
Tramec Conditions for Repairs to Machines and Equipment for Foreign Businesses

For use with respect to:

1. a person who contracts in exercise of commercial or self-employed activity (Entrepreneur);
2. a legal entity under public law or a separate entity regulated by public law.

I. Conclusion of the Contract, In General

1. If there is an uncontested written order of confirmation, then it is controlling for the content of the Contract and the scope of repairs.
2. If the object to be repaired is not delivered by Contractor, then Client has to indicate the industrial property rights that exist with respect to the object; to the extent that Contractor has no responsibility, Client indemnifies Contractor from possible claims of third parties on the grounds of industrial property rights.

II. Repairs that Cannot be Accomplished

1. Services rendered to tender a bid as well as other costs that arise and can be substantiated (time identifying problems as time on the clock) are charged to Client, if the repairs cannot be carried out by Contractor for reasons beyond his control, particularly because

- the substantiated defects did not appear during the inspection
- spare parts are unavailable
- Client has delayed culpably beyond the agreed upon deadline
- the Contract was terminated while the repairs were being carried out

2. The object of repair needs to be restored to its original condition only at the express request of Client at Client's expense unless the work carried out was not essential.

3. Where repair cannot be carried out, Contractor has no liability for damages to the object to be repaired, breach of corollary contractual duties, or for damages that did not occur on the object itself, notwithstanding what legal basis Client invokes.

4. In contrast, Contractor is liable for deliberate acts, for gross negligence of the owner or principal executive employees as well as for culpable breach of essential contractual duties.

5. In case of culpable breach of essential contractual duties, Contractor is liable apart from the cases of deliberate acts and gross negligence of the owner or chief executive officer only for reasonably foreseeable damages typical of contracts.

III. Statement of Costs, Cost Estimates

1. Insofar as possible, estimated costs for repairs will be given to Client on conclusion of the Contract, or else Client may set cost limits. If the repairs cannot be carried out at these prices or if, during the repairs, the Contractor regards further tasks as necessary, Client's agreement must be sought, if the specified costs will be exceeded by more than 15%.

2. If a cost estimate with binding price estimates is desired, Client must request it expressly. Such a cost estimate is – to the extent not otherwise agreed upon – binding only if it is in writing. To the extent that they can be utilized in carrying out the repairs, services rendered to tender a bid are not charged to Client.

IV. Costs and Payment

1. Contractor is entitled to demand a reasonable deposit at conclusion of the Contract.

2. In calculating repairs, prices for parts to be used, materials and miscellaneous services, as well as costs of work-related duties, costs of travel and transportation are to be accounted for separately. If the repairs are carried out on the basis of a binding cost estimate, reference to the binding cost estimate is sufficient, so that only deviations in the scope of services have to be mentioned.

3. Additionally, sales tax at the appropriate established rate is charged to Client's account.

4. Possible adjustment of the account on the part of Contractor and objection on the part of Client must take place in writing not later than four weeks after invoice.

5. Payment is to be made on acceptance and delivery or remittance of the account without discount.

6. Withholding payments or offsetting because of possible complaints by Client contested by Contractor is not allowed.

V. Cooperation and Assistance of Client outside Contractor's Place of Business

1. Client has to support the repair personnel at his own expense while repairs are being carried out.

2. Client has to take necessary special measures for protection of persons and property at the repair site. He also has to inform the person in charge of repairs about existing safety regulations to the extent that these matter to the repair personnel. He notifies Contractor of infringements of these safety regulations by the repair personnel. In the case of serious infringement he may, in consultation with the chief of repair personnel, deny the infringer entry to the repair site

3. Client is obligated to provide technical assistance at his own expense, especially to:

a) supply necessary dedicated support staff in the quantity needed for the repairs and at the required time. Support staff must follow the directions of the chief of repair personnel. If support staff cause shortage or loss as a result of the directions of the chief of repair personnel, then the regulations in Paragraphs X and XI apply accordingly.

b) undertake all work related to construction, foundation, and scaffolding, including provision of necessary building materials.

c) provide necessary equipment and heavy tools as well as required stock items and materials.

d) supply heat, lighting, power, and water, including necessary attachments.

e) make available necessary dry space that can be locked for storage of tools of repair personnel.

f) protect the repair site and materials from harmful influences of any sort, cleaning the repair site.

g) provide suitable, theft-proof break rooms and work spaces (with heat, lighting, lavatory, sanitary facilities) and first aid for the repair personnel.

h) prepare materials and handle all other matters that are necessary for adjusting the object to be repaired and carrying out the test scheduled in the Contract.

