

# Terms and conditions of assembly and repair

(Version 05/2010)



## 1 Field of application

The terms and conditions of this clause are considered to be a supplement and more special provisions to the MARBACH general terms and conditions of business for all assembly, repair and other such ancillary services which are not simply ancillary obligations in a purchasing contract. They shall particularly apply to contractual relations on an independent basis which have a performance effect on the content of the contract (works contracts).

The following provisions of the general terms and conditions of business of MARBACH shall not apply to works contracts on an independent basis:

- Clause 2 Offer, conclusion of contract, order confirmation, ancillary agreements, cost estimates, specifications, power of representation
- Clause 4 Price rules, dispatch clause, price changes, supplements, export rules
- Clause 5 Delivery periods, part deliveries, on-call contracts and delayed acceptance
- Clause 7 Force majeure, hindrances to performance
- Clause 9 Dispatch clause, delivery, transport, transfer of risk
- Clause 10 Terms of payment, authority to collect, discount, settlement, deterioration in financial circumstances, default in payment, offsetting
- Clause 13 Duty of inspection and obligation to notify defects, complaints
- Clause 14 Warranty, claims for defects, warranty period
- Clause 15 Liability
- Clause 20 (1) Place of performance

## 2 Formation of contract, extent of services

- (1) If an undisputed written order confirmation has been issued by MARBACH, this shall have determining effect on the content of the contract and the extent of repair or assembly services.
- (2) If the subject of the services is not a MARBACH product, the customer shall give notice of any existing intellectual property rights; to the extent MARBACH is not at fault the customer shall indemnify MARBACH from any and all claims raised by third parties due to intellectual property rights.

## 3 Feasibility of repairs

- (1) The work provided for the submission of a cost estimate and other justifiable expenditure arising (troubleshooting time is work time) shall be charged to the customer if the repair cannot be carried out for reasons beyond the control of MARBACH, in particular because
  - The faults which are the subject of complaint were not apparent on inspection
  - Replacement parts cannot be obtained
  - The customer has culpably missed the agreed deadline
  - The contract was terminated during implementation.
- (2) The item being repaired needs only to be restored to the original condition at the express requirement of the customer and for payment of the costs, unless work undertaken was not necessary.
- (3) Where repair is not possible, MARBACH is not liable for damages to the item being repaired. Moreover, Clause 15 of the MARBACH general terms and conditions of business shall apply accordingly.

## 4 Cost details, cost estimate

- (1) Where possible, the customer will be notified on formation of contract of the likely assembly or repair price, otherwise the customer may set a cost limit.
- (2) If repair cannot be carried out at such price, or if MARBACH considers additional work to be necessary during the repair, the permission of the customer shall be obtained if the stated costs are to be exceeded by more than 15 %.
- (3) If a cost estimate with fixed price limits is desired before the repairs are carried out, this must be expressly requested by the customer. Such cost quotation is – unless otherwise agreed – only binding if this is stated in writing. The quotation shall be paid for. The services implemented for the provision of the cost quotation will not be charged to the customer provided they can be fully used to carry out the repair.

## 5 Remuneration

- (1) Repair or assembly work and other ancillary works will be charged in principle according to time and other expenditure. If time spent is the basis of calculation,  $\frac{1}{10}$  of an hour (six minutes) is agreed as the billing interval.
- (2) Working time  
If no hourly rate is agreed, the general hourly rate charged by MARBACH shall be the basis for the calculation.
- (3) Material  
The materials required for the service are charged for in accordance with the quantities actually required at the prices applying on performance of the services. If in Clause 6 no special rules are stipulated, the MARBACH general terms and conditions of business apply to supply of the material.
- (4) Systems, machines and equipment  
The required use of MARBACH's own testing and inspection installations, machines and devices is charged for in accordance with the actual time required at the prices applying on performance of the services.
- (5) Third-party services  
If third-party services are used for the provision of the services, by agreement with the customer, the purchase price plus a supplement for general costs is charged on a current rate of 5 % of the net purchase price.

