

General Terms and Conditions of WAGNER Ersatzteilversorgung GmbH

I. Scope

1. These General Terms and Conditions (GTC) of **WAGNER Ersatzteilversorgung GmbH** ("WAGNER") shall apply to all business transactions concerning the supply of goods and those services related to the supply of goods (e.g. installation of the supplied goods) to the customer by WAGNER insofar as the customer is not residing in Germany.
2. The scope of these GTC shall be limited to contracts with business entities.
3. Any inclusion of General Terms and Conditions of the customer is hereby objected to. Such General Terms and Conditions shall not apply even if we have knowledge of such or do not expressly object to such GTC of the customer when any delivery is made to the customer.
4. These GTC shall also apply to any future business transactions between WAGNER and the customer.

II. Rights to Documentation

1. All offers, quotations and other documentation shall remain our property and shall not be made available to any third party without prior written (§ 126 BGB) approval.
2. All rights to any samples, equipment, tools, drawings, quotations, drafts and plans in particular patent rights, copyright, and inventor rights shall belong exclusively to us. Such rights shall not be made available to any third party unless we have expressly agreed to such in writing.
3. In the provision of any of the above objects or documentation there shall be no transfer of rights nor any granting of a licence of use.

III. Additional Duties of Customer

1. The customer shall notify us without undue delay of all binding legal provisions which apply at the place of destination of the goods and the seat or the country of place of the customer and as such binding legal provisions could interfere with the provisions of this contract or the performance thereof.
2. The customer shall provide us with extensive support in case we have to undertake measures for the performance of the contract in the country in which the customer has its seat or the country of the place of destination known to the customer.

IV. Contract Formation

1. Our offers are generally non-binding and are valid for a period of four (4) weeks after the offer was dispatched. This shall also apply even if we provide, at the request of the customer, and in particular for the purposes of satisfying legal requirements, an advance invoice (pro forma invoice) or any comparable declarations.
2. The contract will only be formed with our written order confirmation.
3. Any offer of the customer shall be irrevocable for a period of ten working days from the time of receipt by WAGNER. This shall not apply if the customer has reserved the right of revocation expressly in writing.

V. Content of Contract

1. The contractual performance shall be determined in accordance with the order and the order confirmation and, if necessary, the customary purpose for such goods of the same nature. Any particular purpose intended by the Customer is only applicable if such purpose is expressly made known to us before the concluding of the contract in writing (§ 126 BGB).
2. The subject matter of the contract shall be satisfied in accordance with the contract insofar as it meets the legal requirements and in particular the official, public or official requirements at our seat. We only shall be liable for non compliance with outline requirements at the seat of the customer or in the place of destination of the country known to the customer or in a third country if we have issued an express written agreement to such (§ 126 BGB) and the customer has satisfied its duty to provide support in relation to existing requirements in particular in accordance with III. Generally, it shall be the duty of the customer to obtain any necessary permits.
3. Technical specifications for our products such as those related to weight, measurements, performance and quality as well as any pictures, drawings and other documentation do not constitute a guarantee of quality.
4. Specific qualities shall only be deemed to be guaranteed insofar as a separate written agreement (guarantee of quality) is entered into. In terms of writing, for the declaration of guarantee §126 BGB shall apply.
5. Documentation shall be provided in the German or English language. Any agreement as to a duty of WAGNER to provide documentation in any other language must be made in writing (§ 126 BGB).
6. Any supplementary changes or additions to the performance obligations of WAGNER are permissible insofar as such are customary or technically necessary and are not an unreasonable burden for the customer.

