

# General Terms and Conditions of the HMS-Tuning Company

## 1. Scope and Definitions

- a. These General Terms and Conditions (hereinafter referred to as "T&Cs") represent the exclusive basis for all legal relationships established between HMS-Tuning, Markus Handloser, Gewerbestr. 11a, 79364 Malterdingen (hereinafter referred to as "HMS-Tuning") and the Agreement partners (hereinafter referred to as "Customers").
- b. Consumers are regarded as persons within the meaning of Section 13 BGB (German Civil Code), i.e. natural persons who conclude the respective legal transaction for a purpose which is outside their trade, business or profession. In other cases, customers are entrepreneurs pursuant to Section 14 BGB.
- c. The T&Cs current at the time of the conclusion of the Agreement are applicable.
- d. These T&Cs also apply for future dealings with Customers who are entrepreneurs, if they concern related types of legal transactions.
- e. Deviating Customer conditions shall not be recognised, unless HMS-Tuning provides express written consent to their validity.

## 2. Agreement Conclusion

- a. Images and descriptions only apply as general clarification. Technical data may be subject to change.
- b. HMS-Tuning offers are subject to confirmation. HMS-Tuning reserves the right to make technical changes and changes in form, colour and/or weight within reason.
- c. An order declared by the Customer is a binding offer. HMS-Tuning is entitled to accept the Agreement offer in the order within no more than four weeks of receipt.
- d. The offer may also be deemed accepted through the delivery of the order item. An order includes the authorisation to perform test runs.
- e. Online enquiries on the HMS-Tuning website do not constitute the conclusion of an Agreement. Only an HMS-Tuning offer following the enquiry represents a binding offer.

## 3. Prices

- a. Price information provided to entrepreneurs is considered net, exclusive of statutory value-added tax.
- b. Price information provided to consumers are gross prices, inclusive of statutory value-added tax.
- c. Additional costs arising for the price of the goods for payment, packaging and shipping shall be conveyed to the Customer.
- d. The prices valid on the day of conclusion of the Agreement shall be decisive. If there are more than four months between the conclusion of the Agreement and the agreed delivery date, HMS-Tuning shall be entitled to adjust the price if salaries, material costs, raw material prices, land or sea freight, taxes, customs duties or market cost prices have increased prior to completion.

## 4. Estimates

- a. Estimates are only binding if they are delivered in writing and are identified as binding.
- b. If the Customer requests a binding quote, this shall require a written estimate. The services rendered for providing an estimate may be charged to the Customer if this is agreed at the individual level.

- c. If additional work is necessary for repair or processing, the extent of the work may be exceeded by 20% for a total amount of up to EUR 250.--, and by 15% over EUR 250.--, without further enquiry.

## 5. Acceptance

- a. The objects of the Agreement are considered accepted and properly delivered upon transfer.
- b. The transfer is performed at HMS-Tuning, unless otherwise agreed. In this case, the Customer is in default of acceptance if he does not collect the object of the Agreement against payment of the invoice within 8 days of notification of completion and delivery of the preliminary or final invoice.
- c. If a vehicle is not collected on expiry of the above-mentioned period, HMS-Tuning reserves the right to charge customary demurrage.

## 6. Delivery

- a. Insofar as, and provided that, no delivery periods are agreed, HMS-Tuning shall deliver the ordered item at its earliest possible convenience. Force majeure, operating and transportation hindrances, raw material and prefabrication defects, strikes or other circumstances, which are outside the sphere of influence of HMS-Tuning, release HMS-Tuning from compliance with delivery periods and shall not entitle the Contractor to compensation or withdrawal from the Agreement.
- b. HMS-Tuning reserves the right to make design or form changes and changes in the scope of delivery, provided the product is not altered significantly.

## 7. Shipping and Transfer of Risk

- a. Shipping shall take place at the expense of the Customer. The mode of shipping shall be selected according to our best judgement.
- b. Additional costs may arise for the delivery service in the event of a subsequent change of address, which shall be borne by the Customer.
- c. Customers must cover the cost of the return if the goods as supplied are in accordance with what was ordered and if the price of the item to be returned does not exceed 40 Euros or, if the price of the item is higher, if at the time of cancellation the customer have not yet paid for it in full or made a contractually agreed part payment. In any other case the return of the goods is free of charge to the customer. Items which cannot be sent by parcel post will be collected from the customer.

