

Terms of Business

All orders, contracts and services, regardless of nature, will be carried out by the corporation

**MMS Marine Motor Service GmbH,
Mühlenstraße 21 in 21279 Wenzendorf/Germany
(contractor)**

exclusively in accordance with the following general terms of business.

In case the customer uses contrary terms of business, those will be without effect.

The contract will only come into force if the validity of the following terms of business will be accepted.

§ 1 General

1. Applicable law and place of jurisdiction

German law is exclusively applicable for all legal relations based on contract.

As far as the *United Nations Convention On Contracts For The International Sale Of Goods* might be taken into consideration, its validity for these contracts is expressly denied.

Place of fulfillment for all mutual performances based on these contract relations is the contractor's place of business.

The German court at the contractor's general place of jurisdiction is in charge of any legal claim and dispute.

2. Liability

Over and above this guarantee, the contractor is in principle only liable for cases of gross negligence or intent. A further liability for cases of slight negligence is expressly excluded.

In case the contract cannot be realized due to circumstances in the responsibility of the customer or if there are existing legal conditions for a compensation for breach of contract, the contractor has the right to demand a flat-rate compensation in the amount of 15 % of the contract's value.

The customer's right to prove a lesser damage to the contractor, is reserved.

The assertion of further claims that have to be put into specific forms, is not touched by this clause.

3. Form

Contract completions, especially assurances of certain features and conditions of the contract's subject, need to be put into written form exclusively.

4. Right to hold back and set off

The customer may, if legally permissible, assert a right to hold back or set off demands against due demands of the contractor, if the customer's demands are acknowledged by the contractor or found effective by a court of law.

5. Salvatoric Clause

The validity of the whole of these terms of business is not affected if single regulations should be or should become inoperative. Instead, the inoperative regulation is replaced with a legally operative regulation that comes closest to the economic meaning of the inoperative regulation.

The German text of these terms of business is valid for interpretation in case of doubt, as far as these terms are translated into another language for reasons of simplification. Translations into other languages are solely means of information.

§ 2

1. Offer / Order

Contracts will only be concluded regarding the conditions confirmed in writing by the contractor. Only performances, prices, deadlines and other essential describing conditions mentioned in the written confirmation are binding for the carrying out of the contract.

All offers are without engagement until the written confirmation and are made with the reservation of change and intermediary sale.

Differing descriptions in offers, estimates or similar documents, providing the conclusion of the contract, are without engagement, as far as they vary from the actual confirmation.

Engagements in timing, delivery deadlines and all further assurances are decisive, as long as they are mentioned in the confirmation.

2. Prices, shipment, deadlines, delivery and devolve of the risk of loss

The prices offered by the contractor are net. VAT (value added tax) that might come up is not included.

The prices include delivery of the contractual performance ex works, excluding packing and loading, if not otherwise agreed on in the order.

Prices are in the currency stated in the confirmation.

Monetary changes do not entitle to adapt the price.

An estimate given by the contractor for performances (e.g. manufacturing, repair, service) is binding in its numbers and prices, if this is expressly agreed upon in the actual contract. Otherwise, the estimate is non-binding, provided that at the time of the contract an exceeding of the costs named in the estimate up to 25 % is supposed to be approved. Further exceeding is to be announced in advance and an approval of the customer is necessary.

Should the settlement of accounts be based on expenses, the reports on time- and material expenses, filed by the contractor, are decisive. The customer is free to prove that the charged expenses do not exist or do not exist in the amount charged.

In case a repair cannot be carried out for reasons the contractor is not responsible for, the costs for an estimate and the costs of the detection for failures must be reimbursed based on expenses. That applies especially to the situation when a repair cannot be carried out, because the failure could not be found, the spare parts were not available, time limits were missed for reasons the customer is responsible for, or the contract is being terminated by the customer while being carried out.

For lack of other clauses, the customer has to bear the costs for shipping the contract's subject to a place other than the place of fulfillment.

Should the contractor take on the shipment, he may have the choice of the forwarding agent, the carrier, the cargo route and the cargo means, without taking on any liability.

Should the contractor himself act as a forwarding agent, the *Allgemeine Deutsche Spediteurbedingungen* (General Forwarding Agent's Terms) are valid.

The risk of losing the subject of the contract is transferred to the customer at the time of the written notice that the subject is ready to be picked up / ready to be forwarded, at the latest when handing-over the subject to the forwarding agent or carrier to be chosen by the contractor.

