

Translation from the German

Standard Terms and Conditions for Motor Vehicle Repairs

Terms and conditions for the execution of work on motor vehicles, trailers, aggregates and their components, and for cost estimates

Non-binding recommendations of the German Federation for Motor Trades and Repairs (Zentralverband Deutsches Kraftfahrzeuggewerbe e.V. (ZDK))

As of: March 2008

I. Order Placement

1. The services to be performed, and the expected or binding date of completion, shall be described in the order form or in a letter of confirmation.
2. The customer shall receive a copy of the order form.
3. The order authorizes the contractor to place sub-contracts and to carry out trial runs and transit journeys.

II. Prices quoted in the Order Form, Cost Estimates

1. At the request of the customer, the contractor shall also note in the order form the expected prices that will be taken as a basis for estimation of the order price. Prices in the order form may also be quoted on the basis of relevant items in the price and work value catalogues open to inspection on the contractor's premises.

2. If the customer requests a binding quotation, this requires a written cost estimate, in which labour and spare parts are in each case listed in detail together with their respective price. The contractor is bound to this estimate for 3 weeks after submission thereof. The cost of services rendered for submission of a cost estimate may be charged to the customer if agreed upon in the individual case.

If an order is placed on the basis of the cost estimate, then any costs arising for the cost estimate shall be charged against the invoice for the order. The total price, however, may not be exceeded without the consent of the customer.

3. If prices are quoted in the order form, these must, as in the case of a cost estimate, include the value added tax.

III. Completion

1. The contractor is obligated to observe the completion date that has been stipulated as binding. If the scope of work is changed or if it exceeds that described in the original order, thus leading to delay, the contractor shall promptly name a new completion date and give reasons for the new date.

2. If, in the case of orders that involve the repair of a motor vehicle, the contractor fails for more than 24 hours culpably to keep to a completion date that has binding force and has been consented to in writing, then the contractor shall at his discretion make available to the customer free of cost a replacement vehicle that is to the greatest extent possible equivalent in accordance with the contractor's valid conditions applicable in this case, or shall reimburse 80% of the costs for the actual use of an equivalent hired vehicle. The customer shall return the replacement or hired vehicle promptly after notification of the completion of the subject-matter of the order; any and all further damages due to delay in performance are excluded, except in cases of intent or gross negligence. The contractor is also responsible for any impossibility of performance occurring during the time of delay through coincidence, unless the damage would have occurred even if performance had occurred in due time.

In the case of motor vehicles used for commercial purposes, the contractor may compensate for loss of earnings arising from delayed completion instead of making a replacement vehicle available or assuming the costs for a hired car.

3. If the contractor fails to keep to the completion date due to 'force majeure' or interruption of operations through no fault of his own, he shall have no obligation to pay damages due to any delay conditioned thereby, in particular he shall have no obligation to provide a replacement vehicle or to reimburse costs for the actual use of a hired motor vehicle. The contractor is, however, obligated to advise the customer about any delays, to the extent that this is possible and reasonable.

IV. Acceptance

1. Acceptance inspection of the contract item by the customer will take place on the business premises of the contractor, unless otherwise agreed upon.

2. The customer is obligated to pick up the contract item within one week of receipt of the notification of completion and delivery or forwarding of the invoice. In the case of non-acceptance, the contractor may exercise his legal rights. For repair work that is carried out in one working day, this one-week period is shortened to two working days.

3. If acceptance inspection is delayed, the contractor is entitled to charge storage fees in accordance with local custom. The contract item may also be stored elsewhere at the discretion of the contractor. The costs and risks of storage shall be charged to the customer's account.

V. Calculation of the Order Price

1. In the invoice, prices or price factors shall be shown separately for each job that has been performed and technically completed, as well as for the spare parts and materials that have been used. If the customer wishes to arrange pickup or delivery of the contract item, he does this at his own expense and risk. Liability for faults remains unaffected.

2. If the order is executed on the basis of a binding cost estimate, this cost estimate need only be referred to, and only additional jobs need to be specially listed.

3. Calculation of the exchange price for the exchange of a part presupposes that the dismantled aggregate or part corresponds to the supply scope of the replacement aggregate or part, and that it has no defects that render reprocessing impossible.

4. The value added tax is payable by the customer.

5. Any correction of the invoice made on the part of the contractor, and any complaint raised on the part of the customer, is required to be made within six weeks after receipt of the invoice.

VI. Payment

1. The invoiced amount and prices for performance of additional services are due in cash upon acceptance of the contractual item, and delivery or forwarding of the invoice, however at the latest within one week following notification of completion and delivery or forwarding of the invoice.

2. The customer can only set off claims against payment if the customer's counterclaim is undisputed or if there is a legally effective title; a lien can only be claimed if it is based on claims arising from the order. The contractor is entitled to demand a reasonable advance payment at the time the order is placed.

VII. Extended lien

Owing to his claim arising from the order, the contractor is entitled to place a contractual lien on items that came into his possession as a result of the contract work. The contractual lien

can also be invoked for claims arising from earlier work performed, deliveries of spare parts and other services as far as they are connected with the subject-matter of the contract. For other claims arising from the business relationship, the contractual lien is valid only if the claims are undisputed or a legally valid title exists and the subject-matter of the order is the property of the customer.

