

# General Terms and Conditions for Repair Services



## § 1 Scope of Validity

- 1) Our quotations and repair services shall be realized exclusively pursuant to the latest respective version of these General Terms and Conditions for Repair Services. They shall apply for all future repair services even if they have not been expressly confirmed.
- 2) We hereby object to order confirmations referring to deviating General Terms and Conditions respectively General Terms of Purchase. Silence on our part in respect to the conditions of the customer shall under no circumstances be considered as consent or recognition.
- 3) Deviations from the present Terms of Repair Services shall only apply if confirmed in writing by us.

## § 2 Offers and Conclusion of a Contract

- 1) Our quotations for repair services are made without obligation and may therefore be revoked at any time before and up to two working days after the customer has accepted the quotation.
- 2) The customer is bound by his order for 14 days.
- 3) The repair contract is only brought about by our acceptance. The acceptance must be made in writing.

## § 3 Scope of repair services

- 1) Unless otherwise agreed, the customer is obliged to provide us with a complete description of the defect to be repaired respectively the manifestation of the defect 48 hours before we start to repair.
- 2) Our repair services are directed towards the expert performance of the repair work. They are limited to the defect/the manifestation of the defect, which has been described to us. Should we realize in the performance of the repair that the repair object shows further defects requiring repair which go beyond the defects described and which would increase the scope of the repair services by more than 10 % of the original scope of the repair services, we are obliged to inform the customer in writing before we perform these further repair services.

If the repair services are performed in our workshop the customer shall make his decision as to whether the order shall be extended to the additional detected defects within 24 hours. The repair services are limited to the originally described defect if we do not obtain any written message of the customer within that time. Should the extension of the scope of repair services be necessary to put the repair object in working order, we may postpone the whole repair until the customer has made a decision regarding the extension of the scope of the repair services and the repair

services performed so far have to be paid by the customer.

In case the repair services are performed directly at the customer, the customer shall decide immediately and without an estimate of costs as to whether and to which extent the repair services shall be performed. If the customer rejects the proposed scope of repair services in these events, we may refuse the performance of the further repair. The customer must pay the repair services performed so far including travelling expenses.

- 3) The scope of repair services and/or our obligation to inform the customer about further defects in need of repair includes under no circumstances the periphery in which the repair object is integrated.
- 4) If the cause of the defect cannot be located despite expert performance of the repair, or if the repair cannot be completed, since necessary spare parts are not available respectively cannot be provided by us and/or if the customer refuses to accept the necessary scope of the repair, and if these circumstances could not have been recognized at the time of the conclusion of the repair contract, we are entitled to terminate the repair contract and the customer is obliged to pay the costs which have accrued so far.

## § 4 Cooperation of the customer

- 1) If the repair services are performed at our workshop the customer shall package the repair object properly, in particular provide for an appropriate packaging, like for example antistatic equipment for electronic components.
- 2) The customer arranges for the transport to us and determines the carrier/the means of transport.
- 3) The delivered repair object shall be accompanied by a complete list (delivery note) of the parts, which have been sent to us for repair.
- 4) If the repair is performed at the customer's business, the customer is obliged, to give our service staff access to the objects to be repaired, to provide appropriate premises for the repair, to furnish the necessary energy for the connection of testing equipment, to provide sufficient staff, and to provide the object to be repaired in such a way that it is operational – accept with regard to an eventual failure caused by the defect – and that particularly hardware and software, which is necessary for the operation, is available.
- 5) The repair may alter or destroy data on data carriers. For that reason the customer ensures that the data existing on the repair object are copied on data carriers and are kept separately as a duplicate of the existing data.

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- 6) Should the customer's databases be infected with virus, the customer is obliged to inform us thereof before we start the repair.

## § 5 Prices/Terms of Payment

- 1) Our estimates of costs as to the expected costs of the repair are to be remunerated if the customer rejects the performance of the repair.
- 2) With the exception of materials cost the costs of the repair and the costs for the estimate of costs are calculated on the basis of our latest respective prices ("Verrechnungssätze"). Materials cost are charged according to the expenses incurred.
- 3) Repair costs mentioned in estimates of costs are estimates and no binding ultimate prices. Should the actual expected repair costs exceed the estimate by more than 10% the customer will receive a further estimate of costs as soon as the discrepancy becomes recognizable.
- 4) Payments shall become due on the agreed time for payment. If no date for payment has been fixed, payments will become due upon receipt of the invoice or an equivalent statement of account. Should the date of receipt of the invoice or the statement of account be uncertain, payments will become due 10 days after completion of the repair. We are entitled to claim partial amounts.
- 5) On the basis of any counterclaims, the customer shall not be entitled to retain payments or other obligations or offset them against our claims unless such counterclaims have been recognized by us or finally stated as legally binding by a court of law.

## § 6 Term of Performance/Default

- 1) If no time of performance has been fixed in writing in our repair confirmation, we shall start the repair within 14 days after our acceptance of the repair order. If the customer does not meet his obligations to cooperate, particularly if he does not deliver the repair object in time and/or does not give us access to the object to be repaired and/or the repair object is not operational – unless caused by the defect – and/or we do not receive the description of the defect in time, the term of performance shall be extended reasonably. If the repair services are to be performed abroad we shall start with the repair within four weeks after the conclusion of the repair contract if the above-mentioned requirements are met and no different agreement has been reached.
- 2) The term of performance of the repair shall be considered as having been met if we start the performance of the repair within this term. The completion

of the repair depends on the type and scope of the defect, the customer's proper cooperation, the availability/the time of delivery of spare parts as well as eventual extensions of the scope of the repair services. Unless otherwise agreed there shall be no fixed date for the completion of the repair.

