



WMH GROUP GERMANY. QUALITÄT.

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY **Westdeutscher Metall-Handel GmbH**

Valid as of: March 2015

1. GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

1.1

The following terms and conditions of sales and delivery (the „Terms and Conditions“) apply to all our contracts, offers, deliveries and any other Performance by us, both now and in future. General terms and conditions of business of the Customer shall not apply, even if they are transmitted to us in a letter of confirmation or otherwise and are not rejected by us.

1.2

Agreements made by word of mouth, any deviations from or additions to these Terms and Conditions or the exclusion of these Terms and Conditions as well as guarantees or declarations of warranty by our employees or representatives shall only be valid if confirmed in writing. The same shall also apply to any waiver of this requirement of the written form.

1.3

Authoritative for construction and interpretation of these Terms and Conditions shall be the German version only, even if translations of them are furnished to the Customer or are signed by the parties.

1.4 Should any of the provisions of these Terms and Conditions or any other provisions of the contract between the parties be or become invalid, the contract shall in all other respects remain in full force and effect. The parties shall have a duty to replace any invalid provision by one which is valid and which in economic outcome corresponds as nearly as possible to that intended by the invalid provision.

2. OFFER AND CONCLUSION OF CONTRACT

Our offers are without engagement. A contract shall only come into being on written confirmation of the order by us (order confirmation).

3. QUALITY, QUANTITY, DELIVERY, PASSAGE OF RISK AND CALL ORDERS

3.1

Unless agreed otherwise, the relevant German DIN EN standards shall apply or, in their absence, the relevant DIN standards. In all other respects, our products are supplied in the quality and finish customary in the trade, with allowance for the customary fabrication tolerances in respect of dimensions, weights and quality. References to standards, material data sheets or works tests shall not be deemed as constituting any guarantee of quality. Public utterances by ourselves or our vicarious agents or any of our manufacturers or their vicarious agents, in particular in advertising materials, relating to the quality of our products may serve as substantiation for claims for defects on the part of the Customer only if they have been made part of a quality agreement concluded between the parties.

3.2

With regard to weights, the results of weighing done by ourselves or our supplier using calibrated scales shall be authoritative. The resulting unit weights can be used for calculating the delivery weight.

3.3

Unless agreed otherwise, deliveries by us of up to 10% more or less than the ordered quantity or number are permissible.

3.4

Part-deliveries and part-performance are permissible except where they would be economically unreasonable for the Customer.

3.5

Unless otherwise indicated in writing, e.g. Incoterms, we made choose to perform our deliveries ex works or ex warehouse. This may also be the works or warehouse of another party. The consignment will be performed on the Customer's behalf of and on its account. Risk passes to the Customer at the very latest at the time of delivery to the shipping agent or other transport company. This also remains the case if the goods are delivered by our own employees. If the Customer has not issued any particular instructions, we will be responsible for selecting a suitable transport company. Risk likewise passes to the Customer when we store goods at the request of the Customer.



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3.6

Our delivery and Performance obligations are subject to correct and timely delivery and Performance to ourselves.

3.7

Unless otherwise agreed in writing, information concerning our delivery and performance time is approximately only. Our service obligations only mature at the time we notify our customers in writing of our readiness to deliver/dispatch. For its part, the Customer can only establish the maturity of our duty to deliver supplies and services through a written demand for performance with a notice period of one month following the end of the aforementioned time periods.

3.8

The maturity of our supplies and services obligations is in any case dependent on the delivery of documents, approvals and releases required of the Customer, and all technical issues have been clarified.

3.9

Supply and service time periods shall be reasonably extended in the event of measures taken in connection with industrial disputes, in particular strikes and lawful lockouts, as well as on the occurrence of any other obstacles for which we are not responsible. This shall also apply if the circumstances concerned affect our suppliers. Nor may we be deemed responsible for circumstances of the aforesaid kind even if they occur while we are already in delay. We will inform the Customer as soon as possible of the start and end of such obstacles. should circumstances occur after conclusion of the contract (e.g. general mobilization, measures of an official body, including measures relating to foreign trade) which could not be foreseen by us and which hinder us in a manner which is not merely temporary in providing the performance owed by us, or should a disturbance which is not merely temporary in nature occur to our detriment in the balance between performance and counter-performance to be provided by the parties, we shall be entitled to demand that the contract be adjusted accordingly. If adjustment of the contract is not possible or would be unreasonable for either of the parties, we shall have the right to repudiate the contract. AH of the foregoing shall be without prejudice to the statutory provisions relating to the exclusion of the duty to perform, the right of the liable party to withhold performance, changes in the circumstances on which the contract was based and the right of termination for cause.

