

General Terms and Conditions of J. Wagner GmbH

1. General

- 1.1 All sales and deliveries are subject to the Supplier's terms and conditions as set out below. Any terms and conditions of the Purchaser shall not bind the Supplier even when not expressly rejected.
- 1.2 If the contract does not solely relate to the delivery of goods but also to the planning and/or delivery of plants, the Supplier's special conditions for such plants shall apply in addition. These special conditions shall be submitted on request unless already enclosed with the offer.
- 1.3 The charge for cost estimates for repairs and for special supplements are listed in the Supplier's current Conditions of Repairs and are due plus the costs of return shipment. If an order for repair is placed or new equipment purchased, the cost estimate shall be free of charge. This provision applies to equipment and accessories from the trade and industry product range.
- 1.4 Electronic data processing means are used for handling the business relations and in-house processing of the business transactions. The Purchaser is hereby informed pursuant to the provisions of the German Federal Data Security Act that the Supplier processes the personal data required for this purpose and will only distribute these internally.

2. Offers

- 2.1 Supplier's offers shall be subject to confirmation. An order shall not be deemed accepted until confirmed in writing or textform (§ 126 b of the German Civil Code "Bürgerliches Gesetzbuch" (in the following referred to as "BGB"),) by the Supplier.
- 2.2 Supplier's commercial agents and such employees not expressly authorised shall not be entitled to make any verbal commitments of any kind to the Purchaser or conduct or accept any act of legal significance.
- 2.3 Enclosures and documents included in the offer, such as figures, drawings or specifications of weight are only approximate unless explicitly stated as being binding. The same shall apply to performance and consumption specifications. The Supplier reserves the right of ownership and copyright to all cost estimates, drawings and other enclosures and documents; it shall neither be reproduced nor made available to any third party.

3. Prices and Payment

- 3.1 Unless otherwise agreed, prices are specified ex-works including loading at the works. If nothing else is agreed the goods will be sent to the destination specified by buyer (contract of sale involving the carriage of goods). Supplier decides on type of shipment. Shipping and packaging costs incurred by each order shall be charged at cost, prices shall be subject to V.A.T. at the current legal rate, unless explicitly stated otherwise.
- 3.2 Invoices are due and payable immediately.
- 3.3 Payments made to commercial agents not holding written authorisation to receive such shall not have a discharge effect versus the Supplier.

- 3.4 Defence of set-off shall only be admissible for those counter-claims of the Purchaser which are not contested by the Supplier or for which a legally enforceable title has already been obtained. A right to withhold payment can only be based on Purchaser's payment claims under the fore-mentioned conditions.
- 3.5 The agreed price is based on the current costs of materials and wages. If these should change by the time of shipment of the order, the price shall also be adjusted according to the percentage of change in costs of materials and wages. For this purpose, the current state of manufacture at the time of the change in costs of materials and wages shall be taken into account, i.e. the adjustment only refers to the portion of the price which corresponds to the costs additionally incurred.
- 3.6 If the Purchaser is a consumer as defined by § 13 BGB the price shall be adjusted for a cost increase for materials or wages if it is agreed that the Supplier's performance shall be made later than 4 months after conclusion of the contract.
- 3.7 Costs of detergent and disposal procedures necessary to perform repair orders shall be charged at a flat rate per order. The conditions are listed in the Supplier's current Conditions of Repairs.
- 3.8 The minimum order value is € 25.00.
- 3.9 The retention of payments or the offsetting of any, disputed by the supplier or not legally determined counterclaims, is not allowed.

4. Return of Goods

- 4.1 Insofar as the Supplier agrees to accept the return of delivered goods as a sign of goodwill without legal obligation, the Supplier will charge a flat rate in the amount of 20% of the net purchase price of the goods concerned as compensation for the costs of reintegration into the stock and the associated contractual and administrative overhead; the Purchaser remains at liberty to prove that lower costs have been incurred to the Supplier. The products returned must form part of the current Wagner product range, be undamaged and in a marketable condition. Return shipment freight costs shall be at the Purchaser's expense.

5. Delay

An annual interest rate of 8 % above current base interest rate (5 % above current base interest rate, if the Purchaser is consumer as defined in § 13 BGB) shall be charged should the contractual, calendar or statutory payment deadlines be exceeded. The Supplier reserves the right to prove and claim higher interest rates or damages for delay.

6. Period of Delivery

- 6.1 The period of delivery commences upon dispatch of the order confirmation, however, not prior to submission of any documentation, licences or approvals to be procured by the Purchaser in accordance to the contractual agreements. Another prerequisite for commencement of the period of delivery is receipt of any agreed down payment.

