

## **Terms and Conditions for the performance of work on motor vehicles, trailers, units and the parts thereof, and wheelchairs and the parts thereof and for cost estimates**

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### **I. Order placement**

1. The performance to be rendered and the probable or binding completion date must be specified in the order slip or letter of confirmation.
2. The Customer receives a copy of the order slip.
3. The job contract authorises the Contractor to award subcontracts and test drives as well as transportation.

### **II. Prices specified in the order slip; cost estimate**

1. At the request of the Customer the Contractor also notes the prices on the order slip, which are expected to apply. Price information on the order slip can also be given by making reference to the items that come into question in the price and labour rate lists.
2. If the Customer wishes binding price information a written cost estimate is required; it must specify the work and spare parts in detail, together with the relevant prices. The Contractor is bound to this estimate for a period of 3 weeks from the time it is submitted.  
The work done to prepare the estimate for submission may be charged to the Customer if this has been agreed beforehand in a specific instance.  
If an order is placed on the basis of the estimate, any costs for the estimate are set off against the job contract invoice and the overall price may only be exceeded on the invoice for the job with the consent of the Customer.
3. If the order slip contains price information, then the turnover tax must be specified as in the estimate.

### **III. Completion**

1. The Contractor is under obligation to uphold a completion date stated in writing to be binding. If the scope of the work changes or exceeds the scope of the original order, and if this causes a delay, the Contractor must immediately name a new date of completion, stating the reasons for it.
2. In the case of job contracts for special conversions or the repair of a vehicle or a wheelchair, if the Contractor fails to meet a completion date which has been assured in writing by more than 24 hours through fault of his own, then – at his own discretion - the Contractor must provide the Customer with a courtesy vehicle / wheelchair free of charge that is as closely as possible equivalent according to the terms and conditions of the Contractor that apply in such a case. Alternatively, the Contractor must reimburse 80% of the costs of a rental vehicle / rental wheelchair actually used by the Customer, which is as nearly as possible equivalent to the Customer's vehicle / wheelchair. The Customer must return the courtesy or rental vehicle / wheelchair immediately after completion of the object of the job contract has been reported. More extensive compensation for loss owing to the delay is excluded except in cases of intent or gross negligence. The Contractor is also responsible for inability to render performance owing to random events unless the loss would have occurred even if performance had been rendered punctually.
3. In the case of vehicles / wheelchairs for commercial use, instead of providing a substitute vehicle or assuming the costs of a rental vehicle, the Contractor can compensate the loss of earnings caused by delayed completion.
4. If the Contractor is unable to meet the date of completion owing to force majeure or plant breakdown through no fault of his own, there is no obligation to pay compensation for delays caused and, in particular, no obligation to provide a substitute vehicle / wheelchair or to reimburse the costs of a rental vehicle / wheelchair actually used. However, the Contractor is obliged to inform the Customer of the delays if this is possible and can reasonably be achieved.

### **IV. Acceptance**

1. Acceptance of the object of the job contract by the Customer takes place on the premises of the Contractor, insofar as no other arrangements have been agreed.
2. The Customer is under obligation to collect the object of the job contract within 1 week of receipt of notification of completion and receipt of the invoice. In the case of contract work carried out within one working day, this period is shortened to 2 working days. If the Customer fails to accept the vehicle, the Contractor may assert his statutory rights.

3. If the Contractor demands compensation, it shall amount to 15% of the sum of the invoice for the performance rendered. The compensation must be set lower or higher if the Contractor proves higher loss or the Customer proves that the loss was lower.
4. If acceptance is delayed, the Contractor may charge the normal local fee for storage. At the discretion of the Contractor, the object of contract may also be stored elsewhere. The Customer shall bear costs and risks of storage.

## **V. Invoicing the contracted order**

1. Prices or price factors for each self-contained part of the overall job and the spare parts and materials used must each be shown separately on the invoice. If the Customer wishes to collect the object of the job contract or have it delivered, this shall be at his own expense and risk. This is without prejudice to liability in case of fault.
2. If the contracted job is carried out on the basis of a binding estimate, reference to the estimate suffices and only additional work must be mentioned on the invoice.
3. Charging the price of exchange - if exchange takes place - requires that the unit or part removed corresponds to the scope of supply of the replacement unit or part and shows no damage that impairs the feasibility of reprocessing.
4. The VAT shall be borne by the Customer.
5. Any adjustment to the invoice on the part of the Contractor and any objection on the part of the Customer must be made at the latest 6 weeks after receipt of the invoice.

## **VI. Payment**

1. The invoiced amount and the prices for auxiliary services are due for payment in cash when the object of contract is handed over and the invoice is received and at the latest within 1 week after notification of completion and issue or sending of the invoice.
  2. The Customer may only offset against claims on the part of the Contractor if the counterdemand of the Customer is undisputed or a legally enforceable title is held; a right of retention may only be asserted, if it is based on claims under the job contract.
- The Contractor is entitled to demand an appropriate advanced payment when the order is placed.

## **VII. Extended right of lien**

Owing to his claim arising from the job contract the Contractor is entitled to a contractual right of lien pertaining to the objects in his possession because of the job contract.