3.10

In the case of call orders, the Customer must call the goods forward within a period of two weeks from notification by us of readiness for delivery / dispatch. If in the case of call orders a quantity is called forward which exceeds the order quantity, we shall have the right to supply the order quantity only or to charge for the additional quantity at the price valid on the day.

3.11

In the event of failure by the Customer to take delivery of or call the goods forward in a timely manner, we shall have the right, without prejudice to our claim to performance and other rights, to demand compensation for the additional costs incurred by us for fruitlessly offering the goods and to store the goods for the account and at the risk of the Customer.

4. PRICES AND COSTS

4.1

Unless agreed otherwise in writing, prices are quoted ex works or ex warehouse (whereby the works or warehouse may be that of a third party) exclusive of packing of the kind customary for the goods concerned. If it is agreed that delivery shall take place more than 3 months after conclusion of the contract or if delivery is not made until more than 3 months after conclusion of the contract due to a delay for which the Customer is responsible, we shall have the right, if cost increases have occurred after conclusion of the contract, in particular due to collective wage agreements or increases in the prices of materials, to increase the agreed prices correspondingly.

4.2

Value added tax at the statutory rate is not included in the prices; it is shown in invoices as a separate item at the rate in force on the day of issue of the invoice.

4.3

If goods are stored by us on the Customer's request, the costs therefor shall be borne by the Customer.

4.4

If on inspection or testing of goods for alleged defects it emerges that the Customer has no warranty claim, the Customer shall have a duty to bear the costs incurred for the inspection or testing.



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5. PAYMENT

5.1

Payments are due within thirty days from the date of invoice. We will only accept cheques made out to the minimum amount of € 5,000.00 (domestic banks) and € 10,000.00 (foreign-based banks). In the case of making payment within 8 days from the date of invoice, the Customer is entitled to deduct 2% cash discount. Authoritative for the timeliness of payments is the time of receipt of the payment by us or of the amount being credited without reservation to our account.

5.2

For any period in which the Customer is in arrears with payment, we shall be entitled to charge interest at a rate of eight percentage points above the base interest rate or at a higher rate if we have legal grounds for doing so. This shall be without prejudice to our right to claim for further loss or damage or to claim other statutory rights for delay.

5.3

If payment is effected with funds procured by the Customer by discounting an inverted bill, our claim to payment shall become extinct only when the bill of exchange has been honoured by the Customer.

5.4

Where several accounts receivable against the Customer are open and a payment by the Customer is not sufficient to repay all the receivables, repayment will be effected in accordance with the statutory regulations (section 366 (2) of the German Civil Code [„Bürgerliches Gesetzbuch“]) even if the Customer has expressly declared the payment as being intended to settle a certain receivable.

5.5

The Customer must not make offset or exercise a statutory right to withhold payment or performance on the strength of counterclaims of the Customer which are disputed by us or have not been finally and absolutely established at law (e.g. for defects). Nor may the Customer exercise a right to withhold payment or performance except where the claims and counterclaims relate to one and the same contract.

5.6

If the Customer fails to meet a payment date or if after conclusion of the contract it becomes apparent for other reasons that our receivables are in jeopardy due to the Customer's inability to pay, then we shall be entitled to make future deliveries subject to payment in advance. Instead of delivery subject to advance payment, we are also entitled to demand security prior to delivering supplies or services, or we may rescind the agreement. Statutory claims to damages remain unaffected.

6. NOTICE OF DEFECTS, CLAIMS FOR MATERIAL DEFECTS AND DEFECTS OF TITLE, CUSTOMER'S INSTRUCTIONS, ADVICE

6.1

The Customer is obliged, in writing, to report recognisable faults no later than three days following delivery of the goods; hidden faults must be reported no later than three days following their discovery. These time periods are to be regarded as exclusion limits. The punctuality of the fault report is determined on the basis of the time we receive it.

6.2

Our statutory liability in the case of the existence of rights of third parties based on industrial or intellectual property („proprietary rights“) shall be limited to proprietary rights which exist effectively in the Federal Republic of Germany. If according to the agreements between the parties it is intended for the goods to be sold to another country („third country“) or to be otherwise used in such third country, we shall also warrant in accordance with statutory regulations that no proprietary rights exist in the third country which could be asserted against the Customer. Where the parties have made no agreement concerning resale to or use in a third country but the Customer is domiciled in a third country, we shall warrant in accordance with statutory regulations that no proprietary rights exist in the Federal Republic of Germany and the Customer's country of domicile.