## 6 Proof of performance

- (1) The customer shall furnish daily evidence of time worked, at the request of MARBACH but at the latest after conclusion of the work, in activity reports.
- (2) Activity reports signed without reservation by the customer are in principle an incontestable basis of calculation.

## 7 Invoicing and payment

- (1) Invoicing for the services shall, in principle, take place after acceptance. MARBACH is however entitled to request reasonable advance payments on a weekly basis. This also applies to the use of installations, machines and devices in the invoicing period and to material processed and supplied in the invoicing period.
- (2) Invoices shall become due for payment as soon as they are received, and without deduction.
- (3) MARBACH is entitled, on formation of the contract, to demand reasonable advance payment for the remuneration.

## 8 Special obligations of customer collaboration

- (1) The customer shall assist the personnel carrying out the work at the premises of the customer at its own cost.
- (2) He shall take the necessary measures to protect personnel and property in the workplace. He shall instruct the foreman appointed by MARBACH on any special safety provisions, where these are of importance for the personnel. He shall notify MARBACH immediately of any infringements by personnel of such safety provisions. In the event of severe infringements, he may, upon mutual agreement with the works foreman, refuse the perpetrator access to the place of work.

## 9 Technical support for assembly services at the customer's premises

- (1) The customer is obliged, at its own expenses, to provide technical support in particular regarding:
  - Provision of the suitable specialist and auxiliary personnel in the numbers required for assembly and for the necessary time. The auxiliary personnel shall comply with the instructions of the assembly foreman. MARBACH accepts no liability for the auxiliary personnel. If error by the auxiliary personnel is directly attributable to incorrect instruction by the assembly foreman, MARBACH is liable and accepts responsibility as for his own assembly personnel.
  - Undertaking of all earth, construction bedding and scaffolding work, including procurement of the necessary building materials
  - Provision of the necessary jigs and heavy tools (e.g. lifting gear, compressors) and the necessary items and substances (e.g. rigging, wedges, underlays, cement, cleaning and sealing materials, lubricants, fuels, drive cables and drive belts)
  - Provision of heating, lighting, operating power, water, including the required connections
  - Provision of necessary dry and sealable areas for the safeguarding of the tool for the assembly personnel
  - Transport of the material to the assembly location, transport of the assembly parts at the assembly location, protection of the assembly location and materials against damaging influences of any kind,
  - Cleaning of the assembly location
  - Provision of suitable, theft-secure relaxation areas and work rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for assembly personnel
  - Provision of materials and undertaking of all other actions necessary for the adjustment of the item to be assembled and implementation of contractual ancillary services
- (2) Technical assistance by the customer shall ensure that the assembly can commence immediately on arrival of the assembly personnel without delay until acceptance by the customer. If specific plans or instructions are necessary, MARBACH shall give them to the customer in good time.
- (3) If the customer does not meet his obligations, MARBACH is entitled, but not obliged, to undertake, after setting a deadline, the tasks which were customer's duties at the customer's premises and at the customer's costs.
- (4) If, due to absence of or delay in collaboration by the customer, additional expenses due to hindrance have incurred (e.g. maintenance personnel waiting idly, machines and devices that cannot be installed etc.), MARBACH shall give notice of such circumstances immediately. The customer shall pay the additional expenses due to the obstruction and shall provide instructions as to whether the assembly should be aborted, interrupted, or resumed after a delay.

