

General Terms and Conditions of Sale and Delivery of Viertel Motoren GmbH

1. General provisions

The following General Terms and Conditions shall apply exclusively to the legal relationship between Viertel Motoren and the Customer in connection with all deliveries and services provided by Viertel Motoren. These shall even apply if the customer excludes the validity of the same in his conditions of purchase and no express objection is made by Viertel Motoren. The Customer's general terms and conditions shall only apply insofar as Viertel Motoren has expressly agreed to them in writing. Viertel Motoren must confirm verbal agreements and any specific arrangements in writing in order to be binding.

2. Subject matter of the order and ancillary services

- a. The Subject matter of the order in the case of purchase contracts is the item to be delivered by us (delivery item), and in the case of contracts for work and services the item to be serviced / repaired / maintained (service item). The service item shall always be only that part of the item which is to be serviced / repaired / maintained in accordance with the order. The service item shall be at most the entire driving item (engine / gearbox / axle), not the item driven by it and its peripheral components.
- b. We shall only be obliged to provide special ancillary services, such as instruction on commissioning, operation or maintenance, if this has been expressly agreed.

3. Cost estimates, offers and conclusion of contract

- a. Cost estimates and quotations shall only be binding if they are made in writing and expressly specified as binding. Viertel Motoren shall be bound by this cost estimate/offer for a period of 30 days after submission. Should a higher work effort arise, the total amount of the binding cost estimate may be exceeded by up to 15% without further notice. The preliminary work and specific services required for the submission of a cost estimate (e.g. dismantling) shall be charged to the Customer even if the work specified in the cost estimate is not executed or is executed only in a modified form.
- b. A contract with Viertel Motoren is deemed as concluded as soon as the Customer has accepted our offer verbally, in writing, by fax or e-mail and the Customer has received a written order confirmation in response to his order or Viertel Motoren has commenced with the performance of the service. If Viertel Motoren accepts an offer to conclude a contract (e.g. an order from the customer), our order confirmation shall be decisive for the content and scope of the contract, unless expressly agreed otherwise.

4. Prices and payments

- a. Our prices are net prices ex works or subsidiary excluding transport and packaging costs.
- b. When quoting prices for exchange engines, exchange gearboxes and other exchange parts, it is assumed that the main parts of the exchanged item can be repaired, otherwise we are entitled to an appropriate subsequent charge.
- c. Invoicing shall be based on the recorded costs at the prices valid at the time of the delivery or service performed. Our invoices shall be due for payment upon receipt. Payment shall be made net immediately upon receipt of the final invoice without any cash discount or other deductions.
- d. Travel, accommodation and board expenses for the personnel as well as packaging, transport, customs and other costs including consular certificates and certificates of origin shall be borne by the customer.
- e. In the case of deliveries and services rendered in the Federal Republic of Germany, the Customer shall also pay the value added tax valid on the day of delivery or service.
- f. If payments are made later than agreed, the Customer shall automatically be in default without the need for a further reminder. Viertel Motoren can - without prejudice to other legal or contractual rights - demand flat-rate interest of 8% or 3% above the Euribor interest rate of the European Central Bank applicable on the due date. The underlying Euribor interest rate shall initially apply for an interest period of one month and shall be replaced for each subsequent monthly interest period by the Euribor interest rate applicable on the 1st day of the respective interest period.

5. Offsetting and right of retention

The Customer shall only be entitled to a right of retention with regard to claims arising from the same contractual relationship which are undisputed or have been finally determined by a court of law. In the latter case, in the event of defects in parts of the delivery or service, he may withhold payment only to the amount corresponding to the value of the defective delivery or service. Counterclaims by the customer on account of breaches of obligations by Viertel Motoren shall remain unaffected.