VI. Delivery Deadline; Force Majeure; Part Delivery; Non-Compliance with Delivery Deadline

1. Subject to an explicit differing provision in writing, in any individual case delivery deadlines especially in the order confirmation shall be approximate targets. WAGNER informs the customer in due time, when the goods are ready for delivery (Notice of readiness for delivery). Customer is obliged to collect the goods in between 14 calendar days after WAGNER sent out the notice.
2. The commencement of a delivery deadline shall only begin after the clarification of all technical issues. The delivery deadline shall not commence before the customer has satisfied its duty to supply support in this regard.
3. In case the customer is obliged to support WAGNER or fulfil certain obligations before delivery of WAGNER particularly providing a down-payment or proof of financing any agreed delivery deadline shall only commence when the customer has satisfied the respective duty to perform.
4. WAGNER shall be entitled to the defence of non-performance of the contract.
5. Any agreed delivery deadline shall be subject to the condition of complete and timely delivery by our contractual partners (self-delivery reservation).
6. Any delivery deadline shall be extended by a reasonable period in case of force majeure, in particular events such as but not limited to flooding, natural catastrophes, shortage of raw materials, terrorist attacks, strikes. WAGNER shall notify the customer without undue delay as to the occurrence of any force majeure event as well as the probable time that such event will end. In case the force majeure event continues for a consecutive period of more than six weeks or if the delivery date is delayed by a period of more than eight weeks as a result of a force majeure event, the customer is entitled to cancel the contract (Aufhebung). In case of any force majeure event any further rights to claim are excluded.
7. We are entitled to provide part-deliveries insofar as such is not unreasonable for the customer.
8. Any claims for damages as a result of non-compliance with delivery deadlines shall be in accordance with XII.

VII. Transfer of Risk

1. The risk of accidental loss, destruction and damage shall transfer when WAGNER places the goods at the disposal of the customer at the premises of WAGNER in Reutlingen (EXW INCOTERMS 2010 Reutlingen, Germany).
2. If the customer does not take delivery of the goods which have been declared ready for delivery according to VI, section 1 sentence 2 14 calendar days after WAGNER sent out notice of readiness, the risks in relation thereto for any accidental loss, damage or destruction are transferred to the customer at this time.
3. In the event customer has also ordered the installation of the goods by WAGNER the risk of accidental loss, destruction and damage shall transfer upon installation of the goods. Section 2 is applicable accordingly.

VIII. Delay in Taking Delivery; Delay Damages

1. If the customer does not take delivery of the goods in good time (VII. Section 2) or if it is in any other way in delay in the taking of delivery, the customer shall pay WAGNER for each commenced week an amount of 0.5% of the contract value or the value of the part-delivery but not exceeding a maximum of 5% of the contract value or the value of the part-delivery.
2. The customer has the right to prove that the actual damage is lower and WAGNER has the right to prove that the actual amount of damage is greater.

IX. Prices; Payment Conditions

1. All prices are net prices and subject to the applicable turnover tax, trade tariffs and customs duties in each case.
2. Unless agreed otherwise, payments are made in EUR. If any agreement to pay in EUR is not permissible, payment is to be made in the customary currency at the seat of the customer. In such case payment shall be to the amount corresponding to the invoice value in EUR at the due date for payment or part payment. If payment is not possible in either of the above named currencies, payment may be made in the currency of a third country. Sentence 3 as well as section 6, sentence 2 shall apply accordingly.
3. Any other costs incurred including those for the processing of payment, transport, import and export, customs, duties, fees etc. shall be borne by the customer.
4. Subject to any specific agreement to the contrary in each case all prices are EX Works (EXW Reutlingen Germany - Incoterms 2010).
5. Any deduction for prompt payment shall require a separate agreement in each case.
6. Payment is to be made to the seat of WAGNER in Reutlingen, Germany. Costs and risks in relation to payment shall be borne by the customer.
7. Subject to any written agreement to the contrary, in any individual case, customer shall pay 21 calendar days at the latest from date of invoice.

8. If more than 14 weeks separate the date of the concluding of the contract and the transfer of risk and provided that we have not intentionally caused the period to be exceeded, we are entitled to increase any price in accordance with our increased production costs particularly on the basis of any increase in raw material prices.

