



**Kaiserslautern Legal Services Center
Legal Assistance Information**

**Car Repair Rules
in Germany**



This information paper provides basic information only, and is not intended to serve as a substitute for a personal consultation with a Legal Assistance Attorney. For an appointment to see an attorney, dial DSN 483-8848 or Civilian 0631-411-8848.

I. REPAIR CONTRACT 1

 A. Conclusion of Contract..... 1

 B. Cost Estimates 1

II. DISTURBANCES..... 2

 A. Additional Defects..... 2

 B. Delayed Services..... 3

 C. Acceptance and Payment 3

 D. Unsuccessful Repair 4

 E. Special Termination Right of the Customer 4

III. MISCELLANEOUS 5

 A. Mechanic's Lien and Retention..... 5

 B. Statute of Limitations..... 5

I. REPAIR CONTRACT

A. Conclusion of Contract

a. The repair shop, legally referred to in repair contracts as the contractor, undertakes to construct, service, maintain, repair, alter or restore an object, or to perform other result-oriented work. The contract between the repair shop/contractor and you as the customer requires no special form. Oral contracts are binding and enforceable. Yet, it is strongly recommended to put the order in writing to provide evidence that you placed a precise order for a certain price or a clearly defined price range. You must express clearly and exactly what you want to be done, and place a precise order.

b. If you take your car to a repair shop and tell them “my car broke down; fix it,” you practically give the repair shop a blank check. The same is true if you ask the repair shop “to make the car fit to pass inspection”. Therefore, if you are a layman with respect to mechanical car issues, you should first have an expert (*e.g.*, the repair shop’s mechanic if he appears reliable) evaluate the situation, define the required services (parts and labor), and estimate the price for the completed product. If necessary, you should get several estimates before you place an order and you should also set a clear price limit for the repair shop. Thereupon, the repair shop is obligated to achieve the promised result and you being the ordering customer are bound to pay the agreed upon price.

c. Where services are expected for a consideration (*e.g.*, money), a consideration is deemed to have been stipulated by law. Many German car dealer repair shops have accepted price standards for parts and typical services set by automobile producers. Generally, typical services are rated as to the time required, expressed in work units, for which a specific price is set. So unless something else is agreed upon, the price list of the repair shop becomes part of the contract by your submission.

d. Most companies have their general terms and conditions of trade (“Allgemeine Geschäftsbedingungen”, AGB) laid down in small print. Note, that it is no excuse for someone who does not speak German that he could not read the small print because of the language barrier.

B. Cost Estimates

a. The Central Association of the Automobile Repair Trade (“Zentralverband des Kraftfahrzeughandwerks”, ZVK; <http://www.kfzgewerbe.de>) recommends to its members its Terms of Contract for the Performance of Services on Motorized Vehicles (“Bedingungen für die Ausführungen von Arbeiten für Kraftfahrzeuge” a.k.a. “Kfz-Reparaturbedingungen”). Most repair shops have accepted them as the basis of their service contracts. These terms provide that

you can ask for a binding cost estimate, known in German as a “Kostenvoranschlag”, in which all required parts and all required work are substantiated in full detail and with specified prices. If you get such a binding estimate and places your order under express submission of this binding estimate within three weeks, the repair shop is bound to the total price and must not exceed it “substantially(!)” without your consent.

b. Generally, the repair shops charge a fair sum for a written cost estimate (*e.g.*, €70.00) but will normally deduct this sum from the subsequent repair bill if you have the repair done by the same repair shop. So in case of a doubt, customers who are laymen should use this procedure to place a repair order.

c. Beware of oral price quotations which are not properly substantiated. Oral cost estimates are not enforceable the way written estimates are. They generally serve only to advise you of the approximate price range but impose no limit or cap on repair costs.

d. Even in the event of proper substantiation of the parts and services and the statement of a certain price, German repair shops often exclude a guarantee. In this case § 650 BGB (“Bürgerliches Gesetzbuch”, German Civil Code) provides that if the estimate is incorporated into the order, the repair shop must notify you without delay when a substantial price increase becomes necessary. When you then terminate the contract because of the proposed price increase, you must only pay a proportionate price for the services performed.

e. Estimates can be (and often are) exceeded by 15%. Since such deviation is not seen as a substantial one, your expressed consent is not required (Palandt-Sprau, BGB, 70th Ed. 2011, § 650 BGB #2). Only a substantial deviation triggers notification rights.

