

General repair and installation conditions of Pekrun Getriebebau GmbH

Preamble

Unless the following conditions include special provisions, our general terms and conditions of sale and delivery shall also apply.

Section 1 Scope, information obligations, safety instructions

(1) These general repair and installation conditions shall apply to maintenance (repairs) and installation works.

(2) If the item subject to repair or installation was not previously delivered by the seller, but by a third party, the customer must advise of existing industrial property rights in relation to the item; if the supplier is not at fault, the customer shall exempt the seller from any potential third-party claims arising from industrial property rights.

(3) The customer must inform the seller in good time and in writing of any contaminations and any residues in the items to be repaired/installed that may pose a health risk as well as of transport risks and other measures that must be taken in relation to the repairs.

Section 2 Unperformable repair

(1) The services performed based on submission of a cost estimate as well as any further substantiated costs (troubleshooting time equals working time) will be invoiced to the customer, if the repair cannot be performed by the seller due to grounds for which it is not responsible, in particular because:

- The fault that is the subject of the complaint did not occur during the inspection,
- Spare parts cannot be procured,
- The customer culpably missed the agreed deadline,
- The contract is terminated during the performance.

(2) The item to be repaired only needs to be restored to the original condition on the express wish of the customer against a reimbursement of costs, unless the works performed were not required.

(3) In the event of an unperformable repair, the seller shall not be liable for damages to the repair item, for the infringement of contractual secondary obligations or for damages which have occurred not to the repair item itself, irrespective of which legal basis the customer invokes. However, the seller shall be liable for intent, gross negligence of the owner/entities or leading employees as well as for culpable infringement of essential contractual obligations. In the event of a culpable infringement of essential contractual obligations, the seller shall be liable – apart from cases of intent and gross negligence of the owner/entities or leading employees – only for the typical contractual damages which can reasonably be foreseen.

Section 3 Cost details, cost estimate

(1) To the extent it is possible the customer will be given estimated repair/installation prices upon conclusion of the contract, otherwise the customer can set cost limits. If the repair/installation cannot be performed for these costs, or if the seller considers the performance of additional work to be necessary during the repair/installation, the consent of the customer must be obtained if the specified costs are exceeded by more than 15%.

(2) If a cost estimate with binding pricing is requested before the execution of the repair/installation, this must be expressly requested by the customer. Unless otherwise agreed, such a cost estimate shall only be binding if it is submitted in writing. If the services required to submit the cost estimate are utilised in the performance of the repair, they shall not be invoiced to the customer.

Section 4 Price and payment

(1) The seller shall be entitled to request an advance payment on conclusion of the contract.

(2) The calculation of the repair/installation must itemise separately the prices for used parts, materials and special services as well as the prices for work performance, travel and transport costs. If the repair/installation is to be carried out on the basis of a binding cost estimate, the reference to the cost estimate suffices whereby only deviations in the performance scope shall be listed specifically.

(3) Value added tax shall be calculated at the applicable legal rate and shall be at the expense of the customer.

(4) Any possible correction of the invoice by the seller and any complaint by the customer must be made in writing at the latest four weeks after receipt of the invoice.

(5) The payment is to be made without discount upon acceptance and issuance or transmission of the invoice.

(6) An agreed payment period runs in the case of doubt from the invoice date.

(7) The customer must reimburse the seller for any reminder and collection costs.

(8) Offsetting with counter-claims of the customer or the withholding of payments due to such claims shall only be admissible if the counter-claims are undisputed or legally established or arise from the same order as the delivery concerned.

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Section 5 Cooperation and technical assistance of the customer for repairs away from the workplace of the seller