X. Claims for Defects

1. The customer shall examine any performance for defects within five (5) working days of the transfer of risk..
2. The customer shall notify us within further three (3) working days in relation to any defect detected during the examination.
3. Furthermore, the customer shall notify us of any defect which was not capable of being detected during the examination within three (3) working days of the date of actual discovery of such.
4. Any notice of defect must be in writing. The notice of defect shall provide details on the basis of which the likely cause as well as the effects can be determined. Upon request, suitable documentation, in particular photographs, as well as the defective goods are to be made available at the premises of WAGNER in Reutlingen.
5. In the event that the customer does not fulfil its obligations to examine and to provide notice of defect, the performance shall be deemed to have been approved and any warranty claims as well as any right to claim for damages shall be excluded. This shall not apply insofar as we have been concealed such defect or such exclusion would not be compatible with the provisions of a guarantee according to V section 4.
6. The customer shall bear any related costs of WAGNER in connection with an unjustified notice of defect.
7. The deadline for sections 1 to 3 shall commence, insofar as any documentation is due from WAGNER, from the time that the customer receives such documentation.
8. If between the delivery and the notification of any defect a period of two years passes, the Customer shall have not be entitled to make any claims based on defect.

XI. Rights of the Customer in Case of Breach of any Obligation by WAGNER (Warranty Claims); Expiry of any Rights to Claim; Relationship to Damages

1. In case of any incorrect performance by WAGNER, i.e. the non-conformity of the actual performance with the performance owed under the contract (defective performance), the rights of the customer shall be determined in accordance with the following provisions.
2. Initially the customer is only entitled to require WAGNER to rectify any defect within a reasonable period. WAGNER is allowed at its own discretion to select the method of rectification by way of repair or replacement delivery. For the purpose of rectifying any defect the customer shall allow WAGNER or, any third party nominated by WAGNER, access to the goods and provides support for any measures which become necessary or are required. The costs of defect rectification shall be borne by WAGNER except for those extra costs related to the additional transport of the goods to or from a place other than the original place of delivery.
3. If WAGNER does not provide the rectification of the defect within a reasonable period or if the work undertaken by WAGNER in the selected form does not result in a rectification of the defect, the customer is entitled to reduce the purchase price.
4. The customer is entitled to cancel (Aufhebung) the contract only
 - a. if there is a material breach (wesentliche Vertragsverletzung) and
 - b. if the rectification of the defect does not take place within a reasonable deadline or such is unsuccessful in terms of correcting the defect.Lit. b is not required to be fulfilled for the cancellation (Aufhebung) of the contract if the defect rectification is unreasonable or will apparently not be successful for the customer on the basis of the circumstances of the individual case.
5. The customer is entitled to cancel the contract only if WAGNER does not comply with the delivery deadline despite a further reasonable deadline being set (and generally such further deadline should not be less than two weeks) and after the expiry of such further deadline the performance is still not provided. In relation to such further deadline VI section 6, sentence 1 shall apply accordingly.
6. The customer shall make any claims under section 2-5 within a reasonable period. It shall request WAGNER to undertake the measures in writing.
7. If the non-performance or inadequate performance relates only to part of a delivery, the rights under sections 2 and 3 shall only relate to that part affected by the non-performance or inadequate performance. Any cancellation of the entire contract (sections 4 and 5) may be declared in such case only if an incomplete delivery or a part-only delivery in accordance with the contract constitutes a material breach of the contract (wesentliche Vertragsverletzung).
8. Warranty claims – with the exception of claims for damages – shall expire within twelve months from the time of the transfer of risk. This shall not apply to any fraudulently concealed defects as well as any hidden defects (X. section 3).
9. The customer may demand a cancellation of the contract or substitute delivery only if the received performance can be substantially returned in the condition in which it was received.
10. Any of the above claims for inadequate performance which result from incorrect use or operation by the customer or third parties acting on behalf of the customer. The same applies for the non-observation of

the guidelines for use, maintenance or installation of the goods by the customer or third parties acting on behalf of the customer are hereby excluded.

11. In relation to any claims for damages as a result of defects, section 4. b. as well as section 4, sentence 2 shall apply correspondingly. In addition XII shall apply.