4. The technical assistance of Client must guarantee that the repair can be begun promptly after arrival of the repair personnel and can be carried through without delay up to acceptance by Client. Insofar as special plans or equipment of Contractor are required, he is to make them available to Client in a timely manner.

5. If Client does not fulfill his duties, after setting a timeframe Contractor is entitled, but not obligated to undertake the incumbent matters in place of and at the expense of Client. Incidentally, the statutory rights and claims of Contractor remain intact.

VI. Transport and Insurance for Repairs at Contractor's Works

1. If not otherwise agreed to in writing, delivery and removal of the item to be repaired, possibly including packing and shipment, carried out at Client's request, are performed at his expense. Alternatively, the item to be repaired is delivered to Contractor's place of business Client at his expense, and after the execution of the repair there, the item is again taken away by Client.

2. Client bears the risk of conveyance.

3. At the option of Client, transport to and, if applicable, from is insured at his expense against insurable perils, *e.g.* theft, breakage, fire.

4. During the repair period at Contractor's place of business there is no insurance protection. Client has to provide for the maintenance of the existing insurance protection for the item under repair, *e.g.* with respect to insurance against fire, tap water, and breakdown of machinery. Only at the express request and at the expense of Client can insurance protection be effected for these perils.

5. If Client delays acceptance, Contractor may assess warehousing charges for storage at his place of business. The repair item may also be kept elsewhere at the discretion of Contractor. Cost and risk of storage are charges to Client's account.

VII. Deadlines for Repairs

1. Specifications for the time period for repairs are based on estimates and therefore are not binding.

2. Client may not demand agreement on a binding time period for repairs, that must be designated as binding, until the scope of the job is accurately fixed.

3. Given a contractually prescribed checkout for acceptance, the binding deadline for repair is adhered to if, when the time has elapsed, the item to be repaired is ready for acceptance by Client.

4. The agreed-upon deadline is extended correspondingly in the event of subsequently placed add-on orders that expand the job, or in case of necessary additional repairs.

5. If repairs are delayed through measures within the framework of labor disputes, especially strikes and lockouts, or the occurrence of circumstances for which Contractor

cannot be blamed, then to the extent that such obstacles are demonstrably of substantial influence on completion of the repairs, a reasonable extension of the deadline occurs; this applies even if such circumstances arise after Contractor has already fallen behind.

6. If Client sustains loss as a consequence of Contractor's delay, then Client is entitled to demand a compensatory allowance. It amounts to 0.5% for each week of delay, but in total a maximum of 5% of the cost of the repairs for each part of the item to be repaired by Contractor that cannot be used in a timely manner on account of the delay.

If, after the due date, Client gives Contractor a reasonable time period for performance and the deadline is not met, then - allowing for statutory exceptions - Client is entitled to cancellation within the framework of statutory provisions. Further claims arising from delay are determined exclusively according to Paragraph XI.3 of these terms and conditions.

VIII. Acceptance

1. Client is obligated to accept the repair work as soon as he has been shown its completion and checkout of the repaired item as provided for in the Contract has taken place.

If the repair does not prove to be as required by the Contract, Contractor is obligated to remedy the deficiencies. This does not apply if the deficiency is irrelevant to Client's interests or is based on a circumstance that is attributable to Client. If there is no material deficiency, Client may not decline acceptance.

2. If acceptance is delayed through no fault of Contractor, then acceptance is deemed to have occurred when two weeks have elapsed after notification of completion of the repairs.

3. To the extent that Client has not reserved to himself the assertion of a specific deficiency, Contractor's liability for visible deficiencies becomes inapplicable on acceptance.

IX. Retention of Title, Adjusted Lien

1. Contractor retains title to all accessories, replacement parts and equipment assemblies used until receipt of all payments arising from the Contract for repairs. Ongoing insurance agreements can be arranged.