6.3

Any claims of the Customer for defect shall be limited to the right to remedy. Remedy shall be effected, at our choice, either by elimination of the defect or by delivery of a defect-free item. Should our attempts at remedy fail, the Customer may, at the Customer's own choice, either rescind the contract or reduce the purchase price.

6.4

If and insofar as we have a duty, on the strength of statutory provisions, to pay compensation for a defect - irrespective of the legal ground on which the claim for compensation is based, including claims for positive breach of contract, negligence in negotiations or tort - such duty shall be limited in accordance with the provisions of Art. 7 hereof.



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6.5

The foregoing shall be without prejudice to any rights of recourse of the Customer pursuant to Section 478 of the German Civil Code. If and insofar as we have a duty on account of such recourse to pay compensation in accordance with the statutory provisions, such duty shall be limited in the manner set forth in Art. 7 hereof.

6.6

Claims of the Customer for defects shall expire one year after delivery of the item. This shall not apply (1) in the case of wilful intent or fraudulent concealment of the defect, (2) in the case of non-compliance with any guarantee of quality given by us or (3) in the case of an item which has been used in keeping with its customary use in a building structure and has caused the building structure to be defective. Nor shall the period of one year apply to claims for defects where the claim is based on gross negligence on the part of our legal representatives or senior executive personnel or on personal damage or injury or where we have liability for tort. Where the defect lies in a right in rem of a third party on the strength of which surrender of the item can be claimed or in any other right recorded in a land title register, the limitation period for claims shall be three years. This shall be without prejudice to the statutory provisions relating to limitation periods for recourse claims under Section 479 of the German Civil Code or limitation and exclusion periods under the Product Liability Act [„Produkthaftungsgesetz“]. 3

6.7

In the case of declassified goods and seconds, all claims for defects are barred in respect of defects which were already known to the Customer at the time of conclusion of the contract. Nor may we be held liable for defects which remained unknown to the Customer due to gross negligence at the time of conclusion of the contract except where the defect was fraudulently concealed by us or a corresponding guarantee of the quality of the goods was given by us.

6.8

For defects resulting from an instruction or specification of the Customer, we may be held liable in accordance with the statutory provisions and these Terms and Conditions only if we have given a written undertaking to the Customer to assume the risk of defects occurring as a result of the instruction or specification. The Customer shall be responsible towards us for instructions or specifications not resulting in defects in the goods manufactured or supplied by us, unless we have given our written undertaking to assume the aforesaid risk of the occurrence of defects.

6.9

The onus is on the Customer for determining whether or not the goods are suitable for the use intended by the Customer. We therefore do not warrant suitability for the purpose planned by the customer. any elaborations produced by us for the Customer or advice or recommendations given by us shall not establish any liability on our part; before being implemented, they must be examined and considered carefully by the Customer, who if need be must obtain the expert advice of third parties.

6.10

Defect-free goods which are returned to us will only be accepted by us if we have previously confirmed in writing our willingness to accept them. The costs of return delivery shall be borne by the returning party. if the returned goods are in good condition, we will issue a credit note for them after the deduction of handling costs in the customary amount of 20% of the invoice value. Goods which are not generally stocked by us and goods which have been processed in any manner are excluded from return. Credit notes can only be offset against other invoices.

7. LIMITATION OF LIABILITY

7.1

our liability for loss or damage caused by wilful intent or gross negligence on the part of our legal representatives or senior executive personnel or for personal damage or injury shall be governed by the statutory regulations.

7.2

in the case of wilful intent or gross negligence on the part of ordinary vicarious agents and in the case of breach through ordinary negligence of material contractual duties which are indispensable for achieving the purpose of the contract and on strict compliance with which the Customer must therefore be able to rely, our liability shall be in accordance with the statutory regulations, though limited to such loss or damage the nature and scope of which could be foreseen by us at the time of conclusion of contract.

7.3

In those cases described in Art. 7.2, our liability is limited to three times the value of the delivery in question, but in any case only up to € 1 million per damage event and € 2 million per calendar year. Our liability for financial loss is limited to a maximum of two times the value of the delivery in question, but in any case only up to € 100,000.00 per damage event and € 200,000.00 per calendar year.



