

Repair and Service Conditions of BAUER MAT Slurry Handling Systems

The following terms and conditions apply to the repair/service relationship between the customer (Customer) and BAUER MAT Slurry Handling Systems, Branch Office of BAUER Maschinen GmbH (hereafter referred to as BAUER MAT) exclusively.

§ 1 Conflicting General Terms and Conditions

The following General Terms and Conditions apply to the performance of repair work and the provision of services by BAUER MAT in accordance with the contract concluded between BAUER MAT and the customer.

The general terms and conditions of the customer, even if used by it at a later date, become an integral part of the contract without the written approval of BAUER MAT only if these do not conflict with the present Repair Conditions. Conflicting general terms and conditions shall not affect the validity of the concluded contract. In the event that conditions are inconsistent, the legal provision shall apply.

§ 2 Declaration of intent by auxiliary persons

Auxiliary persons of BAUER MAT, e.g. fitters and equipment operators, are not authorised to make binding declarations of intent for and against BAUER MAT.

They are only authorised to collect receivables upon presentation of a written authorisation.

§ 3 Information on costs and cost estimates

1. Information on costs provided by BAUER MAT before carrying out repairs and/or services is without obligation.
If the repair cannot be carried out at these costs or additional work is necessary – for example if it is necessary to call in a service partner/sub-contractor of BAUER MAT – the consent of the customer must be obtained if the total costs stated will be exceeded by more than 15 %.
2. If the customer wishes to receive a cost estimate with binding price rates before the repair/service is carried out, it must expressly request this. Such a cost estimate is binding only if it is submitted in writing and is expressly declared as binding and the order is placed by the customer within 4 weeks after submitting the cost estimate. Work entailed in the submission of a cost estimate shall be charged to the customer as agreed. The work provided to submit the cost estimate shall not be charged to the customer if it can be used to carry out the repair work.

§ 4 Price and payment

1. By placing the repair/service order an advance payment in the amount of 30 % of the order value, based on the cost estimate, shall be due. Another 60 % of the order value, based on the cost estimate, shall be due by the time of acceptance. The remaining amount becomes due upon collection. Payment shall be made net without discount immediately after receipt of the invoice. In addition, the value-added tax is charged to the customer at the legally applicable rate.
2. Payments may be retained or amounts offset due to any of the customer's counterclaims only if these counterclaims are undisputed or have been declared legally valid by a court of law and the customer's counterclaim is based on the same contract in case of retained amounts.
3. In case of a delay in payment, interest at 9 percentage points p.a. above the basic interest rate shall be charged. The assertion of further default damage

remains reserved. In such a case, the customer is reserved the right to furnish proof that BAUER MAT did not suffer any damage or much less damage as a result of the delay in payment.

§ 5 Additional costs

1. All additional costs incurred, e.g. hotel, travelling, taxi and flight expenses, shall be borne by the customer.
2. Field allowance, hotel and travelling expenses are charged at cost and upon presentation of proof as far as possible. Beleuchtung,

§ 6 Participation and technical assistance from the customer in case of repair outside BAUER MAT's factory

1. Upon demand, the customer shall support the repair and service personnel at its expense when repairs are carried out.
2. The customer must take the special measures required for the protection of people and property at the place of repair according to the HSE-standards of the BAUER group (http://www.bauer.de/bauer_group/bauer_group/hse/). It must also inform the repair manager of existing special safety regulations if these are significant for the repair or service personnel. The customer shall notify BAUER MAT of any acts in breach of these safety regulations by the repair or service personnel. In case of serious breaches, it can refuse the offender access to the place of repair in consultation with the repair manager. The customer shall inform BAUER MAT in any case in advance about the use of the repair/service item and any resulting contamination by harmful or toxic substances as well as local conditions, in particular in case of contamination.
3. Upon demand, the customer is obliged to provide technical assistance at its expense, in particular to
 - a) provide the amount of suitable auxiliary personnel required for the repair and for the period required. The auxiliary personnel must follow instructions given by the repair manager. BAUER MAT shall not assume any liability for the auxiliary personnel.
 - b) perform all construction, bedding and scaffolding work and procure the construction parts required.
 - c) provide the equipment and cutting tools required and the commodities and materials required.
 - d) provide heating, lighting, operating power, water including the connections required.
 - e) provide lockable, dry rooms required for storing the tools of the repair personnel.
 - f) protect the repair location and repair materials against damaging effects of all kinds. Clean the repair location.
 - g) provide suitable, theft-proof rest rooms and work spaces (with heating, lighting, washing facility, sanitary installation) and first aid for the repair and service personnel.
 - h) provide materials and perform all other acts required for the adjustment of the repair/service item and carry out a contractually specified test.
 - i) Any waste disposal costs incurred shall be paid by the customer.
4. The technical assistance of the customer must ensure that the repair/service work can be started immediately after the arrival of the repair/service personnel and carried out without delay until acceptance by the customer.

