

Hans Hess Autoteile GmbH – Standard Terms and Conditions

1. Scope of application / general

1.1 All our deliveries and services, particularly deliveries and services as part of purchase and manufacturing contracts, for primarily but not exclusively motor vehicle parts, motor parts, industrial requirements, tools, workshop installations, components, turbochargers or individual parts, including repair, assembly and other services as well as advisory and other ancillary services (referred to hereafter as “deliveries” and/or “services”) are based solely on the following standard terms and conditions (hereafter referred to as “Contractual Conditions”).

1.2 Any additional conditions of the customer or client (hereafter referred to as “Customer”) that differ from or contradict these Contractual Conditions or provisions of the law will only apply provided that we have explicitly acknowledged them in writing. Nor do we acknowledge such conditions should we fail to contradict them on receipt or carry out deliveries and services without qualification.

1.3 These Contractual Conditions apply only to entrepreneurs. An entrepreneur within the meaning of § 14 of the German Civil Code (“BGB”) is a natural person or legal entity or legally responsible partnership that, at the time of a legal transaction, is carrying out its commercial or independent professional activity. Public law legal entities and public law special assets are equivalent to entrepreneurs in this sense.

1.4 These Contractual Conditions will also apply to future deliveries and services as part of a permanent business relationship.

2. Quotations and the conclusion of a contract, cost estimate, form

2.1 Our quotations are always subject to change and non-binding. A contract will come into existence as a result of an order from a customer and our acceptance. The contents and the scope of the contract are governed by our written order confirmation.

2.2 We will issue cost estimates requested by customers in writing should these be requested. This cost estimate will list the relevant individual deliveries (parts, replacement parts and other goods delivered (hereafter referred to collectively as “goods”)) and services (work) and the relevant price. We are bound by a cost estimate agreed as binding for a period of 21 days after it has been issued.

2.3 We are entitled to invoice the Customer the costs (working time, travel costs etc.) of a cost estimate prepared at the Customer’s request, even should the deliveries and services foreseen in the cost estimate not be carried out or carried out in an amended form. All prices stated in the cost estimate are net prices.

2.4 We will contact the Customer immediately should it emerge whilst providing the goods and services that additional goods and services not agreed in the contract are required in order to fulfil the purpose of the contract. In this case, we are entitled to demand an appropriate adjustment to the contractually agreed price before providing further goods and services.

2.5 In the case of non-binding cost estimates, overruns of up to 15% of the amount stated in the cost estimate will be considered permissible and immaterial. Before incurring any further overruns, we will immediately obtain the Customer’s consent prior to providing further goods and services. In this case, the Customer will be entitled to cancel the order.

2.6 Should these Contractual Conditions require the written form, text form within the meaning of § 126 b BGB (e.g. fax or e-mail) is sufficient in order to comply with the written form.

3. Contents, scope and performance of deliveries and services, deadlines

3.1 Our deliveries and services are limited to what has been contractually and expressly agreed. Side-agreements, amendments, additions etc. require our written confirmation.

3.2 Documents, such as diagrams, drawings, information on weight or dimensions and other technical data forming part of quotations as well as references to DIN (German norms), VDE (Association of German Technicians) or other company or supra-company norms serve only to describe the subject matter of the contract and do not constitute a guarantee of a particular quality. The right to changes in design and form, variations in shades of colour and changes in the manufacturer’s delivery during the delivery period is permitted provided that they do not affect a guaranteed quality and provided that these changes or variations are reasonable for the Customer, account having been taken of our interests.



3.3 In accepting repair, assembly or other work in overhauling motor vehicles, motors, turbochargers, components or individual parts, the article repaired is not required to be as new or fully functioning. Our obligation to perform is limited to the proper performance of this work. Any additional result in terms of a manufacturing contract is only due when we have agreed this in writing with the Customer.

3.4 In particular, we assume no responsibility for the previous condition of the article to be repaired or for goods delivered by the Customer to be used in the repair. We assume that these are in a condition customary for their age and for the service to be performed. In particular, the article to be repaired and other articles delivered must be suitable for repair, in particular they may not have unusual signs of wear and tear or rust, the main components must not show any signs of – even previously welded – breakage and must be delivered complete and fully assembled. The same applies to objects sent to us by the Customer for exchange. The Customer is required to inform us immediately should this not be the case; moreover, in this case we are entitled to terminate the contract and to invoice the Customer any goods and services provided up to the time of termination.

