

General Terms and Conditions

of Accella Tyrefill Systems GmbH

Part A. General provisions

I. General provisions

Our General Terms and Conditions shall be applicable exclusively. Previous General Terms and Conditions which have already been published shall no longer be valid. Divergent (and supplementary) terms and conditions of our suppliers and customers will not be accepted and shall not be valid even if we do not explicitly reject them. Delivery and/or performance by us without reservation shall not represent an acknowledgement of these general terms and conditions which diverge from or supplement our own.

II. Delivery

1. The goods will be delivered at the point of sale. If a dispatch of the goods is agreed in an individual case (at the customer's request) then the risk shall be transferred to the customer once we have handed the goods over to the party appointed to execute the dispatch. The customer shall be responsible for the dispatch costs.

2. A fixed delivery deadline shall only be deemed to have been agreed with binding effect if agreed in writing in the order confirmation. The delivery deadline shall be deemed to have been met if the goods are handed over to the appointed carrier on the last day of the applicable period. Claims for compensation for delayed delivery or suspended delivery shall be excluded unless these are based on wilful intent or gross negligence. This does not affect the customer's statutory right of withdrawal. Adherence to the agreed periods for deliveries/performance is conditional upon the prompt receipt of all documentation to be provided by the customer and the necessary approvals and releases, in particular related to plans as well as compliance with the agreed payment terms (e.g. advance payments) and other obligations by the customer. If these conditions are not met on time, then the agreed periods for delivery and performance shall be extended appropriately; this shall not apply if we are responsible for the delay. If the failure to comply with agreed periods is attributable to force majeure, e.g. mobilisation, war, civil disturbance or similar events, such as strike, lockout, etc. then the agreed periods shall be extended appropriately. The same shall apply to cases in which we have not received supplies ourselves on time or in the proper form (agreed delivery deadlines are thereby subject to correct and timely delivery from our own suppliers).

3. Any essential deterioration in the customer's financial position, filing for insolvency proceedings, provision of or application for an affirmation in lieu of an oath, occurrence of payment difficulties or a change in company owner linked to payment difficulties shall release us from the obligation to fulfil ongoing delivery orders and shall entitle us to suspend deliveries with immediate effect, unless the customer payment is concurrent with the delivery.

III. Prices

1. Prices will be calculated in accordance with the total prices (list price and VAT) and terms applicable on the order date.

2. By way of derogation from this the following provisions shall apply to transactions with business customers:

Prices will be calculated in accordance with the total prices (list price and VAT) and terms applicable on the date of dispatch or collection. We reserve the right to amend our prices. If the time of delivery is less than four months from the order and there is a price increase in this period then our customer shall be entitled to cancel their order. The cancellation must be communicated to us in writing without delay following notification of the price increase and before delivery.

3. There shall be no right to implement a price increase if there is evidence that we are solely responsible for delivery delays. The customer shall be responsible for all taxes, customs duties, levies, etc. charged outside of Germany.

IV. Payment

1. Discounts will only be granted within the payment periods expressly stated on our invoices and for the amounts agreed and stated there, and only upon condition that all payment obligations from prior deliveries have been fulfilled in their entirety and the invoice amount has been paid on time by the due date stated. In all other respects invoices shall be due for payment immediately following receipt or by the relevant date stated with no discounts deducted.

2. Any objections of the customer to the invoice or the invoice amount must be communicated to us in writing within a period of 30 days following the invoice date (receipt of the complaint). Objections to invoices shall be excluded following unconditional payment or expiry of the deadline with no written communication.

3. Reminder costs may be applied at EUR 5.00 per reminder. If the customer also does not pay the relevant amount following the reminder than we reserve the right to have the claims collected at the customer's expense. The costs incurred through this must be reimbursed by our customer.

4. Offsetting is not permitted unless the claim to offset is undisputed or has been determined by force of law. The customer shall only be entitled to a right of retention provided that this is based on the same contractual relationship.

V. Retention of title

1. We reserve the title to the goods delivered by us until we receive payment in full. This retention of title shall also apply to transactions with business customers until all future and contingent claims from the business relationship with us are fulfilled.

2. Our customer must adequately insure the goods subject to retention of title, particularly against fire and theft. Our customer hereby assigns to us any claims against the insurance company from a damage event affecting the goods subject to retention of title to the value of the goods subject to retention of title. Our customer must inform the insurance company of the assignment of the claim and of the existing retention of title. We shall be entitled to notify the insurance company of this.

3. The following additional provisions shall apply to transactions with business customers:

Our customer shall be entitled to resell the goods subject to retention of title in the normal course of business, but not to assign or pledge them as collateral. The customer hereby assigns to us the claims arising from the sale of the goods subject to retention of title against its business partner, including the finished processed part in the event that the goods have been processed further.

