

# General Contract Conditions of Maske Fleet GmbH for the Sale of Used Motor Vehicles. Status: 05.2010



Der Spezialist für Auto-Langzeitmiete

## I. Conclusion of contract / transfer of rights and obligations of the Buyer

1. The contract of purchase shall materialise upon signing by the Buyer and the representative of Maske Fleet GmbH on this executed contract form. No additional statement of acceptance on the part of Maske Fleet GmbH is required.
2. Transfers of rights and obligations on the part of the Buyer from the contract of purchase require Maske Fleet GmbH's written approval.

## II. Payment

1. The purchase price and the prices for additional services shall become due upon delivery of the purchased vehicle and handing over or, where applicable, posting the bill to the Buyer for payment.
2. The Buyer may set off claims against Maske Fleet GmbH only if the Buyer's counterclaims are undisputed by Maske Fleet GmbH and a legally binding title exists against Maske Fleet GmbH; a right of retention on the payments to be effected by the Buyer can be asserted only if said claims are based on the counterclaims from this contract of purchase.

## III. Delivery and default in delivery

1. The delivery deadlines and times for delivery, which can be stipulated as binding or nonbinding, shall be set forth in writing. The time for delivery commences on the conclusion of contract.
2. After ten days, in the case of utility vehicles two weeks, if a nonbinding time for delivery or a deadline has passed, the Buyer may request Maske Fleet GmbH to effect delivery. Upon receipt of the request, Maske Fleet GmbH shall be in default. If the Buyer has a claim to damage caused by default, said damage shall be limited in the case of ordinary negligence on behalf of Maske Fleet GmbH to a maximum of 5% of the agreed upon purchase price. If in addition, the Buyer wishes to withdraw from the contract and/or demand damages instead of performance, after the expiration of a ten-day time limit according to sentence 1, the Buyer shall set Maske Fleet GmbH a reasonable time limit for delivery. If the Buyer is entitled to damages instead of performance, in the case of ordinary negligence, the claim shall be limited to max. 10% of the agreed upon net purchase price. If the Buyer is a legal entity under public law, a special fund under public law or a company, which, upon concluding this Contract carries out a trade or business or activities as a self-employed person, damage claims in the case of ordinary negligence shall be excluded. If Maske Fleet GmbH, while being in default, accidentally is able to effect delivery, it shall be liable only with the aforesaid stipulated limitations of liability. Maske Fleet GmbH shall not be liable if the damaging event would have occurred even in the case of timely delivery.
3. If a binding time for delivery is exceeded, Maske Fleet GmbH will be in default already when exceeding the delivery deadline or time for delivery. The Buyer's rights then shall be determined according to item III second sentence 3 – 6 of these contract conditions.
4. Force majeure or breakdown at Maske Fleet GmbH, which, without Maske Fleet GmbH being at fault, will prevent Maske Fleet GmbH from delivering the purchased item at the agreed upon date or within the agreed upon time limit, shall extend the deadlines and time limits referred to item III 1-3 of these Contract Conditions by the period of the breakdown which is contingent upon these circumstances. Should corresponding breakdowns result in a delay of performance of more than four months, the Buyer may withdraw from the contract. This, however, shall not affect any other existing legal rights of withdrawal.

## IV. Inspection

1. The Buyer shall be obligated to inspect the object of purchase within eight days after receiving the delivery notice. In the case of non-inspection, Maske Fleet GmbH shall assert its legal rights.
2. If Maske Fleet GmbH demands damages, this shall be in the amount of 10% of the net purchase price. The damages shall be estimated higher or lower if Maske Fleet GmbH is able to prove a higher or the Buyer a lower damage amount.

