

General Terms and Conditions of Sale of M.W.B. GmbH

§ 1 General, Scope

(1) The present General Terms and Conditions of Sale (GTCS) shall apply to all our business relations with our customers (hereinafter: "Customers"). The GTCS shall apply only if the Customer is an entrepreneur (Section 14 of the German Civil Code (BGB)), a corporate body under public law or a special fund under public law.

(2) The GTCS shall in particular apply to contracts for the sale and/or supply of moveable objects (hereinafter also referred to as: "goods"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (Sections 433, 651 of the German Civil Code (BGB)), or whether we provide assembly services. The GTCS, as amended from time to time, shall also apply as a framework agreement to any contracts entered into in future with the same Customer, without any particular reference to their application being required from us in each individual case; in such case, we will inform the Customer without delay of any amendments to our GTCS.

(3) Our GTCS shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of Business of the Customer shall only become a part of the contract insofar as we have given our express consent to their application. This requirement for consent shall apply in all cases, for example even if we unconditionally make deliveries to the Customer while aware of its General Terms and Conditions of Business.

(4) Individual agreements reached with the Customer in an individual case (including side agreements, addenda or amendments) shall in any event take precedence over these GTCS. The content of such agreements must be set out in a written contract or confirmed in writing by us.

(5) Declarations and notifications relevant in law that the Customer must make to us after conclusion of the contract (e.g. deadlines, notices of defects, declaration of withdrawal or reduction of the price) must be made in writing in order to be effective.

(6) References to the validity of statutory regulations shall serve merely as clarification. Therefore, the statutory regulations shall apply even without such a clarification unless they are directly changed or are explicitly excluded in these GTCS.

§ 2 Conclusion of the Contract

(1) Our offers shall be subject to change and non-binding. This shall also apply if we provide the Customer with catalogues, technical documentation (e.g. drawings, plans, calculations, cost estimates, referrals to DIN standards), other product descriptions or documents, including in electronic form, to which we reserve ownership rights and copyrights.

(2) An order placed by the Customer for the goods shall be deemed to be a binding offer to enter into a contract. Unless the purchase order states otherwise, we shall be entitled to accept such offer to enter into a contract within 7 days of its receipt.

(3) Acceptance may be declared either in writing (e.g. by confirmation of the order) or by delivery of the goods to the Customer.

§ 3 Delivery Time and Delayed Delivery

(1) The delivery period shall be agreed on an individual basis or specified by us when the purchase order is accepted.

(2) If we cannot adhere to binding delivery deadlines for reasons for which we are not responsible (non-availability of performance), we shall inform the Customer of this immediately and at the same time inform it of the expected, new delivery deadline. If performance is still not available by the new delivery date, we shall be entitled to withdraw from the contract in whole or in part; in this case, we shall refund, without delay, any counter-performance already effected by the Customer. Such non-availability of performance shall be deemed to exist in particular if our suppliers fail to supply us in a timely manner, if we have entered into congruent covering transactions, if neither we nor our suppliers are at fault or if we are not obliged to make a purchase in an individual case.

(3) The date from which we are deemed to be in default of delivery shall be governed by the statutory provisions. A dunning notice from the Customer shall, however, be required in all cases. If we are in

default of delivery, the Customer may demand flat-rate compensation for the damage caused to it by the default. The flat-rate compensation shall be 0.5% of the net price (delivery value) per complete calendar week's default, subject, however, to a maximum of 3% of the delivery value of the goods delivered late. We shall reserve the right to furnish evidence that the Customer has incurred no damage, or has only incurred significantly less damage than the aforementioned flat-rate compensation.

(4) This shall not affect the Customer's rights pursuant to § 8 of these GTCS and our statutory rights including in particular if the obligation to perform is excluded (e.g. if performance and/or supplementary performance is impossible or unreasonable).

