

Hans Hess Autoteile GmbH - General Terms and Conditions

1. Scope of application / General

1.1. The following General Terms and Conditions of Business (hereinafter referred to as "General Terms and Conditions") apply to all our offers, orders and acceptance of orders, deliveries and services, including but not limited to deliveries and services under purchase and service contracts for motor vehicle parts, engine parts, industrial supplies, tools, workshop equipment, assemblies, turbochargers or individual parts, including repair, assembly and services as well as consulting and other ancillary services (hereinafter referred to as "Deliveries" and/or "Performances").

1.2. Terms and conditions of the buyer or customer (hereinafter referred to as the "Customer"), which depart from or contradict these terms and conditions of contract or statutory provisions or which complement these terms and conditions of contract or statutory provisions, apply only if we expressly accept them in writing. Any terms and conditions do not apply to us, even if we do not object to them after receipt or if we carry out deliveries and services unconditionally.

1.3. These General Terms and Conditions apply only to commercial enterprises. An entrepreneur is, pursuant to s. 14 of the German Commercial Code (BGB), a natural or legal person or a partnership of legal capacity acting in pursuit of its trade or professional activity when concluding a legal transaction. Enterprises within this meaning are deemed equal to legal entities under public law and special funds under public law.

1.4. These General Terms and Conditions also apply to all future deliveries and services within the context of an ongoing business relationship.

2. Offers and conclusion of contract, cost estimate, form

2.1. Our offers are subject to change without notice and are non-binding and without customs clearance. A contract is entered into by order of the Customer and our acceptance. The content and scope of the contract is defined exclusively by our written order confirmation.

2.2. If the Customer desires a cost estimate, it will be provided by us in writing. This will specify the respective deliveries (parts, spare parts and other delivery items (hereinafter collectively referred to as "Goods")) and services (work) in detail with the respective price. We will be bound by a cost estimate, if agreed as binding, until 21 days following submission. Cost estimates are confidential and may only be made accessible to third parties with prior consent.

2.3. We are authorised to charge the Customer for expenses incurred in preparing a cost estimate at the Customer's request (work hours, travel expenses, etc.), even if the deliveries and services provided for in the cost estimate are not carried out or are carried out only in a modified form. All prices stated in the cost estimate are net prices.

2.4. If it transpires that additional deliveries and services, which have not been contractually agreed, are needed for the fulfilment of the contractual obligations, we will contact the Customer without delay. If this is the case, we reserve the right to demand a reasonable revision of the contract price prior to the performance of further deliveries and services.

2.5. For non-binding cost estimates, overruns of up to 20% of the stated value of the cost estimate are permissible and considered insignificant. For any additional overruns, the Customer's consent will be required prior to the performance of further deliveries and services. In this event, the Customer has a right of termination. If additional work is required for the performance of the agreed service, it is not to be included in the calculation of the price increase. Additional work may also be performed amounting to 20% of the cost estimate and must be remunerated accordingly.

2.6. If these Terms and Conditions require the written form, the text form within the meaning of s. 126 b BGB (e.g. fax or email) suffices to comply with the written form requirement.

2.7.

After conclusion of the contract, if it transpires that circumstances are likely to lessen the creditworthiness of the Customer, we have the right to suspend performance completely and to demand sufficient securities after setting a period of grace and/or to demand advance payments covering the full amount of the outstanding claims. If the Customer does not provide securities within set period or does not effect the requested advance payments, we reserve the right to rescind the contract in whole or in part.

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

3.1.

All declarations concerning delivery times, deadlines and dates are made without any commitment and our deliveries and services are limited exclusively to the scope expressly agreed in the contract. Ancillary agreements, amendments, supplements, etc. require our written consent. Working days are Monday to Friday. If a deadline falls on a day that is not a working day, the deadline is postponed to the following working day.

3.2.

The documents pertaining to the offers, such as images, drawings, weight or dimension specifications or other technical data, as well as DIN, VDE or other company or inter-company standards referred to, merely designate the subject matter of the contract and are no guarantee of quality. Any changes regarding design or form, deviations in colour and changes regarding the scope of delivery by the manufacturer are reserved during the delivery period, unless these affect a quality warranty and unless the changes or deviations are reasonable for the Customer, taking into account our interests.

3.3.

When accepting repair, assembly and other services for repairing vehicles, engines, turbochargers, assemblies or individual parts, the object of repair must not be as good as new or fully functional. Our performance obligation is limited to the orderly execution of this work. Any additional performance under the contract for work and services is only owed if this has been agreed in writing between the Customer and us.

3.4.

