

**1. Acceptance of these conditions**

Delivery is made and services are carried out by us with regard to engines, components or single parts (in the following "contractual objects") only on the basis of the following terms and conditions. Any and all terms and conditions of the client, especially it's 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 contractor is a merchant, our offers are understood as non-binding, if not agreed otherwise in writing. Under the same condition, that the contractor is a merchant, the extra deliveries and services such as travel costs and assembly works, necessary for the cost estimate, will be charged extra to the client. This is even the case, when these repair and maintenance will not be provided or be provided in a different way. If the contractor, 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 in a specific case, 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 charged 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 is set out separately.

**3. Orders for repair and maintenance**

- 3.1. The scope of the respective repair and maintenance has to be determined by the client. If this is not possible, the contractor will determine the respective repair and maintenance 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 the client decides that the order will not be completed because of commercial inefficiency the contractor is entitled to charge all costs incurred up until then including an adequate profit.
- 3.2. The contractor is not liable for defects arising out of drawing documents, samples etc. as well as any information provided by the client, if not to be reasonably discovered by the contractor.
- 3.3. The contractor will carry out the repair and maintenance according to the generally accepted state of technology. The contractor is entitled to deviate from, or not to apply, extraordinary repair and maintenance instructions of the manufacturer. In the event of damage the burden of proof is incumbent upon the client that the non-application of the repair and maintenance instructions of the manufacturer is the causative factor for the damage incurred.

**4. Purchase / Barter**

- 4.1. Consideration on the part of the contractor may be delivery of a new or completely overhauled contractual object even against delivery of the respective old engine, 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 except for ordinary wear and tear. Special agreements of compensation apply in case of a barter transaction 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 postage, freight and package. If package is provided by the contractor, it will be charged on a cost basis. Contractor shall be notified of objections to invoices within 8

days after invoice delivery if the circumstances do not provide otherwise.

- 5.3. If applicable VAT will be added. If the client is not a merchant, the price will include VAT which will be posted 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 charges. All expenses for checks and drafts will be charged to the contractor's account.
- 5.6. Setoffs of accounts are only valid if the counterclaim has either been finally decided by court, or has been agreed upon or is undisputed between the parties. A right of retention lies for the client only 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 of delivery**

- 6.1. If agreed upon the time of completion or time of delivery is binding.
- 6.2. If time of delivery or for rendering of services the statutory rights remain intact. This even applies when in case of a delay the performance of delivery or services provided are of no value to the client.
- 6.3. In case the client modifies or extends the agreed upon scope of delivery or services the contractor shall not be liable for delays by this. The contractor will provide the client promptly with a new completion time or delivery date, citing the reasons.
- 6.4. If an untimely performance is caused by force majeure or disruptions, even in the sphere of suppliers or sub-suppliers, which are not caused by the contractor, the contractor 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 deadline and the hours worked already carried to the customers' account.

**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 EXW/ex works of the contractor if not agreed otherwise in writing. The same applies for services. If the client requests delivery, delivery will be carried out on account and on risk of the client.

**9. Reservation of proprietary rights**

- 9.1. Until the client has met fully all financial obligations arising out of the relationship between contractor and client, the contractor retains the property rights to the contractual objects. If the client is a merchant the proprietary rights encompasses the respective balance of claims between contractor and client in case of a current account agreement. 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 towards it's customers in case of resale; the client may collect these claims if he is not in arrears with payment towards the contractor. In case of arrears of payment the contractor is entitled to revoke the right of resale as well as the right 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 it's 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 mixture of the contractual object with other property the contractor is entitled to an unlimited interest in this property if this property is not to be considered as the main property of this client. 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 amount 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. Lien – 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 reservation of proprietary rights 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 sell the contractual object at the best possible rate. 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 operational reasons is not able to store the pawn, he is entitled to reimbursement of any costs for external warehousing.
- 11. Liability for material defects**
- 11.1. The client's material defect claims are time-barred within one year from acceptance or delivery of the item, provided the client is a merchant. Otherwise the statutory regulation of the matter applies. Shortening the period of limitation does not apply to attributable personal injuries, to damage compensation claims due to breach of essential contractual obligations or damages under the Product Liability Act and to damage compensation claims due to deliberate or grossly negligent breach of duty by the contractor, or the latter's legal representation or agents. In the case of maliciously concealed defects, the statutory regulation of the matter also remains applicable. If the client accepts the item while aware of a material defect, it will only be entitled to material defect claims if it has at the time of acceptance reserved the right to claims. Beyond that, term 12 is applicable to damage compensation claims of the client's customer in relation to the contractor.
- 11.2. In case the client is a merchant the statutory obligations for inspection and notification according to §§ 377, 381 par. 3 HGB ("German Trade Code") remain intact.
- 11.3. In case of warranty the contractor is entitled and obliged to rectify defects. He is entitled to deliver new contractual objects in exchange, which are free from defect. In case of rectification of defects he is obliged to pay for all costs caused to rectify the defects, especially transport, toll, labour and material costs. He will not pay for rectifications of defects for goods that have been removed from the place of performance. 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 from the contract or to request price reduction.
- 11.4. Warranty claims have to be filled with the contractor by the client in written form. The contractor accepts warranty work carried out by third parties only if he consents thereto in advance or if the contractor is in arrears with remedying the warrantable defect 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 contractor.
- 11.5. Warranty work with regard to contractual objects is carried out only in the agreed upon scope. Warranty does not cover functionality of certain part in excess to what has been agreed.. 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. If a defect is based on defective assembly, the contractor is only liable for warranty, if 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 assembly has been carried out in a proper and state-of-the-art manner.
- 12. Further liability**
- 12.1. The contractor is not liable for damages which are not caused directly on the contractual objects. The contractor is not liable for incidental and consequential damages or lost profit.
- 12.2. This does not apply if claims of the client are based on the explicitly guaranteed quality of the contractual objects. The same applies if the client's claims are based on intentional or grossly negligent breach of contract by the contractor.
- 12.3. Damages covered of the contractor include only foreseeable damages if the contractor has negligently breached a major contractual duty. In all cases the contractor is not liable for simple negligence.
- 12.4. Liability due to culpable injury of life, body or health remains untouched. This is also valid for the imperative liability according to the German Product Liability Act ("Deutsches Produkthaftungsgesetz").
- 13. Software Licensing**
- 13.1. 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 only. Usage of software on an additional system is prohibited.
- 13.2. 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 and trade marks by the producer – especially copyright signs – without the prior written authorization of the producer.
- 13.3. All further rights to the software and its documentation including any copies, remain with the contractor or the software producer. Granting of sublicenses is not allowed.
- 14. Jurisdiction – Place of Performance**
- 14.1. If not agreed differently in writing the place of performance is the contractor's place of business.
- 14.2. 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.
- 14.3. This agreement is governed solely by the law of the Federal Republic of Germany, excluding the UNCITRAL-Law and Rules.