

General Terms and Conditions applicable to work on motor vehicles, trailers, power units and their parts, on wheelchairs / medical movement trainers and their parts and to cost estimates

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I. Scope of validity, exclusion of the application of different Terms and Conditions of Business

1. Our General Terms and Conditions of Business apply exclusively. They also apply to all future business transactions and ancillary services such as technical instructions, information or the like, and to all business-related contacts with the customer, such as the commencement of contract negotiations or the initiation of a contract, even if it is not explicitly agreed again or no explicit reference is made to them.
2. If in individual cases obligations are established towards persons who are not intended to become contract partners themselves, the liability provisions of these General Terms and Conditions of Business still apply to third parties insofar as they were involved in the establishment of the obligation towards the third parties. This is primarily the case when the third party had become - or was already familiar with - the General Terms and Conditions of Business when the obligation was entered.
3. We do not accept any Terms and Conditions of the customer which differ from or contradict our General Terms and Conditions of Business and we hereby explicitly contradict their validity. Earlier agreements or earlier versions of our General Terms and Conditions of Business are cancelled by these General Terms and Conditions of Business.

II. Conclusion of contract, content and scope of performance, and non-assignment clause

1. Our offers are prepared free of charge and they are non-binding. The contract becomes effective when we accept the customer's order or when we start to execute it.
2. Our offer or our order confirmation is decisive for the scope of the order. Subsidiary agreements and modifications require our written confirmation. We are only obliged to present third-party test or acceptance certificates if this has been explicitly agreed.
3. The customer is not authorised to transfer or assign any debts or rights arising from the business contacts to third parties without our consent. The same applies to obligations and rights which we incur directly by virtue of the legislation.
4. The contractor is authorised to award subcontracts to third parties and to perform test drives and delivery drives.

III. Price details on the written order; cost estimate

1. If the customer so requests, the contractor also writes the prices on the order which will probably form the basis for its execution. Price details on the written order can also be given by reference to the items which come into question in the catalogues of prices and labour values on display at the contractor's premises.
2. If the customer wishes to have binding price information, a written cost estimate is required. It must list the work and spare parts in detail stating the price for each item. The contractor is bound to abide by this cost estimate for 3 weeks after it is submitted. The work involved in submitting a cost estimate may be charged to the customer if this is agreed on a case-by-case basis. If an order is placed based on the cost estimate, any expenses for the cost estimate will be set off against the invoice for the order, and - when the order is calculated - the total price may only be exceeded with the consent of the customer.
3. If the written order contains price details, the VAT must be stated as is the case for the cost estimate.

IV. Payment, offset and rights of retention

1. Our invoices are due for immediate payment. Other instruments of payment will be accepted only by special agreement and only on account of performance, subject to payment of all due collection and discount charges.
2. In case of payment arrears we are authorised to make further services dependent upon the complete settlement of the arrears.
3. Furthermore, we are authorised to refuse our services if - owing to any circumstance arising after the contract has been concluded - we have cause to worry that we may not receive the consideration of the customer in full and punctually, unless the customer accomplishes payment or gives sufficient security. This applies primarily if we obtain knowledge of compulsory enforcement measures and/or cheque or bill protests against the customer.
4. Offset against counterclaims of the customer which are not disputed, legally finalised or are not ready for a decision is excluded. At the time of concluding the contract, if the customer acts in pursuance of his commercial or self-employed vocation, his notice of defects has no influence on the duty to pay or on the due date of payment, and he will forego exercising his right to refuse payment or his right to retention unless we - or our legal representatives or vicarious agents - are guilty of gross breaches of contract; the same applies if the counterclaims of the customer which form the basis for the right to refuse performance and the right of retention are undisputed, legally finalised or ready for a decision to be taken.