6. Retention of title

- a. All delivery items as well as all parts to be replaced or exchanged on or in the service item (together: goods subject to retention of title) shall remain the property of Viertel Motoren until all claims to which it is entitled against the Customer arising from the business relationship have been fulfilled. In so far as the value of all security claims to which Viertel Motoren is entitled exceeds the amount of all secured claims by more than 20%, Viertel Motoren shall, at the Customer's request, release a corresponding part of the security claims; in the release Viertel Motoren may choose between different security claims. During the existence of the retention of title, a pledge or transfer by way of security is prohibited to the Customer and resale is only permitted to resellers in the ordinary course of business transactions and only under the condition that the reseller receives payment from its customer or provides the reservation that ownership is only transferred to the Customer when the same has fulfilled its payment obligations.

- b. If the Customer resells goods subject to retention of title, it hereby assigns to Viertel Motoren by way of security its future claims against its customers arising from the resale, together with all ancillary rights - including any accounts receivable - without the need for any further specific declarations. If the goods subject to retention of title are resold together with other items without an individual price having been agreed for the reserved goods, the Customer shall assign to Viertel Motoren that part of the total price claim which corresponds to the price of the goods subject to retention of title invoiced by Viertel Motoren.
- c. I. The Customer is permitted to process the goods subject to retention of title or to mix or combine them with other items. The processing is carried out on behalf of Viertel Motoren. The Customer shall keep the resulting new item for Viertel Motoren with the care of a prudent businessman. The new item is deemed to be goods subject to retention of title.
- II. Viertel Motoren and the Customer already agree at this point that in the event of combination or mixing with other goods not belonging to Viertel Motoren, Viertel Motoren is in any case entitled to co-ownership of the new goods in relation to the invoiced value of the reserved goods resulting from the ratio of the value of the combined or mixed goods subject to retention of title in relation to the value of the other goods at the time of combination or mixing. To this extent, the new item shall be deemed to be goods subject to retention of title.
- III. The regulation on the assignment of claims according to No. 3 shall also apply to the new item. However, the assignment only applies up to the amount corresponding to the value of the processed, combined or mixed goods subject to retention of title invoiced by Viertel Motoren.
- IV. If the Customer combines the goods subject to retention of title with buildings, land or movable property, he also assigns to Viertel Motoren by way of security, without the need for any further specific declarations, his claim to which he is entitled as remuneration for such combination, together with all ancillary rights, to the amount of the ratio of the value of the combined goods subject to retention of title to the other combined goods at the time of combination.
- d. Until revocation, the Customer is authorised to collect assigned claims from the resale. If there is good cause, in particular in the event of default in payment, cessation of payments, opening of insolvency proceedings, protest of a bill of exchange or justified indications of over-indebtedness or imminent insolvency on the part of the Purchaser, Viertel Motoren is entitled to revoke the authorisation of the customer to collect the claims. Furthermore, Viertel Motoren may, after prior warning and adherence to a reasonable period of time, disclose the security assignment, realise the assigned claims as well as demand the disclosure of the security assignment by the Purchaser to its customers.
- e. In the event of pledges, seizures or other dispositions or interventions by third parties, the Customer must inform Viertel Motoren immediately. If a justified interest is substantiated, the Purchaser must immediately provide Viertel Motoren with the information necessary to assert its rights against the customer and hand over the necessary documents.
- f. In the event of breaches of duty by the Purchaser, in particular in the event of default in payment, Viertel Motoren is entitled, after expiry of a reasonable period set for the customer to perform to no avail, to withdraw from the contract in addition to taking back the goods; the statutory provisions concerning the dispensability of setting a period of grace remain unaffected. The purchaser shall be obliged to surrender the goods. The withdrawal or the assertion of the right of retention of title or the seizure of the goods subject to retention of title by Viertel Motoren does not constitute a withdrawal from the contract, unless Viertel Motoren has expressly declared this.

