

# GENERAL CONDITIONS OF SALE WEFA

## § 1 General, scope of application

(1) These General Conditions of Sale (GCS) shall apply to all our business relations with our Customers (hereinafter referred to as "Customer"). The GCS shall only apply if the Customer is an entrepreneur (§ 14 German Civil Code-BGB), a legal entity under public law or a special fund under public law.

(2) The GCS apply in particular to contracts for the sale and/or delivery of movable goods (hereinafter also referred to as "Goods"), irrespective of whether we manufacture the goods ourselves or purchase them from subcontractors (§§ 433, 651 German Civil Code – BGB). The GCS in their respective version shall also apply as a framework agreement for future contracts for the sale and/or delivery of movable goods with the same Customer, without us having to refer to them again in each individual case; in this case we shall inform the Customer immediately of any changes to our GCS.

(3) Our GCS shall apply exclusively. Any differing, conflicting or supplementary general terms and conditions of business of the Customer shall only become part of the contract if and insofar as we have expressly agreed to their application. This requirement of consent shall apply in any case, for example, even if we carry out the delivery to the Customer without reservation despite knowing the Customer's general terms and conditions.

(4) Individual agreements made with the Customer on single-case basis (including collateral agreements, supplements and amendments) shall in any case take precedence over these GCS. A written contract or our written consent shall be decisive for the content of such agreements.

(5) Legally relevant declarations and notifications submitted to us by the Customer after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) shall be invalid if not made in writing.

(6) References to the applicability of statutory provisions shall serve the purpose of clarification only. Even without such clarification, the statutory provisions shall apply, unless they are directly amended or expressly excluded in these GCS.

## § 2 Termination of contract

(1) Our offers are subject to change and non-binding. This shall also apply if we have provided the Customer with technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – to which we reserve ownership and copyrights.

(2) The order of the goods by the Customer is considered a binding contract proposal. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 3 working days of its receipt by us.

(3) The acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the Customer.

## § 3 Delivery period and delay in delivery

(1) The delivery period shall be agreed on case-to-case basis or specified by us upon accepting the order.

(2) If we are unable to meet a binding delivery deadline for reasons beyond our control (non-availability of the service), we shall inform the Customer of this immediately and at the same time inform him of the expected new delivery deadline. If the service is also not available within the new deadline, we shall be entitled to withdraw from the contract in whole or in part.

We will immediately reimburse any payment already made by the Customer. A case of non-availability of the service

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in this context is especially the non-timely delivery by our supplier, if we have concluded a corresponding purchasing transaction, neither we nor our supplier are at fault or we are not obliged for the procurement, in single cases.

(3) The occurrence of a delay in delivery shall be determined in accordance with the provisions of law. In any case, however, a reminder from the Customer is essential. If we are in default of delivery, the Customer may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5 % of the net price (delivery value) for each completed calendar month of delay, but no more than a total of 5 % of the delivery value of the delayed goods. We have the right to verify that the Customer has not incurred any damage or only a significantly lower damage than the above-mentioned lump sum.

(4) The rights of the Customer in accordance with § 8 of these GCS and our legal rights in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unacceptable performance and/or post-performance) remain unaffected.

### **§ 4 Delivery, transfer of risk, acceptance, default of acceptance**

(1) The delivery shall be ex works, which is also the place of performance. Upon request and at the expense of the Customer, the goods will be shipped to another destination (sale to destination). Unless otherwise agreed, we shall be entitled to determine the mode of shipment (especially carrier, mode of shipment, packaging) ourselves.

2) The risk of accidental loss and accidental damages to the goods shall pass to the Customer at the latest at the time of delivery. In the case of mail order purchases, however, the risk of accidental loss and accidental damage to the goods as well as the risk of delay shall pass upon delivery of the goods to the forwarding agent, carrier or other

person or institution designated to carry out the shipment. If acceptance has been agreed upon, this is decisive for the transfer of risk. Besides for an agreed acceptance the legal provisions of the contract rules for work and services apply accordingly. If the Customer is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

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

The proof of a higher damage and our legal claims (in particular compensation for additional expenses, appropriate compensation, termination) remain unaffected; however, the lump sum is to be offset against further monetary claims. The Customer shall be entitled to prove that we have incurred no damage at all or only a significantly lower damage than the above lump sum.

