

GENERAL TERMS AND CONDITIONS FOR THE DELIVERY OF USED TRUCKS from STILL GmbH (hereinafter referred to as "STILL"), date 01.10.2016

1. Scope of application

1.1. These general terms and conditions apply to all deliveries of used STILL trucks. They apply to all offers and all contracts concerning sales, delivery, service deliveries, labour and materials including consulting and any other contracted services provided by STILL. They apply exclusively. Customer purchase conditions, amendments or deviations from these terms of delivery or ancillary agreements are subject to explicit written confirmation by STILL in order to become effectively contracted.

1.2. In case of ongoing business relationships, these terms and conditions shall apply to all future used truck business with the customer in as far as no other terms and conditions have been explicitly agreed upon. Furthermore, these general terms and conditions for used trucks shall apply to all agreements, for example, for maintenance and repair, made on the basis of an already concluded contract.

2. Offer and conclusion of the contract

2.1. Standard offers

2.1.1. Offers and cost estimates made by STILL are non-binding.

2.1.2. The written order confirmation issued by STILL shall be binding for both parties with respect to the scope of the order.

2.1.3. In case a term of acceptance is given by STILL, a contract shall only be concluded within the given term. In case the offer is not accepted within the given term of acceptance by the customer or if the acceptance of the customer deviates from the offer, a contract shall only be concluded on the basis of a confirmation of the deviation in written. The term starts on the day of reception of the offer by the customer.

2.1.4. Subject to prior sale.

2.2. Online offers

2.2.1. Online offers made by STILL are also non-binding. The contract shall only be concluded on the basis of a written order confirmation by STILL.

2.2.2. In case of an order, the customer is obliged to provide truthful information. In as far as customer data changes, in particular name, address, e-mail address or phone number, the customer shall be obliged to inform STILL immediately about these changes by e-mail or ordinary mail. The customer bears the risk of a non-recoverable, erroneous transmission of an order confirmation or order.

2.2.3. Should the customer not inform STILL or provide erroneous data, STILL reserves the right to withdraw from the contract, in as far as a contract has been concluded. Withdrawal can be declared legally effective by sending an e-mail to the customer.

3. Deliveries and services

3.1. Any documentation included with the offer, such as images, drawings, weights and measurements, speeds, fuel consumptions and operation costs are approximate values as custom in the industry and do not represent a quality warranty. Any descriptions of the used trucks, promises or any other statements made before or during the closure of the contract do not state any kind of guarantee. STILL is entitled to improve or edit the respective documentation or information as well as the trucks as such, e.g. with respect to colour or texture of the paint coat at any time, as long as these modifications are improvements or are reasonably acceptable by the customer.

3.2. Binding for the condition of the objects of delivery is the description in the order confirmation issued by STILL. It is not guaranteed. Deviations from the agreed condition require written confirmation in as far as they are not permissible in the sense of section 3.1. The customer is obliged to notify in written conditions of the application or environment (in particular environment or local conditions) deviating from the standard conditions given in the sales documentation. Absence of such notification puts the aforementioned standard conditions from STILL in effect.

3.4. STILL reserves copyright and/or any other commercial property rights on all documentation. Cost estimates, drawings and similar documentation may not be used for any other purpose, in particular not copied or made accessible to third parties without prior written confirmation by STILL. On request, the documentation is to be returned to STILL immediately. Title to documentation delivered to the customer as accompanying documentation together with the truck is transferred to the customer after complete payment. Title to all other documentation remains with STILL.

4. Prices, terms of payment and sales taxation

4.1. Prices

In as far as not agreed otherwise, prices for used trucks are ex-storage location STILL excluding statutory sales tax applicable on the day of the invoice including loading for transport at the storage location and without transport, packaging and any other ancillary costs, which will be invoiced to the customer separately. Packaging material is only returnable upon special agreement.

4.2. Payment

4.2.1. As long as not otherwise agreed, payment is due in cash without discount directly on reception of the invoice. STILL reserves the right to hand over the used trucks step by step in return of payment by the customer.