- (1) The customer shall at its own expense support the repair/installation staff in the performance of the repair/installation away from the workplace of the seller.
- (2) The customer shall undertake the requisite specific measures to protect the staff and materials at the place of repair/installation. It shall also instruct the repair/installation manager in the existing special safety provisions if these are of significance for the repair/installation staff. It shall inform the seller of any infringements by the repair/installation staff of such safety provisions. In the event of serious infringements it can refuse access to the repair/installation site to the infringing person in consultation with the repair/installation manager.
- (3) The customer shall be under the obligation, at its expense, to provide technical assistance, in particular to:
- Provide the necessary appropriate auxiliary staff in the requisite number for the repair/installation and for the requisite time; the auxiliary staff must comply with the instructions of the repair/installation manager. The seller shall assume no liability for the auxiliary staff. If a defect or damage occurs by the auxiliary staff due to instructions of the repair/installation manager, then the provisions of Sections 9 and 10 of these conditions shall apply accordingly.
 - Undertake all construction, bedding and scaffolding works including procurement of the necessary building materials.
 - Provide the requisite equipment and heavy tools as well as the requisite consumables.
 - Provide heating, lighting, operating staff, water and including the necessary connections.
 - Provide the necessary dry and lockable rooms for storing the tool of the repair/installation staff.
 - Protect the repair site and repair materials from damaging influences of all types and to clean the repair/installation site.
 - Provide appropriate theft-proof recreation rooms and work rooms (with heating, lighting, washing opportunities, sanitary facilities) and first aid for the repair/installation staff.
 - Provide materials and carry out all other actions which are necessary for the adjustment of the repair/installation item and for the performance of a contractually-specified trial.
- (4) The technical assistance of the customer must ensure that the repair/installation must begin immediately after the arrival of the repair/installation staff and that it can be performed without delay until acceptance by the customer. If specific plans or instructions of the seller are required, then the seller must provide these promptly to the customer.
- (5) If the customer does not comply with its obligations, then the seller, after setting a deadline, shall be entitled, but not under the obligation, to undertake the actions incumbent on the customer in its place and at its costs. Otherwise the statutory rights and claims of the seller shall remain unaffected.

Section 6 Transportation and insurance for repairs in the workplace of the seller

- (1) Unless otherwise agreed in writing, any outward/return transportation of the repair item carried out on request of the customer – including any packaging and loading – shall be at the expense of the customer, otherwise the repair item will be delivered to the seller by the customer at its expense and after the seller has performed the repair it will be collected again by the customer.
- (2) The customer shall assume the transportation risk.
- (3) On request of the customer, at its expense the outward/return transportation shall be insured for the insurable transportation risks, e.g. theft, breakage and fire.
- (4) There shall be no insurance cover during the repair time in the workplace of the seller. The customer must ensure that the existing insurance policy for the repair item is maintained, for instance, for fire, mains water, storm and mechanical breakage insurance. Only on the express wish and expense of the customer can insurance cover be obtained for these risks.
- (5) In the event of a customer delay in the handover, the seller can invoice an amount for storage in its workplace. The repair item can, at the discretion of the seller, also be kept elsewhere. The costs and risks of storage shall be assumed by the customer.

Section 7 Repair/installation period, repair/installation delay

- (1) The details specified for repair/installation periods are based on estimates and are therefore not binding.
- (2) The customer may only demand the agreement of a binding repair/installation period that must be designated as binding when the scope of the work has been accurately specified.
- (3) The binding repair/installation period is complied with, if by its expiry, the repair/installation item is ready for handover to the customer or ready for the performance of a contractually-specified trial where required.
- (4) If additional or extended orders are awarded subsequently or should additional repair/installation work become necessary, then the agreed repair/installation period shall be extended accordingly.
- (5) If the repair/installation is delayed due to measures taken within the context of industrial disputes, in particular strikes and lockouts or due to the occurrence of circumstances which are not the fault of the seller, to the extent that such impediments are proven to have a significant impact on the completion of the repair/installation, an appropriate extension of the repair/installation period shall come into effect.

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(6) If the customer suffers damage due to the delay of the seller, it shall be entitled to demand a fixed delay compensation fee which for each full week of the delay shall amount to 0.5%, in total however up to a maximum of 5% of the repair/installation price for that particular part of the item to be repaired/installed by the seller that due to the delay cannot be used in a timely manner. If the customer – taking statutory exceptional cases into consideration – sets the seller an appropriate extension period after the due date to perform the service and the deadline is not complied with, the customer shall, within the framework of statutory provisions, be entitled to withdraw. It shall be under the obligation, upon the request of the seller, to state within a reasonable timeframe whether it shall be availing itself of its right to withdraw. Further claims due to delay shall be determined exclusively pursuant to Section 10 (3) of these conditions.

Section 8 Acceptance

(1) The customer shall be under the obligation to accept the repair/installation work as soon as it has been notified of its completion and if a contractually-specified trial of the repair/installation item has taken place. If the repair is proven to deviate from the contract, the seller shall be under the obligation to remove the defect. This shall not apply if the defect is insignificant for the interests of the customer or if it is based on a circumstance attributed to the customer. In the event of an insignificant defect, the customer may not refuse acceptance.

