

General Terms and Conditions of Sale, Delivery and Installation

WAREMA International GmbH



§ 1 General information

- (1) Our Terms and Conditions of Sale, Delivery and Installation (hereinafter referred to as "General Terms and Conditions") apply exclusively, and solely in relation to companies within the meaning of Section 310 (1) German Civil Code (BGB), to all current business relationships with the purchaser and to all future business relationships, provided that said relationships involve legal transactions of a related nature. Any previous terms and conditions which may or may not differ from the present terms and conditions are hereby rendered invalid.
- (2) The offer, offer acceptance, order confirmation and/or sale of all products shall be governed by the General Terms and Conditions set forth below. Any terms and conditions of the purchaser which conflict with or differ from the General Terms and Conditions set forth below are hereby rejected; we shall only recognise said terms and conditions if we have expressly agreed to their validity in writing.
- (3) We reserve the right to correct any inadvertent errors in our sales brochures, price lists, offer documents and any other documentation without being held liable for said errors.

§ 2 Offer and conclusion of contract

- (1) Our offers, regardless of the form thereof, shall be non-binding unless otherwise expressly agreed. They are based on the technical specifications of the purchaser, which specifications must accurately describe the local conditions insofar as said conditions affect the products that we are to deliver.
- (2) The quantity, quality, description and any specific characteristics of the goods shall conform to our offer. The contents and scope of our deliveries and services shall be determined solely by our written order confirmation. All sales documents, specifications and price lists shall be treated in a confidential manner and must not be disclosed to third parties without our prior express consent in writing. We reserve all proprietary rights and copyrights to any and all sales documentation, specifications and price lists as well as any other similar documents.
- (3) By placing an order, the purchaser makes a binding declaration that it intends to purchase the ordered item. Changes to the order are no longer possible once the order has been received. Supplementary agreements or assurances shall only be valid if they have been confirmed by us in writing.
- (4) We reserve the right to make technical changes and improvements that are within a reasonable scope even after the contract has been effectively concluded, provided that said changes do not detract from the ordered products with respect to form, function or price.
- (5) The purchaser shall be aware that the products we manufacture are specially made-to-measure, and that they can be neither exchanged nor returned. If the purchaser does not accept the ordered goods, we shall invoice the purchaser for any demonstrable costs which we have already incurred in connection with the order, any extra expenses incurred and any lost profits.

§ 3 Delivery dates, delivery of goods

- (1) Stated delivery times shall only be binding if our written order confirmation contains a calendar date for delivery and if said date has been expressly confirmed in writing as a binding delivery date.
- (2) The period in which delivery is to occur shall only begin after all technical questions and other details of the order have been clarified together with the purchaser and the purchaser has duly fulfilled its other obligations in a timely manner. The obligations of the purchaser shall include in particular the provision of necessary documents and the payment of any first instalment that may be agreed. We reserve the right to defence by reason of non-performance of the contract.
- (3) The delivery period shall be extended by a reasonable amount of time in the event of unforeseeable obstacles for which we are not responsible, such as force majeure, labour strikes, lockouts and the interruption of operations. The purchaser shall be informed immediately of the reason for and predicted duration of the delay. If it is likely that the obstacle will not be eliminated within a reasonable period of time, we reserve the right to withdraw from the contract in full or in part.
- (4) In the event of a delay in delivery, the purchaser shall only be entitled to withdraw from the contract if the purchaser has previously set a reasonable extension of time when expressing its intent to withdraw from the contract and if performance does not occur within said time period.
- (5) The partial provision of services and partial deliveries shall be permissible within a reasonable scope and may be invoiced accordingly.
- (6) Should the purchaser become delayed in accepting delivery, or if the purchaser intentionally or negligently is in breach of any other duties to cooperate, we shall be entitled to demand compensation for any damages we suffer as a result thereof, including any extra expenses. The obligation of the purchaser to pay the purchase price when it becomes due shall not be affected thereby. In the event of a delay in acceptance, we shall store the goods at the risk and expense of the purchaser. At the request of the purchaser, we will insure the goods at the purchaser's expense. All further claims are explicitly reserved.

§ 4 Purchase price

- (1) The purchase price is the price specified in the order confirmation. If no price is specified therein, the purchase price shall be the price that is indicated in our current price list and valid at the time of order placement, or the price contained in the offer.
- (2) For receiving locations within the Federal Republic of Germany, the purchase price shall include delivery to the receiving station via normal freight, including the costs of packaging, plus the value-added tax required by law.
- (3) Expenses which arise from changes to the type or scope of delivery at the request of the purchaser after we have confirmed the order and/or which arise from the compliance with subsequent or unforeseeable regulatory obligations or requirements shall also be invoiced separately from the quoted purchase price.

