

## **General Terms & Conditions of Sale and Supply of W.AG Funktion + Design GmbH in Business Dealings**

### **1. General Applicability**

- (1) These terms and conditions of business apply to contractors, corporate bodies and special public entities (hereinafter: customer).
- (2) Our supplies, services and quotations are provided exclusively on the basis of these conditions of sale and supply. They shall apply also to all future transactions with the customer, insofar as the transactions concerned are legal transactions of the same or related kind, without us having to refer to them again in each individual case.
- (3) Any of the customer's conditions of business or purchasing terms are herewith countermanded. Any general terms of business of the customer's that differ from ours are not recognised, save only if we specifically consent to their applicability in writing.
- (4) Any material declarations or reports by the customer in relation to the contract (e.g. setting of a deadline, reporting of defects, cancellation or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, etc.). Statutory formalities and other verifications, especially in the case of doubts about the legitimacy of the party making the declaration, remain unaffected.

### **2. Quotation and Contract Conclusion**

- (1) Our quotations are subject to confirmation and are non-binding, save only if we have expressly described them as binding. This applies too if we have provided to the customer, including in electronic form, any catalogues, technical documents (e.g. drawings, plans, calculations, cost estimates, references to DIN standards) or other product descriptions or paperwork, over which we have reserved rights of title and copyright.
- (2) The presentation of our goods and the granting of the possibility to place an order does not yet represent any binding offer on our part. It is not until you place an order that any act representing an offer to us to enter into a purchase contract is made. We may declare acceptance thereof either in writing (e.g. through an order confirmation) or by sending the goods to the purchaser.
- (3) Any drawings, illustrations, measurements, weights or other specifications are binding only if this is explicitly agreed in writing.
- (4) The conclusion of the contract shall be in German.

### **3. Delivery**

- (1) Our acceptance of the customer's contract offer is subject to correct and on-time delivery to ourselves, save only if the incorrect or late delivery to ourselves is due to matters for which we are responsible.
- (2) We shall be entitled to make partial deliveries or partial provision of services if, based on the purpose of the contract, this is of interest for the customer and as a result of it no significant extra work arises for the latter.
- (3) Details relating to delivery times are approximate unless otherwise agreed with the customer. Delivery deadline periods do not begin until after complete clarification of all details of how the contract is to be executed and are subject to the customer properly fulfilling its obligations on time.
- (4) If the customer defaults on the calling off, acceptance or collection of the goods, we shall be entitled to demand reimbursement of the costs we have incurred; on commencement of any default in the acceptance procedure, the risk of the goods being accidentally destroyed or damaged shall pass to the customer.

(5) Unless otherwise agreed, where delivery is on a call-off basis, the acceptance of goods is to be in volumes spread as evenly as possible over the contract term. Upon expiry of the agreed call-off period, we shall be entitled to deliver all remaining goods.

(6) Delivery shall be to the delivery address given by the customer.

(7) If, for reasons for which we are not responsible (non-availability of the goods or service, force majeure such as natural disasters, war, civil war, terrorism, pandemics or similar), we are unable to keep to any binding delivery deadlines, we will notify the customer of this without delay and inform them at the same time of the probable new delivery date. If the goods or service is/are also not available inside the new delivery period, we shall be entitled to withdraw fully or partially from the contract; we shall then reimburse any consideration already paid for this by the customer without delay. A case that in this sense shall apply in particular as one of non-availability of the goods or service shall be a failure of our supplier to make delivery to us on time if we have entered into a congruent covering transaction, the fault lies with neither us nor our supplier or in an individual case we have no obligation in respect of procurement.

(8) We shall also be entitled to decline to provide the service if it requires a level of time and effort that considering the contents of the purchase contract and the principles of good faith is grossly disproportionate to the customer's interest in the contract being fulfilled. Any amounts already paid will be reimbursed without delay.

#### **4. Transfer of Risk, Acceptance, Acceptance Default**

(1) Delivery shall be ex-warehouse, which shall also be the place of fulfilment for the delivery and for any retrospective fulfilment. Upon request of the customer and at the latter's expense the goods shall be sent to a different destination (purchase with delivery to an alternative location). Unless otherwise agreed, we shall be entitled to determine the dispatch method ourselves (in particular haulier, route and packaging).

