General Terms and Conditions of Business: Vehicle parts and wheelchair parts

Status 07 2010

I. Payment

1. The purchase price and the prices for auxiliary services are due for payment when the object of purchase is handed over and the invoice is received.

2. The purchaser may only offset against claims on the part of the Seller if the counterdemand of the Purchaser 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 purchase contract.

II. Delivery and delayed delivery

1. Delivery dates and delivery periods that can be agreed to be binding or non-binding, must be submitted in writing. Delivery periods begin when the contract is signed.

2. Ten days after the non-binding delivery date or delivery period is exceeded the Purchaser can demand that the Seller deliver. When the demand is received, the Seller has delayed his performance. If the Purchaser is entitled to compensation for loss due to loss caused by delayed performance, the latter is limited to a maximum of 5% of the purchase price in the case of slight negligence on the part of the Seller. If, in addition, the Purchaser wishes to cancel the contract and/or demands compensation instead of performance, in compliance with sentence 1 at the end of the ten-day period he must set an appropriate period for delivery. If the Purchaser is entitled to compensation instead of performance, in the case of slight negligence the claim is limited to maximally 25% of the agreed purchase price. If the Purchaser 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, in the case of slight negligence claims for compensation are excluded. If by chance during the period when the Seller has delayed performance, the latter becomes impossible, he is liable subject to the restrictions to liability agreed above. The Seller bears no liability if the damage would have occurred even if delivery had been punctual.

3. If a binding delivery date or a binding delivery period is exceeded, the Seller is considered to be delayed as soon as the delivery date or delivery period is exceeded. The rights of the Purchaser are defined by figure 2, sentences 3 to 6 of this section.

4. Force majeure or plant breakdowns that occur to the Seller or to the Seller's suppliers and which temporarily prevent the Seller from delivering the object of purchase on the agreed date or within the agreed period through no fault of his own, the dates and periods mentioned in figures 1 to 3 of this section change in keeping with the impairment of performance caused by these circumstances lasts. If the breakdowns cause performance to be delayed for more than four months, the Seller may cancel the contract. This is without prejudice to other rights to rescind the contract.

III. Acceptance

1. The Purchaser is under obligation to accept the object of purchase within eight days of receipt of notification that it is ready for delivery. If the Purchaser fails to accept, the Seller can assert his statutory rights.

2. If the Seller demands compensation based on a statutory claim, then this amounts to 10% of the purchase price. The compensation must be set lower or higher if the Seller proves higher loss or the Purchaser proves that the loss was lower.

IV. Retention of title to ownership

1. The object of purchase shall remain the property of the Seller until such time as the debts receivable under the Purchase contract to which he is entitled are settled.

If the Purchaser 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, the retention of title of

ownership also applies to the Seller's debts receivable from the Purchaser from the current business relationship until debts in connection with the purchase have been settled.
If the Purchaser demands it, the Seller is under obligation to forego the retention of title if the Purchaser has indisputably paid all outstanding debts in connection with the purchase object and adequate security has been given to cover other debts arising from the current business relations.

2. If the Purchaser falls into arrears with payments, the Seller may cancel the purchase contract. If in addition to this the Seller is entitled to compensation for damage instead of the payment and takes the purchase object back, the Seller and Purchaser agree that at the time of taking back the object of purchase, the Seller shall refund the ordinary value of the purchase object at the time it is taken back. At the request of the Purchaser, which may only be expressed immediately after the object of purchase has been taken back, at the discretion of the Purchaser a publicly appointed and sworn expert, e.g. from the Deutschen Automobil Treuhand GmbH (DAT), shall establish the ordinary sales value. The Purchaser shall bear all costs of taking back and realising the object of purchase. The costs of selling amount to 5% of the ordinary sale value without proof. This amount must be set lower or higher if the Seller proves higher costs or the Purchaser proves that the costs was lower.

3. As long as the retention of title to ownership continues, the Purchaser may neither dispose of the object of purchase nor grant any third party a right to use it.

V. Material defects

1. Claims on the part of the Purchaser owing to material defects become time-barred after two years for new vehicle parts and wheelchair parts and for used parts one year from delivery of the object of purchase.

If the Purchaser 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, the claims of the Purchaser owing to material defects become time-barred one year after delivery in the case of new vehicle parts and wheelchair parts. Used vehicle parts and wheelchair parts are sold under exclusion of any form of liability for material defects.

2. Curtailment of the period of limitation in accordance with Section V, fig. 1, paragraphs 1 and 2 does not apply to liability for damage caused by gross negligence or intentionally, nor to damage from injury to life, body or health that were 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.

If defects or the assumption of a guarantee for the quality are intentionally misrepresented by silence it is without prejudice to further claims.

Insofar as the Seller is liable for material defects, the Purchaser must keep the object of sale available 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.

3. The following applies to the process of eliminating defects:

a) The Purchaser must assert claims for the elimination of defects against the Seller. If claims are indicated verbally the Purchaser must receive written confirmation that the notification has been received.

b) Replaced parts become the property of the Seller.

VI. Liability

1. If the present terms and conditions require that, owing to statutory regulations, the Seller has to pay compensation for damage that was caused by slight negligence the Seller shall assume limited liability:

Liability applies only if important contract duties have been infringed and is limited to typical, foreseeable damage. This limitation does not apply to injury to life, body or health. If the damage is covered by insurance taken out by the Purchaser for such damage, the Seller only assumes liability for any disadvantages thus caused to the Purchaser, for example higher insurance premiums or reduced interest until the insurance company has settled the claim.

No liability is assumed for damage caused by a defect on the object of purchase.

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

3. The arrangements for liability in the case of delayed delivery have been dealt with conclusively in Section II.

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

VII. Legal venue

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

2. The same legal venue applies if the Seller has no general legal venue in Germany, or moves his domicile or ordinary place of residence abroad or his domicile or ordinary place of residence is unknown at the time legal action is brought. For the rest, for claims on the part of the Seller against the Purchaser the residence of the latter is considered to be the legal venue.

3. The law that applies at the main place of business of the Seller shall apply to the contract relationship.

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