

# GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT



AS AT JANUARY 2022

## § 1 Scope of application, Form

(1) These General Terms and Conditions (hereinafter „Terms and Conditions of Delivery and Payment“) shall apply to contracts for the sale and/or delivery of movable goods – regardless of whether we manufacture the goods ourselves or purchase them (§§ 433, 650 German Civil Code BGB) - (hereinafter “Goods“) between us, Wildeboer Bauteile GmbH, and our customers (hereinafter “Purchaser“). These Terms and Conditions of Delivery and Payment shall only apply if the Purchaser is an entrepreneur (§ 14 German Civil Code BGB), a legal entity under public law or a special fund under public law.

(2) Unless otherwise agreed, the Terms and Conditions of Delivery and Payment in the version valid at the time of the Purchaser’s order or in any case in the version last notified to him in text form shall apply as a framework agreement also for similar future contracts without our having to refer to them again in each individual case.

(3) These Terms and Conditions of Delivery and Payment shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Purchaser shall only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply without exception and in particular if we carry out the delivery without reservation in the knowledge of the Purchaser’s General Terms and Conditions.

(4) Individual agreements made with the Purchaser take precedence over these Terms and Conditions of Delivery and Payment. Subject to proof to the contrary, a written contract or written confirmation by us shall be decisive for the content of such agreements.

(5) All declarations with legally relevant effect by the Purchaser with regard to the contractual relationship must be made in writing, whereby the text form (letter or e-mail) is sufficient. Statutory formal requirements shall remain unaffected.

(6) References to the applicability of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these Terms and Conditions of Delivery and Payment.

## § 2 Contract conclusion

(1) Our quotations for all Goods are subject to change and non-binding. This shall also apply if we have temporarily provided the Purchaser with catalogues, technical documentation (e.g. drawings, plans, illustrations, dimensions, weights), manuals or other product descriptions, documents and specifications – also in electronic form. Information on technical specifications and properties of the Goods are to be understood as average values, unless expressly stated otherwise. We expressly reserve the ownership as well as the copyrights to the documents described above.

(2) The Purchaser’s order for the Goods shall be placed by letter or e-mail and shall be deemed a binding offer to conclude a corresponding contract. We are entitled to accept this offer within a period of two weeks. The period begins as soon as we have received the offer.

(3) A contract is only concluded when we have accepted the Purchaser’s binding offer of contract in accordance with paragraph (2) above. Acceptance may be declared either expressly, in writing (e.g. by order confirmation) or implied by delivery of the Goods to the Purchaser.

## § 3 Delivery period and delay in delivery

(1) Delivery periods and dates are only binding if they are expressly designated as binding by us and confirmed in writing. In the event of a bindingly agreed delivery period, this shall commence when we have accepted the Purchaser’s offer and the Purchaser has provided all the documents, approvals and/or releases that need to be made available and when existing technical questions have been conclusively clarified with us. If a down payment has been agreed, the delivery period shall not commence until the agreed down payment has been received in full.

(2) If we are unable to meet binding delivery deadlines through no fault of our own (hereinafter referred to as “Non-Availability of Performance“), we shall inform the Purchaser of this immediately and at the same time inform him of the expected new delivery deadline. If delivery of the Goods is not possible within the new delivery period either, we may withdraw from the contract.

If the Purchaser has already provided consideration, this shall be refunded. A case of Non-Availability of Performance in this sense shall be deemed to have occurred in particular if there is a late delivery of supplies to us, if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in the particular case.

(3) If a delivery period has not been agreed with binding effect, this shall be approximately four (4) weeks from the conclusion of the contract. This period shall not commence until the Purchaser has provided all documents, approvals and/or releases that need to be made available and when existing technical questions have finally been clarified with us. If a down payment has been agreed, the delivery period shall not commence until the agreed down payment has been received in full.

(4) Statutory provisions shall determine whether we have incurred a delay in delivery. However, the Purchaser will need to send a reminder in any case.

(5) The rights of the Purchaser pursuant to § 8 of these Terms and Conditions of Delivery and Payment and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

(6) Compliance with all delivery deadlines presupposes that the Purchaser has fulfilled his obligations in full.

## § 4 Delivery, Transfer of risk, Acceptance, Default of Acceptance

(1) Delivery shall be ex works, which is also the place of performance for the delivery and any subsequent performance. The Goods can be shipped to another destination at the Purchaser’s request and expense (hereinafter referred to as “Sale by Delivery to a Place other than the Place of Performance“).

