



General Terms & Conditions (T&C MB GTC)

Last amended: February 2023

ENGLISH

General Terms and Conditions for the sale of used vehicle parts and accessories by MB GTC GmbH, Mercedes-Benz Used Parts Centre

I. Subject matter of the contract and conclusion of contract

1. The MB GTC General Terms and Conditions apply to the purchase of both new and used Goods.
2. Any General Terms and Conditions of the Buyer shall not apply even if the Seller does not expressly reject them.
3. The obligation to supply shall be limited to available inventory. If the Goods are no longer available, the Seller shall inform the Buyer without undue delay regarding the unavailability and reimburse any payment made without undue delay.
4. The Seller shall be bound to the order for a maximum of 7 days. The sales contract shall be deemed to have entered into force if the Seller has confirmed acceptance of the order for the Goods within the stated 7-day period, in writing or in text form, or if delivery has been carried out. However, the Seller shall not be obliged to inform the Buyer without undue delay if the Seller does not accept the order.

II. Prices

1. The price of the Goods is ex Seller's works or ex Seller's warehouse that supplies the Goods (purchase price). Packaging and shipment as well as any agreed additional services, particularly transport insurance, will be charged additionally.
2. Special packaging shall be taken back at the return prices generally determined for individual forms of packaging.

III. Payment

1. The purchase price and prices for additional services shall be due for payment immediately upon entering into the contract unless other payment terms have been agreed. The purchase price and the prices for additional services shall not be paid in cash.
2. The Buyer may only offset its own claims against the Seller's claims for payment if the Buyer's counterclaim is undisputed or the Buyer is in possession of a legally binding entitlement. The Buyer's counterclaims arising from the same sales contract shall be excluded. The Buyer may only exercise a right to withhold payment if such as right is based on the same contractual relationship.

IV. Delivery and delayed delivery

1. Delivery dates and delivery periods, which may be agreed on a binding or non-binding basis, shall be stated in text form. Delivery periods shall begin upon entering into a contract.
2. The Buyer may demand delivery from the Seller when a non-binding date or non-binding delivery period has been exceeded by ten days. Upon receipt of such a demand, the Seller shall be deemed to be in default unless the Seller is not responsible for the delay. If the Buyer is entitled to compensation for damages caused by a delay, this shall be limited to a maximum of 5% of the agreed purchase price in the event of slight negligence on the part of the Seller.
3. Furthermore, if the Buyer wishes to withdraw from the contract and/or demand compensation instead of performance, the Buyer shall set the Seller a reasonable delivery period following expiry of the 10-day period under Sub-clause 2 of this Clause IV. If the Buyer is entitled to compensation instead of performance, the entitlement shall be limited to a maximum of 25% of the agreed purchase price in the event of slight negligence. If the Buyer is a legal person under public law, a special fund under public law or an entrepreneur carrying out his/her commercial or self-employed professional activity when the contract was entered into, claims for damages in the event of slight negligence shall be excluded.
4. If a binding delivery date or binding delivery period is exceeded, the Seller shall be deemed to be in default as soon as the delivery date or delivery period is exceeded unless the Seller is not responsible for the delay. The rights of the Buyer shall be determined according to Sub-clause 2 (3) and Sub-clause 3 of this Clause IV.
5. The limitations and exclusions of liability under this Clause IV. shall not apply to damages resulting from a grossly negligent or wilful violation of the obligations of the Seller, the Seller's legal representative or the Seller's vicarious agent. Nor shall they apply in the event of injury to life, limb or health.
6. Force majeure or interruptions to operation occurring at the Seller's company or at its suppliers that temporarily prevent the Seller from delivering the Goods on the agreed date or within the agreed period at no fault of the Seller shall extend the agreed dates and periods by the duration of the interruption to performance attributable to these circumstances. If corresponding interruptions lead to a postponement of performance of more than four months, the Buyer shall be entitled to withdraw from the contract. Other rights of withdrawal shall remain unaffected.
7. The manufacturer reserves the right to make changes to the design, form, colour as well as changes in the scope of delivery during the delivery period, provided these changes can be deemed reasonable for the Buyer while taking into account the interests of the Seller. If the Seller or manufacturer uses characters or numbers to designate the order itself or the Goods ordered, no rights can be derived from this circumstance alone.
8. The Buyer shall accept the Goods within 8 days of receipt of the notification that the Goods are ready for collection. If the Goods are not accepted, the Seller can make use of its statutory rights, in particular those allowing the Seller to withdraw from the contract.
9. If the Seller demands compensation, this shall amount to 10% of the agreed purchase price excluding VAT. The amount of compensation shall be raised or lowered if the Seller provides evidence of greater financial losses or if the Buyer provides evidence that lower or no financial losses were incurred.

V. Retention of title

1. The Goods shall remain the property of the Seller until the payments due to the Seller under the sales contract have been settled. If the Buyer is a legal person under public law, a special fund under public law or an entrepreneur carrying out his/her commercial or self-employed professional activity when the sales contract was entered into, the retention of title shall remain valid concerning the Seller's claims for payment vis à vis the Buyer arising from the ongoing business relations until payments relating to the purchase have been settled. Upon request by the Buyer, the Seller shall waive retention of title if the Buyer has incontestably settled all payments relating to the Goods and there is otherwise appropriate security regarding other demands for payment arising from the ongoing business relations.
2. As long as the retention of title is in force, the Buyer may neither dispose of the goods nor enter into a contract granting third parties use of the Goods.
3. If the country on whose territory the Goods are situated does not permit the retention of title but allows the Seller to reserve other rights pertaining to the Goods, the Seller may exercise all such rights. The Buyer shall, at the Buyer's own expense, take all necessary action to allow the retention of title or, in its place, other rights to the Goods, to become effective and be maintained.

