

General Terms and Conditions of Sale and Delivery of Wohlhaupter GmbH, Frickenhausen

I. Applicability of the conditions

1. These General Terms and Conditions of Sale and Delivery (General Sales Terms) apply to all contracts, deliveries and other services, including consulting services, repairs, information, etc., excluding the contracts in which we act as purchaser. They apply at the latest upon acceptance of the received goods or service. They apply to all business transactions between us and the customer, even if reference is not made hereto in subsequent agreements. They apply in the same way to both work and services. In place of delivery of the products supplied, in the case of performance consisting of work, acceptance takes place upon approval of the work and in the case of services, upon receipt of the services.
2. Conditions of the customer that conflict with, supplement or deviate from these General Sales Terms shall not become part of the contract, unless we would have agreed, in writing, to their validity. These General Sales Terms also apply to us, in full knowledge of conflicting, supplementary or deviating conditions, unconditionally perform a delivery to the customer.

II. Conclusion of the Contract, Provided Documentation

1. Our offers are always – in particular with respect to the conclusion of the contract and with regard to quantity, price and delivery period – non-binding and subject to change and without obligation, unless otherwise stated by us in writing. We reserve the express right to the prior sale of goods that we have declared as having in stock.
2. If documents are provided together with the offer, such as figures, drawings, weight and dimensional data, etc., these shall be considered as being indicative, unless they have been specifically specified in writing as binding.
3. We reserve all ownership, copyright and other proprietary rights in the offer documentation. Such documents are not permitted to be disclosed to third parties. The customer must immediately return all offer documentation to us at our request, provided such documentation is no longer required in the ordinary course of business. The same also applies specifically for all other documents, drafts, samples, patterns and models.
4. The order of Goods by the customer shall be deemed to constitute a binding contractual offer. An order shall only be deemed to be valid after written confirmation of order is issued or upon the delivery of the Goods to the customer as agreed upon (acceptance). Order confirmation issued with the assistance of automated equipment that does not feature a signature or name shall be deemed to be in writing. The order confirmation shall not be binding on us if it contains obvious errors, (typing errors or miscalculations. The purchaser is bound for 2 weeks – and in the case of custom-made products for 4 weeks – to the order.
5. This acceptance is subject to a condition (§ 158 para. 1 of the German Civil Code): it shall only become effective if the export control laws of the Federal Republic of Germany or the European Union or the USA (as far as this is applicable from the U.S. point of view and German/EU law does not conflict with its application) do not (any longer) stipulate a contractual prohibition for this legal transaction and the (export) license(s) required for this legal transaction has/have been issued. The parties do explicitly not agree on retroactivity (§ 159 of the German Civil Code).

III. Prices

The price of the purchase object (purchase price) is understood to be Free Carrier Frickenhausen resp. from the place of delivery specified in the contract (FCA Incoterms 2020), without discount or any other deductions, plus VAT/sales tax. Additional costs such as packaging, transport and insurance costs are not included. In the case of deliveries and services performed into the EU, the customer shall provide Wohlhaupter with the customer's VAT-ID no.

IV. Payment

1. Unless otherwise specifically agreed upon, our invoices are payable with a 3% discount within 14 days of the invoice date or within 30 days without any reduction. Discounts are not granted in the case of repair work or if the purchaser is in arrears with the payment of other invoices. The day upon which we are able to freely dispose of the delivery price is deemed to be the payment date.
2. Legal provisions shall apply in the case of a delay in payment. In addition to legal interest, we may claim further damage due to delay upon respective offer of prove.
3. We reserve the right to not accept bills of exchange/checks. Acceptance occurs only as an undertaking to pay, so bills of exchange/cheques are valid as payment only upon encashment. The purchaser is fully responsible for discounting and collection costs. We take no responsibility for correct and timely presentation or protesting.
4. Our invoices shall be immediately due, if the conditions contained in section V.5. apply to the purchaser after contract conclusion. In this case, all deferrals shall end, also through the acceptance of accepted bills.

5. Off-setting with a counter-claim is only permitted when the counter-claim has been ascertained as being uncontested or legally binding. The purchaser shall have the right to retention or the right to refuse performance, when its outstanding debts are based on the same contractual relationship as our claims.

