

## General Terms and Conditions of Sale and Delivery Westdeutscher Metall-Handel GmbH

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### **1 General, exclusion of assignment**

#### 1.1

The following terms and conditions of sale and delivery shall apply to all our - also future - contracts, offers, deliveries and other services. The customer's general terms and conditions shall not apply, even if they are communicated to us in a letter of confirmation or in any other way and we do not object to them.

#### 1.2

Verbal subsidiary agreements, deviations from these terms and conditions as well as additions to or exclusion of these terms and conditions as well as guarantee and assurance declarations by our employees or representatives require written confirmation to be legally effective. This also applies to the waiver of this written form requirement.

#### 1.3

The German version of these General Terms and Conditions of Sale and Delivery shall prevail for the interpretation of these General Terms and Conditions of Sale and Delivery, even if translations of these Terms and Conditions of Sale and Delivery are provided to the customer or signed by the parties.

#### 1.4

If provisions in these General Terms and Conditions of Sale or other contractual provisions are or become invalid, the remainder of the contract shall remain valid. The parties are obliged to replace an invalid provision with a valid provision that comes as close as possible to the economic result of the invalid provision.

### **2 Offer and conclusion of contract**

Our offers are subject to confirmation. The conclusion of a contract requires our written confirmation of the order (order confirmation).

### **3. Quality, quantity, delivery, transfer of risk and call-off orders**

#### 3.1

Unless otherwise agreed in writing, the relevant German DIN-EN shall apply, otherwise the relevant DIN shall apply. In all other respects, our goods shall be delivered in customary quality and design, taking into account customary manufacturing tolerances for dimensions, weights and quality conditions. References to standards, material sheets or factory tests do not constitute a guarantee of quality. Public statements by us, our assistants or any manufacturers or their or by any manufacturers or their assistants, in particular in advertising material, concerning the quality of our goods shall only be capable of substantiating the customer's rights in respect of material defects if they are made part of a quality agreement between the parties.

#### 3.2

The weighing carried out by us or our supplier on calibrated scales shall be decisive for the weights. The resulting unit weights can be used to calculate the delivery weight.

#### 3.3

Unless otherwise agreed, excess or short deliveries by us of up to 10% of the ordered quantity or number of items are permitted.

#### 3.4

Partial deliveries and services are admitted unless they are economically unreasonable for the customer.

#### 3.5

Unless otherwise agreed in writing (e.g. Incoterms), our deliveries shall be made at our discretion ex works or ex warehouse. This may also be the factory or warehouse of a third party. Transport is carried out on behalf and for the account of the customer. The risk shall pass to the customer at the latest upon delivery to the forwarding agent or other transport person. This also applies if the goods are delivered by our own employees. In the absence of specific instructions from the customer, we shall be responsible for selecting a suitable transport person. The risk shall also pass to the customer if goods are stored with us at the customer's request.

#### 3.6

Our obligation to perform and deliver is subject to correct and timely delivery to ourselves by our suppliers.

#### 3.7

Unless otherwise agreed in writing, information on our delivery and performance time is only approximate. The due date of our performance obligation shall not occur until we have notified the customer in text form of our readiness to hand over or dispatch the goods. For his part, the customer can bring about the due date of our deliveries and services at the earliest one month after the expiry of the specified periods by written request for delivery and performance.

### 3.8

A due date for our deliveries and services requires in any case that the customer has provided all documents, approvals and releases to be obtained by him and that all technical questions have been clarified.

### 3.9

Delivery and performance periods shall be extended appropriately in the event of measures within the scope of industrial disputes, in particular strikes and lawful lockouts, as well as in the event of the occurrence of other obstacles for which we are not responsible. This shall also apply if and insofar as the circumstances occur at our sub-suppliers and our delivery is delayed or prevented as a result. We are also not responsible for the aforementioned circumstances if they arise during an already existing delay. We shall inform the customer as soon as possible of the beginning and end of such hindrances. If, after the conclusion of the contract (e.g. due to mobilisation, official measures, including foreign trade measures), we are unable to foresee the measures) which could not be foreseen by us and which make it more difficult for us - not only temporarily - to perform the to render the performance owed by us, or to not only temporary disturbances of the equivalence ratio between performance and counter-performance to our disadvantage, we may demand a corresponding adjustment of the contract. If an adjustment of the contract is not possible or unreasonable for one of the contracting parties, we may withdraw from the contract. Otherwise, the statutory provisions on the exclusion of the obligation to perform, the debtor's right to refuse performance, on the disturbance of the basis of the contract and the right to terminate for good cause shall remain unaffected.