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7.4

Otherwise, all claims of the Customer to compensation for direct or indirect loss or damage - regardless of the legal ground on which they are made, including claims for breach of pre-contractual duties and tort - are barred. This shall, however, be without prejudice to any statutory liability we may have for lack of a property or quality of the goods which was guaranteed by us or for fraudulent concealment of a defect or for claims under the Product Liability Act.

7.5

Claims of the Customer to compensation for defects shall expire as set forth in Art. 6.6 hereof. Other claims of the Customer to compensation shall expire two years from the time at which the Customer acquired or, but for gross negligence, should have acquired, knowledge of the circumstance giving rise to the claim and of the identity of the person by whom the loss or damage was caused, but not later than three years from the time of the event causing the loss or damage. The foregoing sentence shall not apply in cases of wilful intent, fraudulent deception or gross negligence on the part of our legal representatives or senior executive personnel, or in cases of personal damage or injury, tort or liability under the Product Liability Act.

7.6

The foregoing limitations of liability shall also apply to any claims for compensation or damages of the Customer against our legal representatives, senior executive personnel and other vicarious agents.

8. RIGHTS OF TITLE AND COPYRIGHT

We reserve all rights of title and copyright to all drawings, illustrations, cost estimates and other documents which accompany our offers. Except with our prior consent, none of the foregoing may be made accessible to third parties or used for commercial purposes and must be returned to us without delay on our request.

9. RESERVATION OF TITLE, SECURITY

9.1

We reserve ownership over the goods („goods subject to retention of title“) until the fulfilment of all our claims established under the business arrangement, including those claims not yet due.

9.2

Processing or transformation of the reserved goods by the Customer shall in all cases be deemed done on our behalf, though without this giving rise to any liability on our part. If the goods are processed together with other items not belonging to us, we shall have co-title to the new item in the same proportion as that between the value of the goods and the other items included in processing at the time of processing. In the event that reserved goods are combined, mixed or blended with movable items of the Customer in such manner that the Customer's item must be seen as the main item, the Customer hereby already assigns to us a share of the Customer's title to the whole item proportionate to that between the value of the reserved goods and the value of the other items with which it is combined, mixed or blended. If reserved goods are combined, mixed or blended with movable items of a third party in such manner that the third party's item must be seen as the main item, the Customer hereby already assigns to us a share of the Customer's claim to payment against the third party equivalent to that part of the final invoice amount attributable to the reserved goods. The item created by combining or mixing (hereinafter called the „new item“) and/or the (co-) title rights to the new item to which we are entitled or which are to be assigned to us pursuant to this Art. 9.2 as well as the claims to payment assigned to us pursuant to this Art. 9.2 shall serve as security for our claims in the same manner as the reserved goods themselves pursuant to Art. 9.1.

9.3

The Customer has the right to resell the reserved goods or new item in the ordinary course of business, provided the Customer reserves title to them. The Customer has a duty to ensure that claims arising from such resale transactions can be assigned to us in accordance with Arts. 9.4 and 9.5. The Customer is prohibited from disposing of the goods in any other manner.

9.4

The claims of the Customer arising from resale of the reserved goods are hereby already assigned to us. They shall serve as security for us in the same scope as the reserved goods. If the Customer resells the reserved goods together with other goods not supplied by us, the assignment of the claim shall only apply to that part of the final invoice amount attributable to resale of the reserved goods. In the case of resale of goods to which we have cotitle under Art. 9.2 hereof or the statutory regulations relating to the combination and mixing of goods, the claim shall be deemed assigned in an amount equivalent to our co-title share.



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9.5

If the Customer includes accounts receivable from the resale of reserved goods in a current account maintained for the Customer's own customer, the Customer hereby already assigns to us part of any balance that has been recognized in his favour or of the final balance, that part being equivalent in value to the total amount of the receivables from the resale of the reserved goods carried on the current account. The 3rd and 4th sentence of Art. 9.4 shall apply accordingly.

9.6

The Customer is authorized to collect the receivables from the resale of the reserved goods or the new item which have been assigned to us. The Customer is not permitted to assign the receivables from the resale to third parties, even under genuine factoring agreements.

