

## **General terms and conditions of Transmission Repair International GmbH, as at 16 August 2011**

### **§ 1 General**

1. The general terms and conditions of Transmission Repair International GmbH (hereinafter referred to as TRI) apply to all transactions between TRI and its contracting parties.
2. If TRI's contracting party itself makes use of general terms and conditions, these shall only be applicable to the extent that they correspond with the general terms and conditions of TRI.

### **§ 2 Prices and terms of payment**

1. Prices do not include the legal value-added tax.. It will be shown separately in the legal amount on the day of invoicing.
2. Prices for repairs are calculated in accordance with time spent and actual expenses incurred, unless flat rate prices have been agreed.
3. Deliveries are made in return for cash, cash on delivery, or payment in advance. The deduction of a discount requires special agreement.
4. Only uncontested or legally determined claims may be set off against claims arising from this contractual relationship.
5. Rights of retention may only be asserted if they are based on the same contractual relationship.
6. In the event of a delay in payment, interest on arrears and costs are charged amounting to 5 percent above the relevant basic rate of interest of the ECB, without waiving any other rights. If the contracting party is a businessman within the meaning of § 13 of the *Bundesgesetzbuch* (BGB, Federal German Civil Code), the rate of interest on arrears is 7 percent above the respectively valid basic rate of interest of the ECB.

In the event of delay in payment or suspension of payments by the purchaser, all claims against the contracting party shall be payable immediately.

### **§ 3 Cost estimates**

At the request of the contracting party, a cost estimate for repair work can be made out by TRI. While retaining its legal rights, the contracting party is also obliged to pay the price for repair if the price exceeds the cost estimate by less than 20%.

### **§ 4 Performance of repairs**

1. The object to be repaired is to be supplied to TRI at the cost and risk of the contracting party.
2. The repair is to be carried out carefully, taking account of the work specified when the order was placed.
3. Periods and dates for the performance of repair work require to be specially agreed.

### **§ 5 Custody and liability**

TRI is only liable for damage to or destruction of the object to be repaired in the event of the infringement of its customary due diligence, gross negligence, or intentional negligence.

### **§ 6 Tenders**

1. Any passing on of tenders to third parties is permissible only by agreement.
2. Oral or written advice regarding a specific application is to be regarded as merely non-binding information. The contracting party is not exempted from its own testing obligation, taking account of the intended use.

### **§ 7 Passage of risk**

The passage of risk shall be in accordance with the provisions of law. In the case of things to be delivered, an obligation to send is considered to have been agreed.

### **§ 8 Disclaimer**

1. Claims by the contracting party for damages are excluded. This does not apply
  - a) to damage due to deliberate or grossly negligent breach of duty by TRI, its legal representatives or executive vicarious agents, or to a deliberate breach of duty by a simple vicarious agent.
  - b) to damage due to the culpable breach of an obligation essential to the contract ("cardinal obligation") by TRI, its legal representatives or its vicarious agents.
  - c) for liability under §§ 1 or 4 of the *Produkthaftungsgesetz* [law on product liability].

2. If the contracting party is a businessman, liability is limited to the replacement of foreseeable damage typical of the contract, unless it is a question of liability for damage of the nature designated in No. 1.a or 1.d above.

3. Where the liability of TRI is excluded or limited, the same shall also apply to the personal liability of its staff, employees, collaborators, representatives and vicarious agents.

4. Where damage claims are excluded or limited, the same shall apply to both contractual and tortious claims for damages.

### **§ 9 Defect claims**

1. If the contracting party is a consumer, he is entitled to the legal rights of warranty against defects. The provisions of § 8 in particular, however, remain unaffected. Rights to which the buyer is entitled because of a material defect in a used thing cease to be enforceable within one year. In the case of contracts for work, rights to which the customer is entitled because of a defect cease to be enforceable within one year.

2. If the contracting party is a businessman, claims for defects are excluded. This does not apply a) if TRI is obliged to deliver newly manufactured things or to perform work, b) if the claims are based on a defect that TRI has maliciously concealed, c) if TRI has guaranteed a particular nature.

3. The following shall apply to defect claims of a businessman of the nature designated in No. 2.a) above:

a) If a defect exists, TRI is entitled at its own choice to eliminate the defects or to supply replacements. If in these cases TRI is not prepared or is not in a position to eliminate the defects/supply replacements or is delayed in eliminating defects/supplying replacements as a consequence of its own fault, or if the elimination of defects/supply of replacements fails in some other way, the contracting party is entitled at its option to withdraw from the contract or to request an appropriate reduction in price.

b) The contracting party is only entitled to a reduction and to withdrawal due to a defect in accordance with the proviso in regulation No. 2.a.

c) The limitation period for all claims by the client based on a defect is 1 year. The commencement of the limitation period is the time prescribed by law.

d) If instructions for operation or maintenance are not complied with or changes are made to the products, all defect claims are excluded.

e) The contracting party is to notify obvious defects immediately in writing, otherwise within a time limit of two weeks. Businessmen moreover have to carry out a check for defects in incoming goods and to notify TRI in writing of defects that, even after careful checking, were not noticeable, immediately after their discovery.

f) The contracting party - after making an appropriate agreement with TRI - has to give TRI the necessary time and opportunity to perform all the repairs and replacement deliveries that appear necessary at the discretion of TRI, otherwise all defect claims are excluded.

### **§ 10 Removal and installation of transmissions**

The removal and installation of transmissions may only be carried out by authorized specialist workshops. Should this not be the case, no warranty is assumed for damage resulting therefrom.

### **§ 11 Trader's right of recourse in the case of sale to commercial resellers**

The contracting party has no entitlement to damages against TRI in the context of the trader's right of recourse under §§ 478 ff. of the Civil Code.

### **§ 12 Retention of title**

1. The delivered item remains in the ownership of TRI until the claim under the contract for work or sale has been completely settled. If the contracting party is a businessman, TRI retains the ownership of all delivered items until all payments arising from the business relationship have been received.

2. In the event of behaviour by the contracting party contrary to the terms of the contract, TRI is entitled, after giving a reminder, to request the return of the object that was given subject to reservation of ownership. Following the return of goods, TRI is entitled to dispose of them. The earnings from disposal, less the disposal costs incurred by TRI, will be counted against the liabilities of the contracting party.

3. The contracting party is entitled to sell the delivered objects. Claims from the sale of objects that

are given subject to reservation of ownership are to be assigned to TRI in advance. If the value of the securities exceeds the value of the claim due by 20%, TRI is obliged to release the securities to that extent at the request of the contracting party.

4. Despite the assignment of the claim to TRI, the contracting party remains entitled to collect the accounts receivable. TRI undertakes to collect the accounts receivable itself only if the contracting party fails to honour its payment obligations or has applied for or should have applied for the opening of insolvency proceedings. In such a case, the contracting party has to give TRI all information required for collecting the accounts receivable, to provide TRI with the associated documents, and to notify the assignment to the debtor.

#### **§ 13 Data protection**

In accordance with § 33 of the *Bundesdatenschutzgesetz* (BDSG, Federal German Data Protection Act), TRI points out that client and supplier data are stored and processed electronically by TRI.

#### **§ 14 Applicable law**

German law is to apply exclusively. The Agreement of the United Nations on the international purchase of movable property and the Hague conventions concerning standardized laws on international purchase do not apply.

#### **§ 15 Place of jurisdiction**

If the contracting party is a businessman, the place of jurisdiction is Norderstedt.