

General Terms and Conditions

I. General, scope of application

1. The present General Terms and Conditions (hereinafter: GT&C) shall apply to all our business relations with our contract partners (hereinafter: Customers) who are business operators within the meaning of section 14 of the BGB (German Civil Code), a legal entity under public law or a specialised agency under public law.
2. In their form at any given time the GT&C shall also apply, as a framework agreement, to future contracts with the same Customer without our having to refer to them in each individual case.
3. Our GT&C shall have exclusive applicability. Customer's GT&C which differ from, are in conflict with or augment our GT&C shall become part of the contract only if and to the extent that we have expressly approved their applicability. This requirement of approval shall apply in every instance, also for example if, having knowledge of Customer's GT&C, we render service to Customer without reservation.
4. Individual agreements concluded with Customer for particular cases (including supplementary agreements, additions and alterations) shall in every instance take precedence over these GT&C. The content of such agreements shall be determined by a written agreement or by our written confirmation.
5. Legally relevant declarations and notices which Customer has to submit to us after conclusion of a contract (e.g. notices of deadlines or defects, declarations of withdrawal, claims for price reductions) shall be effective only if in written form.
6. References to the applicability of statutory provisions are for clarification purposes only. The relevant statutory provisions shall therefore be applicable, even without such clarification, unless they are directly altered or expressly excluded by these GT&C.

II. Conclusion of contracts

1. Our offers are without engagement and subject to confirmation. This shall also apply when we have furnished Customer with technical documentation (e.g. drawings, plans, calculations, computations, references to German industrial standards), other product descriptions or documents - including those in electronic form - to which we reserve property rights and copyright.
2. An order for goods or services by Customer shall be deemed to be a binding offer of contract. Unless otherwise specified in the order, we shall be entitled to accept such offer of contract up to 2 weeks after receipt by us.
3. Acceptance may be declared either in writing (e.g. by means of confirmation of order) or by delivery of the goods to Customer.
4. Our employees shall not be authorised to conclude supplementary oral agreements or make oral commitments over and above the contents of a written contract.

III. Scope of repairs; spare parts

1. Customer must state the scope of any repairs requested. In cases when this is not possible, we shall determine the scope of the repairs after consultation with Customer.
2. If in the course of determining the scope of the order it turns out that the repair is impossible or not commercially reasonable because of a defect in the part of the engine or machine to be repaired, we shall be entitled to charge for the work done up to the time that this finding is made unless the unfeasibility of the repair lies within our sphere of risk and responsibility.
3. We shall not be liable for any defects resulting from documents (drawings, samples and the like) and information supplied by Customer. We reserve the right to decide on delivery possibilities and to select the parts to be used.

IV. Delivery period and delay in delivery

1. The delivery period shall be agreed on a case-by-case basis or stated by us on acceptance of the order. When this is not the case, the delivery period shall be 2 weeks as from conclusion of contract.
2. If we are unable to adhere to binding delivery dates for reasons for which we are not responsible - e.g. materials procurement difficulties, operational breakdown, strikes, lockouts, intervention by public authorities, energy supply difficulties - , we shall inform Customer of same without delay and at the same time state the probable new delivery date. If the service is not available within the new delivery period either, we shall be entitled to withdraw from the contract, wholly or in part; we shall, without delay, refund any compensation already paid by Customer. This shall be without prejudice to our statutory rights of withdrawal and termination of contract and to the statutory provisions for the performance of the contract in the case of exclusion of the obligation to render a service (e.g. when it is impossible or unreasonable to render the service and/or the case of supplementary performance). Customer's rights of withdrawal and termination under Section X.4 of these GT&C shall also remain unaffected.
3. Whether and when there is a delay in delivery shall be determined subject to the provisions of statute law. A reminder by Customer shall be necessary in every case. If we are in default with delivery, Customer may require lump-sum compensation for the loss caused by the delay. The flat-rate damages amount shall be 0.5% of the value of the service performed per completed calendar week of delay, but the total shall not exceed 5% of said service value. We reserve the right to provide evidence that Customer has incurred no loss whatever or a substantially lower loss than the lump sum referred to above.

