

General Terms and Conditions of Delivery and Sale of HWG Horst Weidner GmbH



1. Applicability

- 1.1 These General Terms and Conditions of Delivery and Sale ("GTC") are valid for all contracts concerning the sale and/or the delivery of movable objects (hereinafter also referred to as "Goods") between you as our customer (hereinafter also referred to as "Purchaser") and us, HWG Horst Weidner GmbH.
- 1.2 Our GTC apply exclusively; contradicting, additional or from these GTC deviating conditions of the Purchaser shall not become part of the contract, unless we have expressly approved their validity in writing. Our GTC shall also apply if we make a delivery to the Purchaser without reservation while having knowledge of his/her contradictory or deviating conditions.
- 1.3 Our GTC shall only apply if the Purchaser is an entrepreneur (Sec. 14 German Civil Code, Bürgerliches Gesetzbuch - "BGB"), a legal person under public law or a special fund under public law.

2. Offer and Conclusion of Contract

- 2.1 Our offers are subject to change and non-binding.
- 2.2 By ordering Goods, the Purchaser submits a binding offer. As far as the order does not stipulate anything else, we are entitled to accept the offer within 5 (five) working days upon its receipt.
- 2.3 The minimum order value is 50 (fifty) Euro.
- 2.4 The acceptance is given by written order conformation. Communication by e-mail or telefax shall also suffice to satisfy the written form requirement. Our non-response to offers, orders, requests or other declarations by the Purchaser shall only constitute our approval if and to the extent that this has been expressly agreed in writing.
- 2.5 Only persons explicitly authorised by ourselves are entitled to make arrangements differing from these GTC.
- 2.6 The Purchaser is obliged to provide us in detail with all information, which we require to issue an order, in particular the intended purpose of use and the installation location of the Goods.
- 2.7 Illustrations, drawings, information about weight, measurements, colour and output as well as other descriptions of the Goods from the documents belonging to the offer are only approximate, unless they are expressly referred to as binding. They do not constitute an agreement or a guarantee of a quality of the Goods.
- 2.8 All our offers and cost estimates as well as illustrations, calculations, prospectuses, catalogues, models and other documents and tools provided to the Purchaser are subject to our property and/or copy right. Without our prior express consent, the Purchaser may not make these documents and items accessible to any third party, neither per se or as content, disclose them to third parties, use them for himself or through any third party, let them be used or reproduce them. Upon our request, he is obliged to return these documents and items entirely to us if they are no longer required in the regular course of business or if negotiations do not lead to the signing of a contract. Copies hereof made by the Purchaser have to be destroyed in such case; excluded is any data stored pursuant to the statutory storage duties and the saving of data for security reasons within the limits of usual data back-up.

3. Prices and Terms of Payments

- 3.1 If not stipulated otherwise in the order confirmation the prices are "ex works" plus delivery costs, packaging, in the case of export customs duties as well as fees and other public charges.
- 3.2 Statutory Value Added Tax is not included in the price and is disclosed separately in the invoice at the statutory rate valid on the day of invoicing.
- 3.3 If not stipulated otherwise, the purchase price is due for payment within 30 (thirty) days of the date on the invoice. The time at which payment is received by us is decisive for the date of payment.
- 3.4 Rebates and/or discounts have to be agreed upon explicitly.
- 3.5 In the event of default, the Purchaser has to pay default interest at 9 (nine) percentage points above the base lending rate per annum. In addition we will charge a lump sum of 40 (forty) Euro. We reserve the right to claim higher interest and/or additional damages. The lump sum mentioned in sentence 2 will be deducted from the damages payable, insofar as the damage is due to prosecution. Our claim for commercial maturity interest (§ 353 German Commercial Code – HGB) against merchants remains unaffected.
- 3.6 We are entitled to carry out outstanding deliveries or services only against advance payment or security deposit, if we get aware of circumstances after conclusion of the contract, which are suited to considerably reduce the Purchasers credit worthiness and by which the payment of our outstanding claims by the Purchaser regarding the respective contractual relationship is endangered.

4. Delivery and Term of Delivery; Export Clause

- 4.1 For the scope of our delivery our order confirmation is authoritative. Changes regarding the scope of delivery require our written confirmation in order to be valid. The confirmation can also be submitted via e-mail or by telefax.
- 4.2 Our Deliveries shall be made ex works (place of fulfilment). Upon request and at the expense of the Purchaser we send the Goods to a different place of destination. As far as nothing else is agreed upon, we are entitled to determine the type of shipment (in particular the transport company, dispatch route and packaging) on our own.
- 4.3 We take back packaging if it is send back to us at no charge.
- 4.4 We are entitled to part-delivery or partial performance respectively, if reasonable for the Purchaser.
- 4.5 Terms of delivery and/or dates of delivery are agreed upon individually, respectively will be specified by us when receiving the order.
- 4.6 If shipment has been agreed upon, the terms of delivery and dates of delivery relate to the point in time of the handover to the shipper, freight carrier or any other third person entrusted with the transport.

