

General Terms & Conditions of Business of DRS-DellenReparaturService Hagelschaden GmbH

Terms & Conditions of DRS-DellenReparaturService Hagelschaden GmbH for carrying out work on vehicles

The following Terms & Conditions apply exclusively to all repairs commissioned by the customer ("Customer") from DRS-DellenReparaturService Hagelschaden GmbH ("Contractor").

I. Object of an order and placement of an order

The Contractor shall carry out work on vehicles and/or their parts for its Customer as per Clause 3. It shall be completed exclusively on the basis of the lever method, i.e. removal of dents without painting. The Customer is obliged to grant the Contractor and its sub-contractors the access rights to the vehicle so that the work can be performed. The place where the order is to be carried out will be determined on a case-by-case basis according to the agreement made between the parties.

The Contractor shall describe the anticipated work to be performed on an order form or in a written confirmation. Any completion date specified is only binding if it is designated as such. The Customer shall receive a copy of the order form.

The Contractor shall appoint a sub-contractor of its choice to carry out the work and shall complete or arrange completion of the test drives, shunting, transfers and other trips required to carry out the order. No contractual relationship shall come into being between the Contractor and sub-contractor.

II. Price information on the order form, Cost estimate

At the request of the Customer, the Contractor shall indicate on the order form the prices with VAT/sales tax for the services that are likely to be performed in completing the order. This price information may also be provided by reference in the individual items to the price and labor cost lists published by the Contractor.

If the Customer requires a binding indication of price, a written estimate of costs must be provided by the Contractor. The work must be itemized in detail in this and the price and VAT/sales tax must be specified. The Contractor is bound to this cost estimate until the end of the 10th day after having been submitted to the Customer, unless otherwise specified in the cost estimate. The services required to submit the cost estimate may be charged to the Customer, if agreed upon in individual cases.

If, on the basis of the binding estimate of costs, an order is placed on a timely basis as stated in Clause 2, the total price quoted for the order may only be exceeded with the consent of the Customer. If the scope of the work changes or is extended in comparison to the scope on which the cost estimate is based, the Contractor and Customer shall come to an agreement about the effects of this on the cost estimate that has been binding up to that point. Any services provided by the Contractor prior to the cost estimate being submitted shall be charged for on the order invoice. Any services already provided that can be used in completing the repair on the basis of the cost estimate shall not be charged for again.

III. Completion date

The Contractor is obliged to comply with a binding completion date agreed to in writing. If the scope of the work changes or is extended compared to the scope on which the order form or confirmation document is based and a delay occurs as a result, the parties shall agree to a new completion date. If the Contractor is unable to comply with a binding completion date for other reasons, he shall notify the Customer immediately and inform him of the new completion date. Other rights of the Customer because of culpable failure to comply with the completion date in accordance with the provisions under IX. remain unaffected.

If the Contractor is unable to comply with the binding completion date through no fault of his own as a result of an act of God (force majeure) or disruption to operations, e.g. a strike, lockout, absence of technical staff or supplier delays, he is not obliged to pay compensation for delays caused by any of these. However, the Contractor shall notify the Customer immediately of the delay and, upon request, release the object of the order before completion in return for payment of the services provided up to that point. Other rights of the customer remain unaffected.

IV. Acceptance, collection period

Acceptance of the object of the order by the Customer is completed when the Customer takes possession of the vehicle, unless otherwise agreed.

The Customer is obliged to collect the object of the order within a week of receipt of notification of completion. In the case of repairs that are completed within one working day, this period is reduced to three working days. If the Customer does not meet this obligation or does not do so promptly and if this is not the result of circumstances for which the Contractor is responsible, the Contractor may charge the standard local storage fee or store the object of the order elsewhere. Storage is at the cost and risk of the Customer.

V. Invoicing for the order

The invoice shall indicate separate prices or price factors for each completed item of work and for the materials used, subject to the provision in Clause 2.

If the order is carried out on the basis of a cost estimate, reference to the cost estimate is sufficient; only any additional work must be listed separately.

The Customer is responsible for paying the VAT/sales tax.

Any complaint about the invoice must be made by the Customer in writing and, at the latest, six weeks from receipt of the invoice.

If the parties agree to the pickup or delivery of the vehicle by the Contractor, this is at the cost and risk of the Customer.