- (4) We reserve the right to make reasonable price changes due to changes in labour, material and sales costs for such deliveries as take place four months or more after conclusion of the contract. For international business, we also reserve the right to raise the price of goods in this case as is necessary due to general price trends that are beyond our control (such as fluctuations in currency exchange rates, currency regulations and changes in customs duties) or due to changes in delivery information.

§ 5 Invoicing and conditions of payment

- (1) Invoices shall be sent by standardised electronic transmission. In agreed exceptional cases, invoices may be submitted in paper form.
- (2) The purchase price shall be due and payable as of the invoice date. Customer-specific or order-specific agreements regarding the size of the discount, the discount deadline or interest on late payments shall only take precedence if we have confirmed said agreements in writing. The discount provision shall not affect the due date set forth in sentence 1; it does not entail any extension agreement or standstill agreement. For new customers, we reserve the right to require prepayment prior to delivery.
- (3) Payments are to be made via bank transfer or check. Payments by check shall be accepted on account of performance.
- (4) If (in the case of international transactions) it is agreed that the purchaser is to open a letter of credit through its bank (or another bank deemed acceptable by us), it is hereby stipulated that the opening of a letter of credit shall be carried out in accordance with the Uniform Customs and Practice for Documentary Credits, Revision 1993, ICC Publication No. UCP 500.
- (5) Should the purchaser fail to effect payment by no later than the due date, we shall have the right to perform any further deliveries to the purchaser against prepayment only. Any further claims provided for by law shall not be affected. The amount of interest charged on late payments shall be equal to 9 percentage points above the respective base rate per year. Claims for higher amounts of damages due to delay are hereby reserved, as are claims for any additional damages.
- (6) If, after the effective conclusion of the contract, the economic circumstances of the purchaser should change in such a manner that, in accordance with proper business discretion, doubts are cast on the creditworthiness of the purchaser, or if we only become aware of such a change in circumstances after the contract has been effectively concluded, we shall be entitled to withhold the delivery of the goods until the goods have been paid for in advance, or until we have received commensurate security for said payment. For new orders, we shall, in addition to having the right to demand advance payment, also be entitled to deliver the goods as they are paid for. Furthermore, we shall be entitled to rescind the contract.
- (7) The purchaser shall have no right to offset any amounts due, except where the purchaser's counterclaims have been finally established at law or are undisputed. Any right of retention shall be excluded if the purchaser had knowledge of the defect or any other grounds for complaint at the time of the passage of risk without reserving its rights in writing to this effect or if said defect or grounds have remained unknown to the purchaser as a result of gross negligence. This shall not apply if we have acted fraudulently or if we have guaranteed the quality of the object/work.

§ 6 Passage of risk, transport, packaging

- (1) The routes and means of dispatch shall be determined at our discretion. Objects shall not be packaged on an item-by-item basis, but rather solely based on transport-related, production-related and environmental aspects. Reusable packaging shall only be available to the purchaser on loan. Within three weeks, the purchaser shall notify us in writing of the return of the packaging units and make the packaging available. Should the purchaser fail to do so, we shall be entitled to retroactively demand the payment of rental fees or invoice the value of the packaging, with said invoice becoming due and payable immediately upon receipt. This provision does not apply to disposable transport packaging materials. At its discretion, the purchaser may return disposable packaging materials to any of our German sites or to the company headquarters in Marktheidenfeld. If the purchaser does not return the disposable transport packaging, it shall independently dispose of said packaging using its own company disposal methods.
- (2) The risk of accidental loss and accidental deterioration of the purchased object shall pass to the purchaser upon the arrival of the goods with our vehicles on the purchaser's company premises or at a destination on a firm road surface specified by the purchaser; in the event that the transfer location is not navigable, the passage of risk shall take place at the nearest location where arrival and departure are readily possible. If the goods are to be shipped to a location other than the place of performance at the instruction of the purchaser, the risk of accidental loss and accidental deterioration of the purchased object shall pass to the purchaser upon delivery of the purchased object to the forwarder. The undisputed acceptance of the shipment by the forwarder shall be deemed proof of flawless packaging quality and proper loading, provided that the purchaser does not demonstrate that the packaging exhibited defects when the shipment was handed over or that the shipment was not properly loaded.
- (3) If the purchaser should be in delay of acceptance, the risk of accidental loss and accidental deterioration of the purchased object shall pass to the purchaser from the date on which said object is ready for dispatch.
- (4) In the event that we deliver the goods using our own transport vehicles, we shall take out a goods in transit insurance policy within the scope of our general policy. The above paragraphs 1 through 4 also apply to partial deliveries.

§ 7 Retention of title

- (1) We reserve the right to retain the title to the delivered object until such time as full payment of any and all claims arising from the business relationship with the purchaser has occurred. This also applies to all future deliveries and installation services, even if we do not always make express reference to this provision. The right to retain the title shall also extend to the recognised account balance if we keep a running account of our claims against the purchaser (current account reservation).