- 4.7 We will inform the Purchaser about performance delays immediately after we become aware thereof. Performance delays due to force majeure, e.g. strike or lockout in third-party businesses or in our business (in the latter case, however, only if the industrial action is lawful), official orders, general disruption of telecommunication or other circumstances beyond our control (hereinafter "force majeure") or circumstances in the Purchaser's sphere (e.g. obligation to collaborate does not take place in good time) shall not be attributable to us and shall entitle us to defer the affected performance for the duration of the obstacle plus an adequate start-up period. If the force majeure continues to exist for more than three months, we as well as the Purchaser are released from the duty to perform. Our further rights, in particular regarding the Purchaser's default of acceptance, remain unaffected.
- 4.8 Delivery is subject to correct and punctual delivery by our own suppliers.
- 4.9 In the event of default in delivery, Purchaser shall be entitled to withdraw from the contract after fruitless expiry of a reasonable grace period, while threatening refusal of acceptance, set by Purchaser after occurrence of the default in delivery.
- 4.10 Customer's claims for compensation of damage or reimbursement of futile expenses in the event of default in delivery or impossibility of performance shall be governed according to Sec. 8.
- 4.11 Our deliveries and services are subject to the condition, that there are no barriers because of national and/or international export control regulations, embargoes and/or other export restrictions. The Purchaser is obliged to provide us with all information and documents, needed for export and/or import of the Goods. Any delays resulting from related examinations and/or approval processes entitle us to defer the affected performance for the time of the examination and/or process. We are released from our duty to deliver and perform, as far as there is a conflict with any export restrictions.

5. Passing of Risk and Default of Acceptance

- 5.1 The risk of accidental perishing and deterioration passes to the Purchaser with handover of the Goods at the latest. If the Purchaser demands shipment of the Goods to another place than the place of performance (Versendungskauf - sales shipment), the risk of accidental perishing and accidental deterioration of the Goods shall pass to the Purchaser with handover of the delivery item to the shipper, freight carrier or any other third person entrusted with the transport. This also applies, if partial deliveries are made. The same applies if the Purchaser is in default of acceptance.
- 5.2 If the Purchaser is in default of acceptance or culpably infringes other obligations to co-operate, we are entitled to claim damages including additional expenditures, if any, e.g. storage costs. Our further claims and/or rights remain unaffected.
- 5.3 The shipment will only be insured against theft, breakage, transport, fire and water damage or other insurable risks on Purchasers explicit demand and on his costs.

6. Retention of Title

- 6.1 We reserve the right to ownership of the delivered Goods until receipt of all payments relating to the business relationship with the Purchaser.
- 6.2 In case of breach of contract by the Purchaser including, without limitation to, default of payment, we are entitled to take possession of the Goods subject to retention of title. By taking possession of the Goods subject to retention of title, we withdraw from the contract. After we have taken back the Goods, we are entitled to liquidate/sell them and to apply the proceeds towards the Purchaser's accounts payable – after deduction of adequate sales costs.
- 6.3 In case of attachments or other interventions by third parties the Purchaser is obliged to inform us immediately in writing.
- 6.4 The Purchaser is entitled to resell the Goods subject to retention of title in the ordinary course of business; he already by now assigns to us all accounts receivables in the amount of the final invoice amount (including VAT) of our account receivable, which he receives by reselling against its customers or third parties irrespective of the fact, whether the Goods have been resold in a processed or unprocessed condition. The Purchaser remains entitled to collect this account receivable after the assignment. Our right to collect the account receivable on our own remains unaffected. We commit ourselves, however, not to collect the account receivable as long as the Purchaser complies with its payment obligations from the collected sales revenues, he is not in default of payment and in particular no request to open insolvency proceedings has been filed or a cessation of payments is at hand. If, however, that is the case we may demand that the Purchaser notifies the assigned accounts receivables and its debtors to us, to give us any and all required information to collect the accounts receivables, to hand over the corresponding documentation and to inform the debtors (third parties) about the assignment.
- 6.5 Any processing or transformation of the Goods by the Purchaser is carried out for us. If the Goods should be processed with other items not belonging to us, we acquire co-ownership of the new item proportionally to the price of the Goods (final invoice amount, incl. VAT) in relation to the other processed goods at the time of processing. The Purchaser keeps the new items in custody for us. For the rest, the same provisions apply to an item resulting from processing or transformation as to Goods delivered under title retention.
- 6.6 If the Goods should be compounded inseparably with other goods not belonging to us, we acquire co-ownership on the new item proportionally to the price of the Goods (final invoice amount, incl. VAT) in relation to the other processed goods at the time of mixture. If mixture happens in a way that the Purchaser's item is considered as the main item, it is agreed that the Purchaser transfers co-ownership in this item proportionally to us. The Purchaser keeps the new items in custody for us. For the rest, the same provisions apply to an item resulting from mixture as to Goods delivered under title retention.
- 6.7 We commit ourselves to release our collaterals on Purchaser's demand if the feasible value of our collaterals exceeds the receivables by more than 10%. We may choose the collaterals to release.

