

General Terms and Conditions of Business of Aug. Winkhaus GmbH & Co KG

(valid from 1 September 2007)

1. Validity of the Terms and Conditions

- 1.1 All our deliveries, services and offers are carried out on the basis of these General Terms and Conditions of Business exclusively. These are an integral part of all contracts which we conclude with our contract partners (hereinafter referred to as "Customer(s)") for the deliveries and services offered by us. They shall also apply to all future deliveries, services or offers to Customers, even if they are not separately agreed again.
- 1.2 The business conditions of the Customer or third parties are inapplicable also in cases in which we do not object to their validity in an individual case. Even if we refer to a letter which contains the business conditions of the Customer or a third party or refers to such this shall not be deemed our consent to the validity of such business conditions.

2. Conclusion of contract and prohibition of transfer

- 2.1 An effective contract materialises only upon our written order acknowledgement or by our manufacturing the goods ordered (hereinafter referred to as "Contract") as a basic principle.
- 2.2 The rights of the Customer under the contract are not transferable.

3. Prices

- 3.1 Our prices are valid ex works plus the statutory VAT as a basic rule. Prices are calculated based on the prices valid on the date of the written order acknowledgement. In case of delivery ex warehouse, our prices are valid ex warehouse.

4. Terms of payment and delay in payment

- 4.1 The price to be paid by the Customer is due and payable within 14 days after the date of the invoice and delivery or acceptance of the goods. Upon the expiry of the above time allowed for payment the Customer is in delay. This shall not apply for as

long as the payment is not paid for a reason for which the Customer is not responsible.

4.2 In case of a delay in payment, we are entitled to:

- a) demand security from the Customer for further services,
- b) realise security furnished under the contract affected by the delay in payment at the amount of the delayed payment,
- c) withdraw from the contract,
- d) demand interest on payments in delay at the currently applicable statutory default interest rate, whereby our claim to commercial interest from the due date remains unaffected in relation to merchants (Section 353 of the German Civil Code [*HGB*]),
- e) assert damage caused by delay which exceeds the default interest.

4.3 The Customer may only offset a counterclaim if it is uncontested or has been declared legally valid by a court of law.

4.4 The Customer has no right of retention, unless it is based on the same contract and the counterclaims are uncontested by us or have been declared legally valid by a court of law.

5. Packing

5.1 Unless otherwise agreed, the goods ordered shall be packed according to our best judgement.

6. Delivery

6.1 The goods ordered are delivered ex works which is also the place of performance. Upon demand and at the expense of the Customer, the goods shall be sent to a different destination (hereinafter referred to as: "sales shipment"). We reserve the right to decide on the type of dispatch, the transport route and the choice of forwarding company, unless this is specified in a contract.

6.2 The goods are delivered at the expense of the Customer.

- 6.3 The risk of accidental loss and accidental deterioration of the goods passes to the Customer upon delivery at the latest. However, in the case of a sales shipment, the risk of accidental loss and accidental deterioration of the goods and the risk of delay already passes upon delivery of the goods to the forwarding agent, the carrier or the person or institution otherwise designated for execution of the shipment. If acceptance is agreed, this is authoritative for transfer of the risk. Also in other respects, the statutory provisions of the law governing contracts for work and services apply for an agreed acceptance accordingly. If the Customer is in delay with acceptance, this shall be deemed equivalent to delivery or acceptance.
- 6.4 If the Customer is in delay with acceptance, he fails to provide assistance or our delivery is delayed for other reasons for which the Customer is responsible, we are entitled to demand compensation for the damage incurred as a result thereof, including additional expenses (e.g. storage costs). For this we shall charge a lump-sum compensation at 5% of the price of the goods for which acceptance is delayed per calendar week, beginning with the delivery period or - if there is no delivery period – with the notification of the readiness of dispatch of the goods. Proof of greater damage and our legal claims (in particular the reimbursement of additional expenses, reasonable compensation, termination) remain unaffected; the lump sum shall, however, be offset against further monetary claims. The Customer is permitted to furnish proof that we did not suffer any damage at all or much less damage than the above lump sum.
- 6.5 The delivery or service periods shall be understood as approximate information as a basic rule. They do not entail any binding commitment regarding a delivery or service deadline, unless otherwise agreed.
- 6.6 If we are unable to comply with binding delivery periods for reasons for which we are not responsible (unavailability of the goods), we shall immediately notify the Customer of this and notify him of the expected, new delivery period at the same time. If the goods are not available within the new delivery period either, we are entitled to withdraw from the contract in whole or in part. We shall immediately refund any payments already made by the Customer. An unavailability of the goods in this context is defined in particular as our not receiving supplies from our sub-suppliers ourselves in due time if we have concluded a congruent covering transaction. Our legal rights of withdrawal and termination and the statutory provisions on contract implementation in case of an exclusion of the duty to perform (e.g. due to impossibility or unreasonableness of the work/services and/or subsequent performance) remain unaffected.

