



KÄSSBOHRER FAHRZEUGWERKE GMBH General Terms and Conditions for Repair Works

Version: October 2021

Article 1 Definitions

- 1.1 *Agreement:* All agreements regarding repair works and/or sale and delivery of spare parts concluded between the Company and the Customer, including these General Terms and Conditions,
- 1.2 *Article:* An article of these General Terms and Conditions.
- 1.3 *Customer:* Any natural or juridical person the Company has concluded or intends to conclude an Agreement with regarding the procurement or purchase by that person of products or services of the Company.
- 1.4 *Company:* Kässbohrer Fahrzeugwerke GmbH.
- 1.5 *General Terms and Conditions:* These general terms and conditions for repair works and/or sale and delivery of spare parts.
- 1.6 *Party/Parties:* The Company and the Customer individually or jointly.
- 1.7 *Products:* All economic goods delivered by the Company to the Customer based on an Agreement.
- 1.8 *Services:* Work performed by the Company for the Customer based on an Agreement.
- 1.9 *Working day:* A calendar day in North Rhine-Westphalia, excluding weekends and holidays, on which agreed services are performed and/or agreed products are delivered.

Article 2 Scope of application

- 2.1 These General Terms and Conditions apply to all business relations between the Company and the Customer regarding repair works of vehicles and the sale and delivery of spare parts.
- 2.2 These General Terms and Conditions apply exclusively. Differing, contradicting or complementary general terms and conditions of the Customer shall only become part of an Agreement if and to the extent the Company has explicitly agreed to. This condition of approval always applies, for example also in cases where the Company, while being aware of the general terms and conditions of the Customer, performs an agreed service without reservations. Deviations and/or amendments and/or additions to these General Terms and Conditions shall only be valid if and to the extent explicitly confirmed in writing by a duly authorised representative of the Company, and they shall only apply to the specific agreement for which they have been made.

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- 2.3 Specific agreements concluded with the Customer in individual cases shall in any case take precedence over these General Terms and Conditions. The content of any such agreement shall be stated in a written Agreement or be approved in writing by the Company, subject to evidence to the contrary.
- 2.4 If, for whichever reasons, one or several provisions of these General Terms and Conditions turn out to be invalid or are declared invalid, the remaining provisions of these General Terms and Conditions shall remain valid and effective to the full extent, and the Company and the Customer shall commence negotiations in order to agree new provisions which shall replace the invalid provision/s. In doing so they shall consider the purpose and scope of the invalid provision/s to the extent possible.

Article 3

Offer and handover of the vehicle to the Company

- 3.1 All offers and quotations made by the Company for repair works shall be established on the basis of the information provided by the Customer, and shall be non-binding; their term of validity shall be one (1) week. The Agreement between the Company and the Customer shall only then be deemed concluded when the Company confirms the Customer order in writing or when the Company has begun to fulfil the Agreement.
- 3.2 The person delivering the vehicle for repair works at the facility of the Company shall be deemed authorised to confirm the order form and to sign it on behalf of the Customer.
- 3.3 Amendments to the signed order form require written form.
- 3.4 Unless explicitly agreed otherwise, the prices do not include delivery of the vehicle to the Company or from the Company to the Customer. Such delivery shall only be carried out if explicitly agreed with the Customer, with the Customer being obliged to pay the additional costs.
- 3.5 Upon delivery to the Company, the vehicle shall be free of any loads, hazardous substances, oil or fuel residues, cement or similar materials. The vehicle shall be fully ready for the repair work (including welding) to be carried out by the Company.
- 3.6 If the provisions in Article 3.5 are not complied with, or not to the extent necessary, and if this causes additional efforts and costs, they shall be invoiced to the Customer as per the price list valid at the moment such additional efforts and costs become necessary. If the price list does not contain any agreement on such additional efforts and costs, the regular remuneration as per section 632 paragraph 2, 2nd alternative BGB (German Civil Code) shall apply. If the repair order for the vehicle cannot be executed due to non-compliance, the Company shall not commence the repair work but store the vehicle at the expense and risk of the Customer. The Company shall inform the Customer about this situation immediately in writing.
- 3.7 The Customer shall ensure that no valuables remain in/on the vehicle when it is delivered to the Company. The Company shall not assume any liability for goods or objects contained in or loaded onto the vehicle, unless the Company has explicitly taken charge of them.
- 3.8 Prior to signing the order form, the Customer may request a detailed



statement of the works' costs and may want to know the schedule for the works. The prices and deadline stated in the order form are estimates and do not constitute a binding agreement. However, the Company shall inform the Customer about likely cost overruns of more than 20%, in as far as the Company can foresee it. In this case, the Customer can terminate the Agreement; the Customer shall however bear the costs for work already performed by the Company. If the Customer agrees to the increased costs, this shall be done in writing, with a written notice being sufficient for this purpose. The Company shall immediately inform the Customer when it becomes obvious that the deadline for the performance of the agreed service as stated in the order form cannot be kept. At the same time the Company shall communicate a new deadline to the Customer. If this new deadline is not acceptable to the Customer, the Customer can terminate the Agreement acc. to section 648 BGB; the Customer shall however bear at least the costs for work already performed by the Company.