## 10 Transport and insurance in the event of repair or assembly at the MARBACH factory, delay in taking back

- (1) Subject to a written agreement to the contrary, delivery and removal of the supplied item – including any packaging and loading – at the customer's request will be carried out at his expense, otherwise the supplied item will be delivered by the customer at his expense to MARBACH and collected by the customer from MARBACH after the contractual service has been carried out.
- (2) The customer shall bear the transport risk for delivery and removal.
- (3) At the customer's request, at his expense, delivery and if appropriate removal transport shall be insured against insurable transport risks e.g. theft, breakage and fire.
- (4) During assembly or repair time no insurance cover is provided at MARBACH. The customer shall ensure the maintenance of existing insurance cover for the item being repaired, e.g. for fire, mains water, storm and machine breakage insurance. Only at express request and cost of the customer can insurance protection for such risks be provided.
- (5) In the event of default of the customer in collection or transfer, MARBACH may charge for storage at its factory. The item to be assembled or repaired may, at MARBACH's discretion, be kept elsewhere. The customer shall bear the costs and risks of storage.

## 11 Period of performance, delayed performance

- (1) Details of assembly or repair times are based on estimates and are therefore not binding. The agreement of a fixed repair period, which must be designated as binding, may only be requested by the customer if the extent of the works is precisely known.
- (2) The time for performance is adhered to if, by the time the allowed period of time for performance elapses, performance is ready for acceptance by the customer and, in the event of a contractually-stipulated trial of the supplied item, ready for its undertaking.
- (3) If performance is delayed due to the occurrence of circumstances beyond MARBACH's control and where such hindrances evidently affect completion of assembly, the period of performance shall be extended accordingly.

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- (4) In the event of additional or extension orders issued subsequently, or in the event of necessary additional repair works, the agreed period of performance shall be extended as appropriate.
- (5) If the work is interrupted in accordance with the customer's wishes, for a period exceeding three months, MARBACH may charge for the services provided up to that point.
- (6) In all cases where there is a statutory right to terminate the contract, the customer undertakes to declare, at the request of MARBACH, within an reasonable period of time, whether he will make use of his right to terminate. Until the notice of termination has been received by MARBACH, the customer is still obliged to accept supplies.
- (7) Further-reaching claims of the customer due to default in performance are governed exclusively by Clause 8 of the MARBACH general terms and conditions of business.

## 12 Acceptance

- (1) The customer is under obligation to accept delivery as soon as he has been notified of its completion, and sample inspection of the processed item has been carried out in accordance with the contract where appropriate. Should performance prove not to be in accordance with the contract, MARBACH shall be obliged to remedy the defect. This does not apply if the defect is not significant for the customer or is caused by a circumstance attributable to the customer. In case of an insignificant defect the customer cannot refuse acceptance.
- (2) If acceptance is subject to delay through no fault of MARBACH, acceptance shall be deemed to have taken place once two weeks have elapsed from completion of the assembly/repair. § 640 sentence 3 of the German Civil Code (BGB) shall remain unaffected.
- (3) On acceptance, MARBACH is no longer liable for identifiable defects if the customer has not made a reservation regarding a particular defect.
- (4) At the express request of MARBACH, on acceptance of performance, an acceptance record is to be drawn up in which in particular all defects are to be recorded, which the customer reserves the right to assert. The acceptance record is to be signed by the representatives of both contracting parties.