II. DISTURBANCES

A. Additional Defects

a. Since additional defects are often detected when an item is dismantled for repair, you should specifically state your phone number in the written order so that the repair shop can, explain the recommended additional services, and specifically present an offer for a price increase. Otherwise German repair shops tend to point to a clause in their small print, stating that if you cannot be reached without delay, price increases for recommended additional repairs shall be deemed authorized up to 20%. Even though those clauses are void, it must be taken into consideration that mechanic often has dismantled a car into a thousand pieces and sits in the middle of a mess. He is expected to carry on his work to finish his services with the agreed time and to clear the place for other work. What is the mechanic, who is responsible for the safety of a car, to do when he also discovers defective brakes, a worn-out clutch, loose steering, or a leaking transmission, while performing your ordered repair on some other defect? You should, therefore, make sure that the mechanic can reach you easily and quickly in the German language.

b. A mechanic is not responsible for other defects of the car which are due to additional problems, because “result-oriented work” does not mean an overall guarantee that the repaired car is perfect. If you have special wishes which deviate from these rules, then you should make a written service contract and express the agreement specifically.

B. Delayed Services

In the event that the contractor does not complete the promised result on time, you can give him- preferably in writing - a reasonable “last and final period” for fulfillment of the contract with the express warning that you will cancel the contract upon expiration of this adequate period of time, *e.g.*, four weeks, if the promised result is not achieved. If, thereafter, the mechanic still fails to deliver the promised result, you can demand the car back and do not need to pay the agreed price but must compensate the repair shop in the amount of the actual value of the rendered services, *e.g.* labor costs.

C. Acceptance and Payment

a. Beware that in the absence of a clearly expressed/documented reservation to the contrary, picking up the car generally constitutes acceptance of the repair. This means that you approve the work as being essentially complete. Such customer-approved completion of the performed services makes it hard to argue poor workmanship afterwards. If you accept an obviously defective product knowing about the defect without specifically reserving your rights, you lose your warranty rights (§ 640 para. 2 BGB).

b. You should only accept a product that conforms to its contractually promised nature. Yet, you cannot refuse to accept the car if there are only minor or “insubstantial” defects (§ 640 BGB). In such a case, you simply need to write down these shortcomings in order to preserve your rights before taking possession of your car. The price is only due upon your acceptance of the product (§ 641 BGB). The repair shop may legally refuse to release your car until the repair bill is paid in full (§ 647 BGB).

c. Under German law the repair shop bears the price risk in order to make the repair shop work carefully, and it is unwise to pay a German craftsman before he has offered the completed result or before you have carefully inspected/tested his work. This is particularly true if you procure German services free of value-added taxes (VAT) through the Morale Welfare Recreation Funds (MWRF); you should not hand the procurement check to the contractor earlier than legally required.

D. Unsuccessful Repair

a. Your primary right is remedy performance (§ 634 BGB). Only if your primary right fails, you may rescind the contract or reduce the price (§ 638 BGB). Additionally you may ask for damages if the defective repair was the contractor's fault. However, under result-orientated contracts like car repairs, the repair shop has the right to choose which of the two remedy performances (repair of lack of conformity or production of a new work) it will perform (§ 635 para. 1 BGB).

b. Unlike § 440 BGB for consumer goods contracts, there is no legal presumption that any repair is deemed to have failed after two unsuccessful attempts to repair under result-orientated contracts like car repair contracts. Instead the specific facts of the case will have to be considered.

