



## **General delivery and payment conditions WERK Holding GmbH**

### **1. Scope**

1.1 These general delivery and payment conditions apply to all of our contracts for deliveries and other services (sales transactions). On our purchasing transactions and contracts with consumers these conditions do not apply. Conditions of the client that we do not have in writing acknowledge, are non-binding for us, even if we do not expressly object to them.

1.2 These terms and conditions in their current version are also the basis for all future services and deliveries according to Section 1.1, even if their inclusion is not expressly agreed again.

1.3 To the extent that "writing" is required in these conditions, written form is required in accordance with Sections 127 and 126 of the German Civil Code (BGB), or electronic form according to §§ 127, 126a BGB, or text form permissible according to §§ 127, 126b BGB.

### **2. Offers and deals**

2.1 Our offers are subject to change. Contracts and other agreements are only concluded through our written confirmation is binding. Information in our offers and/or order confirmations, which are based on an obvious error, namely a typographical or arithmetic error not us. Rather, the obviously intended explanation applies.

2.2 All ownership rights and copyrights to the offer and the attached documents remain with us. They are intended exclusively for the client.

2.3 Subsidiary agreements, reservations, changes, oral assurances or additions to the contract. To be valid, they require written confirmation from us.

2.4 The basis for our services is the service description of our offer, the information in our assembly registration and the service descriptions recorded in the specifications and confirmed by us in writing. The necessary infrastructure and availability of the required interfaces, such as statics, electricity, air, etc., must be provided by the client.

### **3. Delivery times and delays, force majeure**

3.1 The delivery time stated in the offer or order confirmation is generally non-binding. We endeavor to adhere to stated delivery times, but we cannot guarantee this. Delivery times are only binding if they are expressly stated in the offer or order confirmation be described as binding.

3.2 Delivery delays that are due to the client requesting changes to the original order are at his expense. This also applies if the client does not fulfill his obligation to deliver data in the agreed form or does not do so in a timely manner or if the data supplied is defective and needs to be reworked. If production comes to a standstill in these cases, we can demand that the client covers the downtime costs we incur due to idle times.

3.3 In the event of force majeure or other unforeseeable, extraordinary and no-fault circumstances - e.g. B. Material procurement difficulties, operational disruptions, strikes, lockouts, lack of means of transport, official intervention, energy supply difficulties, terror, war, embargo, Pandemics, etc., even if they occur with upstream suppliers - the delivery period will be extended to a reasonable extent if we are prevented from fulfilling our obligation on time.

3.4 If delivery or service becomes impossible or unreasonable due to the aforementioned circumstances, we will be released from our delivery obligation. If the delivery delay lasts longer than 3 months, the client is entitled to withdraw from the contract. The client can withdraw earlier if the delay in delivery is unreasonable for him.

3.5 If the delivery time is extended due to force majeure or if we are released from our delivery obligation, the client cannot derive any claims for damages from this. We can only rely on the circumstances mentioned if we notify the client immediately.

#### **4. Prices and payment, cancellation and processing fees**

4.1 The prices we provide are net prices. VAT at the respective statutory rate is added to the prices. The prices are valid ex our location and do not include the costs of freight, unloading, transport and installation, unless this has been expressly agreed.

4.2 If no payment conditions, in particular advance payment or cash discounts, have been agreed in individual cases, the invoices issued by us are due for payment after the service has been provided upon receipt of the invoice without deductions within the specified payment terms, but at the latest within 30 days.

4.3 If we receive the client's payment late, we are entitled to demand annual interest of 9 percentage points above the base interest rate from the due date. If the client defaults on payment, we can charge interest at the relevant bank rates for overdrafts, but at least 9 percentage points above the base interest rate. We reserve the right to claim further financing costs and other damages resulting from the client's default.

4.4 If the client defaults on payment, we are entitled to withhold delivery. The client is not entitled to withhold or offset payments if the counterclaims have not been recognized by us or have been legally established.