XII. Liability

1. WAGNER shall be liable in accordance with the provisions of law in case of any breach of any obligation for which it is at fault in relation to all damage arising from injury to life, bodily injury or injury to health.
2. WAGNER shall be liable in accordance with the provisions of the applicable product liability laws.
3. In case of any agreement as to a contractual guarantee (V. section 4), WAGNER shall be liable in accordance with the guarantee declaration.
4. WAGNER shall be liable for any wilful breach of a duty or any breach of a duty involving gross negligence.
5. In the case of breach of any duty involving gross negligence Liability under section 4 shall be limited to three times the respective contract value. If three times the respective contract value is less than EUR 50,000, WAGNER shall in case of any actual damage be liable accordingly to an amount of EUR 50,000.
6. Liability for any other breaches of duty or any damage where the party is not at fault is hereby excluded.

XIII. Set-off, Right of Retention

1. Any right of set-off by the customer shall be permitted only in relation to undisputed claims or any claims which have been confirmed by a final court judgment.
2. In relation to any right of retention, section 1 shall apply accordingly.

XIV. Retention of Title

1. Until such time as all claims arising out of our commercial relationship have been settled in full, we shall retain title to any goods delivered (goods subject to retention of title).
2. The customer shall insure goods subject to retention of title at its own expense and adequately in relation to any loss, damage or destruction by fire, water or theft.

XV. Additional terms for the Installation of Goods

1. If the customer has also ordered the installation of the goods the customer shall provide WAGNER with unlimited access to its premises and the plant or machine where the goods will be installed. The customer shall provide WAGNER with the necessary energy, water and other working materials as well as with an accommodation for the personnel sent by WAGNER free of charge.
2. WAGNER is not responsible for any delay caused by insufficient assistance by the customer notably but not limited to improper preparation of the plant or machine or delay in preparatory work by the customer. WAGNER is entitled to as for compensation caused by the delay.

XVI. Applicable Law

1. This contract as well as its formation shall be subject to the Convention of the United Nations concerning Contracts for the International Sale of Goods dated 11 April 1980 (CISG). In addition the law of the Federal Republic of Germany shall apply.
2. Section 1, sentence 2 shall apply accordingly for any non-contractual claims.

XVII. Arbitration, Impracticability of Arbitration Proceedings

1. Any disputes arising in connection with this contract or its validity shall be finally settled in accordance with the arbitration rules of the German Institute of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V.- DIS) to the exclusion of the ordinary courts of law.
2. The place of the arbitration proceedings shall be Stuttgart, Germany.
3. The number of arbitrators shall be three.
4. The language of the arbitration proceedings shall be German.
5. The applicable material law shall be that determined under XV.
6. If the arbitration proceedings are impracticable, the Parties agree that the responsible court at the seat of WAGNER in terms of the contract confirmation shall have exclusive jurisdiction. WAGNER shall in such case also be entitled to commence legal proceedings against the customer at the customer's court of general jurisdiction.

XVIII. Miscellaneous

1. The language of the contract shall be German. All declarations must be provided in the contract language in order to be effective.
2. The customer shall not assign in whole or in part to any third party any rights or duties arising out of this agreement without our prior written (§ 126 BGB) approval.

XIX. Writing

1. Any and all changes or supplements to these GTC as well as any waiver as to the application must be in writing in accordance with §126 BGB. This shall also apply in relation to any possible waiver of this requirement of writing.
2. Where these GTC demand notices, declarations and so to be made in writing, generally Art. 13 CISG applies, unless the specific section determines an alternative form, e.g. § 126 BGB.

XX. Severance

1. In the event that one or more versions of these GTC being in part or in whole ineffective, this shall not affect the effectiveness of the other provisions or the contract as a whole.
2. The Parties undertake to mutually agree on an effective provision to replace the ineffective provision which most closely reflects the original commercial purpose of the ineffective provision.
3. Sections 1 and 2 shall apply correspondingly in case of any omission.