3.5 The Customer is required to deliver the object to be repaired or exchanged to our factory at his own expense and at his own risk. The Customer is required to cooperate as far as is customary and necessary and to provide us with all the information, documents (including drawings, samples etc.) and other auxiliary materials (e.g. keys) in order to carry out the work. We are not liable for defects resulting from erroneous information, documents and other auxiliary materials should we not have been able to identify these errors in time.

3.6 The Customer authorises us to test the object to be repaired in order to carry out the work.

3.7 We are entitled to use third parties (sub-contractors) in order to carry out the work.

3.8 We agree a delivery or completion deadline with the Customer for the provision of the goods and services. Unless anything to the contrary has been agreed, the agreed delivery or completion deadline is non-binding and will be deemed to have been met when readiness for delivery or collection is notified.

3.9 Compliance with a delivery or completion deadline is conditional on clarification of all technical matters, the punctual delivery of all information, documents and other auxiliary materials to be provided by the Customer as well as compliance with all agreed payment conditions and other obligations on the part of the Customer. Should delivery or the provision of the service be delayed for reasons for which we are not responsible, the delivery or completion deadlines will be postponed accordingly. We are entitled to terminate the contract should grace periods set not be met.

3.10 Our obligations to deliver and to provide services are subject to the proviso that our suppliers deliver to us correctly and punctually.

3.11 Should we alter or extend the agreed scope of deliveries and services in consultation with the Customer and should the delivery or completion be delayed as a result, the agreed delivery or completion deadline will be postponed correspondingly.

3.12 Events of force majeure entitle us to postpone the delivery or the service for the duration of the hindrance due to force majeure and an appropriate start-up time. All events not caused by us or that we are unable to prevent and that are not merely of a short duration, particularly natural disasters, acts by sovereign authorities, strikes, major interruptions of operations (e.g. fire, damage to machinery, lack of raw materials), also such as take place at suppliers or sub-contractors, as well as hindrances on transport routes that materially inhibit the delivery or the service constitute events of force majeure. We will notify the Customer as soon as possible when such events occur and of their end.

3.13 Should we be responsible for arrears, our liability for damages incurred either due to or in connection with the delay is limited to a total of 0.5% of the net order value of the delivery or service in arrears for each complete week of the arrears up to a maximum however of 5% of the relevant order value of the delivery or service in arrears. Any additional claims by the Customer on account of delays are excluded, unless anything to the contrary is stated in section 10.

3.14 Should it be established whilst the work is being done, but unknown to us at the time the contract was concluded, that it is impossible to repair the object to be repaired due to defects for which we are not responsible, we will be entitled to invoice the Customer for work carried out up to the time that this fact is established. Should it be established whilst the work is being carried out, but unknown to us at the time the contract was concluded, that continuation of the work is uneconomical for reasons for which we are not responsible, we will notify the Customer immediately. Should the Customer decide that the work should not be continued, we will be entitled to invoice the Customer for goods and services provided up to this time, including a reasonable allowance for profit.

4. Prices and payment

4.1 All prices are to be understood as ex our factory, excluding the costs of packaging, freight, dispatch and disposal. Subject to any agreements to the contrary, the prices are net prices plus the valued added tax applicable at the time the invoice is issued.

4.2 Should the cost factors (suppliers' prices, manufacturing materials, energy, operating supplies, wages and salaries etc.) that determine our pricing change in the time between the conclusion of the purchase contract and the contractually agreed time of delivery, we will be entitled to demand retroactively the agreement of an appropriate increase in the price with the Customer. The Customer will be entitled to terminate the contract should no agreement be reached.

4.3 Subject to any agreements to the contrary, the Customer is required to collect the goods. Should it be agreed that are to dispatch the goods and should nothing to the contrary have been agreed, we will determine the route and delivery method used as well as the transporter and freight forwarder and will charge any packaging, freight and transport costs incurred separately. In the event of deliveries

to foreign countries, the Customer will reimburse all taxes, customs duties and other public dues we are required to pay. The risk of accidental destruction and accidental deterioration of the goods will pass to the Customer at the time of dispatch, when the goods are handed to the person transporting the goods or when the goods leave our warehouse to be delivered.