### 3.10

In the case of call-off orders, the customer must call off the goods within a period of two weeks after we have notified the customer that the goods have been handed over or are ready for dispatch. If, in the case of call-off orders, more than the order quantity is called off, we shall be entitled to deliver only the quantity ordered or to invoice the excess quantity at the valid price of that particular date.

### 3.11

If the customer fails to take delivery or call off the goods on time, we shall be entitled, without prejudice to our claim to performance and other rights, to demand reimbursement of our additional expenses for the unsuccessful offer and to store the goods at the customer's expense and risk.

## 4 Prices and costs

### 4.1

Unless otherwise agreed in writing, prices are ex works or ex warehouse (this may also be the works or warehouse of a third party) excluding the packaging customary for the goods in question. If, as agreed, delivery is to be made later than 3 months after conclusion of the contract or if, due to a delay for which the customer is responsible, delivery is not made until 3 months after conclusion of the contract, we shall be entitled to increase the agreed prices accordingly if, after conclusion of the contract, cost increases occur, in particular due to collective wage agreements or increases in the price of materials.

### 4.2

The statutory value-added tax is not included in the prices; it will be shown separately in the invoice at the statutory rate on the day of invoicing.

### 4.3

Insofar as goods are stored with us at the request of the customer, the costs incurred for this shall be borne by the customer.

### 4.4

If it turns out during the inspection of alleged defects that they do not exist or do not exist to the extent alleged, the customer shall be obliged to bear the costs caused by the inspection to the extent to which the alleged defects turned out not to exist.

## 5 Payment

### 5.1

Payments shall be made within thirty days of the invoice date. Cheques shall only be accepted by us for a minimum amount of € 5,000.00 (domestic banks) and € 10,000.00 (foreign banks). The punctuality of payments shall be determined by the date on which the money is received by us or credited to our account without reservation.

### 5.2

For the period in which the customer is in default of payment, interest on arrears shall accrue at a rate of eight percentage points above the base rate, unless we are entitled to higher interest on another legal ground. The right to claim further damages and other statutory rights due to default is reserved.

### 5.3

If payment is made with means of payment which the customer has procured by discounting an acceptor's bill of exchange, the payment claim shall only expire when the bill of exchange is honoured by the customer.

#### 5.4

If there are several outstanding claims against the customer and if a payment by the customer is not sufficient to settle all claims, settlement shall be made in accordance with the statutory provisions (Section 366 (2) of the German Civil Code), even if the customer has expressly paid for a specific claim.

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#### 5.5

Offsetting or the exercise of any statutory right of retention or right to refuse performance on account of counterclaims of the customer which are disputed by us or which have not been finally determined by a court of law (for example on account of defects in the item) shall be excluded. The exercise of a right of retention or a right to refuse performance is also excluded insofar as the customer's counterclaims are not based on the same contractual relationship.

#### 5.6

If the customer fails to meet payment deadlines or if, after conclusion of the contract, it becomes apparent for other reasons that the fulfilment of our payment claims is jeopardised by the customer's lack of ability to pay or a significant deterioration in the customer's financial situation, we shall be entitled to adjust the payment terms, in particular to make further deliveries to the customer only against advance payment. Instead of a delivery only against advance payment, we are also entitled to demand security before delivery and performance or to withdraw from the contract. Statutory claims for damages shall remain unaffected.

### **6. Notice of defects, claims due to material defects and defects of title, instructions of the customer, advice**

#### 6.1

The customer shall be obliged to notify us of any recognisable defects no later than 3 days of the receipt of the goods at the latest, and of non-recognisable defects at the latest three days after their receipt in written form. These deadlines are preclusive deadlines. For the time of the notification of defects shall depend on the time of its receipt by us. shall be decisive.

#### 6.2

Our legal liability in the event of the existence of third-party rights based on industrial or other intellectual property ("property rights") shall be limited to such Intellectual Property Rights which are validly existing in the Federal Republic of Germany. If, according to the agreements of the parties, the goods are to be resold in another country ("third country") or used in another way in a third country, we shall also be liable, in accordance with the statutory provisions, for ensuring that no property rights exist in the third country which can be asserted against the customer. If the parties

have not reached an agreement on resale or use in a third country, but the customer has its registered office in a third country, we shall guarantee in accordance with the statutory provisions that no property rights exist in the Federal Republic of Germany and in the country of the customer's registered office.