c. In the general contract terms of most car repair shops, it is stipulated that the you must without delay give the original repair shop the opportunity to make redress before the customer may cancel the contract, reduce the price or charge damages. You may forfeit all your other rights if you violate that obligation. The repair shop must be given an adequate period of time to correct the defect.

d. In order to determine a reasonable reduction in price, the following formula may be used:

$$\text{Price owed} = \frac{\text{original price multiplied by the value of the defective product}}{\text{value of the product in flawless condition}}$$

E. Special Termination Right of the Customer

The customer can terminate the service contract anytime before the completion of the mechanic's services (§ 649 BGB). However, in that case, the repair shop can demand the agreed price minus what the repair shop saves due to the termination of contract (saved expenses) and minus what it acquires or would acquire by using the mechanic's work capacity otherwise. The law specifies a legal presumption of 5% of the saved costs for the non-performed work.

III. MISCELLANEOUS

A. Mechanic's Lien and Retention

a. If you bring your car in for a repair, the repair shop acquires a mechanic's lien on that property (§ 647 BGB). However, if you are not the owner of the car, no lien is acquired but a mere right to retention only (§§ 273 ff., §§ 994 ff. BGB). Additionally, the general terms of contract of automobile repair shops often contain a stipulation to the effect that the customer gives the contractor a contractual lien. This contractual lien on a car can be acquired even if you are not the owner of the car, if the repair shop believed in good-faith that you were the owner, *e.g.*, because you were in possession of the car. The repair shop is authorized to retain the repaired car until all his lawful claims are paid.

b. A lien is lost upon return of the car to the customer/owner. Under German law you can only have a lien on an object as long as you possess it to the exclusion of the owner and the grantor of the lien (§ 1253 BGB).

B. Statute of Limitations

a. The period of limitations concerning claims for defects in service contracts begins with the acceptance of the product by the customer. The normal period of limitation, which applies in particular to moveable objects, like cars, is two years from the date of acceptance of the product (§ 634a para. 1 No. 1 BGB). The mere notice or report of defect to the repair shop is not sufficient to toll the Statute of Limitations. It takes the mechanic's acknowledgment to examine or eliminate the reported defect, or even a lawsuit to reserve these customer's rights. Therefore, time is of the essence. After the applicable period of limitation has run out, no customer's claim for a defect can be litigated successfully over the contractor's objection.

b. In rare cases in which you can prove that the repair shop knew of a significant defect and concealed it deceitfully from you in awareness you would not have accepted such a defective product, there is a three-year period of limitation (§ 634a para. 3, § 195 BGB), starting to run at the time when you became or should have become aware of the repair shop's deceitful behavior – but not to run longer than 10 years (§ 199 para. 3 No. 1, para. 4 BGB).

c. To avoid lengthy court proceedings, some repair shops agree to submit disputed repair bills to a settlement office for mediation. Settlement office addresses and procedural guidelines (in German only) can be found at <http://www.kfzschiedsstelle.de> or <http://www.fachhandwerk.de> (click on “Verbraucherinfos”). In the KMC area, the following office exists:

Schiedsstelle des Kfz-Gewerbes Kaiserslautern
Mannheimer Straße 132
67657 Kaiserslautern

Phone: (0631) 34034-67 - Fax: (0631) 34034-78 - Email: schiedsstelle@kfz-pfalz.de

d. The panel generally consists of five jurors (1 member of each: TÜV or DEKRA, ADAC, DAT and 1 lawyer and 1 repair shop representative) IAW § 4 its code of procedure. However, those settlement offices serve first the good reputation of their own trade, secondly their members and thirdly their customers. Any application must be filed (received by the office) NLT 3 months from the receipt of the repair bill if the complaint pertains to the issue of the necessity of certain repairs or the appropriateness of the repair price. While findings of fact by the settlement office are binding on the parties, the expert opinion of the settlement office may be challenged in court.

Prepared by Joerg C. Modellmog, German Attorney-Advisor