- 6.2 Insofar as the Supplier is not obliged to bring the goods to a place determined by the Purchaser, the period of delivery shall be deemed complied with when the goods have left the Supplier's works by the time the period has elapsed or when the Purchaser has been notified of readiness for shipment.
- 6.3 If the Supplier fails to keep the delivery date, on reasons the Supplier is not responsible for (non-availability of the product or service), the Supplier will give notice to the Purchaser and will inform the Purchaser about the new delivery date, immediately. If the product or service is not available within the new delivery date, the Supplier is entitled to cancel the contract as a whole or in part; any consideration by the Purchaser will be reimbursed immediately. A case of non-availability of the product or service is if the Supplier will not obtain the delivery of the product or service itself, but only, if the Purchaser has made a congruent covering purchase. This clause does not affect any legal rights of the Supplier to cancel or to terminate the contract or any legal provisions in respect of handling of the contract in case of exclusion of the duty to deliver the product or service (e.g. in case of impossibility or unreasonableness of performance and/or supplementary performance). This clause does also not affect the Purchaser's rights to cancel or terminate the contract under clause 8 of this terms and conditions.
- 6.4 Default in delivery may apply as stated in the legal provisions. If the Purchaser should suffer loss as a result of a delay in delivery attributable to the Supplier, claims for damages shall be limited to 0,5 % of the net purchase price per calendar week of the delay, but to a maximum of 5 % of the value of that part of the total supply which cannot be put to its intended use in time or not at all due to the delay, in case of light negligence of the Supplier excluding any further claims. The Supplier reserves the right to prove that the damage caused by delayed performance was effectively lower.
- 6.5 If shipment is delayed by circumstances attributable to the Purchaser, the costs incurred by storage on the Supplier's premises, however, at least 0.5 % of the invoice amount per month shall be charged to the Purchaser, commencing one month after notification of readiness for shipment. The Purchaser shall be at liberty to prove lower expenses.

7. Passage of Risk

- 7.1 Risk shall pass to the Purchaser on handing over the goods to the carrier unless the Supplier has expressly taken charge of shipment and assembly and/or on-site delivery of the goods.
- 7.2 Should shipment be delayed by circumstances attributable to the Purchaser, risk shall pass to the Purchaser on receipt of notification of readiness for shipment. However, the Supplier shall be obliged to take out such insurance policies requested by the Purchaser at the Purchaser's expense.

8. Defects of Quality

The Supplier shall be liable for defects of the delivery to the following extent, excluding any additional claims, without prejudice to the Purchaser's right to cancel the contract subject to the provisions provided herein, unless the defect consists in the absence of a warranted quality.

- 8.1 If the Supplier is responsible for a defect, the Supplier shall have the right to remedy the defect – at Supplier's own discretion – either by repair or replacement without charge. Any parts replaced shall become the property of the Supplier. If the Supplier is not prepared or in a position to remedy a defect in this way, in particular if this should be delayed beyond a reasonable period for reasons for which the Supplier is responsible, or if at least two repair attempts should fail, the Purchaser shall be entitled to cancel the contract or claim a reduction in price – without prejudice to any claims for damages pursuant to the provisions of clause 9.
- 8.2 If the Purchaser is entitled to claim rights for defects of quality at Purchaser's discretion, the latter shall be obliged – within a reasonable period at the request of the Supplier – to state the intention to claim subsequent performance, cancel the contract, claim a reduction of the purchase price and/or claim damages in lieu of performance – where legal preconditions are fulfilled.
- 8.3 Expenses incurred for subsequent performance, in particular transport, travel, labour and material costs shall be borne by the Supplier unless the expenses should increase due to subsequent relocation of the goods to a place other than the Purchaser's site and such relocation has not been agreed upon in writing.
- 8.4 The goods shall be inspected immediately upon receipt. Any obvious defects shall be notified to the Supplier in writing within 14 days after receipt in order to avoid the loss of rights to claims for defects.
- 8.5 The Supplier shall not be held liable for any damage to which any of the following circumstances have contributed: Inadequate or improper use, incorrect assembly and/or improper starting up by the Purchaser or by any third party acting on the Purchaser's behalf, normal wear and tear, incorrect or negligent treatment, use of unsuitable operating materials or replacement materials, defective construction work, detrimental chemical, electromechanical or electrical influences, unless such damage is caused by fault of the Supplier.
- 8.6 The Purchaser shall allow the necessary time and afford the Supplier the opportunity to make all those repairs and replacement deliveries as deemed necessary by the equitable discretion of the latter and make available auxiliary personnel to the Supplier at the latter's charge. Should the Purchaser fail to honour this obligation, the Supplier's warranty obligation shall be void. The Purchaser shall only be entitled to have a defect remedied at the Supplier's expense if the Supplier is in delay with remedying the defect. Only in cases of imminent danger to operational safety shall the Purchaser be entitled to have the defect remedied by Purchaser's own personnel or by a third party even before the Supplier is in delay and to claim reasonable compensation for the costs incurred from the Supplier.
- 8.7 Claims for defects of quality shall be subject to a statutory limitation period of 12 months and, if the Purchaser is a consumer as defined in § 13 BGB, 24 months. This shall not apply insofar as the law provides longer periods pursuant to § 438 Para. 1 no. 2 BGB (Buildings and Components for Buildings), § 479 Para. 1 BGB (Right of Recourse) and § 634 a Para. 1 no. 2 BGB (Construction Defects) and/or for contracts which include the complete VOB/B standard building contract terms.
- 8.8 Repair work performed by the Supplier without a legal obligation shall not be subject to warranty, with the exception of liability for damage for which the Supplier is responsible.
- 8.9 The Purchaser shall only have a right of recourse against us pursuant to § 478 BGB insofar as the Purchaser has not made any agreement with the end user exceeding statutory rights to claim defects of quality. Provision 8.3 shall apply accordingly.