#### 6.3

Any claims of the customer due to a defect are limited to the right to subsequent performance. Subsequent performance shall be effected, at our discretion, by remedying the defect or by delivery of a defect-free item. If the supplementary performance fails, the customer may, at his discretion, withdraw from the purchase contract or reduce the purchase price.

#### 6.4

Insofar as we are obliged to pay damages in accordance with the statutory provisions - irrespective of the legal grounds, including any claims for damages arising from positive breach of contract, culpa in contrahendo and tortious acts on account of a defect, this obligation to pay damages shall be limited in accordance with clause 7.

#### 6.5

Any recourse claims of the customer pursuant to § 478 of the German Civil Code shall remain unaffected. Insofar as we are liable within the scope of recourse in accordance with the statutory provisions, this obligation to pay damages shall be limited in accordance with clause 7

#### 6.6

Claims of the customer due to defects shall become statute-barred after one year beginning with the delivery of the item. This shall not apply (1) in the case of intent or fraudulent concealment of the defect, (2) in the case of breach of a quality guarantee assumed by us and (3) in the case of an item which has been used for a building in accordance with its customary use and which has caused the defectiveness of the building. The aforementioned one-year limitation period shall also not apply to claims for damages due to defects if the damage is due to gross negligence on the part of our legal representatives or executives or if it is due to gross negligence on the part of our legal representatives or executives or executive employees or if it is a matter of personal injury or if we are liable in tort. If the defect consists in a right in rem of a third party on the basis of which the surrender of the object can be demanded or in another right that is registered in the land register, the limitation period shall be three years.. The statutory provisions on the limitation of any recourse claims pursuant to § 479 of the German Civil Code and on the limitation and exclusion periods pursuant to the Product Liability Act shall remain unaffected.

#### 6.7

In the case of declassified goods and second choice goods, any rights for defects are excluded for such defects that are known to the customer at the time of conclusion of the contract. We shall also not be liable for defects which remained unknown to the customer at the time of conclusion of the contract as a result of gross negligence, unless we fraudulently concealed the defect or assumed a corresponding guarantee for the quality of the goods.

#### 6.8

The customer is responsible for ensuring that instructions and specifications do not lead to a defect in the goods manufactured or delivered by us. We shall therefore not be liable for such defects unless we have culpably failed to inform the customer of the risk of defects occurring or have assumed such risk in writing.

#### 6.9

It is the customer's responsibility to check the suitability of the goods for their intended use. We are therefore not liable for the customer's intended use. Any elaborations prepared by us for the customer, advice given by us as well as recommendations made by us shall be made without establishing any binding force; they shall be carefully checked by the customer himself - if necessary by obtaining expert advice from third parties - before being implemented.

#### 6.10

We will only accept returns of defect-free goods if we have confirmed this in writing in advance. Any costs incurred shall be borne by the sender of the returned goods. If the returned goods are in a good condition, we shall issue a credit note for it, deducting the usual processing costs of 20% of the invoice value. Goods that are not part of the stock programme and goods that have been processed in any way are excluded from return. Credit notes can only be offset.

### **7. Limitation of liability**

#### 7.1

We shall be liable for damages caused by intent or gross negligence on the part of our legal representatives or executive employees, as well as for personal injury, in accordance with the statutory provisions.

#### 7.2

In the case of intent or gross negligence of simple vicarious agents as well as in the case of simple negligent breach of essential contractual obligations which are indispensable for the achievement of the purpose of the contract and on whose strict compliance the customer must therefore be able to rely, we shall be liable in accordance with the statutory provisions limited to such damages which were foreseeable for us in terms of type and scope at the time of conclusion of the contract.

#### 7.3

In the cases of clause 7.2, our liability is limited to a maximum of three times the amount of the value of the affected delivery, but in any case to € 1 million per damaging event and € 2 million per calendar year. For pure financial losses, our liability is limited to a maximum of twice the amount of the value of the delivery concerned, but in any event to 100,000.00 € per damaging event and 200,000.00 € per calendar year.