### **§ 5 Prices and terms of payment**

(1) Unless otherwise agreed upon in individual cases, our prices valid at the time of conclusion of the contract shall apply ex works, plus the statutory VAT.

(2) In the case of sale by delivery to a place other than the place of performance (§ 4 para. 1), the Customer shall bear the transport costs ex works and the costs of any transport insurance requested by the Customer. Any customs duties, fees, taxes and other public charges shall be borne by the Customer. We do not take back transport packaging and all other packaging in accordance with the German Packaging Ordinance; it becomes the property of the Customer; with the exception of pallets.

(3) Subject to special agreements, the purchase price is generally due and payable within 30 days of invoicing and delivery or acceptance of the goods.

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(4) The Customer shall be in default upon expiry of the above payment period. During the period of default, interest shall be charged on the purchase price at the prevailing legal default interest rate. We reserve the right to claim further damages caused by default. In the case of merchants, our claim to the commercial interest on arrears (§ 353 German Commercial Code-HGB) remains unaffected.

(5) The Customer shall only be entitled to rights of set-off or withhold payment to the extent that his claim has been legally established or is undisputed. In the event of defects in the delivery, the Customer's counter rights, particularly in accordance with § 7 Para. 6 Sentence 2 of these GCS shall remain unaffected.

(6) If, after conclusion of the contract, it becomes apparent that our claim to the purchase price is endangered by the Customer's inability to pay (e.g. due to an application to open insolvency proceedings), we shall be entitled to refuse performance in accordance with the legal provisions and – if necessary after setting a deadline – to withdraw from the contract (§ 321 German Civil Code-BGB). In the case of contracts for the manufacture of unjustifiable goods (custom-made products), we may declare our withdrawal immediately; the legal provisions on the dispensability of setting a deadline remain unaffected.

### § 6 Retention of title

(1) We reserve title to the goods sold until all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims) have been paid in full.

(2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Customer must inform us immediately in writing if and to the extent that third parties have access to the goods belonging to us.

(3) If the Customer acts in breach of contract, in particular if he fails to pay the due purchase price, we shall be entitled to withdraw from the contract in accordance with the legal provisions and/or to demand the return of the goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are actually entitled to demand simply the return of goods and to reserve the right of withdrawal from the contract. If the Customer does not pay the due purchase price, we may only assert these rights if we have previously set the Customer a reasonable deadline for payment without success or if such a deadline is waived according to the legal provisions.

(4) The Customer is entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case the following provisions shall apply in addition.

(a) The Customer hereby assigns to us as security all claims against third parties arising from the resale of the goods or product, either in full or in the amount of our possible co-ownership share in accordance with the preceding paragraph. We accept the assignment. The obligations of the Customer mentioned in paragraph 2 shall also apply in regard to the assigned claims.

(b) In addition to us, the Customer remains authorized to collect the claim. We undertake not to collect the claim as long as the Customer meets his payment obligations to us, is not in default of payment, no application for the opening of insolvency proceedings has been filed and there is no other defect in his ability to pay. However, if this is the case, we can demand that the Customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

(c) If the recoverable value of the securities exceeds our claims by more than 10 %, we will release securities of our choice at the request of the Customer.

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### § 7 Claims for defects of the Customer

(1) For the rights of the Customer in the event of material defects and defects of title (including wrong and short delivery as well as improper assembly or faulty assembly instructions) the statutory provisions shall apply, provided that nothing to the contrary is stipulated below. In all cases, the statutory special regulations remain unaffected in the case of final delivery of the goods to a consumer (supplier recourse according to §§ 478, 479 German Civil Code-BGB).

(2) The basis of our liability for defects is first and foremost the agreement reached on the quality of the goods. All product descriptions which are the subject of the individual contract are deemed to be an agreement on the quality of the goods; it makes no difference whether the product description originates from the Customer, the sub-contractor or from us.

(3) Insofar as the quality has not been agreed, the statutory regulation shall be applied to determine whether or not there is a defect (§ 434 (1) sentences 2 and 3 German Civil Code-BGB). However, we do not assume any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).