9.7

We may revoke the right to resell the reserved goods or new item pursuant to Art. 9.3 and the authorization to collect the receivables assigned to us pursuant to Art. 9.6 in the case of any delay in payment or cessation of payments by the Customer or in the event of a petition being filed for the opening of insolvency proceedings or in any case where the Customer's creditworthiness or trustworthiness appears impaired. In the event of our revoking the right and authorization to resell and/or collect, the Customer has a duty to inform his own customers without delay of the assignment of receivables to us and to furnish us with all information and records needed for collecting the receivables. The Customer also has a duty in this case to surrender or assign to us any security held by the Customer relating to receivables against the Customer's own customers.

9.8

The Customer has a duty to inform us without delay of any attachment or other legal or actual interference with or risk to the reserved goods or any other security existing in our favour.

9.9

The Customer undertakes to adequately insure the reserved goods at new value against the risks of loss or damage through fire, water and theft. The Customer hereby already assigns to us the Customer's claims arising under the insurance contracts.

9.10

In the event of delay in payment or any other breach of contract of a more than minor nature by the Customer or in the case of any rescission of the contract, the Customer hereby already assents to our taking back - or arranging to have taken back - the reserved goods and/or, insofar as we are the sole owner thereof, the new item within the meaning of Art. 9.2, which are in the Customer's possession. Taking the goods or item back shall not be construed as constituting rescission of the contract on our part unless we expressly declare it as doing so. The Customer has a duty to admit our authorized representative at any time for purposes of implementing the aforesaid measures or for general inspection of the reserved goods or the new item.

9.11

14 days after having given notice, we shall be entitled to realise the commercial value of the expropriated goods subject to retention of title, in which context the proceeds of sale - less the reasonable costs realisation - will be offset against the customer's liabilities.

9.12

The Customer hereby grants us a right of lien to materials supplied to us for execution of the order and to claims in lieu thereof as security for all current and future claims arising from the business relationship with the Customer.

9.13

If and insofar as the reservation of title or the assignment of claims are ineffective or unenforceable under indispensable provisions of law of other countries, such security as corresponds to the reservation of title or assignment of claims and is valid in the country concerned shall apply. If the assistance of the Customer is necessary for this purpose, the Customer shall take all measures necessary to create and maintain the security.

9.14

The precondition for our duty to deliver is the absolute creditworthiness of the Customer. If after conclusion of the contract we acquire knowledge of cessation of payments, an application for or the conduct of in-court or out-of-court composition proceedings or a petition for the opening of bankruptcy proceedings, or if the Customer commits any breach of the provisions of these Terms and Conditions or, despite having been reminded, fails to pay due invoices, we shall have the right to refuse to provide the performance incumbent upon us until such time as counter-performance has been effected or security has been furnished therefor. In the event of occurrence of any circumstances of the aforesaid kind, we shall also have the right to declare all receivables arising from contracts already executed by us due and payable immediately. We shall also have the right to rescind a contract if, despite being reminded and being set a final deadline by us, the Customer fails to furnish security or counterperformance of the kind demanded by us.



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10. TOOLS

If and insofar as tools are made or procured by us for deliveries to the Customer, they shall remain our property even if all or part of the costs of the tools is paid by the Customer. The tools will be used exclusively for deliveries to the Customer for as long as the latter fulfils his contractual obligations towards us. If a period of 24 (twenty-four) months has elapsed since the latest delivery or if the contribution of the Customer towards procurement of the tool has been amortized, we shall also be entitled to put the tool to other use or to scrap it.

11. PLACE OF PERFORMANCE, LEGAL VENUE, APPLICABLE LAW

11.1

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

11.2

Where the Customer is a registered trader, a legal entity organized under public law or a separate asset fund organized under public law, the exclusive legal venue for all disputes arising directly or indirectly from the business relationship between the parties is Essen. Instead of the aforesaid legal venue, however, we shall also have the right to bring legal action at any court which has competence under the law.

11.3

The law of the Federal Republic of Germany shall apply; application of the provisions of the UN Convention on Contracts for the International Sale of Goods is barred.

12. DATA PROTECTION CLAUSE

12.1

The Customer agrees that we may communicate permissible information concerning the assumption or cessation of the business relationship. We are entitled, in particular, to report claims, refusals to honour cheques or bills, summary judgements applications/ filing an action for payment of undisputed receivables, initiation of compulsory enforcement proceedings, insurance companies' refusal of or amendments to credit insurance policies. In accordance with the Federal Data Protection Act, this notifications may only be submitted insofar as necessary to protection our legitimate interests or that of the general public.

Note

Data of customers and other third parties involved is, to the extent necessary for dealing with the contractual relations in a due and proper manner, saved and processed by us using electronic data processing equipment and systems.