## 8. Right of Withdrawal for Consumers

### - Begin of the withdrawal instructions -

#### **CANCELLATION POLICY**

You may withdraw your contractual declaration in writing (by letter, fax, email, for example) within 14 days without giving any reason. This period will commence upon receipt of this information in writing, but not before the contract has been concluded or the information requirements pursuant to Article 246 § 2 in conjunction with § 1 (1) and (2) EGBGB [Introductory Act to the German Civil Code] as well as our obligations pursuant to Sec. 312e Para. 1 Sentence 1 BGB in conjunction with Article 246 § 3 EGBGB have been fulfilled. In order to observe the withdrawal period, it is sufficient if you send your withdrawal in time. The withdrawal is to be addressed to:

HMS-TUNING

Gewerbestr. 11a

D-79364 Malterdingen

Fax: +49 7644 9285 58

E-Mail: info@hms-tuning.de

#### **CANCELLATION CONSEQUENCES**

In the event of an effective withdrawal, all payments and consideration received by both parties must be returned and any benefits generated therefrom (interest, for example) surrendered. If you are unable to return the consideration received in part or in whole or are able to return the same only in a deteriorated condition, you must provide HMS-Tuning with compensation of a corresponding value. This does not apply if the deteriorated condition is merely a consequence of the inspection of the good, as if would have been performed while buying the product in a shop and not using the means of long-distance transactions. Moreover, you may prevent your obligation to compensate the value by not using the good as an owner would use it and by omitting everything that affects its value.

You must cover the cost of the return if the goods as supplied are in accordance with what was ordered and if the price of the item to be returned does not exceed 40 Euros or, if the price of the item is higher, if at the time of cancellation you have not yet paid for it in full or made a contractually agreed part payment. In any other case the return of the goods is free of charge to you. Items which cannot be sent by parcel post will be collected from you.

This means that you may nonetheless have to fulfil your contractual payment obligations for the period up to the withdrawal. Any obligations to reimburse payments must be fulfilled within 30 days. For you, this period will commence upon sending your withdrawal statement and for us, upon receipt of the same.

**- End of the withdrawal instructions -**

#### **Please note:**

This right of withdrawal applies only to customers, who are consumers and are entitled by the law to this right. This right of withdrawal does not exist in the case of contracts for the delivery of goods that HMS-Tuning has manufactured on the basis of the customer's specifications or which are clearly tailored to the personal needs of the customer.

## **9. Payment Conditions**

- a. Shipping shall take place against payment upon delivery, or prepayment, whereby the HMS-Tuning reserves the right to select the method of shipment. The additional costs of payment on delivery shall be borne by the Customer, if this method of shipment takes place at his request.

- b. If shipments are sent with an invoice according to a special agreement, the invoice amount shall be due 10 days after receipt, without deduction.
- c. In the event of delayed payment, HMS-Tuning is entitled to charge default interest of 5 percentage points over the base interest rate to consumers and 8 percentage points over the base interest rate to entrepreneurs.
- d. If the Customer remains in delay with the transfer of the service item or fulfilment of his payment obligations for more than 10 days after notice of availability, HMS-Tuning shall be entitled, after a grace period of an additional 10 days, to withdraw from the Agreement or demand compensation for non-performance.
- e. Claim for compensation shall also arise if the Customer withdraws from the Agreement during the period from the order to delivery of the object of the Agreement. Compensation shall amount to 15% of the price. Proof of lesser damage remains reserved for the Customer.

#### **10. Right of Retention and Set-off**

- a. HMS-Tuning shall be entitled to the right of retention and lien to the item that has arrived in their possession based on the Agreement in relation to all, including other, receivables from the business relationship.
- b. HMS-Tuning is entitled to exercise the lien by way of sale on the open market. The dispatch of a written notification to the last known Customer address is sufficient for the enforcement of the lien sale.
- c. The Customer can only offset claims by HMS-Tuning if the Customer's counterclaim is uncontested or a legally enforceable title exists.