In particular, we do not assume any liability for the prior condition of a repair item or items supplied by the Customer for the purpose of repair. We imply that these are in a condition suitable for their age and customary for the service to be provided. In particular, the object of repair and other items delivered must be fit for repair, i.e. they must not display any unusual signs of wear or corrosion, be free of fractures in the main components - including those already welded - and be delivered complete and unassembled. The same applies to items that have been entrusted to us by the Customer as part of an exchange. If this is not the case, the Customer must notify us immediately in writing. In addition, we will be entitled to terminate the contract immediately and to invoice the Customer for the deliveries and services provided up to the point of termination.

3.5.

The Customer must deliver the object of repair or exchange to our premises at their own expense and risk. The Customer must assist us to the extent customary and necessary and provide all the information, documents (including drawings, samples, etc.) and other auxiliary materials (e.g. keys) required for the performance of the service. We are not liable for defects arising from faulty information, documents and other auxiliary materials, if these were not identifiable by us in good time.

3.6.

The Customer authorises the object of repair to be operated on a test basis for the purpose of providing the service owed, including test drives on a reasonable scale. Such authorisation will also entail technical access to the object from outside, in particular for the purpose of remote maintenance.

3.7.

We are authorised to employ third parties to provide the service (use of subcontractors).

3.8.

For the performance of the deliveries and services, we agree a delivery or completion date with the Customer. The contractual delivery or completion date is non-binding - unless expressly agreed otherwise - and is deemed to have been met upon notification that the Goods are ready for delivery or collection.

3.9.

Meeting a delivery or completion date presupposes the clarification of all technical questions, the timely provision of all information, documents and other auxiliary materials to be provided by the Customer as well as compliance with the agreed terms of payment and other obligations of the Customer. If the delivery or performance of services is postponed for reasons for which we are not liable, the delivery or completion dates must be postponed accordingly. We are authorised to terminate the contract after setting a grace period, which has expired to no avail.

3.10.

Our delivery and performance obligations are subject to our due and timely delivery by our suppliers.

3.11.

If we alter or amend the originally-agreed scope of delivery or performance with the Customer's consent and if delivery or completion is delayed as a result thereof, the agreed delivery or completion date must be postponed mutatis mutandis.

3.12.

Force majeure events authorise us to postpone the delivery or performance for the period of the delay caused by the force majeure and a reasonable period of start-up time. Force majeure events include all events beyond our control, which cannot be averted, lasting longer than a short period of time, in particular natural events, sovereign measures, strikes, significant operational disruptions (e.g. fire, machine breakdown, shortage of raw materials), including events affecting upstream suppliers or subcontractors, as well as obstructions to transport routes, which significantly impede or render impossible the delivery of Goods or provision of services. We will inform the Customer of the occurrence of such events and their cessation as soon as possible.

3.13.

In the event of negligent delay, we shall be liable for damages caused by such delay arising out of or in connection with the respective delivery or performance to a total of 0.5% of the net order value of the delayed delivery or performance for each full week of delay, but to a maximum total of 5% of the corresponding net order value of the delayed delivery or performance. Any further claims for damages by the Customer due to delays will be excluded, unless otherwise provided for in Clause 10.

3.14.

If during the performance of the service, but not apparent to us at the time of contract conclusion, it transpires that the repair is impossible owing to defects in the repair object for which we are not responsible, we will be entitled to invoice the Customer for the services performed up to this discovery. If it transpires during the performance of the services, but not apparent to us at the time of contract conclusion, that the further performance of the services is unprofitable for reasons for which we are not responsible, we will notify the Customer of this without delay. If the Customer resolves to stop the performance of the services, we reserve the right to invoice the Customer for the deliveries and performances up to that point, including the corresponding share of the profit.

3.15.

If it is necessary, we are entitled to make partial deliveries insofar as this is reasonable.

3.16.

In absentia deliveries, in particular night deliveries, will be effected to a place specified by the Customer. This place must fulfil the necessary requirements, among other things with regard to size, theft protection and exclusion of access for unauthorised third parties. Any increased risk of loss as a result of failure to deliver the Goods in person and therefore in absentia will be borne by the Customer. There shall be no liability on our part for loss, damage or other pecuniary or consequential loss.

4. Prices and payment

4.1.

All prices are understood to be as ex our premises of the respective company, excluding packaging, freight, shipping and disposal costs. Unless agreed otherwise, the prices are stated as net prices plus the value-added tax applicable at the time of invoicing. The invoicing for intra-Community deliveries (European Union) to entrepreneurs with a known VAT ID number or to third countries (no intra-Community delivery) is based on the tax laws valid at the time of delivery. If the buyer fails to comply with its obligations to furnish proof (valid tax number or proof of shipment), we are obliged and entitled to charge the German VAT to the Customer.