VIII. Material Defects

1. Claims by the customer owing to material defects shall become statute-barred one year from acceptance of the contractual article. If the customer accepts the object despite knowledge of a defect, he is entitled to file claims for defects only if he reserves this right at the time of acceptance.
2. If the subject-matter of the contract is the delivery of movable goods that are to be manufactured or produced, and the customer is a legal entity under public law, a public Special Fund, or an entrepreneur who is independently engaged in a trade or business at the time of conclusion of the contract, claims raised by the customer due to defects shall become statute-barred one year after delivery. For other customers (consumers) the statutory provisions shall in this case apply.
3. Further claims shall remain unaffected provided the contractor's liability is mandatory under a law, or something else is agreed upon, particularly in the case of a guarantee being given.
4. In the event of claims for material defects, the customer shall exercise this right against the contractor. If verbal notice is given, the contractor shall give the customer a written confirmation that the notice has been received.
5. If the contractual object becomes inoperative due to a defect, the customer may, with the prior consent of the contractor, turn to another authorized automotive service and repair workshop. In that case, the customer is required to ensure that what is concerned here is recorded in the order form to the effect that it is the contractor's defect that is to be eliminated and that the dismantled parts are placed at his disposal for a reasonable period of time. The contractor is obligated to refund the customer the costs that the repair work has entailed (proof of which is to be furnished).
6. In the event of defects being rectified, the customer may assert claims for material defects based on the order for the parts installed in order to eliminate the defect for the built-in parts up to the expiry of the statutory period of limitation applicable to the contractual article. Replaced parts shall become the property of the contractor.
7. Section VIII Material Defects is not applicable to claims for damages; such claims are subject to Section IX Liability.

IX. Liability

1. If, according to statutory provisions, the contractor is liable for damage due to ordinary negligence, the contractor's liability is limited: liability exists only in the event of a breach of contractual obligations, such as those that the order intends to impose on the contractor in terms of content and purpose, or fulfilment of which only enables the proper execution of the contract, and the compliance of which the customer regularly relies on and may rely on. Liability is limited to the typical damage foreseeable at the time of signing the contract. If the damage is covered by an insurance (excluding fixed-sum insurance) taken out by the customer for the damaging event concerned, the contractor shall only be liable for any involved disadvantages to the customer, e.g. higher insurance premiums or interest disadvantages on the claims until the insurance company has settled the claims. The liability for loss of money and valuables of any kind that have not expressly been taken into safekeeping is excluded. If the customer is a legal entity under public law, a public sector fund or an entrepreneur who is independently involved in the case as part of his trade or profession, and after one year

from purchase or the delivery of manufactured or produced movable goods will file a claim for material defects the following shall apply: the above limitation of liability shall apply to any damage caused by gross negligence, but not involving gross negligence caused by legal representatives or senior staff members of the contractor, nor for grossly negligent damage caused by the customer that is covered by insurance.

2. Regardless of any fault of the contractor, the possible liability of the contractor's fraudulent concealment of the defect shall remain unaffected by the assumption of a guarantee or a procurement risk and in compliance with the law concerning product liability.

3. The personal liability of the legal representatives, agents and employees of the contractor for damages caused by ordinary negligence is excluded. If, with the exception of the legal representatives and senior staff members, the damage was due to their gross negligence, restriction of liability as regulated for the contractor shall apply accordingly.

4. The liability restrictions in this Section shall not apply to personal injuries or damage to life and health.

X. Retention of Title

As far as built-in accessories, replacement parts and aggregates have not become essential component parts of the contractual item, the contractor reserves his proprietary rights until payment has been received finally and in full.

XI. Board of Arbitration (Arbitration Proceedings)

(Applies only to motor vehicles with a gross vehicle weight of no more than 3.5 mt)

1. If the workshop is a member of the locally competent guild of motor vehicle trades and repair shops, the customer can in the event of disputes arising out of this order or – with his agreement – the contractor can have recourse to the board of arbitration competent for the motor vehicle repair trade or business. Recourse must be made in writing without delay after the point in dispute has become known.

2. The decision of the arbitration board does not exclude recourse to courts of law.

3. Submission to arbitration signifies that the statute of limitations is suspended for the duration of the proceedings.

4. The proceedings before the board of arbitration are dependent on its rules of procedure which on request are handed out to the parties by the board of arbitration.

5. Recourse to arbitration is ruled out if recourse to law has already been initiated. If recourse to law is taken during arbitration proceedings, the board of arbitration shall suspend its activities.

6. There are no costs involved for applying to a board of arbitration.

XI. Jurisdiction

For all present and future claims arising out of or in connection with the business relationship between businessmen, including bills and cheques receivable, the sole place of jurisdiction shall be the contractor's place of business. The same jurisdiction is applicable if the customer has no general jurisdiction in Germany, has moved his domicile or habitual residence out of the country, or if his domicile or habitual residence is unknown at the time a complaint is filed.