#### 7.4

In all other respects, claims by the customer for compensation for direct or indirect damage - irrespective of the legal grounds, including any claims for compensation for breach of pre-contractual obligations and tort - are excluded. Any statutory liability due to the absence of a quality of the item guaranteed by us, due to a fraudulently concealed defect or according to the Product Liability Act shall remain unaffected.

#### 7.5

Claims for damages by the customer due to defects shall become statute-barred in accordance with clause 6.6. Other claims for damages by the customer shall become statute-barred after two years from the time at which the customer becomes aware of the circumstances giving rise to the claim and of the person causing the damage or should have become aware of them without gross negligence, but at the latest after three years from the time of the event causing the damage. The preceding sentence shall not apply in cases of intent, fraudulent intent, gross negligence on the part of our legal representatives or executive employees, personal injury and in cases of tort and liability under the Product Liability Act.

#### 7.6

The above limitations of liability shall also apply to any claims for damages of the customer against our legal representatives, executive employees and other vicarious agents.

### **8. Property rights and copyrights**

We reserve all property rights and copyrights to all drawings, illustrations, cost estimates and other documents enclosed with offers. These documents may not be made accessible to third parties or used commercially without our prior consent and must be returned to us immediately upon request.

## 9. Retention of title and security interests

### 9.1

We retain title to the goods ("Retained Goods") until all our claims, including aged claims, arising from the business relationship with the customer have been satisfied.

### 9.2

The processing or transformation of the goods subject to retention of title by the customer shall always be carried out on our behalf without this giving rise to any liability on our part. If the goods are processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the goods to the other processed objects at the time of the processing.

In the event that goods subject to retention of title are combined, mixed or blended with movable items of the customer in such a way that the customer's item is to be regarded as the main item, the customer hereby transfers to us his ownership of the overall item in the ratio of the value of the goods subject to retention of title to the value of the other combined, mixed or blended items.

If goods subject to retention of title are combined, mixed or blended with movable objects of a third party in such a way that the object of the third party is to be regarded as the main object, the customer hereby assigns to us the remuneration claim to which he is entitled against the third party in the amount corresponding to the final invoice amount attributable to the goods subject to retention of title. The item created by combining or mixing (hereinafter referred to as the "new item") or the claims to remuneration to which we are entitled or which are to be transferred to us or the (co-)ownership rights to the new item to which we are entitled or which are to be transferred in accordance with this clause 9.2 as well as the claims to remuneration assigned in accordance with this clause 9.2 shall serve as security for our claims in the same way as the reserved goods themselves in accordance with clause 9.1.

### 9.3

The customer is entitled to resell the reserved goods or new item in the ordinary course of business subject to retention of title. The customer is obliged to ensure that the claims from such resale transactions can be transferred to us in accordance with sections 9.4 and 9.5. He is prohibited from disposing of the goods in any other way.

### 9.4

The customer's claims arising from a resale of the goods subject to retention of title are hereby assigned to us. They shall serve as our security to the same extent as the reserved goods. If the customer sells the goods subject to retention of title together with other goods not supplied by us, the assignment of the claim shall only apply to the amount of the final invoice amount resulting from the resale of the goods subject to retention of title. In the event of the sale of goods which are co-owned by us in accordance with clause 9.2 or the statutory provisions on the combination, mixing and blending of items, the assignment of the claim shall apply in the amount of our co-ownership share.

### 9.5

If the customer includes claims from the resale of goods subject to retention of title in a current account relationship existing with his customers, he hereby assigns to us any recognised balance or closing balance in his favour in the amount corresponding to the total amount of the claims from the resale of the goods subject to retention of title included in the current account relationship. Clause 9.4 sentences 3 and 4 shall apply accordingly.

### 9.6

The customer is authorised to collect the claims assigned to us from the resale of the reserved goods or new item. The customer is not permitted to assign the claims from the resale to third parties, including within the framework of a genuine factoring agreement.

### 9.7

We may revoke the authorisation to resell the goods subject to retention of title or the new item pursuant to clause 9.3 and the authorisation to collect the claims assigned to us pursuant to clause 9.6 in the event of default in payment or cessation of payments by the buyer as well as in the event of an application to open insolvency proceedings or other cases of impaired creditworthiness and trustworthiness of the buyer. In the event of an application for the opening of insolvency proceedings or in other cases of impaired creditworthiness and trustworthiness of the buyer. In the event of revocation of the resale or collection authorisation, the customer shall be obliged to inform his customers immediately of the assignment of the claim to us and to provide us with all information and documents required for collection. In this case, the customer shall also be obliged to provide any securities to which it is entitled for customer claims, to which he is entitled for customer claims to us or to transfer them.