6.7 We are entitled to provide partial shipments if a contract has materialised for several goods and this can be reasonably expected of the Customer when taking our interests into account.

7. Liability for defects

7.1 The Customer is obliged to examine the goods ordered immediately after receipt for any obvious defects, in particular for obvious short quantities or damage and to notify us of a defect in writing immediately, however within 14 days after receipt of the goods at the latest, stating the nature and scope of the defect (hereinafter referred to as "notification of defects"). The punctual dispatch of the notification of defects suffices for compliance with the time limit. Defects which cannot be discovered within this period even on careful examination shall be notified immediately after discovery.

7.2 Liability is excluded for any defects not notified at all or not notified in due time.

7.3 Goods for which a notification of defects has been given may only be returned after obtaining our express consent.

7.4 If the goods ordered are defective, the defects shall be rectified at our option through subsequent performance by either repairing the goods or exchanging them for goods without defects. If deliveries contain short quantities, we shall provide a subsequent delivery with the shortage.

7.5 If the subsequent performance should fail, be impossible or be unreasonable for the Customer, the Customer may reduce the price or withdraw from the contract.

7.6 We are free to inform the Customer of his right to reduce the price or to withdraw from the contract instead of rendering subsequent performance.

7.7 Our liability for defects does not include the customary wear and tear of the goods and defects only arising after delivery, e.g. through external influences or operating errors nor shall we accept any liability for defects if goods are treated improperly by the Customer.

7.8 Claims based on defects in quality by the Customer under this No. 7 become time-barred one year after the risk passes to the Customer. The statute of limitations applies to construction services and the sale of construction materials.

8. Liability for other breaches of duty

- 8.1 Our liability in case of any breach of contractual or non-contractual duties which does not consist in a defect or damage over and above the defect is based on statutory provisions, unless otherwise specified hereinafter.
- 8.2 We are liable for damages – irrespective of the legal grounds – only in case of wilful intent and gross negligence. In addition, we are liable for simple negligence in case of
- a) damage arising from death, physical injury or an impairment to health;
 - b) a breach of an essential contractual duty. However, in this case our liability is limited to compensation of the foreseeable damage which typically occurs.
- 8.3 Claims of the Customer based on guarantees expressly accepted by us and under the Product Liability Act remain unaffected by the above regulations. However, the provision of specimens or samples is not deemed acceptance of a guarantee in this context.

9. Software

- 9.1 For the delivery of software products, the Customer purchases from us merely the data carrier and a non-exclusive right of use unrestricted in terms of territory and time to the software saved on it.
- 9.2 In the relationship between the contract partners, only we are entitled to the copyright, patent rights, trademark rights and all other ancillary copyrights to the software and to any objects which we permit the Customer to use or which we make accessible during the preparations for and implementation of the contract. Insofar as third parties have rights, we have appropriate exploitation rights.
- 9.3 The Customer shall not make any copies of the software or its documentation in whole or in part apart from for back-up and archiving purposes. The back-up copies must, as far as technically possible, be provided with the copyright notice of the original data carrier and be stored safely. Copyright notices may not be erased, modified or suppressed. Copies no longer required shall be erased or destroyed. The user manual and other documents provided by us may only be copied for internal purposes.