An insurance against theft, breaking, shipping-, fire- and water damages will only be taken out if so desired and paid for by the customer. It is understood that the customer, in lack of such an insurance, is limited to claims against the carrier, based on Forwarding Agent's Terms and laws of transportation.

Contractual deadlines are supposed to be met if at that time either the customer is notified that the subject is ready for shipping or is handed-over to the carrier, if not otherwise agreed on. Delays or prolongations, due to the fact that the customer did not get documents, permissions or otherwise failed to fulfill his duties, extend the deadlines correspondingly.

The noncompliance of a contractual deadline justifies a withdrawal from the contract if the contractor had been given an appropriate additional deadline in writing after exceeding the contractual deadline to perform.

Exceeding claims because of delays exist only in case of special individual agreements and within the scope of the liability limitations announced under § 1.

§ 3 Guarantee

The contractor supplies liability for goods to be delivered / work to be performed by the contractor in accordance to the decisive rules of the German law, excluding the following restrictions regarding the guarantee claims.

1) In accordance to the German Trading Law (*Handelsrecht*), deliveries resulting of sales contracts have to be complained of immediately. Protests regarding the completeness of the condition, especially regarding the absence of assured features, have to be entered and asserted immediately after receipt.

Instead of a legally existing right to withdraw or cancel and change back, the contractor is at first allowed to touch up legitimately claimed defects or make a replacement. Only in case a touch-up or replacement would be an unreasonable demand for the customer, he may assert his rights to withdraw from or cancel the contract.

In this case, further claims are excluded within the scope of the agreed on liability limitations, especially claims for compensation for damages that did not develop in subject of the contract itself.

2) Should the contractor have the right to touch up defects, the customer has the duty to provide sufficient time and opportunity to the contractor for his required performance, as well as for an estimate regarding the works that would be necessary to touch up. Should this opportunity be denied, further guarantee claims will expire.

3) There will be the same guarantee for the delivered replacement part or the repaired part as for the original item of the contract. The total guarantee will not exceed the guarantee for the originally delivered item unless otherwise provided by law.

4) When delivering used parts, the guarantee is limited to the existence of the agreed on or contractual determined characteristics at the time of the devolve of the risk of loss.

An extensive liability is expressly excluded.

If necessary, the contractor is obligated on request to cede claims she might have against the supplier to the customer.

5) There will be no guarantee by the contractor

- for damages resulting from natural wear-out, improper use, use of unsuitable devices and disregard of the work and maintenance instructions

- for consequences and damages, resulting from inexpert alterations or repair and maintenance works, or respectively the omission of repair and maintenance works

- for parts that are subject to an extensive natural wear and tear as a result of their natural condition.

6) When delivering or using foreign products within the scope of works contracts or repairs, the contractor is only liable for obvious defects of the foreign products. Should defects result from the use of such foreign products, the liability is limited to the cession of those guarantee claims the contractor can assert against his supplier. The contractor has the choice either to cede the claims to the customer, so he may assert them in his own name and to his own expenses, or to assert the claims in his name for the customer against the supplier.

7) Guarantee deadlines

The deadline for guarantee claims will be six months, counting from the date of delivery of the subject, at its longest seven months since the devolve of the risk of loss according to § 2 No. 2, unless otherwise cogently provided by law.

§ 4 Security

The property of those contractual subjects, that by their nature are to be transferred to the customer, will be reserved for as long as all demands of the contractor are met. This reservation covers also those demands of the contractor against the customer, that are not related to the contractual subject but have their origin in other orders.

Should there be any claims asserted due to this property reservation, they will not be interpreted as a withdrawal or termination of the contract.

If the above mentioned and arranged property reservation or the right to cede claims should be inoperative due to legal rules of that country the reserved goods are being delivered to, a corresponding security in accordance to those rules is hereby agreed on within reasonable scopes instead of the reservation and cession in accordance to German law.

§ 5 Payments

Payments have to be made net cash within the period of time named in the invoice, at the latest 30 days after the date of invoice, on one of the named bank accounts of the contractor.

The contractor may charge interests on arrears in the amount of 3,5 % above the German Federal Bank's discount rate in the case of delays.

The contractor is free to claim further delay damages that may occur. The customer may prove that a delay damage does not or not in the claimed amount exist.

The contractor may charge reasonable part payments for orders concerning works performances, especially if the contractor has to get third-party performances on his own expenses.