#### **11. Reservation of title**

- a. The service item remains - even in the fitted state - the property of HMS-Tuning until complete payment of all accruing receivables including all costs. As long as the reservation of title exists, all changes to the detriment of HMS-Tuning, sale, pledging, assignment of security or other transfer of the service item to third parties, shall not be permitted without the written consent of HMS-Tuning.
- b. The Customer must carefully store the delivered item and keep it in a flawless condition for the duration of the title reservation. Furthermore, he must immediately and sufficiently insure the item and transfer the rights from the insurance contract to HMS-Tuning. If the Customer cannot meet this obligation, HMS-Tuning may terminate the insurance at cost to the Customer and charge the Customer the costs.
- c. If the delivered items are destroyed, damaged or distrained, HMS-Tuning must be immediately informed in writing.
- d. In the event of access by third parties, in particular in the case of seizure, the Customer must immediately notify HMS-Tuning in writing and inform the third party of the reservation of title.
- e. Likewise, HMS-Tuning shall be immediately informed of any change in the Customer's address or the location of the delivered items. All costs incurred by HMS-Tuning through exercising ownership are charged to the Customer.
- f. If the delivery items are processed by other items not belonging to HMS-Tuning, HMS-Tuning shall acquire joint ownership of the new item in proportion to the value of the delivery item to the other processed items at the time of processing. If the delivery items are inseparably combined with other items not belonging to HMS-Tuning, HMS-Tuning shall acquire joint ownership of the new item in proportion to the value of the delivery item to the other processed items at the time of processing. The Customer stores the joint ownership for HMS-Tuning

## 12. Warranty

- a. For defects in new Agreement objects, HMS-Tuning assumes the warranty for the statutory warranty period for Customers who are consumers and for a period of one year for Customers who are entrepreneurs.
- b. For used Agreement objects, the warranty for Customers who are consumers is limited to 1 year after transfer of the goods.
- c. If the Customer is an entrepreneur, the warranty for used Agreement objects is limited to a period of 6 months from the time of implementation or delivery to the Customer, or a maximum distance of 10,000 km or 100 hours of operating time.
- d. If the Customer is an entrepreneur, the Agreement object shall be inspected immediately after delivery, within no more than 8 days provided this is feasible according to the proper course of business and HMS-Tuning shall be immediately notified if a defect is revealed. If no notification is made by the Customer, the Agreement object is deemed approved, unless there is a defect which could not be detected during the inspection. If such a defect appears at a later date, notification must be made immediately after discovery; otherwise the Agreement object is deemed approved even in consideration of this defect. The timely dispatch of the notification is sufficient to uphold their rights. Visible or obvious transport damage is to be immediately indicated to the transporter and HMS-Tuning by enclosing a postal or rail record. Returns by Customers who are entrepreneurs, regardless of the type, must take place "carriage paid".
- e. If the Customer is an entrepreneur, HMS-Tuning provides a warranty for defects to the Agreement object through improvement or replacement delivery, at their discretion. If the Customer is a consumer, he shall have the choice whether the subsequent fulfilment shall take place by improvement or replacement delivery. However, HMS-Tuning is entitled to refuse the type of selected subsequent fulfilment if this is only possible with disproportionate costs and the other type of subsequent fulfilment is available without significant disadvantages for the consumer.
- f. If the subsequent fulfilment fails, the Customer may fundamentally demand the reduction of remuneration or the withdrawal from the Agreement, at his discretion. However, the Customer has no right to withdrawal in the event of only negligible breaches of contract, in particular for only negligible defects.
- g. Consent must be sought from HMS-Tuning, prior to commencement, if a defect, for which a warranty claim exists, is to be rectified outside the HMS-Tuning workshop. If obtaining prior approval is not reasonable for the Customer, approval must be sought immediately afterwards. The Customer shall arrange prepayment with the external operation - unless otherwise agreed in advance - and create a written warranty claim from HMS-Tuning by submitting all invoice documents on maintenance and repair work carried out in the meantime and on the defective parts.
- h. Replaced parts shall become the property of HMS-Tuning.
- i. Damages arising as a result of improper handling, attachment or overstressing of the Agreement object, or non-observance of the instructions on handling, maintenance and care of the Agreement object (e.g. operating manual or service booklet) are excluded from the warranty.
- j. Furthermore, HMS-Tuning expressly notes that damage arising from wear due to above-average operation (more than 30,000 km/year) are excluded from the warranty.
- k. Declarations by HMS-Tuning in connection with the Agreement (service description, reference to DIN) do not include acceptance of a guarantee in case of doubt. In case of doubt, the acceptance of a guarantee requires the express written declaration by HMS-Tuning.

