

General Terms and Conditions of Machine Breakage of Jungheinrich Vertrieb Deutschland



AG & Co. KG

Valid from 15th June 2023

I. Scope of validity

These General Terms and Conditions of the Machine Breakage Lump Sum apply only in conjunction with a Jungheinrich rental, financing, and/or full service contract within the jurisdiction of the Federal Republic of Germany. They apply to all devices used in Germany for which a monthly premium is contractually agreed as a machine breakage lump sum (MBLS).

- a) Our contractual partner is in delay with two consecutive machine breakage instalment payments;
- b) Our contractual partner does not meet its contractual obligations, or does not perform them suitably;
- c) The device is left to a third party without our prior approval and/or changes are made to the device;

II. Scope of services

1. The Jungheinrich machine breakage lump sum rectifies unexpected damage that occurs suddenly to the device due to the device users' operating errors or lack of skill while the device is being used as designated. Unexpected damage means damage that neither of the contractual partners or their representatives, employees or vicarious agents was able to foresee in time or would have been able to foresee in time with the expertise required for the activities they were performing. If the costs of repair exceed the value of the damaged device before the damage occurred (time value), we reserve the right to replace it with a comparable device.

2. Damage not covered by the MBLS: Regardless of contributory causes, within the confines of our MBLS we shall not undertake any rectification of

- a) Damage resulting from defects that were already present when the MBLS took effect and were known, or should have been known to us or to whomsoever has the responsibility of making decisions regarding the insured device;
- b) Damage attributable to use of a device that recognisably required repairs; however the MBLS does cover damage that is demonstrably not associated with the need for repairs, or in the case of a makeshift repair of the device undertaken with our approval at the time of the damage;
- c) Damage resulting from atomic energy, nuclear radiation or radioactive substances*;
- d) Damage sustained in maritime transport;
- e) Damage resulting directly from the long-term effects of operation, excessive formation of rust or excessive accretion of sludge or other accumulations. If a nearby machine part is damaged as a result of the such damage, we shall rectify that damage as part of section II. item 1 and 2.
- f) Damage for which a third party acting as supplier, contractor or transport company is responsible or damage which is the result of a repair order. If the third party contests its accountability, the damage will first be rectified, provided we are required to do so by the terms of the agreement. If it is determined after the damage is rectified that a third party is accountable for the damage and the third party contests this, the contractual partner must assert its claims to reimbursement of costs out of court, or if necessary in court according to our instructions. The restoration costs must be reimbursed to us if our contractual partner does not follow an instruction from us or if the accountability of the third party is uncontested or has been recognised by declaratory judgement.
- g) **Damage based on intent or gross negligence of the contractual partner, its representatives, employees or other vicarious agents (equipment operators).**
- h) **Repeated damage:** The customer reports damage to a device more than once a calendar year with a comparable appearance and cause of damage (same device, same component) which has already been processed by us for the MBLS.

3. Replacement in the event of theft is not included in the scope of service.

4. Rectification of damage for other insured hazards must be agreed in a separate contract.

5. Scope of restoration: If damage occurs which is covered by our MBLS (see section II 1) we shall restore the device to its original condition:

Restoration includes:

- (1) Responsibility for the costs of spare parts and repair materials;
- (2) Responsibility for wage costs and costs that depend on wages, including wage components not governed by collective agreements and bonuses; also additional costs due to standard surcharges for extra hours, and for extra work on Sundays, holidays and at night;
- (3) Responsibility for the costs of disassembly and assembly;
- (4) Responsibility for the transport costs;
- (5) Responsibility for the other costs required for restoration, especially travel expenses;
- (6) If explicitly agreed, reimbursement for additional costs resulting from air freight and/or express freight;

Restoration costs do not include:

- (1) Costs for overhaul or other measures that would have been necessary regardless of the damage;
- (2) Additional costs due to changes or improvements that go beyond restoration;
- (3) Additional costs incurred because a device that was covered was not repaired in the Federal Republic of Germany;
- (4) Costs for interim devices;

*) Compensation for damage due to nuclear energy is governed by the Atomic Energy Act in the Federal Republic of Germany. Operators of nuclear plants are obligated to provide a financial security and take out liability insurance policies for this purpose.

If damaged parts are replaced even though a repair is possible without endangering operational safety, the costs that would have been needed to repair a damaged part are covered by the MBLS, but no more than the costs expended for the replacement.

III. Term of the agreement / termination of the agreement

1. The duration of the MBLS is the same as the duration of the corresponding rental, financing, and/or full service contract. If the rental, financing and/or full service contract is terminated prematurely, the MBLS contract shall end at the same time.

2. This shall not affect the right of either contractual partner to extraordinary termination of the MBLS for good cause.