2. Because of his claim arising from the Contract for repairs, Contractor is entitled to a lien on Client's item to be repaired that came into Contractor's possession as a result of the Contract. The lien can also be asserted on account of claims arising from work

performed earlier, deliveries of replacement parts and other services, to the extent that they are associated with the item to be repaired.

For other claims from the business relationship the lien applies only to the extent that they are uncontested or legally binding.

X. Claims of Deficiency

1. After acceptance of the repairs Contractor is liable for deficiencies in the repairs to the exclusion of all other claims of Client irrespective of No. 5 and Paragraph XI in the manner that he has to correct the deficiencies. The guarantee for replacement parts and for the repairs performed amounts to 12 months, but it runs at least to the expiration of the original guarantee for the originally indemnified object.

1. Client has to give Contractor notice of an asserted deficiency immediately in writing.

2. Contractor's liability fails if the deficiency is immaterial to Client's interests or is based on a circumstance that is attributable to Client. This applies particularly with reference to parts supplied by Client.

3. In the case of modifications or repair work undertaken inappropriately on the part of Client or any third parties, for example, without the prior consent of Contractor, liability of Contractor is nullified for consequences that arise. Client has the right to have the deficiency remedied himself or through third parties and to demand refund of necessary costs from Contractor only in urgent cases of danger to plant safety, or to defend against disproportionately greater losses, with Contractor to be notified promptly, or if Contractor has let a reasonably established deadline for remedying deficiencies elapse. Replaced parts become property of Contractor.

4. To the extent that the complaint proves justified, Contractor bears the costs arising directly from remedying the deficiencies, the costs of replacements, including shipment.

In addition, he bears the cost of installation and removal as well as the costs of any required presentation to customs of the necessary technicians and support staff, including transportation costs to the extent that no disproportionate burden results for Contractor as a consequence.

5. If Contractor--allowing for statutory exceptions--lets a reasonably established deadline for remedying deficiencies elapse in vain, then Client has a right to reduction of the Contract price within the framework of statutory provisions. Client's right to reduction of the Contract price also exists in other cases of failure to remedy deficiencies. Client may withdraw from the Contract only if repair is verifiably of no interest to Client despite reduction of the Contract price.

XI. Liability of the Contractor, Exemption from Liability

1. If parts of the object to be repaired are damaged through Contractor's fault, then Contractor may repair them at his cost or deliver new ones, at his option. The duty of replacement is limited in amount to the contractual repair price. Further, XI.3 is applicable.

2. If Client cannot use the repair object through fault of Contractor as a consequence of negligent or deficient execution of suggestions and advice provided by Client before or after the conclusion of Contract, as well as other ancillary obligations, particularly manuals for service and preventive maintenance of the repair object, then the provisions of Paragraphs VI and VII apply, respectively, to the exclusion of further claims of the purchaser.

3. Contractor is liable for damages that did not arise on the repair object itself, whatsoever the legal basis may be – only

a. with intent

b. in case of gross negligence of the owner /essential elements, or chief executive employee

c. in case of culpable injury to life, body, health

d. in case of deficiencies that he concealed deceitfully or whose absence he guaranteed

e. to the extent liable under product liability law for personal or property damage for privately used objects

4. In the case of culpable damage to essential Contract duties the Contractor is also liable for gross negligence of non-executive employees, limited in that case to reasonably foreseeable damages typical of contracts.

Further claims are barred.

XII. Limitation of Actions

All claims of the purchaser – on whatever the legal basis – expire in 6 months.

Statutory time periods apply to claims for damages according to Paragraph XI. 3 a-e. If the Contractor effects repair work at a building and thereby causes its imperfection, the statutory time periods similarly apply.

XIII. Indemnification of the Client

If apparatus set up by Contractor or tools for repair operations away from Contractor's workplace are damaged at the repair site or get lost through no fault of Contractor, then Client is obligated to indemnify these losses. Damages that can be traced back to normal wear and tear remain out of consideration.

XIV. Applicable Law, Court of Jurisdiction

1. The law of the Federal Republic of Germany applicable to privity of Contract as between domestic parties is exclusively applicable for all legal relationships between Contractor and Client.
2. The court of jurisdiction is the court appropriate for the domicile of Contractor. Contractor is nevertheless entitled to bring suit at Client's headquarters