V. Delivery, transfer of risk, acceptance, delay in acceptance

1. The delivery of parts for the performance of the service shall be made ex warehouse, which shall also be the place of performance. On the request and at the expense of Customer, the Goods will be sent to a different destination. Unless otherwise agreed, we shall ourselves be entitled to decide on the mode of shipment (in particular the forwarders, routes and packaging).
2. The risk of accidental loss or accidental deterioration of the parts shall pass to Customer

not later than the transfer to Customer. In the case of shipment, however, the risk of accidental loss and of accidental deterioration of the goods shall pass, as of the handing over of the goods, to the forwarder, the carrier or other person or establishment designated as responsible for the performance of the shipment. If formal acceptance of delivery has been agreed, such acceptance shall mark the point of transfer of risk. The statutory provisions of the law on works and services shall apply to an agreed acceptance in other respects. These provisions shall also apply to handing over and/or acceptance in cases when Customer defaults on acceptance.

3. If Customer defaults on acceptance of delivery or fails to provide the required cooperation or if delivery by us is delayed for other reasons for which Customer is responsible, we shall be entitled to demand compensation for the loss resulting therefrom, including additional expenses (e.g. storage costs). In such case we shall charge for lump-sum compensation at a rate of 0.5% of the value of the service per calendar day, but a total of not more than 5% of the service value, starting at the delivery date.

This shall be without prejudice to the provision of evidence of greater loss and to our statutory rights (in particular compensation for additional expenses, reasonable compensation, termination of contract); the lump-sum compensation shall however be deducted from higher monetary claims. Customer shall be entitled to furnish evidence that we have incurred no loss whatever, or a substantially lower loss than the lump sum referred to above.

VI. Prices and terms of payment

1. Except where otherwise agreed in specific cases, the operative prices shall be our current prices as at the time of conclusion of each contract, plus statutory VAT.

2. In the case of shipment as defined in section V.1, Customer shall bear the transport costs ex warehouse and the costs of transport insurance if such is desired by Customer. Any customs duty, fees, taxes and other charges by public authorities shall be met by Customer.

3. The service price shall be due and payable within 14 days of invoice date and delivery or alternatively acceptance of the service. In the case of contracts involving substantial material costs we shall be entitled to require a reasonable level of payment in advance. The payment in advance shall be due and payable within 14 days of invoice date.

4. As of the expiry of the above payment period, Customer shall be in default. During the period of default, interest must be paid on the service price at the statutory interest rate valid at the time of default. We reserve the right to assert further claims for damages due to default. In respect of business operators this shall be without prejudice to our claim to the commercial default rate.

5. Customer shall be entitled to rights of set-off or retention if and to the extent that its claim is established at law or undisputed. Service defects shall be without prejudice to section IX.6.

6. If it becomes apparent after conclusion of the contract that Customer's financial incapacity has placed our claim to the service price in jeopardy (e.g. through application for the opening of insolvency proceedings), we shall, as provided for in statute law, be entitled to refuse to perform the agreed service and - where applicable after setting a deadline - to withdraw from the contract (Article 321 of the BGB). In the case of contracts

for the manufacture of non-substitutable articles (custom-made products) we may declare our withdrawal immediately; statutory regulations for the dispensability of setting deadlines remaining unaffected thereby.