We will not disclose the assignment unless our customer is in default with a due payment by at least two weeks or has revoked a collection authorisation granted to us. In these cases the customer undertakes to notify its business partners automatically of the assignment granted to us and to submit to us its complete list of debtors without delay. We shall be entitled to inspect our customer's accounts in this case for the purposes of determining the names and addresses of our customer's business partners.

4. In the event that the value of the collateral in place for us exceeds our claims from our invoices by more than 10% on a long-term basis, then we shall at the customer's request release collateral at our discretion.

5. Our customer shall only be entitled to possession of the goods sold subject to retention of title until we demand that the goods be returned on account of the retention of title after withdrawing from the contract. In this case we shall be entitled to take possession of the goods delivered once again. Our customer expressly grants us the right to take possession of our goods subject to retention of title at any location. Our customer grants us the right to enter its property and its business premises for the purposes of locating and taking possession of the goods subject to retention of title. The relevant party in possession of the goods shall be irrevocably authorised by our customer to return the goods to us.

6. Any processing or treatment of the goods subject to the retention of title shall be completed by the customer on our behalf without any obligations arising for us from this. In the event that the goods subject to the retention of title are processed, combined, mixed or amalgamated with other goods which do not belong to us, we shall be entitled to co-ownership of the new item at the ratio of the value of the goods subject to the retention of title to the other processed goods at the time of processing, combination, mixture or amalgamation. If the customer acquires sole title to the new item, then the contractual partners agree that the customer grants us co-ownership in the new item at the ratio of the value of the goods subject to the retention of title that have been processed or combined, mixed or amalgamated, and will hold this in safe keeping for us free of charge. Any processing, combining, mixing or amalgamation of the goods subject to retention of title with items belonging to third parties shall only be permitted if the customer ensures beforehand that the extended retention of title also remains enforceable in relation to third parties.

7. The customer must notify us without delay of any seizure or other impairment of our goods subject to retention of title or collateral rights by third parties and must also confirm these rights to third parties as well as to us in writing. The purchaser is prohibited from pledging, assigning or transferring these rights as collateral.

8. We shall issue a credit for the amount of the current value of the goods subject to retention of title that are taken back.

VI. Rights of the customer on account of material defects

1. The purchaser must observe our recommendations related to storage, processing, use/usage restrictions of the goods.

2. If the goods delivered are subject to material defects, our customer may assert claims for defects against us within the framework of the following conditions. The claim assertion period shall be one year for used goods and two years for all other goods.

By way of derogation from this the following period shall apply to transactions with business customers: The period shall be one year for all goods.

The periods shall be calculated in each case from delivery of the goods in accordance with the regulations under section II. "Delivery", no. 1 to our customer.

3. Goods for which a claim is made for liability for material defects should be handed or sent to us in order to allow us to verify the customer complaint. The duration of the verification process shall be four weeks.

4. In the event that the claim for a material defect is rejected we will return the goods subject to the complaint to the customer at the latter's expense if the customer requests this within 14 days following receipt of the rejection.

5. Obvious defects must be communicated to us within one year from delivery.

By way of derogation from this the following periods shall apply to transactions with business customers: Defects must be communicated to us in writing without delay, and no later than within 8 days following delivery (receipt by the customer). Defects which are not capable of being detected within this period, including following a careful examination, must be communicated to us once they are detected, and no later than within one year following delivery of the goods.

6. Claims against us based on a material defect shall be excluded in the event that these periods for notification of defects are not complied with. The customer may at their discretion request rectification of the defect or the delivery of a flawless item. The customer expressly retains the right to demand a reduction in the purchase price (price reduction) or to rescind the contract (withdrawal) at their discretion in the event that the subsequent performance fails (i.e. rectification of the defect or the replacement delivery), if the subsequent performance is unreasonable or if the subsequent performance is refused.

By way of derogation from this the following provisions shall apply to transactions with business customers:

The business customer's claim shall be limited to subsequent performance (rectification of the defect or delivery of a flawless item). We shall be entitled to choose either to rectify the defect or to deliver a flawless item. In the event that two attempts at subsequent performance should fail then the customer shall be entitled to request a reduction in the price paid (price reduction) or to rescind the contract (withdrawal).

7. We shall only be liable for compensation for material defects under the conditions of Part A, section VII (Liability). The provisions of Part A, section VI do not limit or exclude claims for compensation in accordance with Part A, section VII (Liability).

8. Claims against us shall be excluded if defects, impairments or damage are caused by the fact that a) the goods delivered by us have been repaired or otherwise processed by other parties; b) the factory serial number, production symbol or other symbol attached permanently to the goods is no longer present or has been modified, and in particular has been obliterated; c) tyres have been exposed to stress which is contrary to the regulations, in particular by exceeding the load and assigned speed permissible for the tyre size and type of tyre; d) tyres have been damaged through misalignment or are otherwise subject to impaired performance as a result of other faults in the wheel arch following assembly; e) tyres are assembled on a wheel rim which does not match, is not true to gauge, is rusted or is otherwise defective; f) there is natural wear and tear or damage to the goods which are attributable to improper handling or an accident.