- (2) If, in the course of ordinary business operations of the purchaser, a processing or transformation of the purchased object by the purchaser should be necessary, this shall at all times be carried out in our name and on our behalf. In this case, the reversionary right of the purchaser to the purchased object shall extend to the transformed object. If the purchased object is processed with other objects which are not our property, we shall acquire co-ownership in the new object at a rate equal to the proportion of the objective value of our purchased product to the other processed objects at the time of processing. This also applies in the case of mixing. If the mixing is carried out in such a manner that the purchaser's object can be considered the main object, it is hereby agreed that the purchaser shall assign to us pro-rata co-ownership and take proper care of the resulting sole or co-owned property on our behalf. As security for our claims against the purchaser, including e.g. existing claims for installation services, the purchaser shall also assign to us the purchaser's own claims owed to it by a third party as a result of the combination of the goods subject to the retention of title with a piece of real estate.
- (3) The purchaser shall be entitled to resell the goods subject to the retention of title in the ordinary course of business. The purchaser hereby assigns to us its claims against the buyer, equal to the final invoice amount agreed with us (including the value-added sales tax required by law), resulting from the resale of the goods subject to the retention of title. Said assignment shall be valid regardless of whether the purchased object has been resold before or after processing. The purchaser shall remain authorised to collect the claim even after said claim has been assigned to us. Our authorisation to collect the claim ourselves shall not be affected thereby. However, we will refrain from collecting the claim if the purchaser satisfies its payment obligations, if the purchaser is not in arrears and, in particular, if there has been no application to initiate insolvency proceedings or suspension of payments.
- (4) If a processing or sale of the goods subject to the retention of title as set forth in paragraphs 2 and 3 has not taken place, the purchaser undertakes to treat the purchased object with care until such time as ownership has been transferred to the purchaser. In particular, the purchaser shall be obligated to adequately insure said purchased object against theft, fire damage and water damage at replacement value at the purchaser's own expense. Until such time as the purchase price is paid in full, the purchaser shall be obligated to keep the goods separate from its own property and the property of third parties, to store and secure the goods, and to mark the goods as our property. As long as ownership has not yet been transferred, the purchaser shall provide us with immediate written notification if the delivered object has been pledged or subjected to any other interventions by third parties. If said third party is not capable of reimbursing such costs as we incur inside and outside of court in connection with legal action pursuant to Article 771 German Code of Civil Procedure (ZPO), the purchaser shall be liable for the loss we incur.
- (5) We undertake to, on request of the purchaser, release the security to which we are entitled if the value of said security exceeds the claim that is to be secured by more than 20%.
- (6) If the purchaser is in breach of contract, particularly if the purchaser is in delay of payment, we shall be entitled, after setting a reasonable deadline, to withdraw from the contract and demand the return of the purchased object. Once we have taken back the purchased object, we shall be authorised to liquidate it. The amount realised from said liquidation shall be credited to the liabilities of the purchaser, less reasonable liquidation costs.
- ### § 8 Warranty, notice of defects
- (1) All warranty rights assume that the purchaser has duly satisfied its obligations to examine and object to the goods as stipulated by Article 38 CISG. If complaints should arise despite the utmost care, visible defects shall be claimed without delay, but no later than 8 days following the receipt of the goods, while concealed defects shall be claimed immediately upon their discovery; otherwise the goods shall be deemed accepted. Article 39 (2) CISG shall not be affected thereby.
- (2) If the purchaser gives notice of defects, the purchaser shall be obligated to accept and properly store the goods. Before any further processing, destruction, etc. of the goods, the purchaser shall grant us an opportunity to examine the defects for which notice was given and, if necessary, to conduct an independent procedure for the purpose of collecting evidence, provided that the aforementioned is not unreasonable for the purchaser and that no evidence is lost. If this does not occur, the rights of the purchaser shall be forfeited unless the conditions pursuant to Article 40 CISG are present.
- (3) We do not accept any responsibility for defects in the goods that can be traced back to a description of the goods or a specification from the purchaser. Our responsibility does not extend to parts, material or any other equipment that were manufactured by, or by order of, the purchaser and made available to us. The purchaser shall examine independently the quality and load-bearing capacity of the mounting substructure and select suitable fixing materials. We do not accept any responsibility for defects that are due to the incorrect selection of said materials.
- (4) WAREMA complies with the CE product-labeling requirements within the scope of the DIN EN standards that are applicable in each particular case. The responsibility for the use of the products lies with the purchaser. The purchaser must only use the products under the conditions specified in the technical documentation and operating and installation instructions.