### 9.8

The customer is obliged to notify us immediately of any seizure or other legal or actual impairment of the risk to the goods subject to retention of title or other securities existing for us.

### 9.9

The customer undertakes to insure the reserved goods adequately against fire, water and theft at replacement value. He already now assigns his claims from the insurance contracts to us.

#### 9.10

In the event of default in payment or other not merely minor breach of contract by the customer and in the event of rescission of the contract, the customer hereby declares its consent to our taking away or having taken away the goods subject to retention of title located at the customer's premises or - insofar as we are the sole owner thereof - the new item within the meaning of section 9.2. The goods subject to retention of title located at the customer's premises or - insofar as we are the sole owner thereof - the new item within the meaning of section 9.2. The removal shall only constitute a withdrawal from the contract if we expressly declare this. The customer shall grant our representatives access at any time to carry out these measures as well as for a general inspection of the goods subject to retention of title or the new item.

#### 9.11

We shall be entitled to realise the removed goods subject to retention of title by way of private sale 14 days after warning, whereby the realisation proceeds - less reasonable realisation costs - shall be set off against the customer's liabilities.

#### 9.12

The customer shall grant us a right of lien on the material provided to us for the execution of the order and claims replacing it to secure all due and aged claims arising from the business relationship with him.

#### 9.13

Insofar as the retention of title or the assignment of claims should be ineffective or unenforceable due to non-mandatory foreign legal provisions, the security corresponding to the retention of title or the assignment of claims in this area shall be deemed agreed. If the customer's cooperation is required hereunder, the customer shall take all measures necessary to establish and maintain the security.

#### 9.14

The unconditional creditworthiness of the customer is a prerequisite for the obligation to deliver. If, after conclusion of the contract, we become aware of the cessation of payments, the application for or implementation of judicial or extrajudicial composition proceedings, the application for or initiation of bankruptcy proceedings or if the customer violates the agreements of these General Terms and Conditions of Delivery and Payment or fails to pay due invoices despite a reminder, we shall be entitled to refuse the performance incumbent upon us until the counter-performance has been effected or security for it has been provided. In the event of the occurrence of the aforementioned circumstances, we shall furthermore be entitled to call in all claims from contracts already executed by us. Furthermore, we are entitled to withdraw from the contract if the customer, despite a reminder and the setting of an and a grace period set by us, the customer fails to provide a security or counter-performance requested by us.

### 10 Tools

Insofar as tools are manufactured or procured by us for deliveries to the customer, these shall remain our property even if the tool costs are paid by the customer in full or pro rata. The tools shall be used exclusively for deliveries to the customer as long as the customer fulfils its contractual obligations towards us. If, since the 24 (twenty-four) months have passed since the last delivery or if the customer's contribution to the acquisition of the tool has been amortised, we shall also be entitled to use the tool for other purposes or to scrap it.

### 11 Place of performance, place of jurisdiction, applicable law

#### 11.1

The place of performance for our deliveries is the factory or warehouse from which the goods are held ready for collection or dispatched; this may also be the factory or warehouse of a third party. The place of performance for payments is Essen.

#### 11.2

If the customer is a merchant, a legal entity under public law or a special fund under public law, the sole place of jurisdiction for all disputes arising directly or indirectly from the business relationship shall be Essen. Essen shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the business relationship. Instead of the court of jurisdiction agreed upon above, we shall be entitled to invoke any other court of jurisdiction competent court.

#### 11.3

The law of the Federal Republic of Germany shall apply to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

### 12 Data protection clause

#### 12.1

The customer agrees that we may provide approved credit agencies with information on the commencement and termination of the business relationship. In particular, we are entitled to report claims, refusal to honour cheques and bills of exchange, application for a reminder notice / filing of an action for payment in the case of an undisputed claim, initiation of compulsory enforcement measures, rejection or change of debt insurance by credit insurers. According to the Federal Data Protection Act, these reports may only be made insofar as this is necessary to protect our legitimate interests or those of the general public.

#### Note

Data of the customers or involved third parties are stored and processed by us by means of EDP, insofar as this is necessary for the proper handling of the contractual relationships.