9. The following shall apply in addition to transactions with business customers: In the event that newly manufactured goods are resold by a business customer to a consumer, the aforementioned regulations shall not apply if on account of defects the business customer has been forced to take the goods back or the consumer has reduced the purchase price. The statutory provisions in sections 478, 479 of the German Civil Code (BGB) shall apply. In this case also we shall only be liable for compensation in accordance with Part A, section VII (Liability).

VII. Liability

1. We shall only be liable for compensation if we, our legal representatives or our vicarious agents are guilty of wilful intent or gross negligence. We shall also be liable if features have been guaranteed or we are responsible for the breach of essential contractual obligations. Liability in the aforementioned cases under sentence 2 shall be limited to typical damage which is foreseeable upon entering into the contract. Claims against us for compensation shall be excluded in all other respects.

2. Limitations on or exclusions of liability in our General Terms and Conditions shall not apply to liability for damage or loss as a result of injury to life, limb or health or to liability for other damage or loss which is based on a grossly negligent or intentional breach of duty by us, our legal representatives or our vicarious agents, or if and to the extent that claims are asserted against us under the provisions of the German Product Liability Act.

VIII. Data protection

1. In accordance with section 33 of the German Federal Data Protection Act (BDSG) we make express reference to the fact that personal data for the formation of a contract is only collected and saved electronically to the extent that is required in order to enter into the contractual relationship or to amend and implement this as necessary.
2. The customer is entitled to information regarding the scope and purpose of the data processed and additional recipients of the data at any time. Furthermore the customer is also entitled to have their data rectified, disabled or deleted following associated implementation of the contract as intended.

IX. Agreements made by telephone or orally

Agreements made by telephone or orally should be confirmed in writing without delay.

X. Applicable law, place of jurisdiction, severability clause

1. The law of the Federal Republic of Germany shall be applicable exclusively, to the exclusion of the United Nations Convention of the International Sale of Goods and the conflict of law rules under international private law, in particular the Rome I Regulation. In the case of transactions with business customers such as a trader, legal entity under the public law or special fund under public law, the place of fulfilment and exclusive place of jurisdiction shall be our company's registered head office.
2. In the event that individual provisions are or become ineffective, this shall not affect the effective nature of the remaining provisions in these General Terms and Conditions.

Part B. Special regulations for repairs / maintenance services / training

The following terms and conditions apply in addition to the regulations set out under Part A to other services such as repairs / maintenance services / training, except for repairs to tyres and wheels.

I. Cost estimate

We will produce a cost estimate following a request from the customer which will include the projected costs including VAT. Differences of up to 10% from this cost estimate shall be permissible provided that this is reasonable for the customer. The fee agreed and collected for the cost estimate will be offset against the order total upon order execution.

II. Completion deadlines

In the event that we do not meet completion deadlines that have been pledged in writing, we shall be liable to our customer for compensation for loss or damage demonstrably caused by this and based on the delay. Claims for compensation shall be excluded if we provide evidence that the failure to meet the deadline is based on force majeure.

III. Extended lien

1. In addition to the statutory contractor's lien we shall also be entitled to a contractual lien on the items in our possession on account of the order based on our claim arising from the order.
2. The contractual lien may also be asserted on account of claims from earlier work carried out and all other services associated with the subject matter of the order. The contractual lien shall only apply to other claims from the business relationship if these are undisputed or are determined by force of law.

IV. Acceptance

1. Our customer shall be under an obligation to accept the subject matter of the order once we inform them that it is completed.
2. In the event that the customer is in default of acceptance we shall only be liable in the event of wilful intent or gross negligence. The customer shall also be liable for the costs incurred for storage in the event of default of acceptance.

V. Rights of the customer in the event of material defects

The following applies by way of derogation from Part A, section VI:

1. The period for asserting claims for material defects shall be one year from delivery of the contract item to our customer.
2. In the event of a material defect our customer shall be entitled to subsequent performance (rectification of the defect or delivery of a flawless item). We shall be entitled to choose either to rectify the defect or to deliver a flawless item. In the event that the subsequent performance should fail or if the subsequent performance is unreasonable or is refused, the customer shall be entitled to request a reduction in the price paid (price reduction) or to rescind the contract (withdrawal).

The regulations under Part A, section VI shall apply in all other respects.

VI. Retention of title

The retention of title governed under Part A, section V relates exclusively to parts that are the subject matter of a contract for work and materials or a purchase agreement. We shall be entitled to the service contractor's lien in relation to items processed by us under a contract for services.

Part C. Special provisions for disposal services

For disposal services the following terms and conditions shall also apply and shall apply in addition to the regulations stated under Parts A and B.

We reserve the right to inspect the goods to be disposed of beforehand within a reasonable period. If the goods to be disposed of do not correspond with the regulations applicable to the disposal carried out by us then the customer shall be under an obligation to collect these once again at their own expense. This regulation shall not apply if we are obliged to dispose of goods based on a statutory regulation.

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