Repair and Service Conditions of BAUER MAT Slurry Handling Systems

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- If the customer fails to meet its obligations, BAUER MAT is entitled but not obliged to perform the acts incumbent on the customer on behalf of the customer at the latter's expense. In other respects, the legal rights and claims of BAUER MAT remain unaffected.

§ 7 Transport and insurance in case of repair at BAUER MAT's factory

- The customer shall inform BAUER MAT in any case in advance of the use of the repair/service item and any resulting contamination by harmful or toxic substances.
- Unless otherwise agreed, the repair item shall be collected and delivered upon demand by the customer – including packing and loading – at its expense, otherwise the repair/service item shall be delivered to BAUER MAT at the customer's expense and collected again by the customer after the repair/service. In either case, the customer bears the transport risk.
- Upon request by the customer, the transport to and, if applicable, from the factory shall be insured at its expense against insurable transport risks, e.g. theft, breakage, fire. No cover is provided during repairs/services at BAUER MAT's factory. The customer must ensure that the existing insurance cover for the repair/service item is maintained, e.g. for fire, pipe water, storm and machinery breakdown. Only on the express request and at the expense of the customer shall BAUER MAT endeavour to obtain insurance cover for these risks.
- If the customer delays taking over the repair/service item, BAUER MAT may charge a storage fee for the period of storage at its factory. The repair/service item may also be stored at a different location at the discretion of BAUER MAT. The costs and risk of storage are for the account of the customer.

§ 8 Repair period and execution times of services

- Information given on the periods required for repair and services is estimated and thus not binding.
- If additional orders and orders for the extension of the scope of orders are placed later or additional repair/service work becomes necessary, the execution period for repair/service shall be extended accordingly.
- If the repair/service is delayed as a result of measures during industrial disputes, in particular strike and lock-out, and the occurrence of circumstances for which BAUER MAT is not responsible, the repair/service period shall be extended appropriately, unless these obstacles do not have any significant effect on the completion of the repair/service.

§ 9 Acceptance

- The customer is obliged to accept the duly manufactured repair/service item. The customer may not refuse acceptance due to insignificant defects. A defect is in particular insignificant, if it does not, or only insignificantly, impair the functionality of the repair/service item.
- Acceptance is given by accepting the repair/service item without complaint and will be carried out at the place of repair, unless otherwise agreed.
- If acceptance is not carried out within a period of 14 days after notification of the completion of the work for reasons for which BAUER MAT is not responsible, acceptance shall be considered completed upon the expiry of this period, if the customer does not refuse the

acceptance within this period, indicating at least one defect.

- In case the repair/service item is put into operation, acceptance shall be considered completed upon the expiry of 14 days after the commissioning.
- If trial operation has been agreed, acceptance shall be considered completed after faultless trial operation, or at the latest upon the expiry of 14 days after the start of the trial operation.
- Formal acceptance shall be carried out only if this is agreed in writing. If formal acceptance is agreed, BAUER MAT shall notify the customer of its readiness to carry out acceptance in writing. Formal acceptance must then be carried out within 3 business days.

§ 10 Retention of title, extended lien

- Until receipt of all payments under the contract, BAUER MAT reserves title to all accessories, spare parts and replacement units irrespective of further security agreements. For cases in which these are combined with other objects, BAUER MAT is entitled to a share in the co-ownership of the repair/service item at the amount of the value of the repair work.
- For its receivables under the contract, BAUER MAT is entitled to a lien on the customer's repair/service item in its possession on account of the contract. The lien may also be asserted for receivables arising from work performed previously, the purchase of spare parts and other services if these are related to the repair/service item. In case of any other claims arising from the business relationship, the lien applies only if this is uncontested or has been declared legally valid by a court of law.

