

GENERAL CONDITIONS FOR REPAIR WORKS
HERRENKNECHT AG | BUSINESS UNIT UTILITY TUNNELLING | AS OF DECEMBER 2016

1. GENERAL

Any stipulated repair works ("REPAIR WORKS") are executed by Herrenknecht AG (hereinafter "HK") exclusively pursuant to the following General Conditions for REPAIR WORKS in their currently applicable version. HK expressly objects to the application of any deviating or conflicting terms and conditions of the customer. Deviating agreements are valid only if confirmed by HK in writing.

2. SCHEDULE OF THE REPAIR WORKS

- 2.1 Upon receipt of the item to be repaired ("Item") in the workshop in Schwanau, HK will send a cost estimate to the customer. This cost estimate will specify the estimated costs and, if possible, the planned duration of the REPAIR WORKS.
- 2.2 HK will commence with the REPAIR WORKS, after receipt of the counter-signed cost estimate as an order confirmation at the e-mail address specified therein,
- 2.3 If it is foreseeable that the costs specified in the cost estimate will be exceeded by more than 15%, the customer will be notified. If the customer rejects the continuation of the REPAIR WORKS, HK will cancel the REPAIR WORKS and send the Item back to the customer. All costs produced until then are to be reimbursed to HK by the customer.
- 2.4 HK will notify the customer and organize the return transport at the cost and risk of the customer upon completion of the REPAIR WORKS. Acceptance of the REPAIR WORKS shall be deemed to be valid after 14 calendar days from shipment of the Item, in case of a collection of the Item by the customer after 21 calendar days from the notification of completion of the REPAIR WORKS.
- 2.5 If the cost estimate is not confirmed by the customer within 14 calendar days, HK will charge the incurred costs to the customer and organize the return transport at the customer's cost and risk.

3. LIABILITY FOR DEFECTS

- 3.1 HK shall remedy all defects for which HK is responsible either in the workshop in Schwanau or on the site where the Equipment is located pursuant to this clause 3. The customer shall without undue delay notify HK in writing or via E-Mail (E-Mail Contact Address). Parts, which have been replaced, shall be made available to HK and shall be HK's property.
- 3.2 The period of liability for defects for REPAIR WORKS and installed new parts is 12 months from date of acceptance of the REPAIR WORKS.
- 3.3 Only in urgent cases where there is a risk of operational safety and to avert disproportionate damage, whereby HK must be informed immediately, or if HK allows a second reasonable period for remedy of the defect elapse fruitlessly, the customer is entitled to undertake or employ a third party to undertake necessary remedial works at the expense of HK.
- 3.4 Where the defect has not been successfully remedied as specified in 3.3, the customer is entitled to a reduction of the repair price, provided that under no circumstance shall such reduction exceed 15% of the repair price; or where the defect is so substantial that the customer cannot use the repaired Item appropriately, the customer may terminate the contract and claim liquidated damages up to 15% of the repair price. The customer is also entitled for reduction or termination in all cases of failure to remove the defect.
- 3.5 HK is not liable for defects arising out of improper use, maintenance and inspection as well out of wear and tear and unauthorized alterations.

4. LIABILITY

- 4.1 Save as stipulated in clause 3 HK shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit or any indirect loss. This limitation of HK's liability shall not apply, if HK has been guilty of gross negligence.

4.2 Save as otherwise stated in these General Conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any consequential or indirect loss whatsoever.

5. FORCE MAJEURE

5.1 Force Majeure is defined as any event which could not have been foreseen at the time of conclusion of the Contract and which impedes the performance of contractual obligations or makes it unreasonably onerous by any of the following circumstances beyond the reasonable control of the Parties such as but not limited to industrial disputes, fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power or any natural disasters such as earthquake, hurricane or flood.

5.2 In case a party is affected by Force Majeure in fulfilling its contractual obligations, this party is entitled to suspend the performance.

5.3 If a Force Majeure situation is likely to be of a duration of more than three months, the Agreement may be terminated by either Party by giving written notice to the other Party.

6. APPLICABLE LAW AND DISPUTE RESOLUTION

6.1 The present Agreement shall be governed by the substantive laws of Switzerland.

6.2 The Parties shall use their best efforts to solve any contractual conflicts amicably and in mutual good faith within short time.

6.3 If this should not be possible for any reason, then all disputes arising out of or in connection with the Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce. Place of arbitration shall be Geneva, Switzerland.

6.4 The contractual and correspondence language as well as the language of the arbitral procedures shall be English.

Herrenknecht AG

Schlehenweg 2

D-77963 Schwanau

Tel. +49 7824 302 444

www.herrenknecht.de