(2) If acceptance is delayed through no fault of the seller, acceptance shall be deemed as having occurred upon the expiry of a two week period after notification of the completion of the repair/installation.

(3) With acceptance the liability of the seller for identifiable defects shall cease unless the customer has reserved the right to assert a specific defect.

Section 9 Retention of title, extended right of lien

(1) The seller shall retain ownership of all accessories, spare parts and replacement aggregates used until all payments from the repair/installation contract have been received. Further collateral agreements can be made.

(2) The seller shall have a right of lien arising from its claim from the repair/installation contract to the repair/installation item of the customer now in its possession due to the contract. The right of lien can also be asserted due to claims arising from previously performed work, spare parts deliveries or other services performed, provided that they relate to the item to be repaired/installed. For other claims from the business relationship the right of lien shall only apply if these are undisputed or legally established.

Section 10 Defect claims

(1) After acceptance of the repair/installation, the seller shall be liable for defects in the repair/installation to the exclusion of all other claims from the customer irrespective of Clauses (5) and (6) and Section 10 of these conditions in that it must remove the defects. The customer must immediately notify the seller in writing of any identified defects.

(2) The seller shall not be liable if the defect is insignificant for the interests of the customer or if it is based on a circumstance attributed to the customer. This shall apply in particular to parts provided by the customer.

(3) If the customer or any other third party has undertaken incorrect changes or maintenance work without the prior consent of the seller, the liability of the seller for any ensuing consequences shall become void. Only in urgent cases which may endanger operational safety and to avert disproportionately large damages, whereby the seller must be notified immediately, or if the seller – taking statutory exceptional cases into consideration – has allowed a reasonable extension granted to it for the removal of the defect to fruitlessly expire, the customer shall have the right, within the framework of statutory provisions, to remove the defect itself or have it removed by third parties and to demand reimbursement of the necessary costs from the seller.

(4) In the event of a justified complaint, the seller shall assume the costs required to remove the defect provided that this does not result in a disproportionate burden on the seller.

(5) If the seller – taking statutory exceptional cases into consideration – has allowed a reasonable extension granted to it for the removal of the defect to fruitlessly expire, the customer shall have the right, within the framework of statutory provisions, to a price reduction. Only if the repair/installation despite the reduction is verifiably of no interest for the customer, can the customer withdraw from the contract.

(6) Further claims shall be determined exclusively pursuant to Section 10 (3) of these conditions.

Section 11 Liability of the seller, exclusion of liability

(1) If parts for the repair/installation item are damaged through the fault of the seller, the seller may decide whether to repair them at its expense, make a new delivery or provide a replacement. In the event of slight negligence the costs to be incurred for this are limited to the amount of the contractual repair/installation price. Furthermore, liability exists for damages to the repair/installation item pursuant to Clause (3) of these conditions.

(2) If the repair/installation item cannot be used by the customer in the manner stipulated by the contract due to omitted or defective proposals or advisories from the seller which were provided before or after the conclusion of the contract, or due to the culpable infringement of other contractual secondary obligations, in particular instructions for the operation and maintenance of the repair/installation item, then the provisions of Sections 9 and 10 (1), (3) of these conditions shall apply with the exclusion of further claims by the customer.

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(3) The seller shall only be liable for damages incurred to the repair item itself – on whatever legal grounds –

- a) In the event of intent or gross negligence.
- b) In the event of culpable injury to life, limb or health.
- c) In the event of defects it has fraudulently concealed.
- d) Within the framework of a warranty promise.
- e) If there is liability pursuant to the Product Liability Act for personal injuries or material damage to privately used items.

However, in the event of a culpable infringement of essential contractual obligations, the liability of the seller shall be limited, even where there is slight negligence, to typical contractual damages which can reasonably be foreseen. Further claims shall be excluded.

Section 12 Limitation period

All claims from the customer – irrespective of the legal grounds – shall expire in 12 months. For compensation claims pursuant to Section 10 (3) a)-c), e) of these conditions, the statutory periods shall apply. If the seller provides the repair/installation work on a building structure and as a result causes its defectiveness, the statutory periods shall also apply.

Section 13 Compensation by the customer

If during the repair/installation work away from the workplace of the seller through no fault of the seller, the equipment or tools provided by it at the repair/installation site are damaged or lost, then the customer shall be under the obligation to pay compensation for these damages. Damages attributable to normal wear and tear are not taken into consideration.