§ 11 Claims based on defects

- Defects in the work which can be proved to be attributable to faults in the material used or to faulty work shall be rectified by subsequent performance subject to the provisions below:
 - Defects must be notified to BAUER MAT in writing without delay; however, obvious defects within 14 days after take-over at the customer's factory; if trial operation has been agreed, after trial operation. If the customer accepts the repair/service item although being aware of a defect, any warranty claims shall only be valid if the customer reserves the right to claim defects upon acceptance.
 - Claims based on defects become time-barred one year after acceptance; this does not apply if the law prescribes longer periods in accordance with Section 438 I No. 2 and Section 634 a I No. 2 of the German Civil Code (BGB).
 - To render subsequent performance the customer must grant BAUER MAT the time and the opportunity required to a reasonable extent. If it refuses to do so, BAUER MAT is released from its obligation to render subsequent performance.
 - If BAUER MAT permits a reasonable period for subsequent performance to pass by in vain without rectifying the defect, refuses rectification or the rectification fails to eliminate the defect and the customer cannot be expected to tolerate further rectification, the customer is entitled, at his discretion, to reduce the compensation by declaring this to BAUER MAT, or, unless this concerns construction work, to withdraw from the contract.

Repair and Service Conditions of BAUER MAT Slurry Handling Systems

e) The claims based on defects lapse if the item for repair suffered as a result of improper treatment or storage or if modifications or repairs were carried out on it without the written approval of BAUER MAT and the modifications or repairs have led to the defects. There shall be no entitlement to file claims based on defects if the defect is based on wear and tear.

f) The parts replaced to settle claims based on defects become the property of BAUER MAT upon removal unless otherwise agreed.

g) For subsequent performance, BAUER MAT shall be liable to the same extent as for the original work, namely until the expiry of 12 months after the subsequent performance; in any case until the expiry of the original limitation period as settled under § 11 No. 1b).

2. BAUER MAT shall be liable for defective work carried out by the personnel provided by the customer only if BAUER MAT gave incorrect instructions or violated supervisory duties.
3. Further claims of the customer against BAUER MAT based on defective work are barred, in particular claims for compensation of consequential damage such as loss of production, loss of use and lost profits. This does not apply if, in case of personal injury or damage to privately used property, liability is compulsory under the Product Liability Act or in case of wilful intent, gross negligence or any breach of essential contractual duties. Claims of the customer based on damage occurring to the repair item itself are based on § 12 of these Conditions.

§ 12 Liability

1. Unless otherwise stated in these General Terms and Conditions including the provisions below, BAUER MAT shall be liable in case of an infringement of contractual and non-contractual duties based on relevant legal provisions.
2. BAUER MAT shall be liable for damages – irrespective of the legal ground – in case of wilful intent and gross negligence.
In case of simple negligence, BAUER MAT shall only be liable
 - a) for damage arising from death, physical injury or an impairment of health,
 - b) for damage caused by a breach of an essential contractual duty. However, in this case the liability of BAUER MAT is restricted to compensation of the foreseeable damage typically occurring.
3. The limitations of liability arising under No. 2 do not apply insofar as BAUER MAT fraudulently concealed a defect or accepted a guarantee with respect to the quality of an item. The same applies to claims of the customer under the Product Liability Act and for claims for damages arising from impossibility and delay due to a breach of cardinal duties.
4. Insofar as the customer is entitled to claims for damages under § 12, these shall become time-barred upon the expiry of the limitation period applicable for claims based on defects under § 11 No. 1 b). In supplier's recourse, in case of fraudulent intent and in the cases specified in § 12 No. 2 and for claims under the Product Liability Act, solely the legal provisions on limitation are applicable.
5. Insofar as BAUER MAT's liability for damage is excluded or limited, this also applies to the personal

liability for damage of the employees, workers, co-workers, representatives and vicarious agents of BAUER MAT.

§ 13 Liability for seconded personnel

In case BAUER MAT provides personnel to the customer, BAUER MAT shall only be responsible that the seconded personnel is suitable for the works agreed upon. Beyond that, BAUER MAT shall not be liable for any work performed by the personnel seconded. The customer shall indemnify and hold BAUER MAT harmless, in case third parties assert claims for the customer in connection with the personnel seconded.

§ 14 Currency

Payments shall be made in euros.

§ 15 Place of jurisdiction

In case of contracts with merchants, legal entities under public law or special public funds, the court competent for the head office of BMA in Schrobenhausen, Germany has jurisdiction. BAUER MAT is also entitled to bring legal action at the head office of the customer or at the registered office of its branch offices for which the repair or service was carried out.

§ 16 Applicable law / Miscellaneous

1. The contract and its entire implementation are governed solely by the laws of the Federal Republic of Germany to the exclusion of laws on the international sale of goods even if the customer has its place of business or residence abroad.
2. If this Agreement and/or parts of it are executed in the German and English languages, the German version shall prevail in the event of any inconsistencies.
3. Insofar as these conditions are invalid in whole or in part, the contract remains valid in other respects. Insofar as individual provisions are invalid, the content of the contract shall be based on legal provisions.