(2) The risk of the goods being accidentally destroyed or damaged passes to the purchaser not later than at the point of handover. In the case of purchases with delivery to an alternative location, however, the risk of the goods being accidentally destroyed or damaged, and the risk of delay, passes to the purchaser as soon as the goods are delivered to the haulier, the freight forwarder or any other person or organisation assigned to carry out the dispatch. If a formal acceptance procedure has been agreed, this shall be the definitive juncture in relation to the transfer of risk. If the purchaser delays acceptance, the handover / acceptance procedure shall be deemed to have occurred. If dispatch is delayed at the customer's request, the risk shall transfer to the latter upon notification of the goods being ready for dispatch.

(3) If the purchaser falls behind with formal acceptance, fails to cooperate in any given action or if our delivery is delayed for any other reason for which the purchaser is responsible, we shall be entitled to demand reimbursement of the costs arising from this, including any additional expenditure (e.g. warehousing costs). For this we shall charge a lump-sum compensation figure of 750 EUR per calendar day, starting with the date set for delivery or, in the absence of any such set date, with our notification that the goods are ready to be dispatched.

The opportunity to show evidence of a greater loss and our statutory rights (especially to reimbursement of additional expenditures, appropriate compensation, termination) remain unaffected; the lump-sum figure is, however, to be credited against any more far-reaching monetary claims. The purchaser shall remain permitted to show that we incurred no loss at all or only one much lower than the aforementioned lump sum.

## **5. Price and Payment**

- (1) Our prices are ex-works/warehouse, excluding shipping and the prevailing level of sales tax at the given time.
- (2) Unless otherwise agreed with the customer, we charge the standard packaging for transportation/shipping at cost. The choice of protection/packaging to be used shall be for us to make. In the case of any purchase with delivery to an alternative location (as per 4.1), the purchaser shall bear the cost of transportation ex warehouse and of any transport insurance that it wants. If we do not invoice the transport costs actually incurred in any given case, a transport cost lump-sum figure (excluding transport insurance) of 980 EUR is deemed to have been agreed. Any customs duties, fees, taxes or other official levies shall be borne by the purchaser.
- (3) Our invoices are payable in full upon receipt. We are, however, always entitled, including within the scope of an ongoing business relationship, to make a delivery wholly or in part only with prepayment. We shall declare any such proviso not later than at the point of order confirmation.
- (4) The purchaser shall have no right to offset or withhold payment unless its claim is undisputed or has been legally adjudged valid. Any such claim of the customer must also be directly related to our claim. The customer shall be authorised to exercise any right of withholding payment only if its counter-claim is based on the same contractual relationship.
- (5) If the customer falls into arrears with a payment, the statutory regulations shall apply.
- (6) If after contract signature it becomes clear (e.g. as a result of an application to open insolvency proceedings) that our claim to the purchase price is being put at risk by the purchaser's inability to pay, then we shall be entitled in accordance with the statutory provisions to refuse to provide any products or services and, where applicable after setting a deadline, to cancel the contract (Art. 321 German Civil Code). In the case of contracts for the manufacture of non-substitutable goods (custom-made items), we shall be able to cancel at once; the statutory regulations on dispensing with setting a deadline remain unaffected.

## **6. Retention of title**

- (1) Until final payment of all claims arising on the basis of the business relationship, the delivered goods remain our property (retained title goods). In the case of multiple claims or ongoing invoicing the retention of title shall be deemed security for the outstanding balance, even if individual goods deliveries have already been paid.
- (2) Prior to complete payment of the secured claims, the retained title goods may not be pledged to a third party nor assigned as security. The purchaser must inform us in writing without delay if any application is made to open insolvency proceedings or any seizure by a third party (e.g. distraint) of the goods belonging to us. In the event of any seizures, especially distraints, made by a third party of the retained title goods, the customer shall point out our ownership and notify us without delay so that we can assert our ownership rights.
- (3) In the event of any breach of contract by the purchaser, in particular non-payment of the due purchase price, we shall be entitled in accordance with the statutory provisions to cancel the contract and/or to demand back the goods on the grounds of title retention. The demand to return the goods shall not simultaneously constitute a declaration of cancellation; rather, we shall be entitled solely to demand the goods be returned and to reserve the right to cancellation. If the purchaser does not pay the due purchase price, we shall be entitled to assert these rights only if we have previously set an appropriate deadline for payment without success or any such setting of a deadline can be dispensed with in accordance with the statutory regulations. After their return, we shall be entitled to utilise the retained title goods for financial gain. After deduction of an appropriate sum for the cost of such utilisation, the proceeds from it are to be offset against the sums owed to us by the customer.