VII. Retention of title

1. We reserve the right to retain title to the goods delivered by us up to the time of settlement in full of all our current and future claim under the contract and resulting from an ongoing business relationship (secured claims).
2. The goods to which title is retained must not be pledged to third parties or assigned as collateral before payment in full of the secured claims. Customer must inform us without delay in writing if and when third parties gain access to goods which are still our property.
3. If Customer is in breach of contract, in particular in case of default on payment of the service price, we shall be entitled, subject to the relevant statutory provisions, to withdraw from the contract and to require the surrender of the goods to which title has been retained. If Customer fails to pay the service price by due date we may assert these rights only if we have first set Customer a reasonable deadline to no avail, except when statutory provisions make it possible to dispense with such a deadline.
4. Customer shall be authorised to continue to sell and/or process the goods to which title is retained, in the course of normal business operations. In this case the following provisions shall apply with supplementary effect.
 - a) The retention of title shall cover the products resulting from the processing, blending or combination of our goods at their full value; we shall be deemed to be the manufacturers of such products. If, after the processing, blending or combination with the goods of third parties, the property rights of such third parties continue to be effective, we shall acquire part ownership in proportion to the invoice value of the processed, blended or combined goods. In other respects the resulting product shall be subject to the same provisions as for the goods delivered subject to retention of title.
 - b) Customer now assigns to us the claims on third parties resulting from the resale of the goods or the said product, in total or in proportion to any share we may have of the title to the goods or product, in accordance with the above paragraph, as security for payment. We herewith accept said assignment. The Customer obligations specified in subsection 2 shall also apply in respect of the assigned claims.
 - c) Customer shall continue to be entitled to collect such a claim, in addition to ourselves. We undertake not to collect the debt provided that Customer meets its payment obligations towards us, does not default on payment and that no application for the opening of insolvency proceedings is filed and there is no other sign of financial incapacity. If however such is the case, we shall be able to require Customer to notify us of the assigned debts and the debtors concerned, to provide all the information necessary for collection, to hand over the relevant documentation and advise the debtors (third parties) of such assignment in our favour.
 - d) If the recoverable value of the securities exceeds our claims by more than 10%, we shall, at Customer's request, release securities of our own choice.

VIII. Lien, assignment for security

1. In the case of reworking or repairing items of property, our claim under the contract shall include a lien on the Customer's items which have, under the contract, come into our possession. The right of lien may also be asserted in respect of claims resulting from work done at an earlier time, deliveries of spare parts and other work. The right of lien shall apply to other claims resulting from the business relationship only if such claims are undisputed or established at law.

2. If Customer's item of property is not collected with 4 weeks after request for collection, we may charge storage fees at a reasonable rate as of expiry of the four-week period. If the item is not collected within 3 months after request for collection, the obligation to continue keeping it safe shall lapse, as shall any liability for loss or damage due to minor negligence. Customer must be given notice of intended sale one month before expiry of the 3-month period. On expiry of the 3-month period we shall be entitled to sell the item at market value in order to meet our claims. Any excess proceeds of such sale will be paid to Customer.

3. For the event of our reworking or repairing items which belong not to Customer but to third parties, Customer herewith assigns to us any claims for payment to Customer by a third party in the amount invoiced by us for our services. If we repair or remove damage or defects for the repair or removal of which Customer can require costs or expenditure to be reimbursed to it by a third party - e.g. insurance costs - Customer shall assign its claims to us in the amount invoiced by us for our services. Such assignments shall be accepted by us. Notwithstanding such assignments and our collection rights, Customer shall be entitled to collect payment provided that it meets its obligations toward us and is not at risk of insolvency. On request, Customer must supply us with the information necessary for collection of the claims assigned and advise its debtor of such assignment.

IX. Customer's rights in respect of defects

1. The statutory provisions shall govern the Customer's rights in the event of defects of quality and title, except as otherwise determined below.

2. The primary basis for our liability for defects shall be the agreement concluded on the specifications of the service to be rendered. The product descriptions designated as such with which Customer is provided before placing its order or which were incorporated in the contract in the same manner as these GT&C shall be deemed to be an agreement on service specifications.

3. If no agreement was concluded on service specifications, statutory regulations shall be applied to determine whether a defect is present or not.

4. Customer's claims in respect of defects shall be conditional on its having met its statutory obligation to inspect and complain promptly. If a defect is found on such inspection, or later, we must be given written notification of same without delay. Notification shall be deemed to be without delay if it is given within two weeks, adherence to this period being determined by the date of dispatch of the notification. Irrespective of this obligation to inspect and complain promptly, Customer is required to give written notification of manifest defects (including delivery of wrong goods and short delivery) within two weeks of delivery; here too adherence to the two-week period shall be determined by the date of dispatch of the notification. If Customer fails to make the due

and required inspection and/or prompt complaint, we shall have no liability for any unreported defects.