V. Completion

1. The contractor is under obligation to meet a completion date which is termed binding in writing. If the volume of work changes or increases by comparison with the original order, and if this causes a delay, then the contractor must immediately announce a new date for completion, stating the reasons for it.
2. If the contractor is to blame for failing to meet a completion date which has been promised in writing for longer than 24 hours in the case of orders involving the special conversion or repair of a motor vehicle or wheelchair / movement trainer, the contractor may at his discretion provide the customer with a courtesy vehicle / wheelchair / movement trainer which is as near to equivalent as possible, free of charge in compliance with the terms and conditions of the contractor which apply to this; or it will reimburse 80 % of the costs of a rental vehicle / rental wheelchair / rental movement trainer which is as close to being equivalent as possible. The customer must return the courtesy or rental vehicle / wheelchair / movement trainer immediately as soon as completion of the ordered item is reported. More extensive compensation for arrears is excluded, except in cases of intent or gross negligence. The contractor is also responsible for incidental impossibility of performance unless the loss would have been incurred even if performance was rendered on time.
3. In the case of vehicles / wheelchairs / movement trainers used commercially, instead of providing a courtesy vehicle or assuming the rental costs, the contractor may compensate for the loss of earnings caused by delayed completion.
4. If the contractor is unable to meet the completion deadline owing to force majeure or breakdowns caused by no fault on his part, there is no obligation to compensate for delays thus caused and - in particular - to provide a courtesy vehicle / wheelchair / movement trainer or to refund costs for the actual use of a hired vehicle / wheelchair / movement trainer. However, the contractor is obliged to inform the customer about delays insofar as it is possible and can reasonably be expected.

VI. Acceptance

1. Customer acceptance of the contractual object takes place on the contractor's premises, unless otherwise agreed. If the customer wishes to collect or have the contractual object delivered, it is at its own expense and risk. This does not prejudice liability if the contractor is at fault.
2. The customer is obliged to collect the contractual object within one week after receipt of the notification of completion. In the case of commissioned work which is carried out within one working day, the period is shortened to two working days. If acceptance does not take place, the contractor may exercise its statutory rights.
3. If acceptance is delayed, the contractor may charge the customary local charge for storage. The contractual object can also be stored elsewhere at the discretion of the contractor. The costs and hazards of storage must be borne by the customer.

VII. Extended right of lien

Because of its debts receivable arising from the order, the contractor is entitled to a contractual right of lien pertaining to the objects of the customer which are in the contractor's possession owing to the order.

The contractual right of lien can also be asserted owing to debts from work, spare parts deliveries and other services carried out at an earlier date, insofar as they are connected with the object of the contract. The contractual right of lien only applies to other claims arising from the business contact if they are undisputed or if there is a legally finalised title and the object of contract belongs to the customer.

VIII. Retention of title

Insofar as built-in accessories, spare parts and power units have not become integral components of the object of contract, the contractor retains the title to ownership until it has been paid for in full.

IX. Warranty

1. Customer claims due to material defects become time-barred one year after acceptance of the ordered object. If the customer accepts the ordered object in spite of being aware of the defect, it is only entitled to claims for material damage to the extent described in items 6 and 7 if it reserves the right to do so at the time of acceptance.
2. If the object of the order is the supply of movable items which have to be manufactured or generated, and if the customer is a corporate body under public law, or a special fund under public law or an entrepreneur who is actively pursuing his or her commercial or self-employed vocational occupation when the contract is concluded, customer claims for material defects are time-barred one year after delivery. In this case, the statutory provisions apply to other customers (consumers).
3. Foreshortening of limitation in compliance with section IX, nos 1 and 2 does not apply to liability for damage caused by gross negligence and intent, nor to damage from injury to life, the body or health owing to a negligent breach of duty on the part of the contractor. An intentional or negligent breach of duty by the contractor is equivalent to such breaches by a legal representative or vicarious agent.
4. Insofar as the contractor is under obligation to assume liability for material defects, the customer must make the purchased object available at the contractor's headquarters or, alternatively with the consent of the vendor, at another location belonging to the contractor.
5. Fraudulent concealment of defects or the assumption of a warranty for agreed characteristics and quality do not prejudice more extensive claims.