(4) As long as the customer has not fallen into arrears, it shall be entitled to process and sell the retained title goods in the normal course of its business activities. No pledging or assigning of the goods as security is allowed. By way of security, the customer even now assigns to us in their entirety all claims arising from selling on the retained title goods or from any other cause in law related to said goods (e.g. insurance, unlawful acts). We hereby grant the customer the authority, which we can revoke at any time, to collect for its account and in its own name the receivables assigned to us. The collection authorisation shall lapse if the customer fails to properly fulfil its payment obligations, gets into payment difficulties, any foreclosure measures are taken against it, or judicial insolvency proceedings over its assets are opened or the opening thereof is refused due to lack of assets.

(5) Any processing or modification of the goods shall always be done on behalf of us as the manufacturer, however without any obligation for us. If the items delivered are worked up together with items not belonging to us we shall acquire joint title to the new object in proportion to the value of the delivered items relative to the other worked up items at the time of said working. If the items delivered are combined or inseparably mixed with items not belonging to us, we shall acquire joint title to the new object in proportion to the value of the delivered items relative to the other combined or mixed items. If in the combining or mixing the customer's item is to be regarded as the main item, it is deemed agreed that the customer shall assign to us pro rata joint title to the new item. The customer shall hold safe the joint title thus created on our behalf.

(6) The purchaser assigns to us as security even now the claims against third parties arising from the onward sale of the goods or the item produced in full or at the level of any joint title share we may have as per the above paragraph. We accept the assignment. The purchaser's aforementioned obligations shall apply with regard to the assigned claims as well. In addition to us, the purchaser remains authorised to collect the debt. We undertake not to collect the debt for as long as the purchaser fulfils its payment obligations to us, it does not lack the ability to pay and we do not assert title retention. If this is, however, the case, we shall be able to demand that the purchaser discloses to us the assigned debts and their debtors, provides all information needed to collect them, hands over the associated paperwork and informs the debtors (third parties) of the assignment. In such event we shall also be entitled to revoke the purchaser's authority to conduct any further selling or processing of the goods subject to title retention.

(7) If the value of the realisable securities exceeds our receivables by more than 10%, then at the purchaser's request we shall release securities of our choice.

## **7. Deviations**

Samples are made by hand. We therefore reserve the right for the goods delivered to show immaterial deviations and production-related differences from the sample. Normal deviations in quality, strength and colour, and any under- or over-deliveries of up to 3% are also immaterial. Any complaints that the customer raises below this threshold will not be accepted by us.

## **8. Tools**

(1) Unless otherwise agreed, the right of ownership of all models, drawings, patterns, forms, templates, devices and tools related to this contract remains with us.

(2) The customer undertakes to treat all items mentioned in paragraph 1 and belonging to us carefully, to keep them safe and to use them only for the contractually agreed purposes.

(3) We have the right at any time to demand from the customer the return of all items mentioned in paragraph 1 and belonging to us. Once a demand for the items' return has been

made, the customer must return said items without delay and in good condition to our company head office in Geisa.

## **9. Warranty**

(1) In the event of any breach of a contractual obligation, the customer shall have their statutory rights towards us subject to the following provisions.

(2) The customer shall be entitled to make warranty claims only if it has fulfilled its obligations to check deliveries and raise any complaints as per Art. 377 of the German Commercial Code (HGB).

(3) Where a legitimate complaint is made within the deadline during the warranty period, the customer shall have the right to have the deficiency made good. How this is done, i.e. rectification of the deficiency or delivery of a replacement with no defect, shall be for us to choose. Our right to refuse pursuant to the statutory pre-conditions to make good the deficiency remains unaffected. We shall be entitled to make the due making good of the deficiency dependent on the purchaser paying the due purchase price. The purchaser shall, however, be entitled to withhold a part of the purchase price commensurate in proportion to the deficiency.