§ 4 Delivery, Transfer of Risk, Acceptance, Delay in Taking Delivery

(1) Delivery shall be ex warehouse and this shall also be the place of performance. If we perform assembly, the place of performance shall be the place where we perform the assembly work. At the request and costs of the Customer, the goods shall be shipped to another place of destination (sale to destination according to Customer's instructions). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transport company, shipment route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Customer at the latest when they are handed over to the Customer. In the case of sale to destination according to Customer's instructions, however, the risk of accidental loss and of accidental deterioration of the goods as well as the risk of delay shall be transferred on delivery of the goods to the forwarder, to the carrier or to any other person or organisation charged with carrying out the shipment. If an acceptance procedure has been agreed, this shall be authoritative for the transfer of risk. If an acceptance procedure has been agreed, the statutory provisions of the law on contracts for services shall also apply accordingly in all other respects. The goods shall be deemed to have been handed over/taken delivery of if the Customer delays in taking delivery of the goods.

(3) If the Customer defaults on taking delivery, omits to carry out an act of co-operation or causes our delivery to be delayed for other reasons imputable to the Customer, this shall entitle us to demand compensatory damages including additional expenses. For this we shall charge a flat-rate compensation in the amount of 0.5% of the net order value per calendar day, subject, however, to a maximum of 5% of the order value, beginning with the delivery deadline or – in the absence of a delivery deadline – with the notification that the goods are ready for shipment. This shall not exclude claims for damages exceeding that amount.

Proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; the flat rate shall, however, be offset against further monetary claims. The Customer shall reserve the right to furnish evidence that we have incurred no damage, or have only incurred significantly less damage than the above flat rate.

§ 5 Prices and Payment Terms

(1) Unless otherwise agreed in individual cases, our prices current at the time of contract conclusion shall apply ex warehouse plus VAT at the statutory rate.

(2) In the case of sale to destination according to Customer's instructions (§ 4 (1)), the Customer shall bear the cost of transport ex warehouse and the cost of any transport insurance requested by the Customer. Any customs duties, fees, taxes and other public charges shall be borne by the Customer. Transport packaging and all other packaging in accordance with the Packaging Ordinance (Verpackungsordnung) shall be non-returnable and shall become the Customer's property; this shall not apply to pallets.

(3) Unless otherwise agreed, the purchase price shall be due and payable within 10 days from invoicing and delivery/acceptance of the goods or assembly work. In the case of contracts with a delivery value of more than EUR 20,000.00, we shall, however, be entitled to demand a down payment of 30% of the purchase price or partial payments. The down payment shall be due and payable within 10 days of invoicing.

(4) Upon the expiry of the aforementioned payment period, the customer shall be in default of payment. During the period of default, interest shall be charged on the purchase price at the respective statutory default interest rate. We reserve the right to claim further damages for default. Our entitlement to commercial maturity interest (Section 353 of the German Commercial Code (HGB)) remains unaffected vis-à-vis merchants.

(5) The Customer shall only have rights of set-off or retention if its claim has been held to be final and absolute by a court of law or is uncontested. In the event of defective delivery the Customer's counter-claims, in particular pursuant to § 7 (6) second sentence of these GTCS shall remain unaffected.

(6) If after conclusion of the contract it becomes apparent that our claim for payment of the purchase price is jeopardised by the Customer's inability to pay (e.g. by an application for commencement of insolvency proceedings) we shall be entitled in accordance with the statutory provisions to refuse to perform and – if necessary after fixing a time limit – to withdraw from the contract (Section 321 of the German Civil Code (BGB)). In the case of contracts for the manufacture of non-fungible (custom-made products), we may withdraw from the contract immediately; the statutory provisions concerning the lack of necessity to set a deadline shall remain unaffected.

§ 6 Reservation of Title

(1) We shall reserve title to the sold goods until full payment of all of our current and future claims from the purchase contract/contract for services and a current business relationship (secured claims).

(2) The goods subject to reservation of title may neither be pledged to third parties nor assigned as collateral before full payment of the secured claims. The Customer must notify us immediately in writing if and insofar as a third party executes attachment of our goods.