4.2.2. Furthermore, STILL is entitled, on reasonable assumption the payment by the customer will not be made in due time or in full, to refuse fulfilment of the contract on the grounds of uncertainty until due compensation is made or security is provided. In case the customer has not provided security or affected compensation within a period of written notice, STILL shall be entitled to withdraw from the contract. STILL shall also be entitled to withdraw from the contract after a reasonable period notified in written, in case that the customer does not make an agreed down payment in due time or seriously and definitely refuses to accept the ordered materials.

In case of a withdrawal, STILL is entitled to claim compensation of damage including lost profit to the amount of at least 20% of the purchase price, as long as the damage is verifiably lower.

4.2.3. This excludes the right of retention on behalf of the customer due to disputed or non-appealable counter claims as well as setoff.

4.2.4. Payment orders, cheques and bills of exchange are only accepted on special agreement. Bills of exchange must be discountable. Applicable collection or discounting expenses are payable by the customer.

4.3. Delayed payment

4.3.1. Statutory interest on payments not made within the agreed payment period shall be due until the occurrence of the default and after that statutory default interests shall be payable without reminder.

In case of delay, STILL is entitled to charge a fee of ten euro for each reminder. Right to claim additional damage caused by delay remains reserved.

4.4. Sales tax

Sales tax shall apply according to respective statutory right. In case of cross-border deliveries, STILL will take advantage of tax exemption regulations. For cross-border deliveries within the European Union, the customer undertakes to inform STILL about their sales taxation identification number without delay. The customer shall contribute as necessary to obtaining all required documentation necessary to qualify for national or foreign sales tax exemptions. German or foreign sales taxation payable by STILL shall be invoiced and is payable by the customer. If sales taxation becomes applicable due to payments made prior to delivery, respective sales taxation shall be invoiced separately. Sales taxation is due and payable together with the net price.

5. Delivery period and delivery time

5.1. Delivery period shall commence with forwarding of the order confirmation, however, not prior to reception of any documentation and clarification of all technical and commercial details to be provided by the customer and not prior to reception of agreed down payment if applicable.

5.2. Delivery period is deemed adhered if prior to its expiration the used truck is made available at the STILL warehouse or readiness for shipment has been announced. Adherence to the delivery period is subject to fulfilment of all duties of the contract and duties to cooperate on behalf of the customer.

5.3. The delivery period shall be reasonably extended in case of industrial disputes, in particular walkout or lockout as well as occurrence of unexpected events (e.g. interruption of the operation, actions taken by authorities, delay in supply of crucial raw materials, confiscation, troubles in energy supply, war, unrest, embargo, requisition as well as natural disasters) that reasonably and substantially affect the completion or delivery of the used truck. This also applies if these circumstances affect a supplier. STILL shall also not be liable for such circumstances if these arise during an existing delay. In important cases, STILL shall inform the customer as soon as possible about the occurrence and termination of such circumstances.

Fulfilment of the contract is subject to delivery being possible without breaking any national or international rules, in particular export regulations as well as embargos or other sanctions. The parties undertake to provide all documentation and information required for export/relocation/imports. Delays caused by export inspections or authorisations shall suspend delivery periods and times. In case that required permits are not issued, the contract shall be deemed not concluded with respect to the affected parts, claims for compensation shall be excluded insofar and due to aforementioned exceeding of deadlines.

5.4. In case that despatch is delayed on request by the customer, costs arising from storage for each week begun, however, at least 0.5% of the invoiced value shall be claimed from the customer from one week after the indication of readiness for shipment on. Rights to claim higher storage costs remain unaffected. The customer is entitled to prove lower costs for the storage of the used trucks. However, STILL is entitled to make other use of the used trucks after a reasonable period notified in written.

6. Place of fulfilment and transfer of risk

6.1. Place of fulfilment for the performance rendered by both parties is the respective STILL storage location of the used truck in as far as not otherwise explicitly agreed in written.

6.2. Delivery is made in accordance with the applicable Incoterms "free carrier" (FCA), agreed STILL storage location [Incoterms 2010].

6.3. Should delivery be delayed on reasons within the responsibility of the customer, risk shall be transferred to the customer on the day of announcement of readiness for shipment. The risk shall also be transferred to the customer with sending the announcement of readiness for shipment in case of partial deliveries and if STILL has accepted to deliver additional services (e.g. shipment, delivery, carriage, erecting, assembly or training). Shipment is carried out on account of the customer. The customer shall also bear the risk if acceptance of the used truck is delayed.