(2) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Purchaser at the latest when the Goods are handed over. In the case of Sale by Delivery to a Place other than the Place of Performance, however, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall already pass upon delivery of the Goods to the forwarding agent, the carrier or the person or institution otherwise appointed to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the German law on contracts for work and services shall apply mutatis mutandis to an agreed acceptance. It is deemed equivalent to handover or acceptance if the Purchaser is in default of acceptance.

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(3) If the Purchaser is in default of acceptance, fails to cooperate or if delivery is delayed for other reasons for which the Purchaser is responsible, we shall be entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs).

In this case, we shall charge a lump-sum compensation of 0.25% of the invoice amount of the Goods to be delivered for each commenced calendar week or part thereof, starting with the delivery deadline or – in the absence of a delivery deadline – with the notification that the Goods are ready for dispatch.

This shall not affect our statutory claims or proof of greater damage (in particular compensation for additional expenses, reasonable compensation, termination). The lump sum shall be credited against further payment claims. The Purchaser shall be entitled to prove that we have not incurred any damage at all or that the damage is significantly less than the aforementioned lump sum.

(4) If the Purchaser refuses acceptance, we may exercise our statutory rights. If we demand compensation for damages, this shall amount to 10% of the invoice amount. The compensation shall be higher or lower if we prove greater damage or the Purchaser proves that less damage or no damage at all has occurred.

(5) Insignificant defects of the Goods do not entitle the Purchaser to refuse acceptance. The rights for defects according to § 7 of these Terms of Delivery and Payment shall remain unaffected.

(6) Partial deliveries are permissible if they are contractually agreed or are reasonable for the Purchaser.

## § 5 Prices and terms of payment

(1) Unless otherwise agreed in individual cases, our prices current at the time of the conclusion of the contract shall apply, namely ex works, plus statutory turnover tax and plus packaging, freight, carriage, loading, customs, insurance and installation.

(2) We are bound by the prices quoted in our offers for 14 days from the date of the offer. When this period has expired, we are entitled to adjust the prices. Price adjustments may be based in particular on cost factors such as material costs, personnel costs, energy and general levies.

(3) In the case of Sale by Delivery to a Place other than the Place of Performance (§ 4 (1)), the Purchaser shall bear the transport costs ex works and the costs of any transport insurance requested by the Purchaser. Any customs duties, fees, taxes and other public charges shall be borne by the Purchaser.

(4) The purchase price is due immediately after receipt of the invoice in cash without deduction. We are entitled at any time to make a delivery in whole or in part only against advance payment if we declare this with the order confirmation.

(5) Upon expiry of the aforementioned payment deadline, the Purchaser shall be in default of payment. Interest shall be paid on the purchase price during the period of default in accordance with § 288 (2) German Civil Code (BGB). We reserve the right to claim further damages caused by delay. With respect to merchants, our claim to the commercial due date interest (§§ 353, 352 German Commercial Code HGB) remains unaffected.

(6) The Purchaser shall only be entitled to rights of set-off or retention insofar as its claim has been legally established or is undisputed. In the event of defects in the delivery, the Purchaser's counter rights shall remain unaffected, in particular pursuant to § 7 (6) (2) of these Terms and Conditions of Delivery and Payment.

(7) If it becomes apparent after the conclusion of the contract (e.g. by filing for insolvency proceedings) that the claim to the purchase price is jeopardised by the Purchaser's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and – if necessary after setting a deadline – to withdraw from the contract pursuant to § 321 German Civil Code (BGB). In the case of contracts for the manufacture of non-fungible items (customised products), we may declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

(8) We are entitled to create and send invoices and credit notes in electronic form.

## § 6 Reservation of title

(1) We reserve title to all Goods until full payment of all current and future claims arising from the purchase contract and an ongoing business relationship (hereinafter referred to as "Secured Claims").

(2) The Goods subject to reservation of title may neither be pledged to third parties nor assigned as security before full payment of the Secured Claims. The Purchaser must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties (e.g. seizures) have or are likely to have access to the Goods which are our property.

(3) In the event of conduct by the Purchaser in breach of the contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand return of the Goods on the basis of reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the Goods and to reserve the right of withdrawal. If the Purchaser does not pay the purchase price due, we may only assert these rights if the Purchaser has previously been set a reasonable deadline for payment without success or if the setting of the deadline is dispensable according to the statutory provisions.