(3) If the Customer acts in breach of contract, in particular if it fails to pay the purchase price which is due, we shall be entitled to withdraw from the contract in accordance with statutory provisions and/or demand that the goods be returned on the basis of the reservation of title. A demand for the return of goods shall not be deemed to include a simultaneous declaration of withdrawal; on the contrary, we shall be entitled to demand solely the return of the goods and reserve the right to withdraw from the contract. If the customer fails to pay the purchase price due, we may only assert these rights after having previously set a reasonable grace period for the customer to pay, and after such deadline has elapsed without payment being made, or if the setting of any such grace period is not required by law.

(4) The Customer shall be permitted to resell and/or further process any goods subject to the reservation of title in the ordinary course of business. In such case, the following additional provisions shall apply:

(a) The retention of title shall extend to the full value of any products resulting from the processing, mixing or combining of our goods, whereby we shall be regarded as the manufacturer. If third-party title rights remain following any processing, mixing or combining with goods of third parties, we shall acquire co-ownership proportional to the invoice values of the processed, mixed or combined goods. In all other cases the same shall apply to the ensuing products as applies to the goods delivered subject to retention of title.

(b) The Customer hereby assigns to us, by way of security, any and all claims from the resale of the goods or the product vis-à-vis third parties, in full or in the amount of any co-ownership interest we may have in accordance with the preceding paragraph. We accept this assignment. The Customer's obligations under paragraph 2 above shall also apply to the assigned claims.

(c) In addition to ourselves, the Customer shall remain authorised to collect the claim. We undertake not to collect the claim so long as the Customer complies with its payment obligations to us, is not in default of payment, has not filed a petition for the commencement of insolvency proceedings and its ability to effect contractual performance is not impaired in any other way. However, if this is the case we can request that the Customer informs us of the assigned claims and their debtors, provides all information which is necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

(d) If the realisable value of the collateral items exceeds our claims by more than 10% we shall, if so requested by the Customer, release collateral items of our choice.

§ 7 Customer's Claims for Defects

(1) Insofar as not otherwise determined below, the statutory provisions shall apply to the Customer's rights in the event of defects of quality and title (including wrong delivery and short delivery, as well as incorrect assembly and inadequate assembly instructions).

(2) The primary basis of our liability for defects shall be the agreement made concerning the quality of the goods. All product descriptions and technical delivery conditions which are the subject of the individual contract shall be deemed an agreement concerning the quality of the goods; in this context, it

shall be immaterial whether the product description originates from the Customer, from the manufacturer or from us.

(3) If the quality has not been agreed, the statutory provisions must be applied to assess whether there is a defect or not (Section 434 (1) second and third sentences of the German Civil Code (BGB)). However, we shall not accept any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).

(4) Claims for defects by the Customer shall require that it has complied with its duties to examine and notify defects contained in Sections 377, 381 of the German Commercial Code (HGB). Should any defect be found upon examination or later, we must be notified of this in writing and without delay. Notification shall be considered to have been given without delay if it is given within two weeks, whereby timely despatch of the notice shall be deemed sufficient to comply with the deadline. Irrespective of this obligation to examine and notify defects, the Customer must report obvious defects (including wrong delivery and short delivery) in writing within 2 weeks of delivery; here too, timely despatch of the notice shall be deemed sufficient to comply with the deadline. If the customer fails to examine the goods and/or report any defects as required, we shall accept no liability for the defect which was not reported.

(5) If the delivered item is defective we can initially choose whether we shall provide supplementary performance by remedying the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery). This shall not affect our right to refuse supplementary performance in accordance with statutory preconditions.

(6) We shall be entitled to make the supplementary performance which is owed conditional upon the Customer paying the purchase price due. The Customer shall, however, be entitled to retain a reasonable portion of the purchase price that is relative to the defect.

(7) The Customer shall allow us the necessary time and opportunity to provide the supplementary performance which is due and shall in particular hand over the goods concerned for inspection. In the case of replacement delivery, the Customer must return the defective goods to us in accordance with statutory provisions. Supplementary performance shall not include either the removal of the defective item or its re-installation if we were not originally obliged to install the item.

(8) The expenses which are necessary for the purpose of examination and supplementary performance, in particular as regards transport, travel, labour and materials (not removal and installation costs), shall be borne by us if a defect does indeed exist. However, if it is determined that a request for remedy of a defect by the Customer is unjustified, we can request reimbursement of the associated costs incurred from the Customer.