6.4. Delivered used trucks are to be accepted by the customer, irrespective of the rights in Section 8, also in case of defective used trucks insofar as these defects are not substantial.

7. Retention of title

7.1. STILL retains ownership of all used trucks until complete payment of all claims resulting from the business relationship with the customer, including claims from additional ancillary services (e.g. assembly). In case that payment by exchange cheque/bill process is agreed, the right of retention includes cashing of the bill of exchange accepted by STILL on behalf of the customer and does not expire on crediting of the received cheque by STILL. Retention of title shall remain unaffected if the claim is included in a current account and the balance is made and accepted.

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7.2. The customer undertakes to take due care of the used trucks and carry out any necessary repair, maintenance and inspection work on their own account as long as the title of ownership has not been transferred to the customer. STILL is entitled to insure the trucks under retention of title against theft, breakage, water, fire and any other damage in as far as the customer has not taken out a respective insurance and provides respective proof.

7.3. The customer is neither entitled to pledge the trucks nor use them as securities.

7.4. The customer undertakes to inform STILL immediately about pledges or confiscations by third parties. Cost to relieve such attachments are to be carried by the customer.

7.5. The customer is entitled to resell the trucks subject to retention of title in the frame of orderly business or leave the trucks for use to third parties against respective pay. The customer already now entitles STILL to all claims against his customers arising from resell or let to use to the value of the first sale plus 20%, independently of the used trucks being forwarded before or after processing without requiring a specific act of assignment. The customer remains entitled to collect the claim, also after assignment. The right of STILL to collect the claim on its own behalf remains unaffected, however, STILL will only take advantage of this right if the customer delays payment to STILL, or in case that insolvency proceedings are opened against the customer. From late payment on, STILL is entitled to demand payment of the values STILL is entitled to a trustee account indicated by STILL. STILL is also entitled to demand debtors of the customer to make payments to STILL and the customer to name debtors to STILL disclosing the assignment.

7.6. In case that the claim from resale cannot be assigned to the extent described above, because the claim is subject to an open account agreement between the customer and the respective customer of the customer, the balance of the open account after balancing is deemed assigned in as far as the claim from resale is to be assigned in accordance with the aforementioned provisions. Security remains in place until full payment of the claims of the customer against third parties has been made.

7.7. In case the customer processes, connects, mixes or blends the deliveries subject to retention of title with other goods not belonging to STILL, STILL shall be entitled to ownership of the newly created good to the ratio of the value of the good subject to retention of title to the other processed goods. Otherwise the provisions made for goods subject to retention of title apply to the created new good. It is deemed subject to retention of title as the original goods subject to retention of title.

7.8. In case of the customer breaching contractual provisions, in particular with respect to delayed payment, STILL is obliged to take back the goods after written warning and the customer is obliged to hand the goods back in which the delivery contract remains unaffected. In such case delivery period shall be suspended. STILL reserves the right to deliver the goods to the customer after the obstacle has been removed or security has been provided whereas the agreed delivery period shall be deemed to continue.

7.9. STILL undertakes to release securities assigned to STILL on request of the customer in as far as the value of the securities exceeds the value of the secured claims by over 20%.

7.10. In case that statutory legislation of the location of the used trucks does not allow the aforementioned securing agreement, however, permits other kinds of reserved rights to the used trucks, STILL is entitled to take any possible advantage such rights provide.

7.11. The customer undertakes to contribute to any measure STILL takes to protect its rights of ownership or in lieu any other right to the used trucks.

8. Entitlements in case of defects

8.1. Scope

8.1.1. Entitlements to claim defects shall exclusively be effective if explicitly agreed to by STILL in the order confirmation.

8.1.2. The used trucks are categorised as Gold, Silver and Bronze and warrant the customer respective claims for defects excluding statutory liability for defects. Liability for defects for trucks categorised Gold shall expire after 6 months or 600 operating hours, whichever is first (incl. battery and charger for electrically powered trucks); for trucks categorised Silver after 3 months or 300 operating hours (incl. battery and charger for electrically powered trucks) and immediately for bronze trucks. For a description of the used truck categorisations, please go to the STILL website www.still.de/Gebrauchte.