V. Delivery, advance payment, passing of risk

1. The delivery period does not begin before the provision of all documentation, approvals and releases to be provided by the Customer, the clarification of all technical issues, as well as the receipt of an agreed advance payment. In the case of a delivery date, the date shall be postponed by a reasonable period if the Customer fails to provide the documents to be procured by it on time; if release is not granted on time; if all technical issues have not been fully clarified on time; if the agreed advance payment has not been received by us. Compliance with the delivery period is contingent on the timely and proper fulfilment of the other obligations of the Customer. Delivery dates and delivery terms which are indicated in our offers are only binding if they have been expressly confirmed in writing after the purchaser accepted the offer.
2. The delivery term has been observed when the goods have left our factory or their readiness for shipment has been communicated prior to its expiration. Our obligation to deliver shall be suspended as long as the purchaser has not fully paid all accounts payable in spite of reminder. Compliance with the delivery period is subject to proper, in particular, timely, supply to us, unless we are responsible for the improper supply to us. In the event of improper or delayed supply to us, we shall be entitled to withdraw from the contract. We shall notify the Customer immediately whether we intend to exercise our right of withdrawal and shall return any advance payments made by the Customer.
3. In the case of culpable delay in delivery/impossibility of performance, the purchaser may withdraw from the contract, after the additional period the purchaser has set for performance while threatening to refuse acceptance of performance – which in the case of custom-made products must be at least 4 weeks – has expired without results. The purchaser may assert claims for damages due to a delay/impossibility of performance only in the case of intent and gross negligence.
4. In the event of force majeure and similarly serious, unforeseeable, extraordinary circumstances for which we are not responsible, section XVII. shall apply.
5. If one of the following events applies to the purchaser after contract conclusion, we shall have the right to demand full payment of the goods or a surety for the full amount prior to delivery: Suspension of payment, the initiation of composition or bankruptcy proceedings, bill of exchange/cheque protest, proceedings for enforcement, deterioration in the financial situation (§ 321 BGB [German Civil Code]), delay in payment of more than 3 weeks regarding another contract with us or other circumstances or information that establish reasonable doubt regarding the purchaser's credit worthiness.
6. Section 4 shall also apply when the therein specified conditions existed unknown to us upon conclusion of contract and we could not have become aware of them in a reasonable manner.
7. We shall have the right to reasonable delivery in installments as well as to surplus and short deliveries and technically required changes to the ordered goods to a reasonable extent.
8. The place of fulfillment of our obligations is the disputed warehouse the parties agreed upon for each contractual relationship, irrespective of the fact if this is our warehouse or the warehouse of one of our suppliers. The risk is transferred to the purchaser as soon as the goods have left our or a commissioned warehouse irrespective of who bears the freight charges. If the goods are ready to be shipped and the shipment or the acceptance of delivery is delayed for reasons outside our responsibility, or if the purchaser must pick up the goods, the risk shall be transferred to the customer upon notice of readiness for shipment.
9. If the Customer is in default of acceptance, we may demand compensation of the loss incurred, as well as reimbursement of any additional expenses, unless the Customer is not responsible for the non-acceptance of the products. In particular, we are entitled at the Customer's expense to store the products for the duration of the delay in acceptance. The costs of storing the products shall be charged at a lump sum of 0.5% of the net invoice amount per calendar week commenced. This is without prejudice to any further claims of us. The Customer has the right to furnish evidence that we did not incur any costs or that the costs incurred were lower. The same applies if the Customer breaches other cooperation duties, unless the Customer is not responsible for such breach of other cooperation duties.

VI. Contract withdrawal and claims for damages

1. In addition to the cases specified in section XVI., we may withdraw from a contract, and the purchaser shall not be entitled to claims for damage, if a) the purchaser, according to section IV.4., 5. is in default with payments

that are due or the ordering of a security and he has been provided with an additional period of 8 days that elapse without results, or if b) the circumstances indicated in section V.4. are anticipated to continue for a long period of time and their end cannot be estimated or as a result of these circumstances, the delivery becomes impossible or unreasonable. In these cases (b) we will inform the purchaser immediately about the non-availability and, as far as we already received payments of the purchaser for the goods concerned, those will be paid back.

2. In the case that we accept the customer's unfounded withdrawal from the contract or if we can – independently of the legal basis – claim damages due to nonfulfillment, we shall have the right to claim 15% of the agreed price for compensation, notwithstanding the possibility to assert claims for greater damage. The purchaser retains the right to furnish proof that there was no damage or minor damage.

