

1. The binding nature of these conditions

Delivery is made and services are carried out by us with regard to motors, components or single parts (in the following "contractual objects") only on the basis of the following conditions. Any and all terms and conditions of the client, especially its purchase conditions are not binding for us, even if we do not expressly reject them, provided we did not explicitly accept those conditions in writing.

2. Offers – Cost Estimates

In case the client is a merchant, our offers are understood as an invitation for an offer, if not agreed otherwise in writing. Under the same condition, that the client is a merchant, the extra deliveries and services such as travel costs and demontage services necessary for the cost estimate will be charged extra to the client; this is even the case, when these services will not be provided or be provided in a different way. If the client, regardless whether he is a merchant or not, requests a binding cost estimate, such cost estimate will be provided in written form. It will include the respective services and parts in detail as well as the respective price. The contractor shall be bound to the binding cost estimate until 21 days after its delivery. In case of non-binding cost estimates deviations up to 10 % are valid. In case of further deviations the contractor promptly provides the consent of the client before carrying out further services. In such a case the client is entitled to terminate the contract. In case of termination the contractor is entitled to reimbursement of costs as well as an adequate profit. If agreed upon on a case by case basis, the contractor may charge the client the services for providing the cost estimate. If an order is based on a cost estimate, the charge for the cost estimate will be carried out with the invoice for the order itself. Prices in the cost estimate will be shown on a net basis; with regard to a non-merchant VAT set out separately.

3. Orders for services / repairs

3.1. The scope of the respective services / repairs has to be determined by the client. If this is not possible, the contractor will determine the respective services after consultation with the client. The agreed-upon services to be rendered by the contractor are defined in the order or in a confirmation letter. The approximate or binding delivery date will be defined herein. If it becomes apparent during rendering of services that repair of the contractual object is not possible which was not apparent at the time of order the contractor is entitled to charge the client the services rendered up until then. If it becomes apparent during rendering of services that repair is commercially inefficient which was not apparent at the time of order the contractor will promptly notify the client in order to reach a decision by client. If client decides that the order will not be completed because of commercial inefficiency the contractor is entitled to charge costs up until then including an adequate profit.

3.2. The contractor is not liable for defects arising out of brochures, diagrams, samples etc. as well as information provided by the client if not to be reasonably discovered by the contractor.

4. Purchase / Barter

4.1. Consideration on the part of the contractor could be delivery of a new or completely overhauled contractual object even against delivery of the respective old motor, a component or a single part of the same type. The contractor may deviate in delivery in so far as it is reasonable for the client. Contractual objects of the client which are transferred to the contractor for installation or by way of barter have to be free of defects save of ordinary wear and tear, namely the delivered contractual objects have to be free from welded or non-welded breakings or tears.

4.2. Special agreements of compensation apply in case of barter of a contractual object.

5. Prices and Payment Terms

5.1. Prices cover delivery ex works contractor. The respective price lists apply, value added tax will be added to the respective prices.

5.2. The respective prices do not cover porto, freight and package. If package is provided by the contractor, it will be charged on a cost basis. Objections to invoices shall be notified within 8 days after invoice delivery if the circumstances do not provide otherwise.

5.3. Statutory VAT will be added. If the client is not a merchant, the price will include VAT which will be set out separately.

5.4. For contractual objects which are delivered by way of barter the agreed upon price will depend on the fact that the major parts can be repaired; parts which cannot be repaired will be charged separately.

5.5. Payments are due net at delivery of invoice if not agreed upon otherwise in writing. Discounts of early payment are invalid. Checks and drafts are accepted only if agreed in advance; acceptance of checks and drafts does not constitute payment and the debt is not cleared until the check or draft is honoured without reference back. All expenses for checks and drafts will be chargeable to the client's account.

5.6. Setoffs are only valid if the counterclaim has either been finally decided by court, or has been agreed upon or is undisputed. A right of retention lies for the client in so far, as the claim on which the right of retention is based arises out of the same contractual relationship.

5.7. In case of considerable costs for material or long-term services the contractor may ask for an adequate down payment for refinancing.

6. Completion / Time for delivery

6.1. If agreed upon the time of completion or time of delivery is of essence.

6.2. If time is of essence for delivery or for rendering of services the statutory rights remain untouched; this even applies when in case of delay of the contractor performance of delivery or services is of no value for the client.

6.3. In case the client modifies or enlarges the agreed upon scope of delivery or services the contractor shall not be liable for delays caused there from. The contractor will provide the client promptly with an new completion or delivery date, naming the reasons therefore.

6.4. If not-timely performance is caused by acts of god or disruptions even in the sphere of suppliers or sub suppliers which are not caused by the client, the client is not liable for damages rising out of such delays. He will inform the client promptly.

6.5. Time for completion or delivery is extended by the time in which the client is in arrears with the delivery of parts to be provided by him. The contractor is entitled to terminate the contract after an adequate grace period.

7. Acceptance

7.1. Acceptance is carried out at the contractor's premises if not agreed otherwise.

7.2. The client is in arrears with acceptance if he does not take possession within two weeks after notification of completion or after delivery of the invoice against payment of the due invoice.

8. Delivery

8.1. Delivery of the contractual object is on account and on risk of the client ex premises of the contractor if not agreed otherwise in writing. The same applies for services. If the client requests delivery franco domicile, delivery will be carried out on account and on risk of the client.

9. Security interest

9.1. contractor and client in case of an overdraft relationship. In such a case the security interest extends to the respective balance if the client becomes insolvent.

9.2. If the client processes the contractual object, he explicitly agrees that it will be on account of the contractor. The contractor will receive title with regard to the processed contractual object.