6. The following applies to the process for eliminating defects:
- a) The customer must assert claims for the elimination of defects against the contractor; if they are reported verbally the contractor gives the customer written confirmation that the report was received.
 - b) If the contractual object becomes unserviceable due to a material defect, with the prior consent of the contractor, the customer must contact the authorised firm prepared for service which is closest to the location of the unserviceable contractual object and which is acknowledged by the manufacturer/importer to provide service to the contractual object, and the contractor with regard to special conversions or wheelchairs / movement trainers.
 - c) Replaced parts become the property of the contractor.
 - d) For the parts installed to eliminate a defect the customer can assert claims for material defects based on the order until the period of limitation of the contractual object expires.
7. If in the exceptional circumstance in no. 6b) whereby the elimination of defects takes place in a different specialist workshop (belonging to the sales organisation of the contractor), the customer must have added to the written order that it is for the elimination of defects of the contractor and that removed parts must be kept available to the latter for an appropriate period. The contractor is under obligation to refund the customer for the verifiable repair costs incurred.

X. Liability

If our due performance is not rendered, or is rendered late or inadequately, the customer can demand compensation for damages:

- a) For damages from injury to life, the body, or health which are rooted in our intentional or negligent breach of duty or an intentional or negligent breach of duty on the part of one of our legal representatives or vicarious agents.
- b) For other damage caused by an intentional or grossly negligent breach of duty or an intentional or grossly negligent breach of duty by one of our legal representatives, executives or vicarious agents, or to the intentional or negligent breach of important contractual duties (cardinal duties) by one of our legal representatives, executives or vicarious agents. Important contractual duties (cardinal duties) are duties which have to be fulfilled in order to be able to execute the contract at all. Customers generally trust that said duties are observed.
- c) For damage which comes under the protection of a warranty (assurance) issued by us or a quality or durability guarantee or for damages for which we must assume liability by law.

This does not prejudice more extensive liability due to malicious conduct.

In the case of merely negligent breaches of an important contractual duty, in terms of the amount, liability is limited to damage which would be typically anticipated. This excludes damages from injury to life, the body or health.

Insofar as nothing different has been agreed in these Terms and Conditions, all of the customer's claims for compensation for damages of all kinds and especially those which did not arise on the object of delivery as such and claims arising from offences, are excluded. This also applies to claims due to and against our vicarious agents. The limitation of liability is also not applicable if we or our vicarious agents are guilty of / are charged with intent or gross negligence. If third parties are commissioned or involved to initiate or handle the contractual obligation between the parties, then the limitations to warranty and liability named above apply also in favour of the third parties.

XI. Board of Arbitration (arbitration proceedings)

(Applies only to vehicles with a permissible total weight no higher than 3.5 t and not to wheelchairs / movement trainers)

1. In case of disputes over an order, the customer or with its consent the contractor, can appeal to the competent Board of Arbitration for the automotive trade or industry. The appeal must be lodged in writing immediately after the point of contention is perceived.
2. The ruling of the Board of Arbitration does not exclude recourse to the courts.
3. By appealing to the Board of Arbitration, the statutory limitation is stopped for the duration of the proceedings.
4. The proceedings before the Board of Arbitration comply with the byelaws and code of procedure which will be given to the parties by the Board of Arbitration on request.
5. An appeal to the Board of Arbitration is excluded if legal action has already been taken. If legal action is taken during the proceedings before the Board of Arbitration, the latter ceases its activities.
6. The Board of Arbitration proceedings are free of charge for the customer.

XII. Dispute Settlement Proceedings Act (VSBG)

We refuse to take part in dispute settlement proceedings before the consumer arbitration board in accordance with the German Participation in Dispute Settlement Proceedings Act (VSBG).

XIII. Final Clauses

1. The place of performance and legal venue for all disputes arising from the contractual relationship (including those arising from bills of exchange and cheques) is 72539 Pfrontstetten – Aichelau, if the customer is a merchant, a legal entity under public law or a special fund under public law, or the customer has no general legal venue in the Federal Republic of Germany, or has removed his legal venue to somewhere abroad. We are also authorised to bring action at the court with jurisdiction for the domicile of the customer.
2. The customer is aware that data from business transactions, including personal data, have to be saved and processed as required for business, and transmitted to third parties. The customer agrees to data capture and processing for these purposes.
3. Should a provision of these General Terms and Conditions of Business, or a provision within other agreements, be or become ineffective, this will not prejudice the effectiveness of all other provisions or agreements.
4. German law applies exclusively to all contractual and other legal relations with our customer; the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.