- 3.9 Unless not explicitly agreed otherwise, the Company has the right to assign the execution of the entire service agreed with the Customer or parts of it to third Parties.

Article 4 Damage appraisal

If the Company carries out a damage appraisal which requires a vehicle inspection by its expert personnel of more than fifteen (15) minutes, the Company shall bill the inspection to the Customer as per the required effort, with the agreed minimum fee being € 150.- (one-hundred fifty Euros) plus VAT.

Article 5 Mode of payment

- 5.1 Unless otherwise agreed, all prices are in Euros (EUR) plus VAT as legally stipulated. Payment of repair orders shall be made by money transfer to the Company's bank account. Depending on the specific agreement, such payments shall become due (i) upon invoice issue and delivery of the contractual subject matter or (ii) immediately after the work has been performed and the invoice been received.
- 5.2 The invoices of purchases or orders fall due at the agreed date. If no date has been agreed, payment shall be due by the date stated in the invoice. If no payment date has been agreed or stated in the invoice, the invoice shall be paid within eight (8) days of receipt.
- 5.3 For as long as vehicles remain with the Company as stipulated in this article, the storage costs as per Article 7.2 hereof shall be payable to the Company, without prejudice to other rights the Company has under the respective Agreement or laws regarding the right of lien.
- 5.4 If the Customer defaults on its payments, the Customer shall pay the legally stipulated default interest rate. The Company expressly reserves the right to claim further damages caused by delay, such as storage and other costs caused by it. The Company may also exercise its right of retention and its right to withhold performance acc. to sections 273 and



321 BGB, provided the conditions are met, and may accordingly refuse further performance of services.

- 5.5 Any payment shall at first be used to pay outstanding interest and/or costs; once they have been fully paid, the remainder shall be considered payment for the oldest outstanding invoice, independently of whether or not the payment was intended for that, and even if it was explicitly meant for another purpose.
- 5.6 The Company may use payments for set-off purposes. The Customer may use the right of set-off or retention only if its claim is legally established and undisputed.

Article 6

Old parts

All (old) parts and/or materials which have been removed or exchanged shall become the property of the Company, unless the Parties have explicitly agreed otherwise; in that case, the Customer shall take back such parts and/or materials when taking delivery of the vehicle.

Article 7

Taking delivery of the vehicle

- 7.1. Unless otherwise agreed in writing, the completion deadline stated in the order form is not binding. Therefore, missing a deadline does not in itself constitute a delay on the part of the Company.
- 7.2. The Company shall inform the Customer when a vehicle is ready for delivery. From that moment on the vehicle shall be held ready at the expense and risk of the Customer. If delivery of the vehicle is not taken within 14 (fourteen) days, the Company has the right, as of the 15th day, to charge a storage fee of € 25.- (twenty-five Euros) per day.
- 7.3. The provisions of Article 3.2 of these General Terms and Conditions shall also apply to the person taking delivery of the vehicle.
- 7.4. The Customer is obliged to carry out an acceptance of repairs procedure by inspecting the vehicle immediately upon delivery for obvious material defects, and within seven (7) working days of delivery for hidden material defects. If material defects are detected, the Customer shall inform the Company in writing within seven (7) working days of delivery and attach a sufficiently detailed description of the defects to this communication. If no such communication is received within this timeframe, the repair shall be deemed accepted. Acceptance does not prejudice the Customer's rights regarding product defects as stipulated in Article 10 of these General Terms and Conditions.

Article 8

Retention of title

- 8.1. After completion of the vehicle repairs, the Company shall retain the title to all products, including parts it has supplied and/or fitted, until the Customer has paid any outstanding invoice/s to the Company.



- 8.2. The Customer recognises this retention of title and shall manage all products concerned with due care, and shall neither sell nor pledge them nor transfer them as security.

Article 9

Force majeure

- 9.1 If one Party, due to temporary or permanent circumstances, which are neither caused by it nor part of its area of influence, cannot fulfil its contractual obligations, either temporarily or permanently, or when, under such circumstance, fulfilment of its contractual obligations would be economically unreasonable, such circumstances shall be deemed an event of force majeure. However, this does not apply to payment obligations. The following events in particular shall be considered events of force majeure, without, however, being limited to them: epidemics, pandemics, quarantine, regional medical crises, earthquakes, flooding, tempests, fire, administrative actions which limit the ability of the affected Party to fulfil its contractual obligations, riots, insurrections, rebellions, civil disobedience, armed conflicts, acts of terror, war, or the threat of such events, if it is reasonable to assume that such a threat will cause harm to people and property.
- 9.2 The Party affected by events of force majeure shall immediately inform the other Party about it, stating the type of force majeure and, if possible, its duration.
- 9.3 In the event of force majeure, the affected Party shall be exempt from its duty to perform for the duration of the event. Also, for the duration of an event of force majeure, the right to a quid pro quo shall be suspended. If an event of force majeure continues, and if, in the light of this duration of the event, it is unreasonable to expect the other Party to continue to adhere to the contract, both Parties shall have the right to terminate the contract. However, the obligation of the Customer to pay for services rendered prior to Agreement termination remains unaffected.