(9) In urgent cases (e.g. when operational safety is at risk, or in order to prevent disproportionate damage), the Customer shall be entitled to remedy the defect itself and demand reimbursement by us of the objectively necessary expenses incurred. We must be notified immediately (where possible in advance) of any such self-remedying of defects. The Customer's right to rectify defects itself shall not exist if we would be entitled to refuse relevant supplementary performance in accordance with statutory provisions.

(10) If supplementary performance has failed or if a reasonable deadline which is to be set by the Customer for supplementary performance has expired without success or can be dispensed with according to statutory provisions, the Customer can withdraw from the purchase contract or reduce the purchase price. There shall, however, be no right of withdrawal if the defect is negligible.

(11) Claims of the Customer for damages and/or compensation for futile expenses shall exist only in accordance with § 8 and shall be excluded for all other cases.

§ 8 Other Liability

(1) Unless provided otherwise in these GTCS, including the following stipulations, we shall be liable, in accordance with the applicable statutory provisions, for any breach of contractual or non-contractual obligations.

(2) We shall be liable for damages – irrespective of the legal grounds – in the event of intent and gross negligence. In cases of minor negligence we shall only be liable

a) for damage resulting from death, physical injury or harm to health,

b) for damage resulting from the breach of an essential contractual obligation (an obligation whose fulfilment makes proper fulfilment of the contract possible at all and on whose observance the contrac-

tual partner regularly relies and may rely); in this case, our liability shall, however, be restricted to compensation for foreseeable and typically occurring damage.

(3) The limitations on liability resulting from (2) above shall not apply if we have maliciously concealed a defect or if we have given a guarantee for the quality of the goods. The same shall apply to claims of the Customer under the Product Liability Act (Produkthaftungsgesetz).

(4) In the case of a breach of duty which does not involve a defect, the Customer may withdraw from the contract only if we are responsible for the breach of duty. The Customer shall not have a free right of cancellation (in particular in accordance with Sections 651 and 649 of the German Civil Code (BGB)). In all other cases the statutory prerequisites and legal consequences shall apply.

§ 9 Statute of Limitations

(1) Notwithstanding Section 438 (1) no. 3 of the German Civil Code (BGB), the general limitation period for claims for defects of quality and title shall be one year from delivery. Where an acceptance procedure has been agreed the statute of limitations shall begin with the acceptance.

(2) However, if the commodity is a building or an object used for a building as a result of its customary mode of use and has caused its defectiveness (building material), the limitation period according to statutory provisions shall be five years from delivery (Section 438 (1) no. 2 of the German Civil Code (BGB)). Statutory special regulations governing third-party in rem claims for surrender (Section 438 (1) no. 1 of the German Civil Code (BGB)), wilful deceit of the Customer (Section 438 (3) of the German Civil Code (BGB)) and for claims of recourse against the supplier in the case of final supply to a consumer (Section 479 of the German Civil Code (BGB)) shall also be unaffected.

(3) The aforementioned limitation periods of commercial law shall also apply to the Customer's contractual and extra-contractual claims for damages based on a defect in the goods, unless the application of the regular statutory limitation period (Sections 195 and 199 of the German Civil Code (BGB)) would result in a shorter limitation period in the individual case. The periods of limitation under the Product Liability Act (Produkthaftungsgesetz) shall remain unaffected in all cases. In all other cases, only the statutory limitation periods shall apply to claims for damages by the Customer pursuant to § 8.

§ 10 Choice of law and place of jurisdiction

(1) These GTCS and all legal relationships between ourselves and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of international uniform law and in particular the UN Convention on the International Sale of Goods (CISG). The prerequisites for and the effects of retention of title pursuant to § 6 shall be governed by the law in force at the place where the item is stored if, under that law, the choice of German law would be inadmissible or invalid.

(2) If the Customer is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch), a corporate body under public law or a special fund under public law, the exclusive place of jurisdiction (including the international place of jurisdiction) for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Wörth / Isar. We shall, however, also be entitled to file an action at the Customer's general place of jurisdiction.