## V. Reservation of title

1. The object of purchase shall remain Maske Fleet GmbH's property based on the claims to which it is entitled according to the contract of purchase, until the claims in question have been settled. If the Buyer is a legal entity under public law, a special fund under public law or a company, which, upon concluding this Contract carries out a trade or business or activities as a self-employed person, the reservation of title also shall remain in existence for claims of Maske Fleet GmbH against buyers from the current business relations until the payment of all relevant claims. Upon the Buyer's request, Maske Fleet GmbH is authorised to waive the reservation of title, if the Buyer has indisputably fulfilled all claims related to the object of purchase and a reasonable security exists for the remaining claims from the current business relations. During the period of the reservation of title, Maske Fleet GmbH shall be solely entitled to the right of ownership of the motor vehicle registration certificate.

2. In the event of the Buyer's payment default, Maske Fleet GmbH may withdraw from the contract of purchase.

3. So long as the reservation of title exists, the Buyer may not dispose of the object of purchase or grant said object to third parties for contractual use.

## VI. Defect of quality

1. The Buyer's claims based on defects of quality shall lapse within one year as of delivery of the object of purchase to the Buyer. In derogation hereof, the sale of any motor vehicle shall be effected subject to exclusion of any liability for defects, if the Buyer is a legal entity under public law, a special fund under public law or a company, which, upon concluding this Contract carries out a trade or business or activities as a self-employed person. This shall not affect additional claims in the event of malicious non-disclosure of defects or the acceptance of a guarantee for the quality of the vehicle.

- 2.a) The Buyer shall immediately notify Maske Fleet GmbH of any claims for the correction of defects.

- b) By way of retroactive performance, where applicable, the replaced parts of the vehicle shall become Maske Fleet GmbH's property.

- c) Within the scope of the elimination of defects, the Buyer shall be able to claim defects of quality based on the contract of purchase until the expiration of the period of limitation for the object of purchase.

## VII. Liability

1. Should Maske Fleet GmbH be liable for damage caused by ordinary negligence, based on the statutory provisions according to these terms and conditions, Maske Fleet GmbH shall be liable to a limited extent as follows:

The liability shall exist only in the case of a breach of contractual duties and be limited to typical damage foreseeable upon the conclusion of contract. This limitation does not apply to injury to life, body or health. If the damage is covered by an insurance policy concluded by the Buyer for the damaging event in question (with the exception of insurance in terms of fixed sums), Maske Fleet GmbH shall be liable only for related disadvantages suffered by the Buyer, for example, higher insurance premiums or interest disadvantages upon damage settlement by the insurance company. The same shall apply to damages caused by a defect.

2. Irrespective of Maske Fleet GmbH's fault, this shall not affect its liability in the case of malicious non-disclosure of the defect, the acceptance of a guarantee or a quality risk and in accordance with the Product Liability Act.

3. The liability due to default in delivery is regulated in Section III.

4. Excluded shall be personal liability of legal representatives and vicarious agents and staff members of Maske Fleet GmbH for damage caused by ordinary negligence.

## VIII. Jurisdictional venue

1. If the Buyer is a legal entity under public law, a special fund under public law or a company, which, upon conclusion of this Contract, acts in the course of commercial or independent professional activity, the exclusive jurisdictional venue for all current and future claims from the business relations shall be Hamburg as Maske Fleet GmbH's principal place of business.

2. This also shall apply if the Buyer has no general jurisdictional venue domestically, upon the conclusion of contract, relocates its principle place of business or ordinary domicile from a domestic to a foreign location or its domicile or ordinary place of business is not unknown at the time of filing the action. In other respects, in the case of claims filed by Maske Fleet GmbH against the private buyer, the domicile of said Buyer shall be the jurisdictional venue.

## IX. Applicable law

German law shall apply subject to the exclusion of the UN Sales Convention.

## X. Written form clause / escape clause

1. All agreements within the scope of the conclusion of contract shall be made in writing. This also shall apply to any deviations from the content of these Contract Conditions.
2. Should an individual provision of the contract of purchase, including the general contract conditions, prove to be invalid, this shall not affect the validating of the remaining provisions of this contract. In this case, the invalid provision is to be modified or supplemented, if possible, by the contracting parties, so that the economic purpose intended with the invalid provision will be achieved.