4.5 The cancellation of an order placed with us is only possible for important reasons. In the event of a cancellation for an important reason, the client is obliged to reimburse the costs for the level of services already provided, but at least to pay a processing fee of €200.00.

#### **5. Retention of title**

5.1 All delivered products remain our property (reserved goods) until all claims to which we are entitled from the business relationship with the client, have been paid in full. This also applies to future and contingent claims and also if payments are made on specially designated claims. This balance reservation expires once all outstanding claims covered by this balance reservation have been settled at the time of payment.

5.2 The processing of the reserved goods is carried out on our behalf as a manufacturer within the meaning of Section 950 of the German Civil Code (BGB), without any obligation on us. The treated and processed goods are considered reserved goods within the meaning of Section 5.1. If the customer processes, combines or mixes the reserved goods with other goods, we are entitled to co-ownership of the new item in proportion to the invoice value of the reserved goods to the invoice value of the other goods used. If ownership expires through combination or mixing, the client transfers to us the ownership rights to which he is entitled to the new stock or item to the extent of the invoice value of the reserved goods and stores them for us free of charge. Our co-ownership rights are considered reserved goods within the meaning of Section 5.1.

5.3 The client is entitled to resell the products in the ordinary course of business as long, as he is not in default with the purchase price payment. He is not authorized to make extraordinary dispositions such as pledging or transferring property to third parties as security. In the event of resale, the client hereby assigns to us, as a precautionary measure, the claims and other claims arising from the resale against his customers, including all balance claims from current accounts, along with all ancillary rights.

5.4 The client is entitled to collect the assigned claims. The direct debit authorization expires if the client stops making payments, files for insolvency or insolvency proceedings are opened, in the event of an out-of-court settlement or restructuring procedure, in the event of a restructuring procedure according to the StaRUG or in the event of any other asset forfeiture. The same applies if it becomes apparent that our claim to payment is jeopardized by the client's inability to perform. In this case, we can demand that the client inform us of the assigned claims and their debtors, provide all the information necessary to collect the claims, hand over the relevant documents and notify the debtor of the assignment.

5.5 The client is prohibited from disposing of the resale claim without our written consent by way of security or assignment of the claim, including by way of purchase of the claim, unless it is an assignment by way of genuine factoring, which is reported to us and at which the factoring proceeds exceed the value of our secured claim.

5.6 The client must inform us immediately of any seizure or other impairment of our reserved goods by third parties. The client bears all costs that must be incurred to revoke access or to return the reserved goods unless they are reimbursed by third parties.

5.7 We undertake to return or release the securities at the client's request if the value of the security given to us exceeds the total amount of our claim by more than 20%.

## **6. Transfer of risk and acceptance**

6.1 The goods must be accepted after completion of the service if this is contractually agreed. This also applies to self-contained partial services.

6.2 The risk is transferred to the client upon acceptance.

6.3 If the client defaults on acceptance, the risk passes to him at the time of default. The same applies if an agreed assembly is interrupted for reasons for which the client is responsible and if we have mutually handed over the services provided up to that point into the care of the client.

6.4 Unless acceptance is required or agreed, the risk is transferred to the client at the latest when the delivered parts are dispatched, even if partial deliveries are made or we provide other services e.g. have taken over the shipping costs or delivery and installation.

6.5 At the client's request, we will insure the shipment against theft, breakage, transport, fire and water damage as well as other insurable risks at his own expense.

## **7. Weights, dimensions, deviation**

7.1 Depending on the type of goods we deliver, excess or short deliveries of the agreed quantities and weights are permitted within the scope of customary trade and industry practice.

7.2 The DIN tolerances and customary deviations apply to the prescribed dimensions, unless we have agreed different quality requirements with the client.

## **8. Liability for material defects and compensation**

8.1 We accept no responsibility that the goods are fit for a particular purpose unless we have expressly agreed to such liability.

8.2 The warranty period is one year from delivery or, if acceptance is required, from acceptance. This deadline does not apply to the client's claims for damages arising from injury to life, body or health, in the case of guarantees or claims under the Product Liability Act or from intentional or grossly negligent breaches of duty by us or our vicarious agents, which are time-barred in accordance with statutory provisions.

8.3 The liability for material defects does not extend to wearing parts and to damage caused to the client by natural wear and tear, moisture, excessive heating of the rooms, other temperature or weather influences, improper treatment, brute force, overexertion and use General delivery and payment conditions | As of: February 2024 Page 5 of 8 inappropriate operation - or lubricants are created. The maintenance and care instructions must be observed by the client.

8.4 Claims for subsequent performance, compensation, reduction or withdrawal within the meaning of Sections 437, 634 of the German Civil Code (BGB) due to obvious defects expire after acceptance, but at the latest if the client does not complain about them immediately, i.e. within two weeks after handover.

8.5 We will bear the expenses necessary for the purpose of supplementary performance, in particular transport, travel, labor and material costs to the location to which we delivered the goods. If the goods are located at a location other than the place of delivery, particularly in cases of resale, we are not obliged to bear the resulting additional costs for transport, travel, labor and material costs.

8.6 At our discretion, the goods must be sent in at our expense if this is technically possible. If the goods are sent in, the most cost-effective mode of transport must be chosen, usually by a freight forwarding company and not by plane, provided this is not unreasonable for the client. We can refuse supplementary performance without prejudice to our rights under Section 275 Paragraphs 2 and 3 of the German Civil Code (BGB) if this is only possible at disproportionate costs.

8.7 Instead of repairing the item, we can, at our discretion, also deliver a replacement item. If we deliver a replacement item, we can demand that the client return the defective item in accordance with Sections 346 to 348 of the German Civil Code (BGB). If the repair fails, we refuse to deliver a replacement or we do not provide it within a reasonable period of time, the client can reduce the remuneration or withdraw from the contract. A repair is deemed to have failed after the third unsuccessful attempt, unless the nature of the item or the defect or other circumstances indicate otherwise.

8.8 Insignificant, reasonable deviations in dimensions and designs, especially in the case of repeat orders, do not give rise to complaints unless compliance with dimensions and tolerances has been expressly agreed. Technical improvements and necessary technical changes are also considered to be in accordance with the contract as long as they do not represent a deterioration in value.

8.9 If the client stipulates the use of a specific material or provides us with the material to be used, or requires a specific type of execution that deviates from usual production, we are not liable for any defects or damage resulting from this, either our product or lead to defects in the product to be manufactured. We are not liable for parts, materials or other equipment manufactured by or on behalf of the client.

8.10 All claims for material defects expire if the client himself or through third parties makes changes or interventions in the product without our written permission. A guarantee also expires if the customer uses spare parts that have not been approved by us, unless the customer proves that the defect would also have occurred if an original part or a replacement part approved by us had been used.

8.11 All claims for damages on the part of the client arising from breach of duty, delay, impossibility of performance, positive breach of contract, negligence in concluding the contract, tort and other legal reasons are excluded, provided that the damage or consequential damage that did not arise from the delivery item itself was not caused by intentional or grossly negligent acts actions were caused by us. The limitation of liability applies to the same extent to our vicarious agents and vicarious agents.

8.12 The exclusion of liability according to Section 10.11 does not apply if essential contractual obligations are breached or if the client asserts claims for damages due to the lack of a guaranteed feature. In these cases, however, our liability is limited to the damage foreseeable at the time the contract was concluded.

8.13 In the event of defects in components from other manufacturers that we cannot remedy for licensing or factual reasons, we will, at our discretion, assert warranty claims against the manufacturers and suppliers for the account of the client or assign them to the client. In the event of such defects, warranty claims against us only exist under the other conditions and in accordance with these General Terms and Conditions of Delivery and Payment if the legal enforcement of the above-mentioned claims against the manufacturer and supplier was unsuccessful or, for example, due to insolvency, is hopeless. During the duration of the legal dispute, the statute of limitations of the relevant warranty claims of the client against us is suspended.

