

General Terms and Conditions of Trading for Service 24 Notdienst GmbH

I. Award of contract

Services supplied by Service 24 Notdienst GmbH ("the contractor") are based on these General Terms and Conditions of Trading ("T&Cs"). The contractor will only agree contracts under its own T&Cs. Any regulations that deviate from these, in particular terms of business or conditions of purchase of the contract partners, apply only if the contractor has expressly accepted these in writing. Every amendment to the T&Cs must be in writing. Silence on the part of the contractor does not count as agreement, e.g. on wishes for changes by the client.

II. Implementation of the contract, refund of expenditure

1. The client shall answer precisely and fully all questions in connection with performance of the contract asked by the contractor or by its authorised representative and the client shall also point out, without being required to do so, any unusual circumstances.
2. The client must ensure that any objects or other loads in the vehicle are sufficiently secured (e.g. against slipping). The client should remove items of value from the vehicle.
3. If the client or the person seeking help has not specified a location to which the vehicle is to be brought, the contractor is to bring the vehicle at its own discretion either to the premises of the commissioned sub-contractor or to the nearby accident or breakdown premises of a third party or deposit it there. In such a case, the client is responsible for the costs during the period of deposit and also for making, without delay, arrangement for the further whereabouts of the vehicle.
4. If on the instruction of the client the vehicle is brought to the business premises of the sub-contractor commissioned by the contractor, but no decision is made as to whether a parking space is to be hired there or the object of the contract is to be deposited, the contractor will deposit the object of the contract at the client's cost. The contractor will accept no liability for the deposit of items of value.
5. If, through no fault of the contractor, a contract cannot be carried out, the contractor has a claim to a refund of its expenses.
If the contract cannot be carried out due to the fault of the client, the contractor shall in addition have a claim to compensation for loss of profit. The right to claim further compensation is reserved.

III. Payment

1. Remuneration for the contract is due for payment immediately after to contract has been carried out. If it has been agreed that payment shall be by bank transfer, payment is due within 10 days after the issue of an invoice.
2. Payments are to be made in cash or by accepted fuel cards or credit cards or by an agreed method of payment. The assistant at the breakdown is entitled to take the payment for the contract in cash.
3. Offsetting with counter-claims is excluded, unless the counter-claim has been recognised by the contractor in writing or legally determined by a court of law, the claim has a legal connection with the claim of the contractor or in the case of insolvency of the the contractor.
4. In the event of arrears of payment, the contractor is entitled to default interest at the legal rate.

IV. Right of pledging / Right of retention

1. Based on its receivables from the contract and/or a deposit of the vehicle in connection with these, the contractor shall have a right of retention and a contractual right of pledging of the objects that have come into its possession because of the contract. If the contractor makes use of its right of retention, the further costs of accommodating and depositing of the vehicle continue to be payable by the client. If remuneration for the contract is not paid after it becomes due, the contractor, based on its right of pledging, is entitled to bring the object of the contract to the premises of its subcontractor at the client's expense and deposit it there.
2. If the client is in arrears for more than one month with the payment of remuneration for the contract or the costs for the deposit, the contractor can threaten sale of the pledged property in writing. After the expiry of one month after the threat, the contractor is entitled to implement the sale of the pledged property. A notification sent by registered mail or with a return slip to the last address of the client known to the contractor shall suffice for the threat of sale of pledged property. If the threat of sale of pledged property cannot be delivered, a sale of pledged property is only permissible if a new address cannot be found via the Central Register of Residents.

V. Liability

1. If a freight transaction is involved, the contractor will be liable both for the reason and the amount according to company law provisions for freight transactions.
2. With other services performed by the contractor (especially breakdown and accident assistance), the contractor will be liable only in the event of gross negligence or intent, as well as for slight negligence. If the client should be in breach of any of his/her duties, in particular for securing the loading for the items in the vehicle, the contractor shall not be liable. Liability towards business persons for consequential damages, loss of profit, loss of production, interruption of business as well as for all direct damages is excluded.
3. The contractor must inform the client or the third party affected without delay and in writing of any damage to or loss of objects of the contract in the contractor's care.
In the same way, the client is obliged to inform the contractor, without delay and describing it exactly, of any damage or loss for which the contractor may be liable to pay.
4. If in order to achieve the success of the contract it should be necessary to cause reasonable damage to the object of the contract or to the legal assets of third parties, the client shall release the contractor from the duty to provide compensation in this regard. Causing damage is necessary if the damage is unavoidable or could only be avoided by disproportionate means and costs.

VI. Claims for defects

The claims for defects from a client who is a business person become time-barred one year from the transfer of the object of repair or the towed away vehicle. If the client is a consumer, legal provisions apply to time-barring. The contractor will rectify any defects of which the client has informed him in writing. The contractor has the right to supplementary performance or rectification.

VII. Final provisions, applicable law & place of jurisdiction

1. In the event that an individual clause of this contract is or becomes wholly or partially ineffective, this will not affect the validity of the remaining clauses. The invalid clause shall be replaced by a replacement provision which is as close as possible to the purpose envisaged by the invalid clause. The same applies to gaps in the contract.
2. All contracts and business relationships between the client and the contractor are subject exclusively to substantive Austrian law. Applicability of the UN Convention on Contracts for the International Sale of Goods, as well as other reference norms (conflict of laws) is excluded.
3. The (international) competence for all contracts and business relationships is agreed to be that of the Austrian courts. For clients who are consumers, the local competence is according to the provisions of Austrian law. For clients who are business persons, the relevant competent court with subject-matter jurisdiction in 1010 Vienna is agreed to be the place of jurisdiction for all claims arising from the contractual relationship on which the contract is based. The same place of jurisdiction shall apply if the client has no general place of jurisdiction within Austria, moves his/her domicile or normal place of residence out of Austria after conclusion of the contract or his/her domicile or normal place of residence is unknown at the time the suit was filed.

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