

# General Terms and conditions of Sales

## 1. Exclusive Application and Recognition of our Terms and Conditions of Business

1.1  All our offers are based on our Terms and Conditions of Business. We take purchase orders exclusively on these Terms and Conditions of Business. We reject application of any terms and conditions of business of our contractual partners.

1.2  By placing an order or accepting deliveries, the orderer recognises that our Terms and Conditions of Business apply, not only to the transaction, but also to all future transactions.

## 2. Offers - Collateral Agreements - Content of the Contract

2.1  Our offers are subject to change without notice, in the sense that a contract is formed only upon our acceptance of the purchase order.

2.2  Collateral agreements relating to our offers and order acknowledgements shall only be valid with our written confirmation.

2.3  If a contract involving continual dispatch is concluded, delivery call-offs and the corresponding type classification shall be approximately the same for each monthly quantity. If the Orderer does not call off or classify in due time, we shall, after having set a grace period to no avail, be entitled to classify ourselves and deliver the goods or, at our choice, rescind the part of the contract which is still outstanding or demand compensatory damages due to non-performance.

2.4  Subject to compliance with the relevant statutory regulations, we shall be entitled to process all data protected by law relating to the Orderer.

## 3. Nature, Condition and Quality of the Goods

3.1  Illustrations, drawings, dimensions and weights contained in catalogues, price lists or other printed material constitute approximate data. We reserve the right to make deviations, in respect of design or material, which are technically essential or are absolutely necessary for the styling, in so far as such alterations are reasonable for the orderer, taking account of the intended purpose of the goods.

3.2  We reserve the right to over-deliver or under-deliver by up to 10 %.

3.3  Works and acceptance certificates shall only be provided on request and only against payment of a fee.

## 4. Reservation as to Rescission

4.1  We shall have the right to rescind the contract, if performance of the contract meets with technical difficulties which cannot be overcome or which can only be overcome at a disproportionately high cost compared to the value of the items to be delivered, or if we become aware of circumstances which make the orderer's credit-worthiness appear doubtful.

4.2  Equally, events of force majeure shall entitle us to rescind the contract. Strike, lockout and similar circumstances shall be deemed equivalent to force majeure.

## 5. Prices

5.1  Our prices are understood to be for delivery ex works, excluding value-added tax, packaging, customs duties, any incidental import levies and insurance.

5.2  We reserve the right to impose a subsequent charge in the event that alloy surcharges change between conclusion of the contract and delivery.

5.3  The minimum order value is 100.00 (€) net in the case of purchase of full packaging units.

## 6. Period for Delivery

6.1  Periods for delivery are deemed agreed upon on an approximate basis only. If delivery is delayed due to circumstances beyond our personal sphere of influence, particularly due to force majeure, official intervention, measures relating to a labour dispute, difficulties in procuring material, disruptions in production, special requests on the part of the orderer or the like, the period for delivery shall be extended by the duration of the hindrance. This shall also apply to delays arising because, through no fault of our own, we ourselves are not supplied correctly or are not supplied in due time. A hindrance exceeding a six-week period and whose end is not foreseeable shall entitle the orderer and ourselves to rescind the contract, in so far as we are unable to perform the contract due to the hindrance.

6.2  The orderer may not derive against us any damage claims whatsoever from overrunning of a period for delivery or from default in delivery, unless failure to meet the period for delivery is due to intent or gross negligence on the part of our management or any of our employees.

## 7. Liability for Defects

7.1  In no case shall we assume warranty that the goods ordered are suitable for the purpose envisaged by the orderer or that they can be used or processed under the conditions prevailing at the orderer or at its customer. Rather, it shall be a matter for the Orderer to try this out prior to use or processing. We shall not be liable for faults ensuing from the documents (drawings, samples and the like) submitted by the orderer.

7.2  Any and all defect-related complaints must be lodged in writing. Defects in part of the goods delivered shall not entitle the orderer to complain about the delivery as a whole. We shall deliver replacement goods free from faults, in so far as a notification of defects has been properly made and is justified. The orderer shall, at our request and at our expense, return the goods complained about. In this case, the orderer shall only be entitled to delivery of a replacement upon receipt of the return consignment at our premises. In lieu of delivery of replacement goods, we may alternatively choose rectification of the defective goods, cancellation of the contract in respect of the defective goods or reduction of the purchase price. The orderer may set us in writing a ten-day period for exercising this right to choose, which shall begin to run no earlier than upon arrival of the defective goods at our premises. If we do not exercise our right to choose within this period, this right shall pass to the orderer.

7.3  We shall only be liable for possible damages in the event of intent or gross negligence on the part of an employee or on the part of an assistant with employee or independent contractor status for the purposes of vicarious liability in contract. Compensation for damage shall, also in those cases, be limited to foreseeable damage which is typical for the contact. We shall not be liable for damage caused to legally protected interests of the orderer by the item delivered. Excluded from the foregoing is liability for damage arising from injury to life, body or health due to a negligent breach of duty on the part of ourselves, on the part of one of our representatives or on the part of one of our assistants with employee or independent contractor status for the purposes of vicarious liability in contract.

7.4  The limitation period for claims and rights on account of any defects is 1 year, regardless of the legal basis. This shall not apply in the cases defined in section 438 (1) no. 1 of the German Civil Code [BGB], section 438 (1) no. 2 of the German Civil Code, section 479 (1) of the German Civil Code or section 634a (1) no. 2 of the German Civil Code. A 3-year limitation period shall apply thereto.

The aforesaid limitation periods shall not apply in cases of intent. Nor shall they apply in cases of fraudulent concealment of a defect. The limitation periods shall also be inapplicable in cases of injury to life or limb or to health or freedom, in the case of claims under the Product Liability Act [Produkthaftungsgesetz] and in cases of grossly negligent breach of duty or breach of material contractual duties.

## 8. Liability for Product Risks and Culpa in Contrahendo

8.1  If damage arises from a risk inherent in the goods delivered, if this risk may be due to a defect in the goods or may be associated with their contractually agreed condition, or if damage arises as a result of failure to give warning of this risk or sufficient warning of this risk, the injured party may not assert against us any damage claim accruing to him from this, unless our management or one of our employees caused the damage by intent or gross negligence. Excluded from the foregoing is liability for damage arising from injury to life, body or health due to a negligent breach of duty on the part of ourselves, on the part of one of our representatives or on the part of one of our assistants with employee or independent contractor status for the purposes of vicarious liability in contract.

8.2  We shall only be liable for consequences of culpa in contrahendo, particularly for consequences of insufficient or incorrect advice given to the orderer, if those consequences are due to intent or gross negligence on the part of our management or one of our employees.

## 9. Invoices - Payment

9.1  We shall issue an invoice once the goods ordered are ready for dispatch or collection. Delays in dispatch of the goods, or in collection of the goods, for which we are responsible shall not cause the due date of the invoice to be deferred.

9.2  Our invoices shall be due and payable, without any deduction, immediately from the invoice date and shall be settled in euros (€).

9.3  Subject to a reminder, the orderer shall enter into default 30 days after receipt of an invoice at the latest. From commencement of default, whether as a result of a reminder or as a result of the 30-day time limit described above, we shall charge interest at the rate of 8 percentage points above the base interest rate. The right to assert a higher claim to compensation for default-related damage remains reserved.

9.4  If circumstances which make the orderer's credit-worthiness appear doubtful become known to us after conclusion of the contract, we may, at our choice, demand advance payment or provision of security. The same shall apply, if the orderer fails to meet, when due, a duty to make payment to us. If any of those cases arises, our entire receivables against the orderer, also from other transactions, shall become immediately due at the same time.

9.5  In so far as we accept cheques or bills of exchange, this shall always occur on account of payment, but not in lieu of performance.

9.6  The orderer shall not be entitled to set off in relation to our payment claims or exercise a right of retention in respect of due amounts. This does not apply to set-off with receivables which are undisputed or have been determined by a valid and non-appealable court judgement nor to exercise of a right of retention until such receivables are satisfied.

## 10. Reservation of Title

10.1  The goods delivered by us shall remain our property until full settlement of all our receivables arising from the business relationship with the orderer, even in so far as our receivables have been included in a running account.

10.2  In cases where the goods delivered by us are combined and/or mixed, every acquisition of title by the orderer is excluded. Re-working or processing shall be effected on our behalf in such a manner that we are to be regarded as the manufacturer. If the goods delivered by us are processed with goods of a different origin which are likewise subject to extended reservation of title which includes processing, we shall acquire joint title to the new item in the ratio of the invoiced value of our goods in relation to the value of the other goods at the time of processing. The property created for us as a result of re-working or processing, combining or mixing shall, in legal terms, be treated in the same way as the original goods.

10.3  All the orderer's receivables arising from reselling of goods to which we hold title or joint title shall, up to the sum of the invoiced value, already pass to us at the time of conclusion of the purchase contract, regardless of whether the goods are sold without having been re-worked, processed, combined or mixed or after having been re-worked, processed, combined or mixed and regardless of whether they are sold to one customer or to several customers.

10.4  At our request, the orderer shall give the debtors of the assigned receivables notification of the assignment, make known the debtors and the amounts owed by them and hand over to us the documents which we require for asserting the receivables assigned.

10.5  Goods owned or partly owned by us may be sold, re-worked or processed or be combined with goods of a different origin only in the normal course of business.

10.6  If the orderer wholly or partly defaults on performing an obligation secured by reservation of title, or if circumstances which make our rights appear jeopardised become known to us, we may demand surrender of the goods delivered by us, without having declared rescission from the purchase contract beforehand in accordance with section 440 of the German Civil Code [BGB] and without having set a time limit for performance of the payment obligation beforehand in accordance with section 323 of the German Civil Code. Neither the continuance of the purchase contract nor the orderer's obligations shall be affected by such a demand or by surrender of the goods.

10.7  The reservation of title is subject to the condition subsequent that, upon full payment of all our receivables arising from the business relationship, title to the goods under reservation of title shall automatically pass to the orderer and the assigned receivables shall accrue to him. At the orderer's request, we shall release, at our choice, security interests (goods and receivables) to which we are entitled under the above rules, in so far as their value exceeds by more than 20 % the claims to be secured.

## 11. Place of Performance - Place of Jurisdiction - Applicable Law

11.1  The place of performance for delivery is the respective place of dispatch of the goods. The place of performance for payment is Wuppertal. The exclusive place of jurisdiction for all disputes concerning or arising from the contract, including proceedings relating to a bill of exchange or cheque, is Wuppertal. However, we shall have the right to also bring an action against the orderer at any other place of jurisdiction applicable to him.

## 12. Ineffectiveness of Individual Stipulations

12.1  If individual stipulations in these Terms and Conditions of Business are or become ineffective, for whatever reason, the validity of the other stipulations shall remain unaffected by this.

Wagener & Simon, WASI GmbH & Co. KG