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7. Warranty Rights

- 7.1 If a bilateral commercial transaction ("*beidseitiges Handelsgeschäft*") is given, the claims for defects are subject to the Purchaser's compliance with the statutory inspection and notification obligations according to Sec. 377 German Commercial Code (Handelsgesetzbuch – "HGB").
- 7.2 If the delivered Goods are defective, we are entitled to choose, whether we perform supplementary performance by removal of defects (subsequent improvement) or by delivery of Goods free from defects (replacement delivery).
- 7.3 We are entitled to make the owed supplementary performance dependent on the payment of the due purchase price by Purchaser. Purchaser is entitled, however, to retain a part of the purchase price, which is adequate in proportion to the defect.
- 7.4 The Purchaser is obliged to give us the time and the opportunity to perform the owed supplementary performance, in particular to hand over the Goods being object of complaint for examination purposes. In case of a replacement delivery he is obliged to hand over to us the defective Goods according to the statutory regulations.
- 7.5 The expenditures required to examine and to perform supplementary, in particular transport, travel, labour and material costs, are borne by us, if there is actually a defect and as far as they are not increased due to shipment of the Goods to a place differing from the place of fulfilment.
- 7.6 Defects arising out of usual abrasion or deterioration respectively are not subject to claims for defects.
- 7.7 We are not liable for defects if the reason for the defect is attributable to the Purchaser, e.g. inappropriate use or changes or repairs by the Purchaser or a third party, unless the Purchaser proves that the defect is not the result of such actions.
- 7.8 We are not responsible for any compliance of Goods delivered by us with foreign regulations, if not agreed upon in writing.
- 7.9 If the Purchaser's request for supplementary performance should be unjustified (pseudo defect), we are entitled to demand reimbursement for the costs arisen therefrom unless Purchaser would not have been able to recognise the pseudo-defect even by applying all due care.
- 7.10 If supplementary performance fails or is unacceptable for the Purchaser or if we refuse both ways of supplementary performance in the meaning of Sec. 439 para. 3 German Civil Code, the Purchaser may at his discretion demand reduction of the purchase price or recede from the contract according to the statutory provisions.
- 7.11 Regarding the Purchaser's entitlement to damages respectively compensation of wasted expenses Sec. 8 applies in addition.
- 7.12 The limitation period for claims due to defects is one year starting with the delivery of the Goods. In case of liability for damages arising from wilful intent or gross negligence, in case of fraudulent concealment of a defect, in case of damages deriving from the injury to life, body or health, in case of defect of title according to Sec. 438 para 1 Nr. 1a German Civil Code, guarantees according to Sec. 444 German Civil Code and claims due to recourse of the entrepreneur in case of final delivery to a consumer ("*Lieferantenregress*", Sec. 479 German Civil Code) the statutory limitation period applies, likewise for claims based on the German Product Liability Act [Produkthaftungsgesetz], and in cases the defective Good was used according to its normal usage for a building and caused the building's defectiveness.

- 7.13 Sec. 7.12 applies respectively regarding limitation period of other claims of the Purchaser of any kind vis-à-vis us based on a defect of a Good, if not the application of the statutory limitation period in the individual case leads to a shorter limitation period. The limitation period of other claims according to the preceding sentence begins differing from Sec. 7.12 with the commencement of limitation by law.

8. General Liability

- 8.1 We shall be liable – no matter on what legal grounds – for compensation of damage or reimbursement of futile expenses in accordance with the provisions stated in Lit. (a) and (b):
 - (a) In the event of wilful intent or gross negligence, we shall be liable without limitations. In the event of simple negligence, we shall only be liable for damages arising from the breach of a material contractual obligation (obligation the discharge of which is an essential prerequisite for the proper performance of the contract and the discharge of which Purchaser generally can and does rely upon); in this case, however, our liability shall be limited to the foreseeable damage, typical of this type of contract.
 - (b) The exclusions and limitations of liability set forth in Lit. (a) shall not apply as far as we have fraudulently concealed a defect or have given a guarantee of the quality of the thing (Sec. 444 German Civil Code), for damages arising from injury to life, body or health as well as in the event of liability under the German Product Liability Act [Produkthaftungsgesetz].
- 8.2 To the extent that liability to us is excluded or limited, this shall also apply to the personal liability of our legal representatives and agents.

9. Final Provisions

- 9.1 If the Purchaser is a merchant in the meaning of the German Commercial Code ("HGB"), a corporate body under public law or a special fund under public law, the place of jurisdiction for any and all possible disputes based on the business relations is Renningen, Germany. We are entitled to take action at the Purchaser's place of business as well as at any other permitted place of jurisdiction.
- 9.2 The relations between us and the Purchaser are exclusively subject to the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods as of 11 April 1980 (CISG) does not apply.
- 9.3 If single provisions of these GTC are or become invalid, the validity of the other provisions is not affected.

As of 26 August 2015