7. Completion and delivery periods; delay

- a. Completion and delivery periods are only binding if they have been expressly agreed as binding and expressly confirmed by us in writing.
- b. If non-compliance with the deadlines is due to
 - I. force majeure, e.g. military mobilisation, war, acts of terrorism, pandemics, riots or similar events (e.g. strike, lockout),
 - II. virus and other attacks by third parties on the IT system of Viertel Motoren, insofar as these have occurred despite compliance with the usual care for protective measures,
 - III. obstacles due to German, US or other applicable national, EU or international regulations of foreign trade law or due to other circumstances beyond the control of Viertel Motoren, or
 - IV. failure to supply Viertel Motoren in good time or in the correct manner, the deadlines will be extended accordingly.
- c. If Viertel Motoren is in default, the Customer is entitled to a compensation of 0.5% for each full week of the delay, however, not more than a total of 5% of the price for that part of the deliveries which could not be used as intended because of the delay – provided he he can credibly prove that he has suffered damage as a result of this.
- d. The Customer's claims for damages due to delayed delivery as well as claims for damages in lieu of performance exceeding the limits set out in No. c shall be excluded in all cases of delayed delivery, even after the expiry of any grace period set by Viertel Motoren for delivery. This does not apply in cases of liability for intent, gross negligence or injury to life, limb or health. The Customer may only withdraw from the contract within the framework of the statutory provisions insofar as Viertel Motoren is responsible for the delay in delivery. These provisions do not imply any change in the burden of proof to the detriment of the Purchaser.

8. Performance and Acceptance, Transfer

- a. The contract shall be deemed performed upon completion of the work agreed or required in the opinion of Viertel Motoren. The work shall be deemed accepted upon handover of the processed item or the test run report.
- b. Work services are to be accepted by the Customer as soon as Viertel Motoren has demonstrated conformity with the agreed performance specification. Insignificant deviations do not entitle the Customer to refuse acceptance. The obligation to remedy defects within the scope of liability for defects of title and quality shall remain unaffected thereby.
- c. The commissioning or productive use of the work or parts of the work shall be deemed to be acceptance.
- d. In the case of goods delivered, the risk shall pass to the Customer as soon as the consignment leaves our factory buildings. The transport risk shall be borne by the recipient.
- e. Unless otherwise stated in the contract or the order confirmation, our register office in Nuremberg shall be the place of performance.
- f. The Customer may not reject the acceptance of goods to be delivered due to insignificant defects.

9. Liability for defects

- a. The limitation period for liability for defects applies to work carried out, replaced material supplied by Viertel Motoren as well as to all delivery items in compliance with the care, maintenance, fuel and operating instructions recommended by the manufacturer as well as the use of diesel fuels in accordance with EN 590. No warranty claim can be made if alternative fuel, such as biodiesel, is used unless it has been approved by the engine manufacturer. The same shall apply to defects that arise in the event of power upgrades/modifications in the engine control and regulation system carried out by the Customer. The regulations on the following "General liability of Viertel Motoren" shall remain unaffected thereby.
- b. The subject matter of the order handed over is to be thoroughly inspected by the Customer without delay. We must be notified of obvious defects that have been recognised and that can be recognised on thorough inspection within a period of 2 weeks from the handover of the subject matter of the order. If such notification is not made, the assertion of warranty claims shall be excluded.
- c. The Customer shall bear the full burden of proof for all claim prerequisites under warranty law, for the defect itself, for the time of discovery of the defect and for the timely notification of the defect.
- d. Viertel Motoren is entitled twice to choose between the removal of the defect or the delivery of a defect-free item or the production of a new item. If the defect relates to a subject matter of the order which is not or has not been manufactured in series in large numbers of identical units, nor is it operated in Germany in large numbers of identical units, Viertel Motoren is entitled to remedy the defect several times.
- e. The warranty period shall not be interrupted or extended by subsequent repairs or replacement deliveries.
- f. Should it become apparent during the fault analysis that the services or deliveries carried out by Viertel Motoren are not the cause of the damage incurred, the Customer and Viertel Motoren agree that Viertel Motoren will charge the Customer for the costs incurred for the analysis in accordance with the usual rates. The willingness to carry out a fault analysis does not constitute an acknowledgement of a legal obligation.
- g. The Customer is obliged to make the deliveries or services available to Viertel Motoren so that the latter can examine them and, if necessary, secure evidence. In the event of the rectification of defects Viertel Motoren is obliged to bear all expenses incurred for rectifying the defects, in particular transport, travel, labour and material costs, insofar as these are not increased by the fact that the item has been taken to a place other than the place of performance.
- h. The Customer's claims for material defects and defects of title shall become statute-barred at the latest 12 months after delivery of the goods in question or acceptance of the service provided.