- 3) Claims for damages resulting from delay in performance of the repair services are excluded, unless they are based on gross negligence or willful intent of ourselves, our managerial staff or persons employed by us in the performance of our obligations. This limitation on liability does not apply in case of breach of essential contractual obligations (cardinal obligations) attributable to us.
- 4) If we are liable for damages based on slight negligence the claim for damages is limited to typically foreseeable losses. In these events there shall be no liability for production stoppages or lost profit.
- 5) Any possible right to cancellation or withdrawal from the contract, which the customer may have in these cases, remains unaffected by this limitation on liability.
- 6) Should we be unable to perform the repair completely or in part for reasons attributable to the customer, particularly if the customer should fail to fulfill his obligations to cooperate under § 4, the customer is obliged to pay the costs which have accrued so far.

## § 7 Risk of Transportation

- 1) The risk of accidental loss of or damage to the repair objects sent to us shall only pass to us upon delivery of the repair objects at our place of business. If we return the repaired object to the customer these risks shall pass to him upon shipment of the repair objects.

## § 8 Acceptance

- 1) If no formal acceptance of the repair has been agreed between the parties, the repair services shall be considered as having been accepted if the customer does not notify us of any substantial defects as to the repair services within 10 days after completion of the repair and, if we return the repair objects to the customer, within 10 days from the customer's receipt of the repair objects.

## § 9 Notice of Defect

- 1) The customer's obligation to examine the repair objects and to make a complaint in respect of a defect immediately on receipt is determined by Art. 377 Commercial Code. If the customer fails to notify us of the defect within 10 days after return of the repair object the repair shall be considered as having been

properly performed, unless the defect could not have been discovered by the examination. Should such a defect be discovered later, the notice of defect must be given without undue delay upon its discovery; otherwise the repair shall be considered as having been accepted also in regard of this defect.

## § 10 Liability for Defects

- 1) Parts subject to wear and tear which have been free of defects at the acceptance of the repair services and the working life of which is shorter than the limitation period provided for under § 12 Sec.(1) may not be considered as being defective due to that shorter working life and do not render the repair defective due to their shorter working life.

We are not liable for the loss of data and/or the alteration of data, which would not have been lost in case of proper data safeguarding by the customer even if the performance of our repair services should have been the cause of the data loss.

The unsuccessful repair shall not be considered as being defective, if we are unable to locate the cause of the defect despite expert performance of the repair and/or the repair cannot be performed due to spare parts, which do not exist and/or cannot be procured by us and/or the customer refuses a necessary extension of the scope of the repair contract and the above-mentioned circumstances could not have been recognized at the time of the conclusion of the repair contract.

- 2) Should the repair be defect, we are entitled to remedy the defect. Should two efforts to remedy a defect fail, the customer shall be entitled to remedy the defect himself or by third parties and to ask for reimbursement of the necessary expenses, to cancel the repair contract or to reduce the price.

If the defect has been caused by gross negligence or willful intent of ourselves, our managerial staff or persons employed by us in the performance of our obligations or if the defect leads to a breach of essential contractual obligations (cardinal obligations) attributable to us, or to attributable personal injury, injury to life or to health, the customer may also claim damages for the defective repair services.

If we are liable for damages based on slight negligence (breach of cardinal obligations) the claim for damages is limited to typically foreseeable losses. In these events there shall be no liability for production stoppages or lost profit.

## § 11 Other Breaches of Duties

- 1) Our liability for defective repair services is not affected by this provision (§ 11). In so far § 10 of these terms for repair services applies.
- 2) Claims for compensation resulting from other breaches of duties, particularly duties to protect interests warranting protection or obligations arising out of quasi-contractual relationships are excluded unless they are based on gross negligence or willful intent, attributable breach of essential contractual obligations (cardinal obligations), or personal injury, injury to life or health caused by us, our managerial staff or persons employed by us in the performance of our obligations.
- 3) If we are liable for damages based on slight negligence, the claim for damages is limited to typically foreseeable losses. In these events there shall be no liability for production stoppages or lost profit.
- 4) This limitation on liability applies accordingly to claims in tort.

## § 12 Limitation Period

- 1) The limitation period for all claims of the customer resulting from defective repair services is one year from acceptance of the repair.
- 2) All other claims of the customer resulting from other breaches of duties, which are not based on defective repair services, are subject to a limitation period of one year as of the end of the year, during which the claim arose and the customer obtained knowledge of the circumstances justifying the claim or his lack of such knowledge was due to gross negligence.
- 3) The above mentioned shortenings of the statutory limitation periods do not apply insofar as the defect and/or the breach of duties to protect was caused by gross negligence, willful intent, or attributable breach of essential contractual obligations (cardinal obligations), and/or in case of personal injury, injury to life or health attributable to us, our managerial staff or persons employed by us in the performance of our obligations.
- 4) Negotiations about liability for defects or other claims for breach of duties, which lead to a suspension of the limitation period, shall only be considered to be in progress if the parties have stated in writing, that they are negotiating such claims. In case the pleading of this requirement of writing constitutes an abuse of legal rights, we may not plead the observance of the requirement of writing.

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## § 13 Miscellaneous

- 1) These General Terms and Conditions for Repair Services and the whole contractual relationship between ourselves and the customer shall be subject to the law of the Federal Republic of Germany.
- 2) The exclusive place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship shall be Stuttgart or, at our discretion, the place where the customer has his headquarters.
- 3) Even if individual clauses of these General Terms and Conditions for Repair Services or clauses which make part of other agreements between the parties should be or become legally invalid, the remaining parts shall remain valid. In case the legally invalid clause is no general term or condition, the parties shall be obliged to replace the invalid clause by a legally valid one which will best achieve the economic purpose of the original one in a legally valid manner.

Version 25<sup>th</sup> January 2017

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