4.4 Should we be required to store goods, motors, turbochargers, components or individual parts after notifying their readiness for delivery or collection by the Customer because collection or delivery is to be postponed by more than a week at the Customer's request or because collection or delivery is delayed by more than a week for reasons for which the Customer is responsible, we will be entitled to charge the Customer a storage fee at customary market prices for every part-day on which the goods are stored. This will also apply should we store the goods in our own factory. The Customer may prove that we have not incurred any cost or considerably lower costs on account of the delayed collection or delivery.

4.5 Our invoices are due for payment immediately after the invoice is presented and without any deductions, unless anything different has been agreed. The deduction of cash discount requires a separate written agreement.

4.6 Any old parts such as starters, dynamos, motors, turbochargers, components or individual parts left to us by way of exchange will be invoiced at the agreed price provided however that they are capable of refurbishment. Otherwise, they will be invoiced subsequently. In the event of a subsequent billing, the Customer will be entitled to reimbursement of the objects left by way of exchange.

4.7 We are entitled to demand an appropriate pre-payment in order to enable these costs to be financed should considerable material expense be incurred or the work last a long time.

4.8 The Customer is only entitled to net claims or to withhold payment provided that his counter-claims have been established in law or are undisputed or the counter-claim that is to be netted against is in a mutual relationship to our claim that is to be netted against.

5. Acceptance

5.1 Goods and services only require (formal) acceptance when this has been expressly agreed or is required by law.

5.2 Acceptance will be carried out at the Customer's expense.

5.3 Unless anything to the contrary has been agreed, acceptance will take place within two weeks of readiness for delivery or collection having been notified. Should acceptance not take place punctually or completely for reasons for which we are not responsible, the delivery or service will be deemed to have been accepted following our written request that acceptance take place accompanied by the setting of a grace period, provided that we have drawn attention to this consequence.

6. Reservation of title

6.1 We reserve title to the goods delivered until all our present and future claims against the Customer arising from the business relationship have been fulfilled (reserved goods).

6.2 The Customer may only sell the reserved goods as part of normal business operations. The Customer is not entitled to dispose of the goods in any other way, particular not to pledge them or to transfer title by way of collateral.

6.3 The Customer is entitled to subject the reserved goods to further processing. This further processing will be carried out free of charge and solely on our behalf as manufacturer within the meaning of § 950 BGB without binding us. The processed goods will be considered reserved goods.

6.4 In the event of processing, combination or mixing with goods that are not our property, we acquire co-ownership of the new goods. The extent of this co-ownership is derived from the relationship of the invoice value of the reserved goods to the invoice value of the remaining goods. Should our title be eliminated as a result of combining or mixing, the Customer transfers to us with immediate effect rights of ownership to the new goods to which he is entitled to the extent of the invoice value of the reserved goods and will store them safely on our behalf. Our rights of co-ownership will be considered reserved goods

6.5 The Customer hereby cedes to us the receivable arising from the re-sale of the reserved goods. Should the Customer sell the reserved goods together with other goods not delivered by us, the cession of the receivable arising from the re-sale will only apply up to the re-sale value of the reserved goods. In the event of the re-sale of goods of which we are part owners, the cession of the receivable will apply up to the amount of the re-sale value of these part-shares.

6.6 The Customer is entitled to collect the receivables arising from the re-sale of the reserved goods ceded to us.

6.7 We are entitled to revoke permission to re-sell in accordance with section 6.2.1 and permission to collect the proceeds in accordance with 6.2.5 if a) the Customer is in arrears with payments arising from the business relationship; b) the Customer has disposed of the reserved goods other than as part of normal business operations; or c) a major deterioration in the Customer's financial situation becomes evident after the contract has been concluded as a result of which our claim is endangered, particularly in the event of a cessation of

payments, an application for the opening of insolvency proceedings on the Customer's assets or should a bill of exchange or cheque be protested.

7. Extended right of lien

We have a contractual right of lien to objects in our possession as a result of the contract on account of the receivables arising from the contract. The contractual right of lien may also be exercised due to receivables arising from goods and services provided earlier, provided they are connected with the subject matter of the order. The contractual right of lien to other claims arising from the business relationship will only apply provided that these are undisputed or a legally binding title exists and the object belongs to the Customer.

8. Warranty rights in the case of work as part of a manufacturing contract (repairs, refurbishment, etc.)

8.1 The repair, refurbishment and other services to be provided by us correspond with the state of technology at the time the contract was concluded. This does not entail any guarantees in the legal sense.