- 8.10 Unless otherwise agreed in writing, the Supplier does not warrant that the equipment supplied complies with foreign standards and regulations.
- 8.11 The Supplier's liability shall be governed by the provisions of clause 9. Any further claims for defects of quality shall be excluded.

9. Liability

- 9.1 For any further claims, our liability in case of light negligence shall be limited to the coverage afforded by our liability insurance policy in the case of ordinary negligence. This shall also apply to the personal liability of our employees, workers, associates, commercial agents and persons employed in the performance of our duties. Our insurance policy may be viewed by agreement. This limitation of liability shall also apply to damage other than on the goods themselves, unless the goods should lack qualities expressly warranted by us and the actual intention of this warranty was to protect the Purchaser against a loss other than on the goods themselves and/or if silence has been maintained about a defect with malicious intent.
- 9.2 Any further claims for damages and reimbursement of expenses of the Purchaser shall be excluded. This shall not apply to indispensable claims pursuant to product liability legislation, in cases of intent or gross negligence, for violation of life, limb or health or culpable violation of a vital contractual obligation. However, in case of a violation of a vital contractual obligation the Supplier shall only be liable for the foreseeable damage as typical for the contract, again except in cases of intent or gross negligence, violation of life, limb or health. The provisions of clause 9 do not involve shifting the burden of proof to the detriment of the Purchaser.
- 9.3 Insofar as the Purchaser should be entitled to claims for damages pursuant to this clause, these shall be subject to the statutory limitation period as applicable to claims for defects of quality pursuant to provision 8.7.

10. Retention of Ownership

- 10.1 The Supplier reserves the right of ownership to all goods delivered until settlement of any and all claims from the business relationship with the Purchaser. If the equipment supplied is installed in a building or is integrated with other systems, the Supplier's ownership shall also extend in proportion to the system created by the integration and to the finished goods. This shall also apply if the remuneration for certain deliveries designated by the Purchaser has already been received, since the reservation of ownership is intended as a security for the final balance of the Supplier's claim. If the value of the goods delivered to the Purchaser with reservation of ownership as a security should exceed the total claim of the Supplier by more than 20%, the Supplier shall be obliged to retransfer this right to this extent at the Purchaser's request.
- 10.2 Subject to revocation, the Purchaser shall be permitted to sell the goods supplied in the course of ordinary business transactions unless the claim resulting from reselling should already have been assigned to a third party; the Purchaser's right to reselling shall also expire upon stoppage of payments by the Purchaser.

- 10.3 The Purchaser herewith assigns any claim obtained from reselling or from economically similar dispositions by way of security to the Supplier; this shall apply regardless of whether goods, the goods, delivered by the Supplier are sold without or following integration with other items.
- 10.4 If goods, delivered by the Supplier should be sold together with other goods not belonging to the Supplier, the assignment shall be limited to the amount of the value of said goods, delivered by the Supplier at the time of delivery to cover the Supplier's claims.
- 10.5 The Purchaser shall be authorised to collect the claim assigned by virtue of provision 11.3 as long as the Purchaser fulfils all payment obligations towards the Supplier; the amounts collected shall be immediately passed on to the Supplier to the extent that the latter's claims are due. In case of violation of the Purchaser's payment obligations, the Supplier shall be entitled to disclose the assignment of claims to the Purchaser's customers.
- 10.6 The Supplier shall be entitled to claim surrender of possession of goods, delivered by the Supplier, should the Purchaser fail to meet the payment obligations either after a defined calendar period or after setting a time-limit. The claim to surrender possession shall simultaneously constitute withdrawal from the contract.
- 10.7 The Purchaser shall neither pledge the goods, delivered by the Supplier, nor assign them as a security. The Purchaser shall notify the Supplier without delay in case of pledge, arrest or other third-party dispositions.

11. Place of Performance and Local Venue

- 11.1 The place of performance for all obligations from this contract shall be the registered domicile of the Supplier's office.
- 11.2 The local venue for all legal disputes arising from the contractual relationship, including action on a bill of exchange – inasfar as legally admissible – shall be layed to the registered domicile of the Supplier's office. The Supplier shall also be entitled to file an action at the court of jurisdiction of the Purchaser's office. This clause does not apply, if the Purchaser is a consumer as defined in § 13 BGB.

12. Applicable Law and Language

- 12.1 Mutual legal relationships shall be exclusively governed by the law of the Federal Republic of Germany. The international law on the sale of goods shall be expressly excluded.
- 12.2 In case of differences in the meaning of the German and the English text of this General Terms and Conditions the German text shall prevail.

13. Severability Clause

The contract shall have binding effect on the parties even should any individual provisions or individual clauses in these General Terms and Conditions be invalid. In such case, the invalid provision shall be replaced by a valid provision in good faith, preserving the sense and intent of the contract.

Markdorf, February 2014