- I. Additional Customer claims, in particular due to guarantees issued for the state of the Agreement object, or due to the fraudulent concealment of a defect, remain unaffected. Apart from this, the provisions in Section 12 of these General Terms and Conditions apply for compensation claims.

### **13. Liability**

- a. The following exclusions and limitations of liability apply with regard to HMS-Tuning's liability for damage compensation, notwithstanding the other legal claim requirements.
- b. HMS-Tuning assumes unlimited liability if the cause of the damage is the result of intent or gross negligence.
- c. Furthermore, HMS-Tuning assumes liability for the slightly negligent breach of significant duties, whose breach places the achievement of the purpose of the Agreement at risk, or for the breach of duties whose fulfilment generally enables the execution of the Agreement and on whose compliance they regularly rely. However, in this case, HMS-Tuning shall only be liable for the foreseeable damage that might typically occur under the Agreement. HMS-Tuning is not liable for the slightly negligent breach of duties other than those stated in the above-mentioned sentences.
- d. The above-mentioned limitations of liability do not apply for loss of life, bodily injury or damages to health for a defect after assumption of a guarantee for the nature of the product and for fraudulent concealment of defects. Liability pursuant to the Product Liability Act remains unaffected.
- e. If HMS-Tuning liability is excluded or limited, this also applies for personal liability of employees, representatives, agents or assistants.

### **14. Advertising**

- a. HMS-Tuning shall be entitled to report on the use of the Agreement objects produced by the Customer in word and image both online and offline. This only applies if no overwhelming Customer interests, which the Customer has communicated to HMS-Tuning, contradict this.
- b. The Customer shall be obligated, to the extent that this is possible and reasonable, to indicate that these products were produced using HMS-Tuning products in their verbal and written sales and advertising statements on their products.

### **15. Documents**

- a. Drawings, models, designs, estimates, etc. remain the property of HMS-Tuning and may not otherwise be used without our written approval nor made accessible to third parties that operate in the same or similar area of operation as HMS-Tuning.
- b. HMS-Tuning shall store submitted documents, samples, models or other material at risk to the deliverer.

### **16. Data Protection**

- a. HMS-Tuning processes the Customer's personal data for a specific purpose and pursuant to the statutory provisions.
- b. The personal data stated for the purpose of the order of goods (such as name, email address, address, payment details) shall be used by HMS-Tuning for the fulfilment and execution of the Agreement. This data shall be treated as confidential and not forwarded to third parties that are not involved in the order, delivery and payment process.
- c. The Customer has the right to receive information on the personal data that has been saved by HMS-Tuning about him, free of charge. In addition, the Customer has the right to amend incorrect data, block and delete his personal data provided this does not contradict any legal storage obligation.

## **17. Place of Fulfilment, Place of Jurisdiction, Applicable Law, Language and Final Provisions**

- a. The place of fulfilment shall be the registered office of HMS-Tuning at 79364 Malterdingen, Gewerbestr. 11a, unless expressly agreed otherwise or pursuant to consumer protection legislation.
- b. For all disputes arising from the Agreement relationship, if the Agreement partner is a businessman, the proceedings shall be instituted at the Emmendingen District Court or the Freiburg Regional Court.
- c. German law applies exclusively to the exclusion of the Law on the International Purchase of Moveable Goods, even if the Agreement partner has their registered office abroad.
- d. The language of the Agreement is German, provided no contrary compelling consumer protection provisions arise.
- e. If one of the above-mentioned provisions is partially or completely ineffective, this does not affect the effectiveness of the remaining provisions.