5. If the items delivered or the work performance are defective, Customer may require rectification, initially at our choice, by way of removal of the defect (repair) or replacement delivery or re-performance of the work.

6. We shall be entitled to make the required rectification dependent on Customer having paid the invoice amount due. Customer shall however be entitled to retain a part of the invoice amount that is commensurate with the scale of the defect.

7. Customer must give us the time and opportunity necessary to perform the required rectification, and in particular must hand over the goods for testing purposes. In the case of replacement delivery, Customer must return the defective goods to us subject to the relevant statutory provisions.

8. The expenditure made necessary by the testing and rectification, in particular the transport, travel, working and material costs, shall be met by us if a defect is in fact present. If however Customer's request for the rectification of a defect proves to be unjustified, we shall be entitled to require Customer to reimburse us for the costs incurred.

9. The above provisions shall be without prejudice to Customer's right to effect rectification itself. We must be advised without delay of such rectification. Customer's right to effect rectification itself shall lapse if we would have been entitled to reject the rectification under the relevant statutory provisions.

10. If the rectification has been unsuccessful or if the reasonable period to be set by Customer for the rectification has expired to no avail or can be dispensed with under statutory provisions, Customer shall be able to withdraw from the contract or reduce the invoice amount. There shall however be no right of withdrawal in the case of an insubstantial defect.

11. Customer's rights to claim damages or compensation for fruitless expenditure shall exist solely subject to the provisions of section X and shall otherwise be excluded.

X. Other liability

1. Except as otherwise provided for in these GT&C and the provisions below, we shall be liable in the event of a breach of contractual or non-contractual obligations subject to the pertinent provisions of statute law.

2. We shall be liable for payment of damages - irrespective of their legal foundation - in the case of premeditated intent and gross negligence. In the case of minor negligence we shall be liable only

a) for damage resulting from injury to life, person or health,

b) for damage resulting from the breach of a major contractual obligation. In this case, however, our liability shall be limited to compensation for damage or loss which is predictable and may typically occur.

3. The restrictions on liability stated in subsection 2 shall not apply if we conceal a defect

with fraudulent intent or if we have assumed a warranty for the condition and quality of the work performed. The same shall apply to claims by Customer under the German product liability act.

4. Customer may withdraw from or terminate the contract on ground of a breach of obligation which does not involve a defect only if we are responsible for the breach of obligation. Customer shall have no unrestricted right of termination. The statutory requirements and legal consequences shall apply in other respects.

XI. Statute of limitations

1. Contrary to the relevant statutory provisions, the general period for the time-barring of claims on grounds of defects of quality and title shall be one year as from delivery date. When acceptance of delivery has been agreed, the limitation period shall commence as of acceptance.

2. The above limitation periods shall also apply to Customer's contractual and non-contractual claims for damages on grounds of a defect in the goods, except when, in any individual case, the application of the standard statutory period of limitation would produce a shorter period of limitation. The periods of limitation laid down in the product liability act shall in any case remain unaffected. In all other respects, Customer's claims for damages under section IX shall be governed solely by the statutory periods of limitation.

XII. Governing law and court with jurisdiction

1. These GT&C and all legal relations between us and Customer shall be governed by the law of the Federal Republic of Germany, to the exclusion of all international and supranational contractual and legal systems, in particular the UN's CISG. The preconditions and effects of retention of title as regulated in section VI, however, shall be subject to the law prevailing at the place where the item is stored in cases where the choice of German law as the governing law is impermissible or unenforceable.

2. If Customer is a merchant as defined in the German Commercial Code, the venue of the courts with jurisdiction for all disputes - including international disputes - resulting directly or indirectly from the contractual relationship shall be our business location in Hamburg. We shall however also be entitled to start suit at Customer's general place of jurisdiction.

XIII. Severability clause

If any provisions of these GT&C or a provision in any other written agreements should be or become invalid, this shall not affect the validity of all the remaining provisions or agreements.