

# General Conditions of Dana Motion Systems Deutschland GmbH for repairs of machinery and equipment

## I. Conclusion of Contract, General

1. These general repair conditions of Dana Motion Systems Deutschland GmbH as Supplier shall apply to all repair actions by the Supplier or performed by agents authorized by the Supplier for this purpose, even if they involve warranty claims and/or liability for faults from a prior purchase of the repair item. Terms and Conditions in orders, confirmations or other statements of the Client are legally invalid with respect to us even without our official rejection and despite any statements of the Client of recognising external terms only by its consent, unless they are acknowledged in writing. If the Client is not prepared to recognize any of the following conditions, it must make a clear written objection.
2. If the repair item is not delivered by the Supplier, the Client must refer to existing industrial property rights with respect to the subject matter; provided that the Supplier is not at fault, the Client shall indemnify the Supplier from any third party claims under commercial protected rights.

## II. Non-viable repair

1. The services rendered to submit a cost estimate and the further expense incurred and to be documented (debug time equivalent to working time) shall be charged to the Client if the repair cannot be carried out for reasons beyond the range of the Supplier, in particular because
  - the alleged fault did not occur during the inspection,
  - parts cannot be obtained,
  - the Client has culpably missed the agreed deadline
  - the contract has been terminated during the performance.
2. The repair item needs only to be returned to its original state at the express wish of the Client against reimbursement of costs, unless the work carried out was not necessary.
3. In case of a not feasible repair, the Supplier shall not be liable for damage to the repair item, the breach of contractual obligations and damages which are not caused to the repair item itself, regardless of the legal grounds which the Client cites.

However, the Supplier shall be liable in case of intention, gross negligence of the owner/organs or executives and culpable breach of contract.

In case of culpable breach of contract, the Supplier shall be liable - except in cases of intention or gross negligence of the owner/board members or senior employee - only for contractually typical, reasonably foreseeable damage.

## III. Cost information, cost estimate

1. If, before the repair, a cost estimate with binding price rates is desired, it must be explicitly requested by the Client.

Such an estimate - unless otherwise agreed - is only binding if it is made in writing.

For the fee, and advance fee is calculated, based on the price as new of a comparable new item and staggered as follows (if such a drive is no longer included in our product range, one-time replacement value calculation shall be performed):

Gear unit factory price  $\leq$  15,000.00 €: 4%  
Gear unit factory price  $>$  15,000.00 €  $\leq$  25,000,- €: 3%  
Gear unit factory price  $>$  25,000.00 €: 2%  
Minimum: 180.00 €

The estimate fee is waived on the placing of the repair order, or on the simultaneous ordering of a comparable new item within the validity period of the corresponding bid.

2. For scrapping of gear units a flat rate of 100.00 € is applicable. This does not apply to simultaneous order of a comparable new item, but otherwise shall be charged in addition to the estimate fees.
3. If within one month after the creation of the estimate there is no feedback of the Client, the Supplier shall be entitled to charge a reasonable covering fee for the period of storage.

## IV. Price and payment

1. The Supplier shall be entitled to claim an appropriate advance on concluding the contract.
2. VAT is also charged in the respective legal amount to the Client.
3. Any correction of the invoice by the Supplier and any complaint by the Client must be made no later than four weeks after receipt of the invoice in writing.
4. Payment must be made, unless otherwise agreed, after receipt of the invoice in cash free at the point of payment.
5. The withholding of payments due to any counterclaims of the Client disputed by the Supplier and not legally established is not permitted.
6. The offsetting of any counterclaims of the Client from other legal relationships disputed by the Supplier and still open to appeal is not permitted.
7. In the event the customer cancels any order for customized products for which the supplier has manufactured work-in-process, the supplier will be entitled to reimbursement of only its direct and indirect costs for such work-in-process, to the extent the supplier has the right to such direct or indirect costs pursuant to the terms of the contract or under applicable law.

## V. Cooperation and technical assistance provided by the Client for repairs outside of the works of the Supplier

1. If requested by the Supplier, the Client must support the repair personnel in carrying out the repair at its own expense.
2. The Client must take the necessary special measures to protect persons and property at the repair station. It must also inform the repair manager of existing special safety and access permissions in time, if they are important for the repair personnel. It shall notify the Supplier of violations of such safety regulations by the repair personnel. For serious violations, the offender can in consultation with the repair manager be banned from access to the repair site.

## VI. Transportation and insurance for repair in the works of the Supplier

1. Unless otherwise agreed in writing, delivery and removal of the repair item shall be performed at the request of the Client - including any packaging and loading - on its behalf, otherwise the repair item shall be delivered by the Client at its expense to the Supplier and picked up again after the repair from the Supplier by the Client.
2. The Client bears the transport risk.
3. At the request of the Client at its expense the forward and any return transport shall be ensured against insurable transport risks, e.g. theft, breakage and fire.
4. During the repair time, there is no insurance coverage in the works of the Supplier. The Client must procure insurance, for example, for the maintenance of the existing insurance coverage for the repair item with regard to fire, tap water, storms and machinery breakdown. Only on the request and at the expense of the Client insurance coverage can be procured for these risks.
5. If the Client is late with the takeover, the Supplier may charge storage fees for storage in its works. The storage fee is 0.5% of the repair price for each full week. The repair item may also be stored elsewhere at the discretion of the Supplier. The cost and risk of storage shall be borne by the Client.

## VII. Repair period, delay of repairs

1. The details of the repairs are based on estimates and are not binding.
2. The Client can only demand the agreement of a binding repair period, which must be designated as binding, when the scope of works has been assessed.
3. The binding repair period is met if by the end of it the repair item is ready for acceptance by the Client, in the event of a contractual test for its implementation.