(4) The Customer's claims for defects are based on the assumption that he has fulfilled his statutory obligations to inspect and to notify the defects (§§ 377, 381 German Commercial Code-HGB). If a defect is revealed during the inspection or later, we must be notified of this in writing without delay. The notification shall be deemed to be without delay if it is made within two weeks, whereby the timely dispatch of the notification shall suffice to comply with the deadline. Irrespective of this obligation to inspect and give notice of defects, the Customer must give written notice of obvious defects (including wrong and short delivery) within two weeks of delivery, whereby timely dispatch of the notice is also sufficient to meet the deadline. If the Customer fails to carry out the proper examination and/or

report defects, our liability for the defect not reported is excluded.

(5) If the delivered item is defective, we may initially choose whether we provide subsequent performance by eliminating the defect (rectification of defects) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the legal conditions remains unaffected.

(6) The Customer shall give us the time and opportunity necessary for the subsequent performance owed, in particular to hand over the goods complained about for inspection purposes. In the event of a replacement delivery, the Customer shall return the defective item to us in accordance with the statutory provisions. Subsequent performance does not include the removal of the defective item or the reinstallation if we were not originally responsible for the installation.

(7) The expenditure necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs (not: dismantling and installation costs), shall be borne by us if there is actually a defect. If, however, a demand for the removal of a defect by the Customer turns out to be unjustified, we may demand that the Customer reimburses the incurred costs.

(8) In urgent cases, e.g. if operational safety is endangered or in order to prevent disproportionate damage, the Customer has the right to rectify the defect himself and to demand reimbursement from us for the expenses objectively necessary for this. We are to be informed immediately, if possible beforehand, of any such self-rectification. The right of self-rectification does not exist if we are entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

(9) If the subsequent performance has failed or a reasonable deadline to be set by the Customer for subsequent performance has expired without success or is dispensable accor-

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ding to the statutory provisions, the Customer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right to withdraw from the contract.

(10) Claims of the Customer for damages or compensation for futile expenditure shall only exist in accordance with § 8 and shall be excluded in all other respect.

### § 8 Other liability

(1) Insofar as nothing to the contrary is stipulated in these General Terms and Conditions, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

(2) We shall be liable for damages – irrespective of the legal grounds – in the event of intent and gross negligence. In case of minor negligence we shall only be liable

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

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

(3) The limitations of liability resulting from paragraph 2 shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods. The same applies to claims of the Customer under the Product Liability Act.

(4) Due to a breach of duty which does not consist of a defect, the Customer may only withdraw or terminate the

contract if we are responsible for the breach of duty. The Customer's free right of termination (in particular according to §§ 651, 649 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) No. 3 German Civil Code-BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) If, however, the goods are a building or an object that has been used for a building in accordance with its usual purpose and has caused its defectiveness (building material), the period of limitation shall be 5 years from delivery in accordance with the statutory regulation (§ 438 para. 1 No. 2 German Civil Code-BGB). Special statutory provisions for in rem restitution claims of third parties (§ 438 para. 1 No. 1 German Civil Code-BGB), in case of fraudulent intent of the seller (§ 438 para. 3 German Civil Code-BGB) and for claims in supplier recourse in case of final delivery to a consumer (§ 479 German Civil Code – BGB) shall also remain unaffected.

(3) The aforementioned limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the Customer which are 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 individual cases. The limitation periods of the Product Liability Act shall remain unaffected in any case. Otherwise, the statutory limitation periods shall apply exclusively to the Customer's claims for damages pursuant to § 8.

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### **§ 10 Applicable law and place of jurisdiction**

(1) The law of the Federal Republic of Germany shall apply to these GSC and all legal relations between us and the Customer, excluding international standard law, in particular the UN Convention on Contracts for the International Sale of Goods. Conditions and effects of the reservation of title according to § 6 are subject to the law of the respective location of the item, insofar as the choice of law made in favor of German law is inadmissible or ineffective.

(2) If the Customer is a merchant within the meaning of the German Commercial Code-HGB, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in 78224 Singen, Germany. However, we are also entitled to bring an action at the general place of jurisdiction of the Customer.

### **WEFA Singen GmbH / Wefa Inotec GmbH**

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