4.2.

If the cost factors determining our price structure (upstream supplier prices, production material, energy, operating materials, wages and salaries, etc.) alter during the period from this sales contract to the contracted date of delivery, we reserve the right to demand that the Customer subsequently agree to a reasonably higher price. If an agreement is not forthcoming, the Customer is entitled to withdraw from the sales contract.

4.3.

All deliveries and performances are effected from the respective business premises. Unless otherwise agreed, the Customer is obliged to collect the Goods. If we agree to deliver the Goods (sale by delivery to a place other than the place of performance), we will choose the shipping route and means as well as the carrier and freight forwarder at our discretion, unless otherwise agreed, and will charge the packaging, freight and shipping costs incurred separately. For deliveries abroad, the Customer is obliged to refund all taxes, customs duties and other public charges to be borne by us. The Customer bears the risk of accidental loss and accidental damage of the Goods upon shipment of the Goods, if the Goods are delivered to the person carrying out the transport or if the Goods have left our warehouse for the shipment. We only take out transport insurance at the request of and by agreement with the Customer. This is carried out in the name and for the account of the Customer.

4.4.

If the deliveries were agreed with an obligation to assemble, the Customer must make the necessary arrangements and provide access to the assembly site. In addition, the Customer must supply sufficient premises, incl. electricity and other connections, etc., to enable the proper performance of the assembly obligation. Upon delivery, the risk of accidental loss and accidental deterioration is transferred to the Customer.

4.5.

If goods, engines, turbochargers, assemblies or individual parts must be stored after notification of readiness for delivery or collection to the Customer, because collections or deliveries may be delayed by more than one week at the

Customer's request or because collection or delivery is delayed by more than one week for any other reason for which the Customer is responsible, we are entitled to charge the Customer storage fees at the standard market rates for each day of storage or part thereof. This also applies if the storage takes place at our own premises. The Customer may prove that no damages, or significantly lesser damages, have been incurred by us due to the delayed collection or delivery.

4.6.

Our invoices are payable immediately following invoicing, at the latest after receipt of the Goods, and without deduction, unless otherwise agreed in writing, especially in the case of an advance payment obligation. A discount requires a special written agreement. In the absence of any agreement to the contrary, the Customer will be in default after 14 days following the performance at the latest, without a reminder required. As of this point in time, the Customer must pay interest on arrears of 9 percentage points above the base rate and we are entitled to other statutory rights. The assertion of further damages is expressly reserved, as is the option for the Customer to prove that no or lesser damages have been incurred.

4.7.

If the Customer is in default of payment of an invoice, we reserve the right to request the Customer to pay all due invoices immediately. The regulation under item 2.7. applies accordingly.

4.8.

We will invoice replacement parts such as starters, alternators, engines, turbochargers, assemblies or individual parts at the agreed price, insofar as these can be repaired. Otherwise, we recalculate the price. The Customer is entitled to reclaim the object provided for the purpose of exchange in the event of subsequent recharging.

4.9.

In the event of substantial material costs and long-term work, we are entitled to demand a reasonable advance payment in order to guarantee advance financing.

4.10.

The Customer may only exercise set-off and retention rights to the extent that the counterclaims are due and legally effective or undisputed or the counterclaim to be set off against is in a mutual relationship with our claim to be set off against.

4.11.

If the Customer has defaulted on the payment of an invoice, we are entitled to suspend all delivery obligations until the payment has been made. The Customer must bear all costs incurred as a result thereof.

5. Acceptance

5.1.

Deliveries and performances require acceptance only if expressly agreed or arising under statutory provisions. Acceptance occurs at the expense of the Customer. Insofar as nothing to the contrary has been agreed, acceptance must take place within two weeks of notification that delivery or collection is possible. If acceptance does not occur in good time or is partial through no fault of our own, the delivery or service will be considered to have been accepted upon our written request for acceptance with the setting of a reasonable period of time, if this consequence has been referred to.

6. Retention of title

6.1.

We retain title to the delivered Goods until complete fulfilment of all present and future claims against the Customer resulting from the business relationship (goods subject to retention of title).

6.2.

The Customer may only resell the goods subject to retention of title as part of standard business transactions. The Customer is not entitled to dispose of the goods subject to retention of title in any other way, in particular by means of a pledge or transfer of ownership by way of security.

6.3.