8.14 We cannot rely on the above liability limitations and the one-year warranty period in Section 10.2 if we have fraudulently concealed the defect or have given a guarantee for the quality of the item. The limitations of liability and the one-year warranty period in Section 10.2 also do not apply to damages resulting from injuries to life, body and health, guarantees or claims under the Product Liability Act.

## **9. Provision of materials by the client**

9.1 If the material to be processed by us is made available by the client, the material residues (waste) resulting from material processing and processing become our property without replacement, unless we agree otherwise with the client.

9.2 If the client provides materials, we are not liable for defects that are due to material errors. If we discover material defects, we will inform the client immediately and discuss further action together.

## **10. copyright**

10.1 The copyright and ownership of construction drawings, 3D data, CAM data, technology data as well as all copyrightable services that we provide for the client remain with us.

10.2 Licenses and usage rights can be acquired by the client through a separate contract.

## **11. Obligation of the client to indemnify**

11.1 If the client requires a certain type of execution or a certain specification of the goods, he must check in advance whether this could lead to copyright or patent infringements or other violations of the rights of third parties. The client must inform us of the results of the test before the contract is concluded. We are not obliged to check without sufficient reason whether the above-mentioned instructions from the client violate the rights of third parties.

11.2 If we discover after conclusion of the contract that the type of execution or specification required violates the rights of third parties, we are entitled to demand that the client remove this obstacle within a reasonable period of time and to stop work until then. If the client does not comply with our request despite setting a grace period, we are entitled to withdraw from the contract and demand compensation.

11.3 If claims are made against us by third parties in the cases referred to in section 13.1, sentence 1 due to a violation of their rights, the client must immediately indemnify us against all related claims of third parties. We can request a reasonable advance payment from the client for court, legal defense and expert costs as well as other costs necessary to defend against third-party claims.

11.4 The obligation to indemnify and make an advance payment also applies if it later turns out in a legal dispute that there was no violation of third party rights. The client can demand that we assign to him our claims against third parties for costs and damages after the exemption has been fully implemented and our claims have been met.

## **12. Prohibition of offsetting, contractual penalty**

12.1 The client can only set off claims from us for payment of the agreed remuneration if the client's counterclaim has either been recognized by us or has been legally established. The client's rights of retention are also excluded.

12.2 We will only accept contractual penalties if they are contractually negotiated and recorded in writing. Contractual penalties in the client's general terms and conditions do not bind us under any circumstances.

12.3 For us, all contractual penalties include the rights according to §§ 339 ff. BGB with the proviso that anyone who wants to derive rights from a contractual penalty promise must explain and prove all the requirements for this. Any contractual penalty can be offset against other claims for damages. We reserve the right to prove that no or only lesser damage occurred than the contractual penalty entails and to reduce the contractual penalty accordingly.

12.4 If a contractual penalty is disproportionately high, it can be reduced by judgment in accordance with Section 343 of the German Civil Code (BGB). § 348 HGB is not applicable.

## **13. Out-of-court dispute resolution**

13.1 We are not prepared to take part in dispute resolution proceedings before a consumer arbitration board. We are also not legally obliged to take part in a dispute resolution procedure before a consumer arbitration board.

13.2 EU platform for out-of-court online dispute resolution: <http://ec.europa.eu/consumers/odr/>

## **14. Severability clause**

Should one or more of the provisions of this contract be or become ineffective outside of the main performance obligations, this will not affect the effectiveness of the remaining provisions of this contract. In such a case, the parties undertake to agree to negotiations on a new regulation that comes as close as possible to the economic purpose of the invalid provision and which they would have agreed to if they had known of its invalidity.

## **15. Place of jurisdiction, choice of law**

15.1 The place of performance and jurisdiction for all disputes arising from the contractual relationship is our registered office, provided that the client is a registered merchant, a legal entity under public law or a special fund under public law.

15.2 The law of the Federal Republic of Germany applies exclusively to the contractual relationship between the parties, excluding the UN Convention on Contracts for the International Sale of Goods and the conflict of law rules of private international law.

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