(4) Until revocation, the Purchaser shall be authorised in accordance with paragraph (c) below to resell and/or process the Goods subject to reservation of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

(a) The reservation of title extends to the full value of the products resulting from the processing, mixing or combining of our Goods, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the Goods delivered under reservation of title.

In such cases, the Purchaser shall hold our co-ownership in safe custody free of charge.

(b) The Purchaser hereby assigns to us by way of security any receivables due from third parties arising from the resale of the Goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The Purchaser's obligations set out in § 6 (2) shall also apply in respect of the assigned receivables.

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(c) Both we and the Purchaser are authorised to collect the receivables. We undertake not to collect the receivables as long as the Purchaser meets his payment obligations, there is no defect in his ability to pay and we do not assert the reservation of title by exercising a right in accordance with the above paragraph 3. If this is the case, however, we may demand that the Purchaser discloses the assigned receivables and their debtors, provides all the information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this case, we are entitled to revoke the Purchaser's authority to further sell and process the Goods subject to reservation of title.

(d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Purchaser's request.

(5) The Purchaser is obliged to treat the Goods acquired under reservation of title with care for the duration of the reservation of title and to secure them against interference by third parties. He shall insure the Goods for the duration of the reservation of title against fire, theft and water damage at replacement value and provide us with evidence of this upon request. In the event of a breach of these obligations, we shall be entitled to take out appropriate insurance ourselves at the Purchaser's expense. The Purchaser shall assign claims for compensation to us.

(6) The Purchaser is obliged to carry out the necessary maintenance and inspection work required for the Goods acquired under reservation of title in good time and at his own expense.

## § 7 Claims for defects by the Purchaser, Warranty

(1) The statutory provisions shall apply to the Purchaser's rights in the event of material defects and defects of title, unless otherwise stipulated below. In all cases, the special statutory provisions remain unaffected in the case of final delivery of the unprocessed Goods to a consumer, even if the consumer has processed them further (supplier recourse pursuant to § 478 German Civil Code BGB). Claims from supplier recourse are excluded if the defective Goods have been further processed by the Purchaser or another entrepreneur, e.g. by installation in another product.

(2) The basis of the liability for defects is exclusively the agreement made on the quality of the Goods (§ 434 (2) German Civil Code BGB). In particular, product descriptions and manufacturer's specifications which are the subject of the individual contract shall be deemed to be an agreement on the quality of the Goods. § 434 (3) German Civil Code BGB shall be waived. Insofar as the assembly of the Goods is to be carried out, the Goods shall only be defective if we are contractually obliged to carry out the assembly and have carried it out improperly or the improper assembly is based on a defect in the assembly instructions handed over by us.

(3) If the Goods deviate from our public statements or the public statements of the manufacturer or other third parties regarding the properties of the Goods, this shall only constitute a deviation in quality if the Purchaser has informed us that this property is decisive for his purchase.

(4) Deviations in the quality and colour of the Goods that are customary in the trade or technically unavoidable are not defects within the meaning of § 434 German Civil Code BGB, provided they do not impair the usability and functionality of the Goods. This also applies in particular to changes in the colour of the Goods that may occur during use due to weather conditions (sunlight, rain, frost, etc.). The same applies to deviations in the quality of the Goods due to technical developments, provided that this does not impair the usability and functionality of the Goods.

(5) The Purchaser's claims for defects presuppose that he has complied with his statutory obligations to inspect and give notice of defects (§§ 377, 381 German Commercial Code HGB). In the case of Goods intended for installation or other further processing, an inspection must in any case be carried out immediately before processing. If a defect becomes apparent during delivery, inspection or at any later time, we must be informed of this immediately in writing. In any case, obvious defects must be notified in writing within five working days of delivery and defects which are not recognisable on inspection within the same period of time from discovery. If the Purchaser fails to carry out a proper inspection and/or to give notice of defects, our liability for the defect not notified or not notified in time or not notified properly shall be excluded in accordance with the statutory provisions.

(6) If the delivered item is defective, we may, at our discretion, rectify the defect (subsequent improvement) or deliver a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected.

(7) Subsequent performance does not include the removal of the defective item or the re-installation if we were not originally obliged to install it.

(8) We are entitled to make the subsequent performance owed dependent on the Purchaser paying the purchase price due. However, the Purchaser shall be entitled to retain a part of the purchase price which is reasonable in relation to the defect.