- (5) This warranty does not cover product defects or include liability for damage caused by faulty installation, improper use or storage, unintended use, negligence, incorrect commissioning, modifications or repairs, normal wear and tear, faulty electrical connection, operation in connection with unsuitable control components or any other reasons. The warranty shall be excluded if such necessary maintenance work as is stipulated in the operating instructions has not been performed to the required extent by specialist dealers. The specialist dealer shall verify the transfer of the operating instructions to the user and the performance of the maintenance work by means of a signature from the user and a signature from the person assigned to the maintenance work.
- (6) We shall have the right to rectify defects by subsequent improvement or by subsequent performance at our own discretion. Should we declare that said subsequent improvement or subsequent performance has ultimately failed, the purchaser may – possible claims for damages notwithstanding – declare the contract avoided in accordance with Article 49 CISG where a substantial defect within the meaning of Article 25 CISG is concerned, or the purchaser may reduce consideration in accordance with Article 50 CISG. The purchaser cannot demand compensation for wasted expenditures. Removal and installation costs are not accepted.
- (6) As a rule, the quality of the purchased object shall be based solely on the manufacturer's product description. Accordingly, any public statements, promotion or advertisement by the manufacturer shall not constitute a contractual specification of the quality of the goods. However, we warrant that the delivered goods are free of faults in material and processing defects.
- (7) In the event of wilful intent or gross negligence, we shall be liable in accordance with legal provisions. Unless we have committed an intentional or grossly negligent breach of duty, our liability for damages shall be limited to such damage as typically occurs. This does not apply to liability arising from the intentional or negligent injury to a person, to health or to body, including the death of said person. Liability under product liability law shall also not be affected. Should we be guilty of the intentional or negligent breach of a material contractual obligation, we shall also be liable in accordance with legal provisions.
- (8) Claims made by the purchaser on account of expenses necessary due to subsequent performance or subsequent improvement, in particular costs for transport, travel, labour and materials, are hereby excluded, insofar as said expenses increase because the goods we supplied were brought to a location other than the delivery address of the purchaser. Should we incur such costs as part of non-performance or subsequent improvement, the purchaser shall reimburse said costs.
- (9) In the event of the fraudulent concealment of a defect, or if a guarantee is provided for the quality of the goods at the time of the passage of risk within the meaning of Section 444 German Civil Code (BGB) (declaration by the seller that the purchased object has a certain property at the time of the passage of risk, and that the seller intends to be held liable for all consequences of the absence of said property, regardless of whether or not the seller is at fault), the rights of the purchaser shall be defined solely by the provisions under law.
- (10) The period of limitations for the purchaser to make defect claims which are not subject to the five-year period provided for by Sections 438 (1) no. 2 or 634a (1) no. 2 German Civil Code (BGB) and for which the applicability of Part B of the German Construction Contract Procedures (VOB/B) was not agreed shall be two years. The warranty period shall commence with the delivery of the goods. Sentence 1 notwithstanding, the period of limitations shall be two years for wear parts that age as a result of use (in particular, all movable parts) as well as components that age due to environmental influences. The two-year limitation period also applies to electronic control components. Components to which the period set forth in sentence 3 applies are indicated respectively in the operating instructions. Exceptions related to specific product lines shall not be affected.
- ### § 9 Limitation of liability
- (1) For any other claims for damages, our liability in the event of a breach of duty due to ordinary negligence shall be limited to such damage as typically occurs for the purchased object type. This also applies to breaches of duty due to ordinary negligence on the part of our legal representatives or any persons employed in performing our contractual obligations for which we are vicariously liable. Our liability in the event of breaches of nonmaterial contractual obligations due to ordinary negligence is hereby excluded.
- (2) Liability for the intentional or negligent injury to life, body or health shall not be affected, nor shall mandatory liability in accordance with the German Product Liability Act be affected.
- ### § 10 Final provisions
- (1) All changes and amendments to the contract, including these General Terms and Conditions, must be made in writing. This also applies to any changes made to the clause requiring written form. No supplementary oral agreements have been concluded.
- (2) Unless otherwise provided in these General Terms and Conditions, the UN Convention on Contracts for the International Sale of Goods (CISG) shall apply. National German law is to be applicable to those areas which are not covered by the CISG.
- (3) The sole place of jurisdiction for all disputes arising from this contract shall be our principle place of business in Markttheidenfeld.
- (4) The purchaser is hereby advised that we process all personal data obtained within the scope of the business relationship in accordance with the provisions of the EU Data Protection (EUDATAP) and the German Federal Data Protection Act.
- (5) Should any provision of the contract, including those provisions set forth in these General Terms and Conditions, be or become invalid in whole or in part, the validity of the remaining provisions shall not be affected thereby. The provision deemed invalid in whole or in part is to be replaced by a provision that most closely approximates the economic effect of the invalid provision.

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