

General Terms and Conditions of Sale and Delivery of Wetzel GmbH

Status: January 2009

1. Scope

- 1.1 The following Terms and Conditions shall apply to all – even future – deliveries and services (hereinafter summarily referred to as deliveries only) exclusively, provided no other agreements have been made in writing.
- 1.2 Deviating terms and conditions of the customer shall apply only subject to our written consent to same.

2. Quotations, Conclusion of Contracts and Contractual Documents

- 2.1 All of our quotations shall be non-binding. Any order placed with us shall be deemed accepted only upon our written confirmation or upon delivery of same.
- 2.2 Our employees are required to confirm verbal ancillary agreements or commitments that extend beyond the content of the written contract or that amend these General Terms and Conditions of Sale and Delivery to our disadvantage, in writing.
- 2.3 We shall retain our title and copyrights in all our specimen, samples, change and structure proposals as well as all other documents, information, depictions, drawings, dimensional and weight information as well as cost estimates. Any information inherent in same shall be approximate values only unless expressly agreed upon as binding in writing. They shall not be made accessible to any third parties.
- 2.4 The tools, devices, drawings, samples and models produced within the scope of the fulfillment of the contract shall remain our property.
- 2.5 In the event that the customer should supply documentation such as photographs, drawings, specifications, sample documents and the like, the customer shall assume full liability for ascertaining that the utilization of same does not infringe upon any third party rights.

3. Prices

- 3.1 All prices are to be understood ex works, net in Euros plus packaging, freight, insurance and value added tax as applicable on the day of delivery.
- 3.2 In the event of a delivery date that exceeds one month, we shall have the right to adjust the agreed upon prices accordingly, to the extent that after conclusion of the contract significant changes in labor, energy, materials or raw materials costs and/or in the costs for supplies and operating resources should have occurred and provided we are not responsible for said changes. A price increase shall not exceed a maximum of 5%.

4. Delivery, Time of Delivery, Force Majeure, Partial Shipments, Risk Transfer

- 4.1 The delivery time shall begin upon receipt of the order confirmation, however, never prior to the all-encompassing clarification of all details pertaining to the execution of the order and of all technical questions and never prior to the provision of all documents to be obtained by the customer, including any required digital data in industry standard formats, approvals and permits and not prior to receipt of any agreed upon deposit payment.
- 4.2 The delivery time shall be deemed complied with if the delivery object is ready for shipment upon its expiration.
- 4.3 Delivery execution by us shall be subject to timely and correct self-delivery from our suppliers.
- 4.4 Delivery deadlines and dates shall be extended by the duration of the disruption and its effects in the event of unforeseeable events or incidents that cannot be prevented and for which we are not responsible (e.g. force majeure, labor disputes, traffic and operational interruptions, difficulties in the procurement of materials or energy, transportation delays, lack of workers, energy and raw materials, action undertaken by government agencies as well as difficulties in the procurement of permits, in particular import and export licenses). This shall also apply if these events occur with our suppliers or during a delay that is already ongoing. In the event that the disruption is not only temporary in duration, both contracting parties shall have the right to withdraw from the contract after expiration of an adequate remedial period. In the aforementioned cases, neither party shall be entitled to damage compensation.
- 4.5 In the event of late delivery, our liability in cases of simple neglect shall be limited to 0.5% of the net invoice value of the affected portion of the delivery per completed week; however our maximum liability shall not exceed 5% of the net invoice value. This shall be without prejudice to the entitlement to receive damage compensation in lieu of performance pursuant to Article 8.1. At the latest upon conclusion of the contract, the customer shall inform us about the contractual penalties that apply to customer's relationship with the latter's buyer.
- 4.6 We shall have the right to perform partial deliveries within a reasonable scope.
- 4.7 The risk shall transfer to the customer EXW Grenzach-Wyhlen (Incoterms 2000) even if we have assumed the performance of other services, for instance, the exceptional absorption of the shipping costs or transportation to customer by in-house transportation personnel or installation services, etc.
- 4.8 We shall choose the mode of shipping and packaging at our discretion.
- 4.9 In the event that the customer should fail to accept the delivery, we shall have the right, upon setting a reasonable remedial period and its fruitless expiration, to withdraw from the contract and demand damage compensation in lieu of fulfillment. In terms of damage compensation in lieu of fulfillment, it shall be at our discretion to choose compensation for the damages actually incurred or payment of a contractual penalty in the amount of 10% of the price agreed upon. The customer shall have the right to render proof to us that no damages or lesser damages were incurred.

5. Payment

- 5.1 Payments shall be due within 30 days after date of invoice net and shall be remitted to our bank account, all fees prepaid. Payments shall be deemed made as of and to the extent only that we can gain access to them at our bank without any restrictions.
- 5.2 Bank drafts and checks shall be accepted on account of performance only. Discounts, bank draft fees and collection costs shall be for the account of the customer. The latter shall be due for immediate payment.
- 5.3 In cases of payment default, we shall have the right to charge interest in the amount of 8 percentage points over the prime rate, however, at least 10%.
- 5.4 In the event that justified misgivings about the customer's ability to pay should arise, for instance as a result of slow payment patterns, late payments, bank drafts of checks being returned unpaid, we shall have the right to execute all further deliveries against the provision of collateral or cash payment step by step only. In the event that the customer should fail to meet such demands within a reasonable period of time, we shall have the right to withdraw from the part of the delivery contract not fulfilled yet. This shall not be subject to the setting of any remedial deadline if the customer is clearly not in a position to provide collateral, for instance in the event of initiation of insolvency proceedings against the assets of the customer.
- 5.5 The withholding of payments or their setting off against receivables owed to the customer shall be permitted only if the customer's receivables have not been disputed or have been finally adjudged by a court of law.
- 5.6 The assignment of entitlements arising from contracts made between our company and the customer to us shall be excluded without our express written consent. This shall not apply to monetary receivables. However, we shall have the option to pay to the customer with the effect of releasing us from the obligation.

