and Conditions, in particular any claims for damages, not even based on non-contractual actions, or other rights due to possible disadvantages which are connected with the repair, no matter which legal ground he relies on.

Contractor is however liable

- for intent,
- for gross negligence of the owner/executive bodies or executive employees,
- for culpable injury of life, body, health,
- for defects, which have been concealed fraudulently by him or whose absence he had guaranteed,
- as far as the German Product Liability Act imposes liability for personnel injury or damages to privately used property.

In case of culpable violation of material contractual obligations, contractor is also liable in case of gross negligence of non-executive employees and of slight negligence, in case of the latter limited to the contract typical, reasonably foreseeable damage.

### **13 Compensation of Customer**

13.1 If, during repair works outside the premises of the contractor, the appliances or tools provided by the contractor are damaged or lost at the repair place without fault of the contractor, then customer is obliged to compensate these damages. Damages which result from normal wear and tear remain out of consideration.

### **14 Applicable Law, Place of Jurisdiction**

14.1 German law shall apply, excluding such provision of its rules on conflicts of law, which would refer to any other law than law of Germany. The Convention of the International Sale of Goods (CISG) shall be excluded.

14.2 Place of jurisdiction shall be Wuerzburg, Germany. However, contractor shall also be entitled to sue customer at any other statutory place of jurisdiction.