VI. Terms of payment

Payments are due upon acceptance, at the latest however within eight days of handover/sending of the invoice, without discount or any other reductions. The Contractor is entitled to request an appropriate deposit upon placing the order.

Offsetting is only permitted against uncontested or legally established counterclaims. The Contractor may only exercise a right of retention insofar as it is based on claims from the same repair order.

The Contractor shall charge default interest of 5% p.a. above the base interest rate set by the European Central Bank, if the Customer is a consumer as defined by Section 13 of the German Civil Code. Otherwise, the default interest shall be 8% p.a. above the base interest rate. The default interest shall be set at a higher rate if the Contractor can prove that he is being charged a higher interest rate.

VII. Extended lien

The Contractor is entitled to a contractual lien to the items that come into his possession as a result of the order in respect of its claim. The contractual lien may also be exercised for claims from work carried out previously or other deliveries, insofar as they relate to the object of the order.

The contractual lien only applies to other claims arising from the business relationship if those claims are uncontested or a legal title exists and the object of the order belongs to the Customer.

VIII. Warranty for defects

The Contractor shall provide a warranty for defects in the work, subject to the prerequisites described in Clause 3, initially in the form of rectification of defects or provision of a new product at its discretion ("supplementary performance"). The Contractor may refuse supplementary performance if it is only possible at disproportionate costs. The costs are deemed to be disproportionate if they exceed the order value. If supplementary performance is unsuccessful, the Customer may rectify the defect himself upon expiry of a notice period for supplementary performance determined by him and request reimbursement for the expenses incurred, unless the Contractor has legitimately refused supplementary performance.

If supplementary performance is unsuccessful, the Customer may at his discretion reduce the purchase price or withdraw from the contract, irrespective of any compensation claims in accordance with the provisions in IX. If the defects are insignificant, however, the right of withdrawal is excluded. The Customer shall notify the Contractor of any obvious defects upon acceptance. For all other defects, the expiry period specified in Clause 5 applies as the notification period, with appropriate application of sections 203 ff. of the German Civil Code. The Contractor must be notified in writing of such defects. Sending notification of the defect on a timely basis is deemed sufficient to comply with the period. On expiry of these periods, warranty claims by the Customer are excluded, except in cases as described in IX. Clause 2.

Claims by the Customer for costs required for supplementary performance, in particular transport, labor and material costs, shall be borne by the Contractor. This does not apply to increased costs because the object is subsequently taken to a different location by the Customer.

The expiry period for claims for material defects is five years from the time of acceptance. This does not apply to the cases described in IX. Clause 2.

IX. Liability

The Contractor accepts liability without restriction for damage resulting from intentional or grossly negligent breach of obligation by itself or its vicarious agents. In the case of a breach of obligation as a result of minor negligence, the Contractor only accepts liability in the case of a breach of a material contractual obligation (cardinal obligation), limited to the foreseeable average damage typical for this sort of contract. Material contractual obligations are all those obligations the fulfilment of which facilitates the proper execution of the contract in the first place and on compliance with which the contacting partner may normally rely.

The preceding limitation of liability does not apply to claims by the Customer because of fraudulent concealment of a defect, under any guarantee of quality provided, under the German Product Liability Act, or resulting from loss of life, physical injury or damage to health caused by the Contractor, its legal representatives or vicarious agents.

X. Retention of title

Insofar as installed or attached accessories and spare parts have not become material components of the object of the order, the Contractor retains title to them until full payment has been made.

XI. General

For all current and future claims arising from the business relationship with merchants and legal entities under public law, including bills and checks receivable, the place of jurisdiction is Hamburg. The same place of jurisdiction applies if the Customer has no general place of jurisdiction in Germany, his domicile or regular place of residence moves abroad after conclusion of the contract or his domicile or regular place of residence is unknown at the time when legal action is taken, insofar as this is legally permissible.

The law of the Federal Republic of Germany, excluding international private law, applies to these Terms & Conditions of Business and all of the legal relationships between the Customer and the Contractor. The provisions of the UN Convention on the International Sale of Goods do not apply. Changes and/or additions to these Terms & Conditions of Business or of provisions in the context of other agreements between the parties must be made in writing; this also applies to a change to the requirement of the written form. Should a provision of these Terms & Conditions of Business or a provision in the context of other agreements between the parties be or become invalid, the validity of all other provisions or agreements remain unaffected by this.

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