The purchaser must give us the necessary time and opportunity to carry out the due making good of the deficiency, and must in particular hand over the goods that it has complained about so that we can inspect them. In the event of replacement delivery, the purchaser must return the deficient items to us in accordance with the statutory regulations.

If the making good fails or if further attempts to do so would be unreasonable for the customer, the latter shall be entitled to a price reduction or cancellation of the contract. A right to cancellation shall exist only in the event of significant deficiencies. We, however, accept no liability for any public comments from other manufacturers / third parties (e.g. advertising statements) that the customer has not highlighted to us as key to it in making its purchase.

(4) If a claim is made against the customer by its customer or by a consumer on account of a deficiency of the delivered goods that was already present at the point of transfer of risk or was complained of by a consumer and end user, the customer's statutory rights of recourse against us pursuant to Articles 478 and 479 of the German Civil Code (BGB) remain unaffected.

(5) The customer shall be able to assert any compensation claims on the conditions set out at point 10 only if the making good of a deficiency has failed or we decline to make the deficiency good. The customer's right to assert compensation claims beyond this on the conditions set out at point 10 remains unaffected by this.

(6) Only the client shall have any rights to make claims against us. These cannot be assigned.

(7) All deficiency claims must be made within one year of the date of transfer of risk. This shall not apply if legislation as per Articles 438, clause 1.2 (Construction Work and Items for Construction Work), 478, 479 (Supplier Regress) and 634a, clause 1.2 of the German Civil Code (Construction Defects) stipulates longer periods or in cases of injury to life, body or health, of any wilful or negligent breach of duty by us, or of any malicious concealment of a deficiency. For used goods there is accordingly no warranty.

## **10. Liability**

(1) We shall be liable for any losses arising only if these are due to a breach of a material contractual obligation or to wilful or grossly negligent behaviour by us, our representatives or agents.

(2) In cases of minor negligence, we shall be liable, subject to statutory liability limitations (e.g. diligence exercised in our own affairs; immaterial breach of an obligation), only

a) for damages arising from injury to life, body or health,

b) for damages arising from the breach of a material contractual obligation (an obligation, without the fulfilment of which the contract cannot even be properly executed and that the contractual partner routinely trusts and has every right to trust will be adhered to); in such event

our liability is however limited to reimbursement of the foreseeable loss typically arising in such cases.

(3) The liability limitations from paragraphs 1 and 2 shall also apply to third parties and in the event of breaches of any obligation by people (including to their benefit) for whose transgressions statutory regulations make us responsible. They shall not apply if a deficiency has been maliciously concealed, if characteristics of the goods have been guaranteed, or for any claims made by the purchaser pursuant to the Product Liability Act.

(4) The customer shall be able to cancel or terminate due to a breach of an obligation that does not constitute a deficiency only if we are responsible for said breach. The customer shall not have any free right to termination (especially not as per Articles 650 and 648 of the German Civil Code). In all other respects the statutory requirements and legal consequences shall apply.

#### **11. Severability and Contractual Amendments**

(1) Should any provision of these conditions be or become invalid or should this condition contain an omission, the legal validity of the remaining provisions shall remain unaffected by this. In place of the invalid provision a valid provision is deemed agreed that in a legally permissible way comes closest in its commercial effect to the one wanted by the parties. The same shall apply in the event of any omission.

(2) To be valid any amendments or additions to these terms, including any amendment or waiving of this clause requiring the written form, must be in writing.

#### **12. Place of Execution / Jurisdiction / Applicable Law**

(1) Place of execution for all delivery obligations on our part and for the other contractual obligations for both parties is Geisa.

(2) This contract and these terms of business as well as all the legal relationships between the customer and ourselves are governed by the laws of the Federal Republic of Germany to the exclusion of all references to other legal systems or international agreements. There shall be no application of the UN Convention on Contracts for the International Sale of Goods.

(3) If the purchaser is a sole trader as defined by the German Commercial Code (HGB), a corporate entity or a special public body, sole jurisdiction, including international, for all disputes arising directly or indirectly from the contractual relationship shall rest with the courts of Fulda. The same shall apply if the purchaser is a business owner as defined by Art. 14 of the German Civil Code (BGB). We shall, however, be entitled to bring actions against the customer in the courts of the location in which its business is based. Overriding statutory regulations, especially in relation to exclusive responsibilities, remain unaffected.

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