(9) We may demand reimbursement from the Purchaser of any costs incurred as a result of an unjustified request to remedy a defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognisable to the Purchaser.

(10) Claims of the Purchaser for damages or reimbursement of futile expenses shall also exist in the case of defects only in accordance with § 8 of these Terms and Conditions of Delivery and Payment and are otherwise excluded.

(11) In the event that the Goods are used items, the sale shall be made excluding any liability for material defects.

(12) We do not assume any additional guarantees.

## § 8 Other liability

(1) Unless otherwise stipulated in these Terms and Conditions of Delivery and Payment, including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and noncontractual obligations.

(2) We shall be liable for damages – irrespective of the legal grounds – within the framework of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), for the following

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

b) for damages resulting from the breach of an essential contractual obligation (obligation, the fulfilment of which enables the proper execution of the contract in the first place and on the observance of which the contractual partner regularly relies and may rely); in this case, however, liability is limited to compensation for the foreseeable, typically occurring damage.

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(3) The limitations of liability resulting from para. 2 shall also apply to third parties as well as in the event of breaches of duty by persons (also in their favour) for whose fault we are responsible in accordance with statutory provisions. They do not apply insofar as a defect has been fraudulently concealed or a guarantee for the quality of the Goods was assumed and for claims of the Purchaser under the German Product Liability Act.

(4) Due to a breach of duty which does not consist of a defect, the Purchaser may only withdraw from or terminate the contract if we are responsible for the breach of duty. A free right of termination of the Purchaser (in particular according to §§ 650, 648 German Civil Code BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## § 9 Limitation period

(1) Notwithstanding § 438 (1) (3) of the German Civil Code (BGB), the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall commence with the acceptance.

(2) The above limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the Purchaser based on a defect of the Goods, unless the application of the regular statutory limitation period (§§ 195, 199 German Civil Code BGB) would lead to a shorter limitation period in the individual case. Claims for damages by the Purchaser pursuant to § 8 (2) sentence (1) and sentence 2(a) as well as pursuant to the German Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

## § 10 Provision of software and granting of rights of use

(1) If the subject matter of the contract is the delivery of Goods in connection with a computer program, e.g. for controlling the goods (hereinafter "Software"), the Purchaser shall be granted a non-exclusive (simple), permanent right of use to the Software. The right of use entitles the Purchaser to individual use and only to the extent that the use of the Software is necessary for the contractual use of the Goods.

(2) Unless expressly agreed otherwise, we shall only provide updates for the Software and for all digital content and digital elements to maintain or produce the services owed under this contract (hereinafter referred to as „updates“) for 12 months after handover of the Goods to the Purchaser. We will inform the Purchaser appropriately about the provision of the updates.

(3) Under no circumstances shall the Purchaser have the right to lease or otherwise sub-license the purchased Software, to make it publicly available or accessible by wire or wireless means, or to make it available to third parties for a fee or free of charge.

(4) The Purchaser is only entitled to decompile and reproduce the Software if this is expressly permitted by contract or by law. However, this shall only apply if we have not made the necessary information available to the Purchaser upon request within a reasonable period of time.

(5) Prior to full payment of the remuneration pursuant to § 5 of these Terms of Delivery and Payment, all data carriers as well as the user documentation handed over shall be subject to reservation of title.

(6) The Purchaser may only pass on the Software in its entirety, as it was handed over to him, with simultaneous transfer of the right of use, if the Purchaser assures us that he has passed on all data carriers to the third party and destroyed all copies.

## § 11 Data protection

The parties undertake to comply with the relevant provisions of data protection law. The parties are responsible for the personal data they process. Upon conclusion of the contract, the parties undertake to conclude any further agreements, e.g. a contract for commissioned data processing, insofar as this is required by law.

## § 12 Choice of law and place of jurisdiction

(1) All claims in connection with these Terms and Conditions of Delivery and Payment and the contractual relationship between us and the Purchaser shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Purchaser is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch), a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction – including international jurisdiction – for all disputes arising directly or indirectly from the contractual relationship shall be the Leer Local Court. The same shall apply if the Purchaser is an entrepreneur within the meaning of § 14 German Civil Code BGB. However, we are also entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these Terms and Conditions of Delivery and Payment or a prior individual agreement or at the Purchaser's general place of jurisdiction. Overriding statutory provisions, in particular on exclusive competences, shall remain unaffected.