8.1.3. For dealer business, STILL does not accept any liability.

8.1.4. Should the truck not be in the agreed condition at transfer of risk, the claim for defect of the customer, at discretion of STILL, may scope free replacement delivery or free rework of unusable parts or parts that are substantially damaged affecting their usability.

The customer shall allow sufficient time and opportunity for STILL to make necessary repairs or provide replacement deliveries at its equitable discretion. Otherwise STILL shall be released from liability for defects. In case of correcting defects, STILL shall accept all required and reasonable costs, in particular for transport, travelling, labour and materials. This does not apply to additional costs occurring because the delivered goods have been relocated to a new location other than the contractual place of fulfilment. Replaced parts become property of STILL.

8.2. Duty to inspection

Claiming defects for truck categories Gold and Silver on behalf of the customer is subject to the condition that the customer has fulfilled his duty to inspect and reject in accordance with § 377 HGB [German Code of Commerce]. STILL shall be immediately informed in written by the customer about any defects found.

8.3. Ancillary duties and patents

In case that at the accountability of STILL the used truck cannot be deployed by the customer in accordance with the contractual provisions made, Sections 8 and 9 of these general terms and conditions apply excluding any other claims by the customer. In case of defects of title, in particular in the case that delivery affects patent rights of third parties, STILL will endeavour to remove such defects in reasonable time. In case that this shall prove impossible, Section 9 of these general terms and conditions shall apply. Any other claim on behalf of the customer is excluded, in particular compensation of damage of any kind, including such that are not damages of the used truck itself.

9. Customer right of rejection, reduction or any other liability

9.1. Reduced performance

The customer is entitled to withdraw from the contract in case that the complete delivery becomes impossible for STILL prior to transfer of risk. In case that it is only temporarily impossible for STILL to deliver, the customer shall only be entitled to withdraw from the contract if STILL does not deliver within a reasonable period after the obstacle has been removed.

9.2. Failed rectification

Furthermore, the customer is entitled to withdraw from the contract in case that

STILL fails to rectify an eligible defect on a truck categorised as Gold or Silver within a reasonable period indicated to STILL in written by the customer. The period for rectification is to scope possible order and delivery periods for necessary spare parts to carry out the rectification or, in cases that rectification has conclusively failed, after a minimum of two trials.

At his own discretion, the customer may opt to reduce the purchase price instead of withdrawing from the contract in the aforementioned cases.

9.3. Reduction

In case that after rectification there are still substantial defects, which is refutably assumable if the used trucks are fit for the intended purpose, the right of the customer to withdraw is excluded. In this case the customer is entitled to reduce. To determine the reduced value § 441, Section 3 BGB [German Civil Code] shall be applicable, inasmuch as for the reduced value the useful interest of the customer is relevant.

9.4. Liability disclaimer

Any other claims of the customer as well as compensation of damage of any kind, including such damages not caused to the used truck itself - for whatever legal reasons - are excluded (e.g. truck or production downtimes, lost profit and other consequential damage). This exclusion of liability does not apply to cases of intent or gross negligence on behalf of STILL or in cases of culpable breaching of substantial contractual duties. In case of culpable breach of substantial contractual duties, STILL shall be held liable for damages typical to the contract and to reasonably foreseeable values - cases of intent and gross negligence excluded. The exclusion does not apply to cases in accordance with §§ 1 and 4 of the product liability act with respect to the used truck, for damage to persons or objects privately used. It is also excluded from liability for a guaranteed characteristic in case that the guarantee specifically aims to protect the customer against damage not caused on the truck. Exclusion of liability does also not apply in case that STILL has culpably not fulfilled a duty for life, body and limb and health.

10. Place of jurisdiction, applicable law and partial ineffectiveness

10.1. Any disputes arising from the contractual relationship including proceedings with respect to bills of exchange or cheques, decrees, arrest or preliminary injunctions shall be brought to the civil courts of Hamburg. This does not apply as far as an exclusive place of jurisdiction has been agreed.

STILL is also entitled to opt for a court competent for the customer.

10.2. German law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG), shall apply.

10.3. Should individual provisions of a contract concerning delivery and/or services prove inapplicable and these terms and conditions are part thereof, the remaining provisions of the concerned contract shall remain unaffected.