3. We shall be entitled to extraordinary right of termination in particular if:

4. After the occurrence of a loss event covered by the MBLS, either of the contractual partners may terminate the agreement regarding MBLS. Termination must be made in writing. Notice of termination must be received no later than one month after completion of negotiations regarding the necessary repairs covered by the MBLS. Unless otherwise clarified, termination shall take effect one month after notice is received by the recipient of the termination notice. In deviation to this we may explicitly declare that our termination shall take effect immediately, or at a later time, but no later than the end of the current contractual year.
5. Termination must be made in text form (Section 126b of the German Civil Code (BGB)). The determining factor for whether a deadline is met is receipt by the relevant recipient of the termination.

IV. Compensation for damages in the event of premature termination

1. If we terminate the MBLS for the reasons stated in the preceding section III. item 2 or 3, we shall be entitled to demand 25% of the latest applicable monthly instalment payments that would have accrued through the agreed end of the contract as a lump sum as compensation for damages. The customer shall be entitled to provide proof of lesser damage.
2. We explicitly reserve the right to assert any further claims for damages arising from the premature termination of the contract.

V. Deductible

When a rental, financing and/or full service contract is drawn up, we agree with our customer on the amount of the deductible. If there are multiple instances of damage, the deductible is applied in each case. If the same object is damaged multiple times and if there is also a connection in cause between these instances of damage, the deductible shall only be applied once.

VI. Expert procedures

After a damage incident occurs, the contractual partners of the agreement regarding the MBLS can agree to have the cause and amount of damage determined by an expert. If so agreed, the expert process can also be extended to other factual premises of a claim for compensation. We are free to demand that an expert procedure be conducted even without the consent of our customer.

1. The following provisions apply to the expert procedure:
 - a) Each contractual partner shall name an expert in writing and may then request the other contractual partner to name a second expert in writing, indicating the expert already named. If the second expert is not named within two weeks after the request is received, the requesting party may have one appointed by the Chamber of Industry and Commerce responsible for the place where the damage occurred. This consequence must be referred to in the request.
 - b) The two experts can name a third expert as the chairman of the expert committee before the beginning of the expert procedure. If they do not reach an agreement, the chairman of the expert committee shall be appointed upon application of one of the parties by the Chamber of Industry and Commerce responsible for the place where the damage occurred.
 - c) The contractual partners must not name any persons as experts who are competitors of the other contractual partner or who are in a business relationship with that partner, nor any persons who are employed by competitors or business partners or are in a similar relationship with them. The same applies correspondingly to the experts appointing a chairman of the expert committee.
2. The findings of the experts must include:
 - a) The determined or presumed causes as well as the scope of damage and destruction;
 - b) The costs for restoration;
 - c) The time value (value of the device when the damage occurred);
 - d) The value of the remains and old material.
3. The experts shall present their findings to both contractual partners at the same time. If the findings differ from each other, we shall immediately forward them to the chairman of the expert committee. That person shall decide the points that remain contested within the limits drawn by the findings of the experts and shall present these decisions to both contractual partners at the same time.
4. Each contractual partner shall be responsible for the costs of its expert. Each contractual partner shall be responsible for half the costs of the chairman of the expert committee.
5. The findings of the expert or chairman of the expert committee are binding if it cannot be proven that they are clearly at significant variance to the actual state of affairs. We shall assume responsibility for restoration in accordance with II. item 4 of these General Terms and Conditions on the basis of these binding determinations.
6. The obligations of our contractual partner according to section VIII of these General Terms and Conditions shall not be affected by the expert procedure.

VII. Machine breakage services

Jungheinrich shall implement machine breakage services by itself or through companies retained by Jungheinrich so that the device will be restored to a condition of operational readiness. There is no entitlement to payout for machine breakage services.

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VIII. Obligations of the contractual partner

1. When a damage incident covered by the MBLs occurs, the contractual partner must:
 - a) Notify us of the damage immediately in written or text form;
 - b) Avert or reduce the damage if possible and follow our instructions; the contractual partner must also request such instructions if circumstances permit;
 - c) Record the damage with photographic documentation if possible;
 - d) Only change the damage before it is inspected by our representative:
 - (1) if intervention is required for safety or security reasons, or
 - (2) if intervention will reduce the damage, or
 - (3) after we have given approval, or
 - (4) if the inspection did not take place immediately, but within no more than five working days after the damage report was received;
 - e) Allow our representative to examine the damaged device at any time and provide him with information necessary to determine the damage if requested.
 2. If our contractual partner violates one of the aforementioned obligations, we shall be exempted from the obligation of restoration and other services relating to the machine breakage lump sum.
- IX. Place of jurisdiction**
The place of jurisdiction for all disputes shall be Hamburg, when the Customer is a registered merchant, a legal entity under public law or a special estate under public law, or when it has no general place of jurisdiction in Germany. The local court of Hamburg-Mitte shall be the place of jurisdiction for disputes which fall under the jurisdiction of local courts.
- X. Applicable law**
German law shall apply exclusively to all legal relationships between the Customer and us, in the same way as for relationships between domestic contractual partners.
- XI. Final provisions**
Unless otherwise specified in the preceding terms and conditions, legal provisions shall apply.