The contractual right of lien can also be asserted for claims from earlier work carried out, spare parts supply and other performance, insofar as they relate to the object of the job contract. For other claims from the business relationship the contractual right of lien applies only insofar as the claims are undisputed or a legally enforceable title is held and the object of the job contract belongs to the Customer.

## **VIII. Material defects**

1. Claims on the part of the Purchaser owing to material defects become time-barred one year after delivery to the Customer. If the Customer accepts the object of the contracted job although he is aware of a defect, he is only entitled to claims for material defects to the extent described in figs. 6 to 7 if he reserves the right to such claims at the time of acceptance.
2. If the object of the job contract is the supply of movable objects to be manufactured or created, and if the Customer is a legal person under public law, a public law body or an entrepreneur who is carrying out his commercial or self-employed business at the time the contract is signed. As far as other Customers (consumers) are concerned, in this case the statutory regulations shall apply).
3. Curtailment of the period of limitation in accordance with Section VIII, fig. 1 and 2, does not apply to liability for damage caused by gross negligence or with intent or to damage from injury to life, body or health that was caused by a negligent infringement of a duty on the part of the Contractor. An intentional or negligent infringement of a duty on the part of the Contractor is equal to that of a legal representative or vicarious agent.
4. Insofar as the Contractor is liable for material defects, the Purchaser must keep the object of sale available for rectification at the main place of business of the Seller or, alternatively, if the Seller consents thereto at a different place of business of the Seller.
5. If defects or the assumption of a guarantee for the quality are intentionally misrepresented by silence it is without prejudice to 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 claims are indicated verbally the Customer must receive written confirmation from the Contractor that the notification has been received.
  - b) If the object of contract becomes inoperable due to a material defect, with prior consent from the Contractor the Customer may contact the business operation authorised by the Contractor regarding the necessary repairs and located closest to the place where the inoperable object of contract is standing.
  - c) Replaced parts become the property of the Contractor.

d) The Customer can assert material defect claims under the terms of the purchase contract for the parts installed in order to eliminate the defects until the time bar expires on the object of the job contract.

7. If as an exception under fig. 6b) the defects are eliminated in a different specialist repair shop (belonging to the sales organisation of the Contractor), the Customer must have included in the job order specification that the job concerns the elimination of defects of the Contractor and that the parts removed must be kept available for the latter for an appropriate period. The Contractor is under obligation to reimburse the Customer for repair costs that have verifiably been incurred.

#### **IX. Liability**

1. If the present terms and conditions require that, owing to statutory regulations the Contractor has to pay compensation for damage that was caused by slight negligence, the Contractor shall assume limited liability. Liability applies only if important contract duties have been infringed and is limited to typical, foreseeable damage. If the damage is covered by insurance taken out by the Customer for such damage (except fixed sum insurance), the Contractor only assumes liability for any disadvantages thus caused to the Customer, for example higher insurance premiums or reduced interest until the insurance company has settled the claim. The same applies to damage caused by a defect on the object of the job contract. Liability is excluded for the loss of money, negotiable instruments (including savings books, cheque books, EC and credit cards), precious objects and other valuables that have not been explicitly taken into safe-keeping.

2. Irrespective of any fault on the part of the Seller, it is without prejudice to the liability of the Seller in cases of misrepresentation of a defect by silence, or from assuming a guarantee or a procurement risk and in compliance with the Product Liability Act.

3. Personal liability on the part of the legal representatives, vicarious agents and members of the staff of the Contractor is excluded for damage they have caused owing to slight negligence.

#### **X. Retention of title to ownership**

Insofar as built-in accessories, spare parts and units have not become essential components of the object of the job contract, the Contractor retains the title to on the property until it has been fully and incontestably paid.

#### **XI. Board of Arbitration (Arbitration proceedings)**

**(Applies only to vehicles with a maximum overall weight of no more than 3.5 t and not to wheelchairs)**

1. In case of disputes arising from the present job contract the Customer or, with the consent of the Customer, the Contractor may invoke the board of arbitration for the car business or car trade with competence for the Contractor. Invocation must take place in writing immediately after the issue in dispute becomes known.

2. The decision of the board of arbitration does not exclude the possibility of legal action.

3. By invoking the board of arbitration the period of limitation is suspended for the duration of the action.

4. The proceedings before the board of arbitration take place in accordance with its terms and conditions and code of procedure, which is issued to the parties by the board of arbitration on request.

5. Invocation of the board of arbitration is excluded if legal action has already been taken. If action is taken during the proceedings of the board of arbitration, the board ceases its activities.

6. The board of arbitration proceedings are free of charge for the Customer.

#### **XII. Legal venue**

1. For all present and future claims arising from the business relation with traders including bills and cheques receivable the exclusive legal venue is the main place of business of the Contractor.

2. The same legal venue applies if the Customer has no general legal venue in the country, moves his domicile or main place of residence abroad after the contract is concluded or his domicile or main place of residence is unknown at the time legal action is brought. For the rest, in case of claims on the part of the Contractor against the Customer, the domicile of the former is considered the legal venue..

3. The law that applies at the main place of business of the Contractor is relevant for the contract relationship.

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