10. Limitations of liability

- a. Viertel Motoren is liable without limitation for all damage caused by Viertel Motoren in the case of intent or gross negligence on the part of owners, legal representatives or senior employees. This also applies to any culpable injury to life, limb or health and if mandatory under the Product Liability Act. Furthermore, Viertel Motoren is liable without limitation in the case of claims by the Customer in accordance with § 445 a of the German Civil Code (BGB) and for the culpable breach of essential contractual obligations (cardinal obligations). Essential contractual obligations are those whose fulfilment is essential to the proper performance of the contract and on whose compliance the Customer regularly relies and may rely. This expressly comprises the obligations to perform.
- b. Claims for damages for the slightly negligent breach of essential contractual obligations shall be limited to damage that is contract-typical and foreseeable.
- c. In all other cases, claims for damages and reimbursement of expenses on the part of the Customer shall be excluded, on whatever legal grounds, in particular for breach of obligations arising from the debt relationship and from unlawful acts. This shall also apply insofar as the Customer demands reimbursement of futile expenses instead of a claim for damages in lieu of performance.
- d. There is no change in the burden of proof to the detriment of the Customer associated with the above provisions.

11. Compliance with export control regulations

- a. When passing on goods and services provided by Viertel Motoren (including technical support of any kind) to third parties, the Customer must comply with the applicable provisions of national and international (re-)export control law. In any case, when passing on such goods, work and services to third parties, it must observe the (re-)export control regulations of the Federal Republic of Germany, the European Union and the United States of America.
- b. Before passing on the goods and services provided by Viertel Motoren to third parties, the Customer will in particular check and ensure by means of suitable measures that - it does not violate an embargo of the European Union, the United States of America and/or the United Nations - also taking into account any restrictions on domestic business and any prohibitions on circumvention - by such passing on to third parties, by procuring contracts for such goods, work and services or by providing other economic resources in connection with such goods, work and services; - such goods, works and services are not used for a prohibited or the regulations of all relevant sanctions lists of the European Union and the United States of America concerning business transactions with companies, persons or organisations named therein are complied with.
- c. Insofar as this is necessary in order to carry out export control checks by the authorities or by Viertel Motoren, the Customer will, after being requested to do so, immediately provide all information about the final recipient, the final destination and the intended use of the goods and services provided by Viertel Motoren, as well as any applicable export control restrictions.

- d. The Customer shall fully indemnify Viertel Motoren against all claims asserted against Viertel Motoren by authorities or other third parties because of the recipient's failure to comply with the above export control obligations and undertakes to compensate Viertel Motoren for all damages and expenses incurred in this connection.

12. Miscellaneous

Should individual provisions of the contract with the customer, including these terms and conditions, be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision whose economic effect comes as close as possible to the effect intended by the invalid provision.

13. Applicable law and Place of jurisdiction

- a. The law of the Federal Republic of Germany shall apply. In the case of purchase contracts, the application of the UN Convention on Contracts for the International Sale of Goods shall be excluded.
- b. The exclusive place of jurisdiction for all disputes arising from this contract, particularly in relation to businessmen, is Nuremberg. Nuremberg shall also be the place of jurisdiction if the Customer has neither a registered residence nor a seat of business in Germany.