The Customer has the right to process goods subject to retention of title. This further processing is performed free of charge and entirely for the benefit of us as manufacturer within the meaning of s. 950 German of the Civil Code (BGB), without any obligation incumbent on us. The processed goods are deemed to be goods subject to retention of title.

6.4.

When processing, combining or mixing with goods not owned by us, we acquire co-ownership of the new items. The extent of co-ownership is based on the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods. If our ownership expires due to combining or mixing, the Customer shall transfer to us at this point in time the rights of ownership to the new product to which the Customer is entitled to the amount of the invoice value of the goods subject to retention of title and shall hold them in safe custody for us free of charge. Our co-ownership rights are considered as goods subject to retention of title.

6.5.

The Customer assigns the claim arising from a resale of the goods subject to retention of title to us. If the goods subject to retention of title are sold by the Customer in combination with other goods not supplied by us, the assignment of the claim from the resale shall only apply to the amount of the resale value of the goods subject to retention of title. With the resale of Goods co-owned by us, the assignment of the claim shall apply to the amount of the resale value of these co-ownership rights.

6.6.

The Customer is authorised to recover the claims assigned to us from the resale of the goods subject to retention of title.

6.7.

We are entitled to rescind the permission to resell pursuant to Clause 6.2.1 and the authorisation to collect pursuant to Clause 6.2.5, if

a)

the Customer is in default with payments relating to the business relationship;

b)

the Customer disposed of the goods subject to retention of title in a manner other than in the ordinary course of business, or a claim by us is jeopardised, in particular in the event of suspension of payments, an application for the opening of insolvency proceedings against the Customer's assets or a protest of a bill of exchange or a cheque.

c)

after contract conclusion, a significant decline in the financial circumstances of the Customer becomes apparent, as a result of which a claim of ours is at risk, in particular in the event of suspension of payments, an application for the opening of insolvency proceedings against the Customer's assets or a protest of a bill of exchange or a cheque.

7. Extended right of lien

We are entitled to a contractual right of lien regarding the objects that have come into our possession as a result of the contract, as a result of the claims arising from the contract. The contract right of lien may also be exercised for claims resulting from deliveries and performances provided in the past, provided that these are related to the subject matter of the contract. For other claims arising from the business relationship, the contractual right of lien only applies if these are undisputed or a legally binding title exists and the object belongs to the Customer.

8. Return

8.1.

The return of Goods that have been ordered from us takes place exclusively on a voluntary basis as a gesture of goodwill and does not constitute a recognition of a legal obligation.

8.2.

A return of ordered, clean, flawless and correctly delivered Goods only takes place if we have confirmed the return in writing for each individual case.

8.3.

Excluded from return are items that are not resalable, in particular damaged items, items with damaged packaging, items with installation or processing damage, opened packaging items for which the return quantity no longer corresponds to the original packaging quantity, special orders, filled starter batteries, electronic components, tyres and items with a value of less than EUR 10.

8.4.

Return is only possible within 10 weekdays after delivery. The Goods must also have been received by us within this period.

8.5.

We charge 20% of the net value of the Goods for online registrations for returns. Otherwise we charge 25% for the return of the Goods. We also reserve the right to charge any costs actually incurred in excess of this amount. The Customer has the right to prove that lesser costs have been incurred.

8.6.

The refund of any balance is subject to set-off against open and due claims of the Customer following receipt of the Goods by us. The offset takes precedence over the payment.

8.7.

The return of engine parts is subject to the condition that these are in their original, unopened and undamaged packaging. In addition, any security seals on all parts must be intact.

9. Warranty rights for services (repairs, maintenance, etc.)

9.1.

The repair, maintenance and any other services to be provided by us correspond to the state of the art at the time of the contract conclusion. This does not constitute a guarantee in the legal sense.

9.2.

The place of performance for any subsequent performance is the registered office of our company.

9.3.

We perform subsequent improvement or subsequent delivery as a gesture of goodwill and without recognising any legal obligation, unless we make representations to the contrary. Recognition with the consequence of a recommencement of the limitation period only exists if we expressly notify the Customer thereof.

9.4.

Claims for defects are excluded, if the object of performance is exposed to normal wear and tear or consumption, if materials supplied by the Customer are affected, if the Customer has carried out any alterations without our written

consent or has carried out work at its own responsibility or has had work carried out by a third party or has in any other way affected the object of performance in a manner which is not professional or competent, manufacturer's instructions have not been followed or if, after transfer of the risk, the object of performance has been used in a manner which is not in compliance with its intended use, excessive, negligent, faulty or any other improper external impact on the object of performance, which does not lie within our sphere of responsibility.

9.5.