8.2 The place of fulfilment for subsequent fulfilment is our company's registered office.

8.3 We carry our repairs or deliver replacement goods for reasons of goodwill and without any recognition of a legal obligation, unless we have stated anything to the contrary. An acknowledgement will only entail the re-starting of the period of limitation provided that this is expressly declared to the Customer.

8.4 Claims on account of defects will not be recognised should the goods delivered only show normal signs of wear and tear, should goods provided by the Customer be affected, should the Customer have carried out changes or carried out work on his own responsibility or through a third party without our written consent or in some other way had work carried out on the goods incorrectly or unprofessionally, failed to comply with the manufacturer's specifications or used the goods incorrectly or to excess or neglected them after risk passed or the goods were subject to some other improper, external influence beyond our responsibility.

8.5 The Customer is required to report any defects established immediately and in writing. Should subsequent fulfilment not be successful, the Customer may at his option either reduce the price or rescind the contract subject to the conditions stipulated in law. Claims to compensation and the recovery of expenses incurred on account of defects will be governed by section 10.

9. Warranty rights on deliveries (purchase or exchange)

9.1 We do not assume any guarantee or any other risk regarding the nature of the goods within the meaning of the law in any agreements on the nature of the goods to be delivered.

9.2 Sections 8.2 to 8.4 apply as appropriate.

9.3 The Customer is required to report any defects established immediately and in writing. Should the goods be defective at the time risk is passed, we will carry out subsequent fulfilment either by eliminating the defect (repair) or by the delivery of goods free from defects (subsequent delivery). We will choose the type of subsequent fulfilment (repair or subsequent delivery). Should subsequent fulfilment fail, the Customer has the option either to rescind the contract or to reduce the price. Claims to compensation and the recovery of expenses incurred on account of defects will be governed by section 10.

10. Liability

10.1 Claims for damages and for the recovery of expenses incurred by the Customer, irrespective of the legal grounds (contractual, tort, infringement of obligations under the contractual relationship etc.) are excluded.

10.2 The exclusion of liability in accordance with section 10.1 will not apply:

- a) in cases of liability under the German Product Liability Law;
- b) in cases of deliberate intent or gross negligence,
- c) in the event of culpable injury to life, limb or health;
- d) in the event of the infringement of essential contractual obligations, i.e. such obligations the fulfilment of which enables the contract to be implemented at all and on whose fulfilment the Customer normally relies and may rely. Liability on account of the infringement of essential contractual obligations is however limited to compensation of foreseeable damage, typical for this kind of contract, unless we are liable on account of deliberate intent or gross negligence, injury to life, limb or health or in accordance with the Product Liability Law.

10.3 Should our liability be excluded or limited in accordance with the above sections, this will also apply to the personal liability of our employees, vicarious agents and legal representatives.

10.4 The above provisions do not entail a change in the burden of proof to the disadvantage of the Customer.

10.5 In the event of damages due to arrears, section 3.13 has precedence over this section 10.

11. Time limitation

Claims by the Customer on account of defects will become time expired within a year of the delivery or collection of the job. This will not apply:

- a) in cases of § 438 paragraph 1 no. 1 of the BGB (rights in rem of third parties that entitle the return of the object);
- b) to claims for damages due to deliberate intent or gross negligence, on account of injury to life, limb or health or in accordance with the Product Liability Law;
- c) should the Customer be a consumer: for claims to subsequent fulfilment, on account of rescission or reduction in price;
- d) should the Customer be an entrepreneur: in cases of §§ 478, 479 BGB (recourse against an entrepreneur).

In the cases referred to above, the Customer’s claims on account of defects expire with the legal period of time limitation.

12. Data protection

We are entitled to store and process electronically all data about the Customer relating to the business relationship in order to implement the contract subject to the provisions of the German Federal Data Protection Law.

13. Other

13.1 The Customer is required to treat our documents and our business and operating secrets (hereafter “Information”) with confidence. In particular, he is not entitled to pass on Information or to make Information accessible to third parties without our prior written consent.

13.2 In the event of the assignment of rights against us under the business relationship to which the Customer is entitled, we may at our option fulfil these to the Customer or to the third party in discharge of our obligations.

13.3 The place of fulfilment for all of our obligations is our company’s registered office.

13.4 The sole place of jurisdiction for all disputes arising from or in connection with a contract is our company’s registered office.

13.5 The law of the Federal Republic of Germany alone is applicable. Application of the United Nations Convention on the International Sales of Goods (CISG) is excluded.

Place, date

Signature:

Company seal:

Name in block capitals:
