

I. Conclusion of Contract

1. Our deliveries and services are exclusively subject to the following provisions. Diverging, adverse or supplementary general terms and conditions of the Buyer shall become part of the Contract only if and to the extent of their validity having expressly been consented to by us. This requirement of consent shall apply in any case, for example also if in knowledge of the general terms and conditions of the Buyer we deliver to him unreservedly.
2. Our offers are subject to confirmation and not binding. Individual agreements with the Buyer made in a particular case (including any collateral agreements, supplements and amendments) shall in any case prevail these General Terms and Conditions. For the contents of such agreements a written contract and/or our written approval shall be authoritative.
The ordering of the goods by the Buyer shall be considered as a binding offer of contract. As far as not resulting otherwise from the order we are entitled to accept this offer of contract within 2 weeks upon its reception. Acceptance may be declared either in writing (e. g. by confirmation of order) or by delivery of the goods to the Buyer.
3. Indications of weight and dimension given in offers, sample books or other printed matter are not binding. Deviations are admissible according to DIN or practice. The Seller reserves himself the property rights and copyrights to images, drawings, calculations and other documents. This applies also to such written documents marked confidential. Their being passed on by the Buyer to third parties requires the express written consent of the Seller.

II. Terms of Payment

1. Our invoices are payable within 30 days upon invoice date. For early payment we grant a discount percentage such as given in the offer and/or the invoice.
2. Payment shall be made such that we can dispose of the amount on due date. The Buyer shall be entitled to set-off and retention rights only insofar as a claim has been recognized by declaratory judgment, or is uncontested. Unaffected thereof remains our right to make owed rectification or replacement dependent on the Buyer's paying the purchase price due. The Buyer shall yet be entitled to retain a portion of the purchase price in reasonable proportion to the defect.
3. Accepting acceptances is subject to special agreement. Bills of exchange and cheques are accepted for payment. Acceptances shall be domiciled at a German federal state central bank place / Landeszentralbank.
4. With the expiration of the above term for payment the Buyer is in default. During the period of default, interest shall be paid on the purchase price at the respective valid statutory rate of interest on overdue payments. We reserve the right to assert a further damage caused by delay. The claim for commercial maturity interest (§ 353 HGB / German Commercial Code) remains unaffected.
5. As far as our claim for payment is endangered due to subsequently occurred circumstances resulting in a substantial deterioration of assets, we are entitled to accelerate maturity of the same – regardless of the currency of any bill accepted for payment.
6. If upon conclusion of the Contract our claim for the purchase price is recognisable to be put in danger by lack of financial capacity of the Buyer (e. g. by a petition to open insolvency proceedings), we are entitled to refuse performance and – if so, upon setting a deadline – to withdraw from the Contract (§ 321 BGB / German Civil Code). With contracts on the manufacture of unjustified products (production of single parts) we may immediately declare withdrawal; the statutory regulations on the dispensability of setting a deadline remain unaffected.
7. With one of the cases under the items 3 and 4 arising we may revoke the direct debit authorization (IV.7.) and demand prepayments on forthcoming deliveries.
8. The Buyer can avert the legal consequences given under items 3 to 5 by way of securities to the amount of our endangered claim for payment.
9. The statutory prescriptions on delay in payment shall remain unaffected.

III. Securities

We are entitled to securities customary in kind and scope for our claims, also if contingent or limited in time.

IV. Reservation of Ownership

1. Until the complete payment of all our actual and future claims under the Sales Contract and an actual business relation (secured claims) we reserve ownership of the sold goods. With the settlement of our claim by cheque-bill exchange procedure the reservation of ownership shall continue to exist, regardless of the cheque payment, until the honouring of the bill. At

acceptance of a bill or cheque, payment shall not be considered to have been made but with its payment.