VII. Claims for Defects

1. Observable defects must be objected to in writing after receipt of the delivery without delay and hidden defects must be objected to in writing immediately after discovery. In its written notification to us the Customer must provide a detailed description of the defects. When a notification of defect can be justifiably asserted, payment may be only withheld to an extent that is in a reasonable proportion to the defects.
2. Upon justified objections we shall have the right to choose between a replacement delivery and repairing the defects. At least two attempts to remedy the defect or two replacement deliveries are admissible. Replaced parts become our property. In order to eliminate all defects, the purchaser must provide us with a suitable amount of time and opportunities, otherwise we shall be released from our liability for defects. Liability for defects does not apply to damage resulting from unsuitable or improper use, incorrect assembly or commissioning by the purchaser or a third party, normal wear, unsuitable means of production or insufficient installation work as well as due to the installation and use of non-original Wohlhaupter / Allied Machine replacement parts and accessories. Our warranty obligations also do not apply when the purchaser or a third party carries out repairs, causes damage or makes changes without our approval that are related to the asserted defect.
3. If subsequent performance is not possible, conclusively failed or unreasonable for the Customer or subsequent performance is delayed by more than a reasonable period for reasons within our control, the purchaser, without prejudice to any claims to compensation or reimbursement of expenses, at its discretion has the right to withdraw from the contract or to reasonably reduce the purchase price.
4. Our written and verbal application-technological consultancy, as well as suggestions, calculations, project planning, etc are only made to explain the best possible use of the products we offer. This does not release the purchaser from its obligation to test the products we offer to ensure that they are suitable for its intended purpose.
5. The statute of limitation for the Customer's claims for defects is 1 year, unless there is a consumer goods purchase at the end of the supply chain. If the defective products have been used for a building in accordance with their normal use and have caused its defectiveness or a defect in a building, the limitation period shall be 5 years. The limitation period of 1 year applies to claims in tort based on a defect in the products. The limitation period begins upon delivery of the products. The one-year limitation period does not apply to our unlimited liability for damage attributable to the breach of a guarantee or relating to damage to life, limb or health, for intentional acts and gross negligence and for product faults, or if we assumed a procurement risk. A statement by us concerning a claim for defects asserted by the Customer is not to be viewed as constituting entry into negotiations concerning the claim or the circumstances giving rise to the claim, provided we reject the claim for defects in full.

VIII. Eigentumsvorbehalt

1. We are liable without restriction for damage attributable to the breach of a guarantee or damage to life, limb or health. The same applies to intentional acts and gross negligence or if we assumed a procurement risk. We are liable for slight negligence only in the event of the breach of material contractual duties which are inherent to the nature of the contract and which are of particular significance for the fulfilment of the contractual purpose. In the event of the breach of such duties and in the case of default and frustration, our liability is limited to such damage as can be typically expected within the framework of this kind of contract. Mandatory statutory liability for product defects remains unaffected.
2. If our liability is excluded or limited, this also applies to the personal liability of our employees, workers, staff, representatives and agents.

IX. Product Liability

1. The Customer will not alter the products, in particular, it will not amend or remove existing risk warnings concerning improper use of the products. In the event of any breach of this duty, the Customer shall in the internal

relationship release us from third-party product liability claims, unless the customer is not responsible for the alteration of the products.

2. If, due to product defect, we are required to carry out a product recall or issue a product warning, the Customer will to the best of its ability assist in all such measures considered necessary and expedient by us and support us in this, in particular in determining the necessary customer information. The Customer is required to bear the costs of the product recall or the warning, unless it was not responsible for the product defect pursuant to product liability law principles. This is without prejudice to any further claims of us.
3. The Customer will without delay notify us in writing of any risks in the use of the products and possible product faults that it identifies in the course of its use of the products.

X. Retention of title

Until the total payment of the purchase price and other current or future receivables, which are related to the object of purchase, as well as claims – also claims for balance – to which we are entitled within the scope of a business relationship from an earlier contract, the purchaser shall grant the following securities, which shall be released upon demand at his choice, as long as their value amounts up to more than 20% of the value of our outstanding receivables:

1. We shall retain full title of the goods that have been delivered. Processing or transformation shall always be carried out for us as the manufacturer, but shall not entail liability on our part. We shall be entitled to the ownership of the new item proportionately to the invoice value of our goods to the value of the new item. If our (joint) ownership expires due to joining, it shall be agreed upon here that the purchaser's (joint) ownership of the item according to a value percentage shall be transferred to us and that the purchaser shall preserve (joint) ownership for us free of charge.
2. The purchaser shall have the right to resell the goods – unprocessed, processed or connected – in the ordinary course of business if it expressly agrees with its buyer in writing on retention of title. The purchaser shall not be authorized to resale the goods if it is in arrears with payments to us or its buyer has excluded the assignment of the claim from the resale. Pledges or assignments as security are impermissible. The purchaser herewith assigns to us all claims arising out of damage, loss or resale, in the amount of the invoice value of our goods. The purchaser is authorized to collect the claim.
3. In the event of the breach of contractual duties, in particular in the event of default of payment by the Customer, we are entitled, irrespective of our other rights, on expiry of a reasonable additional deadline to be set by us to withdraw from the contract. The Customer must grant us or our agents immediate access to the products subject to the retention of title and surrender those products. Following appropriate timely announcement, we can otherwise utilise the products subject to the retention of title in order to satisfy our due claims against the Customer.

XI. Compliance with export control regulations

1. The obligation on the part of Wohlhaupter and the customer to fulfil this contract shall be subject to the proviso that the execution of the contract is not prohibited or negatively affected by applicable export-control provisions of the Federal Republic of Germany or the European Union.
2. In addition, this obligation is subject to the proviso that the execution of this contract is not prohibited or negatively affected by other applicable provisions under export-control law, in particular those of the USA, insofar as this is applicable from the U.S. point of view and German/EU law does not conflict with its application.
3. Should trade policy or other factual or legal developments emerge, that the contract or certain performances owed under the contract are or will become subject to government approval or fall or will fall under a prohibition ban, the parties shall be obligated to consult over alternative contract designs with the aim of adopting an amendment to the contract by mutual agreement.
4. The customer takes note of the fact that the above-mentioned legal requirements are subject to constant amendments and adjustments, and are to be applied to the contract as stated in their respective, valid versions. The customer undertakes to acknowledge and comply with the export-control provisions integrated into the contract via section XI, in particular if the customer is affected by a re-export control condition of an authorization granted to the supplier by the export control authority. Wohlhaupter shall inform the customer of a corresponding condition at the latest prior to the export/transfer.

XII. Exclusion of liability for damage caused by export control law

1. The contract shall be deemed to be null and void if it relates to a legal transaction that is prohibited under the law of the Federal Republic of Germany resp. the European Union or the law of the USA, as far as it is applicable from the U.S. point of view and German resp. EU law does not conflict with its application, and shall be provisionally invalid to the extent that it relates to a legal transaction that requires an (export/transfer) license.

2. Notwithstanding provisions to the contrary in the Contract, Wohlhaupter shall not be liable for damage, losses or any other costs that emanate from adherence to export-control provisions of the Federal Republic of Germany resp. the European Union or the law of the USA, as far as this is applicable from the U.S. point of view and German resp. EU law does not conflict with its application, including, but not restricted to those which
 - a) emanate for this legal transaction from a negligent or unrecognized contractual prohibition or an approval of the contract that is not received under the said export-control provisions as long as failure to obtain approval is not due to the willful intent or gross negligence of a party,
 - b) lead to the execution of the contract being prohibited or negatively affected by the said export-control provisions,
 - c) emanates from delays as a result of government license obligations and/or comparable procedures that have not been caused by a party acting with willful intent or in a grossly negligent manner.
3. The customer shall be fully liable to Wohlhaupter for any damages and expenses incurred by Wohlhaupter as a result of the customer's culpable non-compliance with the export-control provisions integrated into the contract via section XI.

XIII. Delays resulting from official government measures

Required (export/transfer) license applications should ideally be submitted at least 6 weeks prior to the planned delivery, provided there is sufficient time after conclusion of the contract. In the event that there are delays as a result of official government approval obligations and/or comparable procedures, the point in time of the performance shall be postponed commensurately in accordance with respective contractual obligations.

XIV. Onward delivery of contractual goods by the customer

The customer shall not be allowed to supply the purchase object directly or indirectly to a third party if such third party is on a sanctions list integrated into the contract via section XI or to sell, export, re-export, supply, forward, deliver or pass on to countries, insofar as this violates against export-control provisions integrated into the contract via section XI.