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4. With subsequently issued additional and extended orders or necessary additional repair works the agreed repair period shall be extended accordingly.
5. If the repair is delayed through actions in the context of employment disputes, strikes and lockouts, as well as the occurrence of circumstances which are not the fault of the Supplier, there shall, insofar as such obstacles demonstrably have considerable influence on the completion of the repair, be a reasonable extension of the repair time.
6. If the Client sustains damages because of the delay of the Supplier, then it is entitled to demand lump-sum compensation. It amounts for each full week of delay to 0.5%, but not more than 5% of the repair price for that part of the object to be repaired by the Supplier which cannot be used in time due to the delay.

If the Client gives the Supplier - taking into account the statutory exceptions - an appropriate deadline for performance after the due date and the deadline is not met, the Client is entitled under the law to withdraw.

It undertakes at the request of the Supplier to declare within a reasonable time if it is exercising its right of withdrawal.

Further claims because of delay are governed exclusively by section XI.3 of these conditions.

## VIII. Acceptance

1. The Client is required to accept the repair works as soon as their completion has been notified and any contractually agreed trial of the repair item has taken place. If the repair is found to be non-compliant, the Supplier shall remedy the fault. This does not apply if the fault is irrelevant for the interests of the Client or due to circumstances attributable to the Client. With a non-critical fault, the Client may not refuse acceptance.
2. If acceptance is delayed through no fault of the Supplier, the acceptance is effective after two weeks of notification of completion of repair.
3. With acceptance, the liability of the Supplier for recognizable deficiencies lapses, unless the Client has reserved the right to assert a specific fault.

## IX. Retention of title, extended lien

1. The Supplier reserves the ownership of all accessories, spare parts and replacement units until receipt of all payments under the repair contract. Further collateral arrangements can be made.
2. The Supplier has from its claim under the repair contract a lien on the repair item of the Client in its possession on the basis of the contract. The lien can be asserted based on claims for prior works carried out, replacement parts and other services to the extent that they relate to the repair item. For other claims from the commercial relationship, the lien applies only insofar as they are undisputed or legally binding.

## X. Claims for faults

1. After acceptance of the repair the Supplier shall be liable for faults in the repair to the exclusion of all other claims of the Client, without prejudice to Nos. 5 and 6 and Section XI in such a way that it must remedy the faults. The Client must notify any fault detected immediately in writing to the Supplier.
2. The liability of the Supplier does not arise if the fault is irrelevant for the interests of the Client or is due to a circumstance that is attributable to the Client. This is particularly true with respect to the parts provided by the Client.
3. With any modifications or repairs performed improperly by the Client or a third party without the prior consent of the Supplier, the Supplier's liability for any consequences of them is cancelled. Only in urgent cases of danger to operational safety and to prevent excessive damage in which the Supplier be notified immediately, or if the Supplier - taking into account the statutory exceptions - has allowed reasonable period to remedy the fault to expire fruitlessly, does the Client under the law have the right to remedy the fault itself or to have it remedied by third parties and claim the necessary costs from the Supplier.

4. In the event of a justified complaint, the Supplier shall bear the direct costs of the remedy, provided this does not cause a disproportionate burden for the Supplier.
5. If the Supplier allows - taking into account the statutory exceptions - a fixed reasonable time limit for the removal of faults to expire without remedying, the Client may reduce the purchase price in the context of the statutory provisions. Only if the repair is demonstrably without interest for the Client, despite the reduction, the Client may withdraw from the contract.
6. Further claims are determined exclusively in accordance with Section XI.3 of these Conditions.

## XI. The Supplier's liability, exclusion of liability

1. If parts of the repair item are damaged by fault of the Supplier, the Supplier must at its option, at its own expense repair or replace them or pay compensation. The costs to be incurred for this purpose, in the case of minor negligence and gross negligence of an employee, are limited in amount to the contractual repair price. In addition, for damages to the item to be repaired the liability in accordance with Section XI.3 is applicable.
2. If, as a result of the Supplier's culpable failure or faulty suggestions or discussions that took place before or after conclusion of the contract, by the culpable breach of other secondary contractual obligations - in particular instructions for operation and maintenance of the repair item - the repair item cannot be used according to the contract by the Client, application shall be made, to the exclusion of other claims of the Client, of the provisions of sections X and XI.1 and 3.
3. For damage not caused to the repair item itself, the Supplier shall be liable - for whatever legal reason - only
  - a) in case of intention,
  - b) for gross negligence of the owner/organs or executives,
  - c) for culpable injury to life, body or health,
  - d) for faults which it has fraudulently concealed,
  - e) in the context of a guarantee,
  - f) if under the product liability law there is liability for personal or damage to privately used items.

In case of culpable breach of contract, the Supplier shall also be liable for gross negligence of non-executive employees and for minor negligence, the latter case limited to the typical, reasonably foreseeable damage. Other claims are excluded.

## XII. Limitation

The warranty period for repairs is 12 months from readiness for shipment.

In a repair outside the works of the Supplier, the limitation period begins on the date of the signing of the timesheets by the Client.

## XIII. Applicable law and legal venue

1. The law of the Federal Republic of Germany is applicable, to the exclusion of UN purchasing law and German private international law.
2. The legal venue is the court responsible for the headquarters of the Supplier. However, the Supplier shall also be entitled to file a complaint in the venue of the Client.
3. In the case of legal disputes over the content of these general conditions the text in German is the sole authoritative version.

Dana Motion Systems Deutschland GmbH, last updated: 20.04.2022