Article 10

Liability

- 10.1 The Company's indemnity liability shall be fault-based liability due to intent or culpable negligence, and irrespective of the legal reason. In the case of simple negligence, and with legal limitations of liability reserved (e.g. *diligentia quam in suis* - care in its own matters; minor dereliction of duty) the Company shall only be liable
- (i) for damages as a result of injury to life, body or health, and/or
 - (ii) for damages as a result of the violation of a material contractual obligation (an obligation whose fulfilment is essential for the orderly implementation of the contract, and in whose compliance the Agreement partner regularly trusts or has reason to trust). In this case, the Company's liability shall be limited to the compensation of the predictable, typically occurring damage.
- 10.2 The limitations of liability emanating from Article 10.1 shall also be



applicable to third Parties and to the dereliction of duty by persons (also in their favour) whose culpability the Company has to assume as per the applicable legal regulations. They do not apply if a defect has been maliciously concealed, nor with regard to Customer claims under the Product Liability Act.

Article 11 **Period of limitation**

11.1 *Services under an Agreement for work*

- (i) Departing from section 634, paragraph 1.2 BGB, the general period of limitation for defect-related claims is one (1) year as of acceptance. In cases where shorter periods of limitations apply to fitted parts, those shorter periods shall apply.
- (ii) The periods of limitation in Article 11.1 (i) shall also apply to contractual and extra-contractual compensation claims of the Customer, which are based on a defective service, unless application of the regular legal period of limitation (sections 195 and 199 BGB) would in individual cases result in a shorter period. Compensation claims of the Customer acc. to Article 10.1, sentence 1 and sentence 2 (i), and the Product Liability Act, or based on malicious concealment of a defect by the Company, shall only be limited by the legal periods of limitation.

11.2 *Sales contract-based services*

- (i) Departing from section 438, paragraph 1.3 BGB, the general period of limitation for defect-related claims is one (1) year as of acceptance. In cases where shorter periods of limitations apply to fitted parts, those shorter periods shall apply.
- (ii) The periods of limitation in Article 11.2 (i) shall also apply to contractual and extra-contractual compensation claims of the Customer, which are based on a defective service, unless application of the regular legal period of limitation (sections 195 and 199 BGB) would in individual cases result in a shorter period. Compensation claims of the Customer acc. to Article 10.1, sentence 1 and sentence 2 (i), and the Product Liability Act, or based on malicious concealment of a defect by the Company, shall only be limited by the legal periods of limitation.

Article 12 **Agreement termination**

12.1 If the Customer uses its right to termination with notice acc. to section 648 BGB, the Company may demand a lump sum remuneration in the amount of 15% of the agreed remuneration if execution of the work has not yet commenced. After commencement of the work 80% of the agreed remuneration shall be payable.

12.2 Termination without notice shall be governed by section 648 a BGB.



Article 13

Personal data

- 13.1 The Parties shall treat personal data in the meaning of the European General Data Protection Regulation (EU “GDPR” 2016/679), which they receive from the other Party or from third Parties, with strict compliance of the GDPR and other data protection legislation. Personal data shall only be processed to the extent necessary for the fulfilment of contractual obligation or of legal requirements.
- 13.2 No Party shall pass on personal data to third persons, unless this is necessary for the fulfilment of the Agreement or otherwise legally permitted.
- 13.3 The Company shall take appropriate measures to ensure that personal data is processed in accordance with the applicable data protection legislation. Personal data shall not be stored for longer than necessary for the purpose for which it has been collected, or as legally prescribed or permitted.

Article 14

Applicable law and disputes

- 14.1 The laws of the Federal Republic of Germany shall apply to these General Terms and Conditions and the contractual relationship between the Company and the Customer; the UN Convention on Contracts for the International Sale of Goods shall be excluded.
- 14.2 The Customer is obliged, for the duration of validity of a respective contract, to comply with all laws, regulations and rules applying to the Customer, including all laws regarding corruption and bribery. The Customer further undertakes not to commit any illegal acts in the name of the Company, neither directly or indirectly in connection with these General Terms and Conditions, nor with respect to the Company, nor in connection with the performance of services under these General Terms and Conditions, nor otherwise. In this context “illegal acts” shall mean to promise, offer or grant a person an unjustified benefit, or to demand or accept unjustified benefits or advantages, in order to unduly influence actions.
- 14.3 These General Terms and Conditions are available in different languages. Translations only serve the purpose of convenience. In case of disputes regarding their meaning or interpretation, only the German version of these General Terms and Conditions shall be valid.
- 14.4 If the Customer is a merchant in the meaning of the HGB (German Commercial Code), a legal entity or special fund under public law, the exclusive legal venue, including international legal venue, for all disputes arising directly or indirectly from the contractual relationship shall be the head office of the Company in Kleve.