6. Retention of Title

- 6.1 Goods delivered by us shall remain our property until we have received all payments and irrevocable credit advices for checks and bank drafts accepted as a result of the business relationship with the customer. In the event that we should have open account arrangements, the retention of title shall pertain to the accepted and reconciled balance.
- 6.2 The processing and handling of reserved goods by the customer shall be performed on our behalf as the manufacturer without any obligation at our end being created. If reserved goods are combined with other goods, we shall acquire co-ownership in the newly manufactured goods at the ratio of the invoice value of the reserved goods to the other materials.
- 6.3 The customer may sell reserved goods only within the normal scope of business. The pledging or assignment as collateral of reserved goods by the customer shall be prohibited. The customer shall undertake to notify us of any third party access immediately. Costs incurred as a result of the prevention of access shall be absorbed by the customer, provided they cannot be collected from the third party. The customer shall undertake to adequately insure the reserved goods at customer's expense against the risk of loss and damages at the new purchase value of the goods; the customer herewith assigns all entitlements under such insurance policies to us.
- 6.4 The customer herewith assigns to us in advance any and all receivables in full generated from the re-sale or continued utilization of the reserved goods to/by third parties. The customer shall have the right to collect any receivables assigned to us as long as the customer meets all payment obligations to us.
- 6.5 In the event that the customer should be in default of payment or if justified misgivings about customer's ability to pay should arise, we shall have the option to revoke the authorization to re-sale or reuse the reserved goods and demand that the customer disclose to us the assigned receivables and the respective debtors and that the customer provides all information required to collect said receivables, hands over any related documents and notifies customer's debtors of the assignment. The seizure of the reserved goods shall not constitute a withdrawal from the contract. If we do declare our withdrawal from the contract, we shall have the right to dispose of same at our discretion.
- 6.6 In the event that the collateral provided should exceed our receivables by more than 10%, we shall, upon customer's request, release collateral at our discretion to that extent.

7. Liability for Defects

- 7.1 The customers shall advise us of any defects immediately, however, no later than 8 days after the receipt of the goods; and in the event of hidden defects no later than 3 days upon their discovery. Notice shall be given in writing. If said deadlines should be exceeded, all entitlements and rights arising from the liability for these defects shall be rendered void.
- 7.2 Complaints about engravings shall be corroborated through the submission of samples. If the samples are congruent with the verification sample which was expressly or silently approved by the customer, no defects shall have occurred. The costs of any remedial work requested nonetheless shall be for the account of the customer.
- 7.3 In the event of justified claims we shall, at our discretion, either deliver a replacement or take remedial action. In the event that said remedial action should fail, the customer shall have the option, upon fruitless expiration of a reasonable remedial time period, to demand a price reduction or – in the event of a defects that is more than minor – withdraw from the contract and demand compensation for damages in lieu of fulfillment pursuant to Article 8.1. The costs of any remedial action resulting from the relocation of the purchased object after its delivery to a different location than the commercial business facility of the customer, shall not be absorbed.
- 7.4 The period of limitations shall be 12 months after the transfer of the risk, provided we did not breach our duties intentionally or as a result of acts of gross neglect, or did not maliciously fail to disclose the defect or provided we did not provide a warranty beyond these terms or provided a longer period of limitations is not mandated by law.

- 7.5 If the defect was caused by a key third party product, our liability shall be limited to the assignment of our defect compensation liability entitlements and rights we are owed by the respective supplier of the third party product, unless the satisfaction of the assigned entitlement or right should fail or be unenforceable for any other reasons. In these cases the customer shall once again be entitled to the rights arising from Article 7.3.
- 7.6 We shall not assume any warranties for materials supplied by the customer. These shall solely be subjected to our standard inspections. The customer shall be liable for their proper quality and shall undertake to reimburse us for any damages incurred due to insufficient quality, including consequential damages.
- 7.7 The infringement upon third party rights shall be considered a legal defect only if these property rights are in effect in the Federal Republic of Germany.

8. General Liability

- 8.1 Entitlement to damage compensation – regardless of the legal grounds – against us shall be excluded if we, our legal representatives or agents have caused the damage as a result of simple neglect. This exclusion of liabilities shall neither apply to personal injuries, nor in the event that we have assumed a contractual guarantee, nor in the event of breach of cardinal contractual duties that put the fulfillment of the purpose of the contract in jeopardy. To this end, our liability shall, however, be limited to the scope of the guarantee or, in the event of breach of cardinal contractual obligations, to the contract typical and foreseeable damages. This shall be without prejudice to any entitlements pursuant to the product liability act.
- 8.2 Damage compensation entitlements shall be subject to a period of limitations of one year after the customer becomes aware of the damage and the replacement obligation or after the point in time at which customer would have had to have become aware of same in the absence of gross neglect. This shall be without prejudice to entitlements pursuant to the product liability act, due to deficiencies and due to personal injuries.

9. Place of Fulfillment, Jurisdiction, Governing Law

- 9.1 The place of fulfillment for all services rendered under delivery contracts shall be Grenzach-Wyhlen.
- 9.2 **The place of jurisdiction for all litigation arising from delivery contracts shall be the competent court at our business domicile.** We shall, however, also have the right to file suit at the competent court at customer's business domicile.
- 9.3 German law shall be the governing law. The application of the Convention of the United Nations on Contracts for the International Sale of Goods (CSIG) of April 11, 1980 shall be excluded.