VI. Liability for material defects

1. Any claims of the Buyer relating to material defects and defects in title shall become time-barred in accordance with the statutory provisions two years after delivery of the Goods unless otherwise agreed in the following paragraphs.
 - a) With regard to Goods containing digital elements, the provisions of this Clause VI. shall not apply to material defects and defects in title relating to such digital elements. Instead, the statutory provisions shall apply in their place.
 - b) If the Buyer is a legal person under public law, a special fund under public law or an entrepreneur carrying out his/her commercial or self-employed professional activity when the contract was entered into, claims based on material defects or defects in title shall become time-barred one year from the handover of the Goods to the Buyer in the case of vehicle parts.
2. If a shortening of the time-bar period was agreed with a consumer in accordance with Sub-clause 1. a) or with a buyer in accordance with Sub-clause 1. b) or if liability for material defects or for defects in title were excluded vis à vis a buyer in accordance with Sub-clause 1. b), such shortening of the time-bar period and the exclusion of liability for material defect and defects in title shall not apply to damages resulting from a grossly negligent or wilful violation of the obligations of the Seller, the Seller's legal representative or the Seller's vicarious agent. Nor shall they apply in the event of injury to life, limb or health.
3. If, due to statutory provisions, the Seller is obliged to pay compensation for damages caused by slight negligence, the Seller's liability shall be limited:
Liability shall only apply in the event of a breach of material contractual obligations, for example such obligations that the sales contract, by virtue of its content and purpose, intends to impose on the Seller and whose fulfilment is necessary for proper execution of the sales contract and upon compliance with which the Buyer regularly relies and is entitled to rely. Such liability shall be limited to typical damages foreseeable at the time of entering into the contract.
Personal liability of the Seller's legal representatives, vicarious agent and employees shall be excluded with regard to damages caused by them due to slight negligence.
Sub-clause 2 of this Clause VI. shall apply accordingly to the aforementioned limitation and exclusion of liability. Irrespective of any culpability of the Seller, any liability on the part of the Seller shall remain unaffected if there is fraudulent concealment of a defect, if it arises from the acceptance of a guarantee or a procurement risk or if it applies under the German Product Liability Act.
4. If a defect is to be remedied, the following shall apply:
 - a) The Buyer shall assert claims for remedying of a defect vis à vis the Seller.
 - b) The Buyer may assert claims for material defects regarding the parts installed to remedy the defect up until expiry of the Goods' time-bar period.
 - c) Replaced parts become the property of the Seller.
 - d) If the Buyer is a legal person under public law, a special fund under public law or an entrepreneur carrying out his/her commercial or self-employed professional activity when the contract was entered into, the Seller shall – notwithstanding Section 439 (1) of the German Civil Code – be entitled, at the Buyer's own discretion, to either make good the defect by eliminating it or by supplying Goods free from any defect.

VII. Liability for other damages

1. Other claims on the part of the Buyer not provided for in Clause VI. "Liability for material defects" shall become time-barred within the regular time-bar period.
2. Liability for late delivery is provided for in full in Clause IV. The provisions in Clause VI. "Liability for material defects," Sub-clauses 4 and 5, apply accordingly to other claims for compensation against the Seller.

VIII. Compliance with applicable law

The Buyer shall not take any action that may lead to culpability on the part of persons employed by the Buyer or by other third parties regarding fraud or embezzlement, insolvency offences, violation of competition laws, granting undue benefits, accepting benefits, bribery, accepting bribes or comparable offences. Nor shall the Buyer facilitate such offenses by failing to take corresponding action. In the event of a violation of this provision, the Seller shall be entitled to withdraw from or terminate all ongoing legal transactions with the Buyer and to terminate any negotiations. Without prejudice to the above, the Buyer shall comply with all laws and regulations pertaining to the Buyer as well as to business relations with the Seller.

IX. Applicable law, additional rights, place of fulfilment, jurisdiction

1. The law of the Federal Republic of Germany shall apply. INCOTERMS 2020 shall apply.
Other mandatory provisions under national law in the country in which a consumer has a habitual residence shall remain unaffected and may be asserted by the Buyer if the Buyer is a consumer.
2. If the Buyer is a legal person under public law, a special fund under public law or an entrepreneur carrying out his/her commercial or self-employed professional activity when the sales contract was entered into, the place of fulfilment for the delivery of the Goods shall be the Seller's factory or warehouse that ships the Goods.
3. If the Buyer is a merchant, legal person under public law or a special fund under public law, the Parties shall exclusively submit to the jurisdiction of the courts of the Seller's registered office for all present and future claims arising from or in connection with this contractual relationship. The Seller shall also be entitled to initiate legal action with courts at the location of the Buyer's registered office.
The same jurisdiction shall apply if the Buyer has no general court of jurisdiction in Germany, moves its permanent address or habitual residence abroad after entering into the contract or if the Buyer's permanent address or habitual residence is unknown at the time the legal action is initiated. Otherwise, in the event of claims asserted by the Seller against the Buyer, the Parties shall submit to the jurisdiction of the courts of the Buyer's permanent address.
4. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 shall not apply.

X. Notice as required by Section 36 of the Act on Alternative Dispute Resolution in Consumer Matters ("Verbraucherstreitbeilegungsgesetz", VSBG)

The Seller will not participate in an alternative dispute resolution process before a consumer arbitration panel as defined in the VSBG and is not obliged to do so.