The Customer must immediately inform us in writing of any defects discovered. Failure to remedy the defect entitles the Customer to reduce the purchase price or to withdraw from the contract, at the Customer's discretion, in accordance with the statutory requirements. Clause 10 applies for claims for damages and compensation due to defects.

9.6.

In the event of unjustified notification of defects, the Customer may be invoiced for the costs incurred for the inspection, unless the Customer is not responsible for the unjustified notification of defects. Submitted parts must be collected by the Customer from the premises within 10 days following notification of the test result. The part can be shipped to the Customer at the Customer's request. The costs of shipping are borne by the Customer.

10. Warranty rights at delivery (purchase or exchange)

10.1

We do not assume any warranty obligations or any other guarantee obligations within the meaning of the law in connection with any agreements on the quality of the goods to be delivered.

10.2

Clauses 9.2 to 9.4 and 9.6 apply accordingly.

10.3

The Customer must inform us in writing of any defects discovered without delay, at the latest within two working days. For in absentia deliveries, defects must be notified in writing by 12pm on the following working day. The same period applies to hidden defects and commences upon discovery of the defect. If the delivery is defective at the time of the transfer of risk, we will provide subsequent performance by remedying the defect (rectification) or by delivering defect-free goods (subsequent delivery). The choice of the subsequent performance method (rectification of defects or subsequent delivery) is made by us at our discretion. If the subsequent performance is not successful, the Customer has the right to rescind the contract or to reduce the price, at his discretion. Clause 10 applies for claims for damages and compensation. Failure to give notice of defects or a delay in giving notice of defects and the ensuing occurrence of further defects or damage will render the warranty in this respect null and void.

11. Liability

11.1

Claims for damages and compensation by the Customer, irrespective of the legal basis (contract, tort, contractual breach of duty, etc.), are excluded.

11.2

The exclusion of liability pursuant to section 10.1. above shall not apply with respect to the following:

in the event of liability under the Product Liability Act;

in the event of intent or gross negligence,

in the event of negligent injury to life, limb or health;

in the event of a breach of material contractual obligations, i.e. obligations whose fulfilment is a fundamental precondition for the proper performance of the contract and on whose compliance the Customer may regularly rely on. Liability for the breach of material contractual obligations shall, however, be limited to compensation for the foreseeable damages normally expected in a contract, unless we are liable on the grounds of intent or gross negligence, injury to life, limb or health, or under the Product Liability Act.

11.3

Provided that our liability is excluded or limited in accordance with the above clauses, it shall also apply to the corresponding personal liability of our employees, vicarious agents and legal representatives.

11.4

No change regarding the burden of proof to the detriment of the Customer is associated with the above provisions.

11.5

For damages caused by delay, Clause 3.13. has priority over Clause 10.

12. Limitation

The Customer's claims due to defects become statute-barred within one year after receipt of the delivery or acceptance of the work. This does not apply:

in the event of s. 438 (1) no. 1 of the BGB (rights in rem of third parties conferring the right to surrender); for claims for damages on account of intent or gross negligence, on account of injury to life, limb or health or liability under the Product Liability Act; in the event of ss. 478, 479 of the BGB (entrepreneur's recourse). In the above-mentioned cases, claims of the Customer due to defects become statute-barred within the statutory limitation period.

13. Privacy

We also use, process and store personal data of the Customer for the proper fulfilment of the order and for our own purposes with the aid of automatic data processing systems. All technical and organisational requirements for data security have been complied with in order to ensure the security of the data files and the data processing procedures with regard to Art. 24 of the GDPR and Art. 32 of the GDPR. We are committed to data protection and all persons entrusted with the processing of data are required by us to comply with the legal provisions on data protection to the letter. The privacy policy governing the processing of personal data is available at www.hess-autoteile.de/datenschutz.

14. Miscellaneous

14.1

The Customer must keep our documents and our business and trade secrets (hereinafter: "Information") confidentially. In particular, the Customer is not entitled to pass on Information to third parties or make it accessible to third parties without our prior written consent.

14.2

In the event of a transfer of claims to which the Customer is entitled against us under the business relationship, we may make payment to the Customer or the third party at our own discretion with discharging effect.

14.3

The place of performance for all our liabilities is the registered office of the company.

14.4

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

14.5

The law of the Federal Republic of Germany shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

14.6

If individual provisions of contracts or these General Terms and Conditions are or become invalid in whole or in part, such invalidity shall not affect the validity of the remaining provisions. The provision that is invalid in whole or in part shall be replaced by a provision that most closely reflects the economic purpose.

As of: March 2021