9.4 Any inadmissible use of the software by the Customer automatically results in the loss of any rights of use for the Customer.

9.5 In addition, the consumer conditions specified for the software are applicable which we shall provide to the Customer upon request.

10. Reservation of ownership

10.1 Our deliveries are made solely with reservation of ownership. We reserve ownership to the goods delivered as long as and insofar as we have claims to which we are entitled against the Customer under the business relationship (hereinafter referred to as "reserved goods").

10.2 The Customer is entitled to process the reserved goods in the ordinary course of his business and/or to sell them to third parties with reservation of ownership. The Customer is prohibited from pledging or assigning by way of security our goods as long as our ownership of the goods is still reserved

10.3 The processing or assembly of reserved goods is always conducted on our behalf without any obligations arising from this for us.

10.4 The reservation of ownership includes the products created through the processing, mixing or combination of our goods at their full value whereby we are considered the manufacturer. If when processing, mixing or combining our goods with the goods of third parties their ownership continues, we acquire co-ownership according to the ratio of the invoice sums of the processed, mixed or combined goods. In other respects the same applies to the product created as for the reserved goods.

10.5 If our reserved goods are sold in the Customer's ordinary course of business without immediate payment or are joined with real estate (Section 946 of the German Civil Code [*BGB*]), the Customer hereby assigns his claim to consideration in full to us now by way of security; we accept this assignment. The Customer is entitled and obliged to collect the claim assigned to us for as long as we have not revoked this authorisation. The Customer must enter the amounts collected separately and immediately pay them over to us. Any costs entailed in this connection are paid by the Customer.

10.6 Upon our demand, the Customer is obliged to notify his buyer of the assignment and provide us the information and documents required to assert our rights against the buyer. We are also entitled to notify our Customer's buyer of the assignment.

- 10.7 If third parties claim or assert a right to the reserved goods, the Customer is obliged to immediately notify us thereof in writing.
- 10.8 In case of conduct by the Customer which is contrary to contract, in particular if he fails to pay the purchase price, we are entitled to withdraw from the contract and demand the surrender of the goods based on our reservation of ownership and our withdrawal.
- 10.9 As soon as he has ceased to make payment, the Customer is obliged to send us a list of the reserved goods still available, even if they have been processed, and a list of his claims to third-party debtors immediately after announcement of his cessation of payments.

If the realisable value of the security exceeds our receivables to be secured due from the Customer by more than 10% we shall release fully paid goods upon demand by the Customer.

11. Transfer of ownership in case of participation of a buying group

If a buying group participates in the legal transaction on the Customer's side in such a manner that the buying group pays the purchase price claim to us and the Customer is then obliged to pay the purchase price claim to the buying group, the ownership does not pass to the Customer when the buying group has paid the purchase price claim to us but only once the Customer has also settled his obligation vis-à-vis the buying group. In other respects the above comments apply accordingly.

12. Third-party proprietary rights

- 12.1 If deliveries are made based on drawings or other information provided by the Customer and third-party proprietary rights are violated as a result thereof, the Customer shall indemnify us against all third-party claims.
- 12.2 The Customer shall pay the costs required for legal defence in this case.

13. Duty to inform, place of jurisdiction, applicable law, safety instructions

- 13.1 The Customer must inform us of changes in ownership, the legal form of the company and any other circumstances affecting his financial circumstances and of any change in address in writing without delay.

13.2 The exclusive place of jurisdiction in case of disputes with a Customer, a merchant, a legal entity under public law or a special public fund is the court competent for the official business location of our firm.

However, we reserve the right to bring action against the Customer at the official business location or residence of the Customer.

13.3 The laws of the Federal Republic of Germany excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are applicable to all contracts which include these General Terms and Conditions of Business and to the General Terms and Conditions of Business themselves.

Note on locking systems: You have decided in favour of a high-class, modern Winkhaus organisational system which, due to its high level of functionality and technology, speaks for itself. However, we would like to point out that, depending on the amount of criminal energy applied, any locking system - whether mechanical or electronic - can be bypassed.

If you would like to know more, please contact us at info@winkhaus.de or +49 (0) 251/49 08-110.