2. Before the complete payment of the secured claims, the goods under reservation of ownership shall neither be pledged to third parties, nor be assigned by way of security. The Buyer shall immediately inform us if and insofar as goods owned by us are getting under third party attachment.
3. With the Buyer acting in breach of Contract, in particular at non-payment of the purchase price due, we are entitled to withdraw from the Contract according to the statutory provisions, and to reclaim the goods by virtue of the reservation of ownership and of such withdrawal. If the Buyer does not pay the purchase price due we shall not ascertain these rights but upon having granted the Buyer a reasonable term of payment without success, or if such a setting of deadline is dispensable according to statutory provisions.
4. The Buyer shall be entitled to resell and/or process the goods under reservation of ownership in the ordinary course of business. In such case the following provisions shall additionally apply, unless we revoke the direct debit authorization in the cases given in Clause II.7.
 - a) The reservation of ownership includes to their complete value also the products created by processing, mixing, or combination with our goods, despite the fact of our being considered as the manufacturer. If at the processing, mixing, or combination with the goods of third parties the property right of the same continues to exist, we acquire co-ownership at the proportion of the invoice values of the processed, mixed, or combined goods. As for the rest, the same shall apply to the product under creation as is applicable to the goods delivered under reservation of ownership.
 - b) All claims against third parties resulting from the resale of goods or products shall be assigned as security to us by the Buyer already now and completely, respectively to the amount of our contingent co-ownership as set forth in the preceding paragraph. We accept this assignment. The obligations of the Buyer under par. 2 shall apply also regarding the assigned claims.
 - c) In addition to us, the Buyer shall remain entitled to collect claims. We undertake not to collect the claim as long as the Buyer meets his financial obligations towards us, does not default, no petition to open insolvency proceedings is being filed, and there is no other lack of his financial capacity. Should this yet be the case, we may demand the Buyer to inform us of the assigned claims and their debtors, to give all instructions required for collection, hand over the related documents, and inform the debtors (third parties) of such assignment.
 - d) If the realizable value of the securities exceeds our claims by more than 10% we shall upon the request of the Buyer release securities at our choice.

V. Place of performance and Jurisdiction

Delivery is ex warehouse, where is also the place of performance. At the request and expenses of the Buyer the goods will be delivered to a different place of destination (sale by delivery to a place other than that of performance). As far as not otherwise agreed, we are entitled to determine ourselves the kind of dispatch (especially the carrier, shipping route, packing). Place of performance for the financial obligation of the Buyer is Hatzfeld.

For all disputes arising from the delivery relation the parties submit to the jurisdiction of Frankenberg, respectively Marburg if no exclusive jurisdiction exists.

VI. Terms for Delivery, Dates of Delivery

1. Terms for delivery begin with the date of our order acknowledgement, yet not before all details of the order having been completely cleared up; the same applies to dates of delivery.
2. If the Buyer fails to comply in time with his contractual obligations – also any obligation to cooperate or collateral duties – such as opening a letter of credit, production of domestic or foreign certificates, advance payment, or similar, we shall be entitled to reasonably postpone our terms for delivery and dates of delivery according to the requirements of our production flow – without prejudice to any of our claims for delay by the Buyer.
3. If binding terms for delivery cannot be complied with for reasons beyond our control (non-availability of the performance), we shall inform the Buyer hereof without delay and simultaneously fix the prospective, new term for delivery. With the performance not being available also within the new term for delivery, we shall be entitled to withdraw in whole or in part from the Contract; a consideration already executed by the Buyer shall be repaid by us without delay. A case of non-availability of performance within this meaning shall in particular be the belated self-supply by our suppliers when we have entered into a concurring covering operation. Our statutory rights to revocation and to termination as well as the statutory prescriptions on the winding up of the Contract at exclusion of the obligation to perform (e. g. impossibility or unreasonableness of performance and/or of rectification or replacement) shall remain unaffected hereof. Unaffected shall also remain

General Terms and Conditions of Sale and Delivery



the Buyer's rights to revocation and to termination in terms of § 8 of these General Terms of Sale and Delivery.

4. Occurrence of our delay in delivery shall be as determined in the statutory provisions. At any rate, a reminder by the Buyer shall yet be required. In case of our delay in delivery, the Buyer may claim a lump sum compensation for his loss occasioned by delay. The lump sum compensation is at 0,5% of the net price (declared value of goods to be delivered) for each completed calendar week, yet all in all not more than 5% of the declared value of goods to be delivered for the goods in late delivery. We reserve the right to furnish proof that the Buyer has suffered no loss at all or a loss considerably smaller than the above lump sum.

VII. Passing of Risk, Acceptance, Default of Acceptance

The risk of accidental loss and of accidental deterioration of the goods shall pass to the Buyer with their delivery at the latest. With sale by delivery to a place other than that of performance the risk of accidental loss and of accidental deterioration of the goods as well as the risk of delay shall pass to the Buyer already with the handing over of the goods to the forwarder, the carrier, or such other person or establishment ordered to execute delivery. With an acceptance being agreed, the same shall be authoritative for the passing of risk. As for the rest the statutory provisions of the contract for work and services law shall also apply mutatis mutandis to an agreed acceptance. The same shall apply to the delivery, respectively the acceptance if the Buyer is in default of acceptance.

If the Buyer is in default of acceptance, omits an act of participation, or our delivery is in delay for other reasons that are within the responsibility of the Buyer, we shall be entitled to claim compensation plus additional expenses (e. g. storage costs) for the loss so occurred. For this we charge a lump sum compensation to the amount of 5% of the declared value of goods to be delivered per each commenced week, beginning with the term for delivery, or – in the absence of such term for delivery – with the notification of the goods being ready for dispatch.

The proof of a higher loss and our statutory claims (especially compensation of additional expenses, reasonable damages, termination) shall remain unaffected; the lump sum shall yet be allowed as credit against further financial claims. The Buyer shall be allowed to furnish proof that we have suffered no loss at all or a loss considerably smaller than the above lump sum.

VIII. Warranty

1. Unless any longer warranty periods are imposed by legislation, the warranty period shall be for 12 months. The warranty period begins with the delivery of the goods to the customer or the forwarder.
2. To the rights of the Buyer for material defects and defects in title (including wrong or short delivery, improper assembly or faulty assembly instruction) the statutory provisions shall apply as far as not otherwise provided for hereinafter. In any case unaffected shall remain the statutory special provisions for final delivery of the goods to a consumer (recourse to supplier in terms of §§ 478, 479 BGB / German Civil Code).
3. With no agreement having been made on quality, decision on whether a defect exists or not shall be made under the statutory provisions (§ 434, sub-par. 1, phrases 2 and 3 BGB/German Civil Code). We shall yet not assume any liability for public statements by the manufacturer or other third parties (e. g. advertising statements).
4. The claims of the Buyer based on defects are on condition that the Buyer has met his statutory requirement of inspection and complaint in respect of a defect at receipt of the goods (§§ 377, 381 BGB/German Civil Code). If at the inspection or later a defect occurs, we shall be notified in writing of such defect without undue delay. Such notification shall be considered to be without delay when done within two weeks, the timely sending of the notification being sufficient to observe the time limit. Regardless of this requirement of inspection and complaint in respect of a defect at receipt of goods the Buyer shall notify in writing obvious defects (including wrong or short delivery) within two weeks upon delivery, with also in this case the timely sending of the notification being sufficient to observe the time limit. Failure by the Buyer to duly inspect and/or complain in respect of a defect at receipt of the goods any liability on our side for the not notified defect shall be excluded.
5. With the delivered goods being defective the Buyer may, as rectification or replacement, at first demand at his choice remedy of the defect (rectification) or delivery of an item free of defects (replacement). If the Buyer does not indicate which of the two rights he chooses, we may fix him a reasonable period of time to do so. If the Buyer makes no choice within the fixed period of time, the right of choice shall pass to us with the expiration of the period of time.
6. We shall be entitled to make the owed rectification or replacement dependent on the Buyer paying the purchase price due. The Buyer shall yet

be entitled to retain a portion of the purchase price in reasonable proportion to the defect.

7. The Buyer shall grant us the time and opportunity required for the owed rectification or replacement, in particular to hand over the rejected goods for examination purposes. In case of replacement the Buyer shall be obliged to give back to us the defective item according to the statutory provisions.
8. The expenses for examination and rectification or replacement, in particular carriage charges, tolls, labour costs and costs of materials shall be assumed by us if there is indeed a defect. If a Buyer's claim for remedy of a defect appears to be unjustified we may demand reimbursement of the costs accrued in this regard.
9. In urgent cases, e. g. endangered operational safety, or to ward off disproportionate damages, the Buyer shall be entitled to remedy himself the defect and to demand from us reimbursement of the objectively required expenses. Of such a self-initiated measure we shall be informed without delay, if possible in advance. The right of self-performance of such act shall not exist should we be entitled to refuse a respective rectification or replacement under statutory provisions.
10. If the rectification or replacement has failed or the reasonable period of time to be fixed by the Buyer has expired or is dispensable under statutory provisions, the Buyer may withdraw from the Sales Contract or lower the purchase price. With an irrelevant defect this right to rescind the Contract does yet not exist.
11. Claims of the Buyer for damages, respectively for the reimbursement of futile expenses exist only in terms of § 8 and shall be excluded as for the rest.

IX. General Limitation on Liability

1. Unless stipulated otherwise in these General Terms of Sale and Delivery including the following provisions we are liable for a breach of contractual obligations and obligations outside the Contract according to the relevant statutory provisions. We shall be liable for damages – regardless of whatever cause in law - by intention or gross negligence. In case of simple negligence we shall only be liable
 - a) for damages arising from injury of life, of the body, or health;
 - b) for damages arising from the violation of an essential contractual obligation (such obligation enables the proper execution of the Contract at all, and in the compliance with which the Buyer recurrently trusts and may trust), with our liability being in this case limited to the compensation of the foreseeable, typically occurring damage.

The restrictions on liability as under sub-par. 2 shall not apply insofar as we have concealed a defect fraudulently, or have guaranteed the condition of the goods. The same shall apply to the claims of the Buyer under the German Produkthaftungsgesetz / Product Liability Law.

For a neglect of duty not consisting of a defect the Buyer may only withdraw or give notice if we are liable for such neglect of duty. A free right to give notice of the Buyer (in particular in terms of §§ 651, 649 BGB/German Civil Code) is excluded. As for the rest, the statutory preconditions and legal consequences shall apply.

2. With the goods being manufactured and delivered according to the specifications of the Buyer, the Buyer warrants that in performing the work no rights of third parties, in particular patents, patented designs and other industrial property rights and copyrights are infringed. The Buyer shall discharge us from third party claims that may arise from such infringement.
3. If goods are manufactured to which the Buyer himself holds industrial property rights or copyrights or licences of third parties, the Buyer shall be obliged to inform us on this at the latest when passing the first order. Otherwise, all claims against us shall be excluded insofar as they concern deliveries by us to others made before such communication having been received by us.

X. Tools and Patterns

1. Insofar as the Buyer provides the same they shall be sent at no expense. They are stored at the risk of the Buyer; we are under no obligation to insure them. We shall be entitled to modify sent-in tools and patterns as far as this seems necessary for technical reasons or risk reduction, without prejudice to the Buyer's liability for the correct construction and the execution that ensures their use for the intended purpose. The costs for maintenance, modification and replacement shall be assumed by the Buyer. We shall be entitled to return not required tools at any moment. If such return is not possible for us and the Buyer does not comply with our request, or if 2 years have passed since their last use, we shall be entitled to destroy the tools and patterns. All costs incurred by such installations shall be assumed by him.

2. Tools and patterns manufactured or procured by us to carry out orders of the Buyer shall remain our property also with pro rata costs being charged. With regard to such installations the Buyer may assert against us claims arising from copyright or industrial property rights only insofar as he informs us of the existence of such rights and expressly reserves them to himself. If the Buyer sends in drawings or makes specifications for tools and patterns to be manufactured or procured by us, he shall be responsible for the documents supplied by him being of such kind to secure their intended use.

XI. Proof of Exportation

With a Buyer residing outside the Federal Republic of Germany (extraterritorial taker), or his authorized representative collects goods and transports or ships them to the external territory, the Buyer shall submit to us the tax-relevant proof of exporting within 6 weeks maximally upon receipt of the goods, or within 8 weeks upon the date of invoice. With this proof not being furnished the Buyer shall pay on the invoiced amount the turnover tax rate applicable to deliveries within the Federal republic of Germany.

XII. Applicable Law

The Law of the Federal Republic of Germany shall apply; the application of any international commercial provisions is excluded. Customer data required for the transaction of business may be stored by data processing, on which the Buyer will be informed.

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FRANK WALZ-UND SCHMIEDETECHNIK GMBH