9.3. If the client is a merchant who in the ordinary course of business is entitled to sell the contractual object the client will assign to the contractor the claims vis a vis its customers in case of resale; the client may collect these claims if he is not in arrears with payment vis a vis the contractor. In case of arrears of payment the contractor is entitled to revoke the power of resale as well as the power of collection for the contractual object in writing. In this case the client is obliged to transfer all information, documents and material to the contractor which include information on the claims of the client against its customers in order to place the contractor into the position to claim against the client's customers directly.

9.4. In case of fixture or confusion of the contractual object with other property the contractor is entitled to an undivided interest in this property if this property is not to be considered as the main property. In the latter case the client will hold the main property as security interest for the contractor. This security interest is held by the contractor for the client without compensation.

9.5. The security interest according to 9.4. as well as 9.3. apply in the amount of the invoice as agreed upon between contractor and client; this invoice includes VAT.

9.6. If the contractual object with lien is sold together with other products 9.3. and 9.4. apply accordingly.

9.7. If the security interest in favour of the contractor exceeds its claims by more than 20 % the contractor is obliged to release exceeding security interest upon request of the client provided that the choice of the security to be released remains with the contractor.

10. Mortgage – Foreclosure – Bailment Fee

10.1. The contractor is entitled to a statutory mortgage with regard to all property of the client which is processed by the contractor. The mortgage includes all claims of the contractor with regard to the lien according to 9.1.

10.2. If the client is in arrears with its payments by more than 2 months, the contractor is entitled after prior written notice and after a further grace period of 4 weeks to foreclose the contractual object by public auction and in case of a market price to privately sell the contractual object. The client is entitled to the sales price; the contractor is entitled to deduct its claim, interest as well the respective foreclosure costs.

10.3. If the contractor due to any internal reasons is not able to store the mortgaged objects he is entitled to reimbursement of costs for external warehousing.

11. Warranty for services / repair

11.1. The contractor warrants state-of-the-art services and usage of state-of-the-art material. Warranty claims of the client lapse within one year after acceptance of contractual objects. In case of client's acceptance with knowledge of defects of the contractual objects the client is entitled to warranty if claimed at the time of acceptance.

11.2. In case the client is a merchant the statutory obligations for inspection and notification according to §§ 377, 378, 381 par. 3 HGB ("German Trade Code") remain untouched.

11.3. In case of warranty the contractor is entitled and obliged to rectify defects on its own cost. He is entitled to deliver new contractual objects in exchange which are free from defect. If the contractor is not willing or not able to rectify, namely is rectification or delivery of contractual objects in exchange free from defects delayed unreasonably or is not possible due to various reasons, the client is entitled to rescind the contract or to request price reduction.

11.4. Warranty has to be claimed by the client from the contractor. The contractor accepts warranty works by third parties only if he consents thereto in advance or if the contractor is in arrears with its warranty work or in case of an emergency where the contractual object is out of function and is more than 50 kilometres away from the place of business of the client.

11.5. Warranty work with regard to contractual objects is carried out only in the agreed upon scope. Warranty does not cover excess functionality of certain parts. Those are not subject to warranty of the contractor, if not agreed upon in writing differently. In particular warranty in respect of a certain durability will not be granted without written agreement.

11.6. Damages to be claimed by the client result from the provision in Clause 13.

11.7. If the contractor undertakes tuning of contractual objects its warranty is restricted to duly rendering of services. The contractor is liable for a certain result only if agreed in writing between contractor and client.

11.8. If the order includes delivery of chattel to be produced and in case the client is a merchant to whom the chattel is delivered in the course of its business, or the client is a corporation founded according to public law or an agency or instrumentality based on public law, warranty claims lapse within one year after delivery. If the client is a consumer the respective statutory provisions apply.

11.9. If a defect is based on defective montage or assembly, the contractor is only liable for warranty, if montage or assembly of chattel which has been processed or sold by the contractor have been carried out in a proper and state-of-the-art manner. The client has to prove that montage or assembly has been carried out in a proper and state-of-the-art manner.

12. Warranty in case of sale / barter

12.1. Warranty claims of the client lapse within one year after delivery if the transaction does not involve a sale to a consumer.

12.2. In case of fraud further damages remain untouched. Processing of warranty work is done in accordance with the procedure of 11.4.

13. Further liability

13.1. The contractor is not liable for damages which are not caused on the contractual objects directly. The contractor is not liable for incidental and consequential damages or lost profit.

13.2. This does not apply if claims of the client are based on the explicitly promised qualities of the contractual objects. The same applies if the client's claims are based on intentional or grossly negligent breach of contract of the contractor.

13.3. Damages of the contractor include only foreseeable damages if the contractor has negligently breached a major contractual duty. In all other cases the contractor is not liable for simple negligence.

13.4. Liability according to § 1 Product Liability Act ("Deutsches Produkthaftpflichtgesetz") remains untouched.

14. Software License

14.1. If the scope of delivery includes software the client is entitled to a non-exclusive right to use the delivered software including documentation. Software is licensed for the usage on the assigned delivered contractual object too. Usage of software on a additional system is not allowed.

14.2. The client is only entitled to duplicate, process or translate the software in the statutory defined scope (§ 69 a ff UrhG - German Intellectual Property Act) as well as to change object code into source code. The client is obliged not to remove remarks by the producer – namely copyright signs – without the prior written authorization of the producer.

14.3. All further rights to the software and its documentation including copies remain with the contractor or the software producer. Granting of sublicenses is not allowed.

15. Jurisdiction – Place of Performance

If not agreed differently in writing the place of performance is the contractor's place of business.

15.1. Exclusive jurisdiction for all litigation in connection with this agreement is the contractor's place of business, if the client is a merchant. In all other cases the statutory provisions apply.

15.2. This agreement is governed by the law of Austria excluding the UNCITRAL-Law and Rules.