## 13 Claims due to defects

- (1) After acceptance of performance, MARBACH is liable for defects in the service to the exclusion of all other claims by the customer notwithstanding Clause (6) and Section 14 to the extent that it must remedy the defect. The customer shall provide written notice of any defect found immediately after it became apparent. To remedy a defect in a tool, the tool must be available in the machine for a reasonable period of time. If remedying cannot be achieved at the customer's premises or only at additional expense amounting to more than 20%, the customer shall return the tool to MARBACH. The customer is entitled to request remedying at MARBACH's premises if remedying at the customer's premises would be unreasonably expensive. The necessary dispatch costs for return and redelivery shall be paid by MARBACH if, and to the extent that the customer does not disregard any dispatch instructions from MARBACH.
- (2) MARBACH shall not be liable if the defect is not significant to the interests of the customer or is based on a circumstance attributable to the customer. This applies in particular as regards components provided by the customer.
- (3) In the event of modifications or repair works carried out by the customer or third parties without specialist knowledge and without the prior approval of MARBACH, any and all liability of MARBACH for the consequences arising from this shall be excluded.
- (4) Only in urgent cases of risk to operating safety and to avert disproportionately high damages, of which MARBACH shall be informed immediately, or if MARBACH – taking into account statutory exceptions – has allowed, without result, elapsing of a reasonable period set for it to remedy defects, the customer shall have the right, within the limits of the statutory provisions, to remedy the defect himself or to have it remedied by third parties, and to claim from MARBACH reimbursement of the necessary costs.
- (5) If during performance, a replacement part delivered by MARBACH is damaged due to MARBACH's fault, this shall be repaired or resupplied at our discretion and at our costs.
- (6) Out of the costs arising directly from remedying defects, MARBACH shall bear – where the complaint proves justified – the costs of the replacement part including its dispatch. It shall also bear the costs of removal and installation and the costs of detachment of any fitters and auxiliary personnel necessary, including their travel costs provided always the latter do not result in disproportionately high charges.
- (7) If MARBACH – taking into account the statutory exceptions – allows, without result, elapsing of a period set for it to remedy defects, the customer shall have the right to claim reduction in price in accordance with the relevant statutory provisions. Only if the customer can furnish evidence that performance is not of interest to him despite a price reduction can the customer terminate the contract.
- (8) Further-reaching claims shall be exclusively governed by Clause 14 of these terms and conditions.

## 14 Liability, exclusion of liability

- (1) MARBACH shall be liable for damages other than damages to the item supplied – on any legal grounds whatsoever – only in the case of
  - Wilful misconduct
  - Gross negligence of the organisation or executives
  - In the event of culpable injury to life, body or health
  - In the event of defects that MARBACH has maliciously failed to disclose
  - In the context of a warranty promise
  - If, under the product liability law, liability exists for injury to people or damage to privately-used objects.
- (2) In the event of culpable infringement of significant contractual obligations, MARBACH shall also be responsible for gross negligence of non-executive employees and negligence, in the latter case limited to contractually-typical foreseeable damages.
- (3) Damages due to production failure, downtime, lost profits or contractual penalties promised to third parties arising or brought about due to delayed delivery to the customer or its customers will only be compensated for if a fixed delivery date was agreed and provided always that the customer, at the time the delivery date was agreed, gave specific notice in writing that such damages and costs may threaten if the delivery date is not adhered to.

- (4) Further-reaching claims are excluded.

## 15 Limitation period for claims

All the customer's claims – for any legal reasons whatsoever – are time-limited to 12 months. The statutory time limits for claims for damages according to Clause 14 (1) apply. Should MARBACH carry out the services on construction works and if this causes defects in them, the statutory time limits shall also apply.

## 16 Retention of ownership, extended right of pledge

- (1) MARBACH retains the ownership of all accessories, replacement parts and spare assemblies until receipt of all payments from the repair contract. The provisions of Clause 11 of the MARBACH terms and conditions of contract shall apply accordingly.
- (2) MARBACH shall have a right of pledge over the customer's supplied goods in his possession due to his receivables arising from the works contract. The right of pledge may be also raised on the basis of receivables from the works carried out previously, supplies of replacement parts and other services, provided that they are associated with the supplied goods. The right of pledge only applies to other claims arising out of the business relationship, if such claims are undisputed or subject to a final court order.

## 17 Replacement service by the customer

If, through no fault of MARBACH, the materials, jigs or tools supplied by it are delivered to the customer damaged or if they are lost through no fault of MARBACH, the customer is obliged to provide compensation for such damages. This does not include damages which are attributable to normal wear and tear.

## 18 Exclusion of power of representation by MARBACH fitters

The fitters are not entitled to issue legally binding declarations on behalf of MARBACH. Only MARBACH's customer service department and the appointed project manager are responsible for the implementation of the contract and the issuing of legally-binding declarations.