XV. Export/Transfer license, information obligations

1. Wohlhaupter is not aware of any circumstances that would prevent the issuance of an export/transfer license if required. However, Wohlhaupter does explicitly neither guarantee that an required export permit will be granted nor the possibility of issuing an required export/transfer license.
2. The customer agrees to use its best efforts to support Wohlhaupter when obtaining an export/transfer license. The customer shall be responsible for obtaining an import license if so required.
3. Notwithstanding other information obligations stipulated in this Contract, each party shall support the other party in providing that information and documents (referred to in the following as: Information) which are required in order to meet the export control law integrated into the contract via section XI or which are demanded by relevant government authorities in this regard. This obligation includes in particular appropriate and complete Information on the end customer, the objective and the use of the purchase object in accordance with their intended purpose. First and foremost the customer is obliged to issue so-called end use certificates and forward these as originals to Wohlhaupter. This obligation shall not be excluded through non-disclosure obligations that may have been concluded previously. If necessary an exemption from a previously closed non-disclosure agreement can be demanded if an applicable provision under export-control law require technical details to be transmitted to the involved authorities.

XVI. Export Controls and Contract withdrawals

1. In addition to the cases specified in section VI. each party may withdrawal from the contract or from the individual delivery or service obligation with ab initio effect if the government authority in charge
 - a) refuses to issue the (export or transfer) license or
 - b) refuses other licenses, authorizations or clearances under foreign trade law or
 - c) fails to issue the required licenses, authorizations or clearances under subparagraphs (a) or (b) within a period of 3 months after the delivery date.
2. This also applies if corresponding export control and embargo law hindrances occur initially between entering into the contract and the delivery or the rendering of the service and in the case of exercising warranty rights, e.g. by way of a change in the legal situation, and render performing the delivery or rendering the service temporarily or ultimately impossible because the necessary export or import licenses or other foreign trade and payments law licenses or releases are not issued by the relevant authorities or are withdrawn or other legal hindrances as a result of foreign trade and payments and embargo law requirements to be complied with conflict with executing the contract or performing the delivery/rendering the service.

3. Wohlhaupter may withdrawal from the contract if the customer undertakes actions that encourage, allow one to expect or could result in a violation against export-control provisions integrated into the contract via section XI, in particular if there are justified reasons for believing that the party receiving the goods intends to use the goods for an illegal purpose (cf. section XIV.).
4. The provisions cited in the foregoing are not based on the possibility to terminate the contract for reasons other than the ones stated in the foregoing.
5. For the sake of clarification, it is noted that also if above para. 1, 2, 3 or 4 apply claims for damages on the part of the customer are excluded in application of the provisions on Limitation on Liability set out in section VIII. and XII. of these General Sales Terms.

XVII. Force majeure

1. Neither Party shall be in breach of this contract if and to the extent that the performance of the contract is prevented or made excessively onerous by an event of force majeure resp. similar serious, unpredictable, extraordinary circumstances outside our responsibility as defined below in para. 2 or by business disruptions occurring in Wohlhaupter's business, or in the business of Wohlhaupter's suppliers, that temporarily prevents Wohlhaupter through no fault of his own from delivering the purchase object at the agreed date or within the agreed period of time. However, no ground for relief under this Force Majeure clause shall exist if the non-performing Party could have reasonably expected both the impediment and its effects upon its ability to perform at the time of the conclusion of the contract or reasonably avoided or overcome it or its effects.
2. An event of force majeure shall be assumed if performance is prevented by circumstances beyond the party's control or especially by (but not limited to) one of the following circumstances: fire, natural disasters or catastrophic events, epidemics/pandemics, war, terrorism, prohibition of export, embargo, seizure or other authority measures, general shortage of materials, restrictions in the use of power, industrial disputes, allocations or restrictions upon the use of materials or manpower, sabotage or revolutions, strikes or lockouts or if performance is prevented caused by subcontractors by any of such circumstances.
3. The circumstances beyond the party's control and their discontinuation are to be reported to the other party immediately. Should such events lead to postponement of performance by more than 4 months, any party, irrespective of other rights of withdrawal, may withdraw from this contract by written declaration.
4. This force majeure clause shall not prejudice any further rights provided either by these General Terms and Conditions of Business or the applicable governing law.

XVIII. Nondisclosure

1. The parties are required for the duration of five years from delivery to maintain strict confidentiality with respect to all information to which they become privy and which is designated confidential or can be identified as business or trade secrets based on other circumstances, and, unless necessary in the course of business dealings, not to record, disclose or utilise this information.
2. The confidentiality obligation does not apply if the information was demonstrably already known to the recipient prior to commencement of the contractual relationship or was generally known or publicly available prior to commencement of the contractual relationship or, through no fault on the part of the recipient, becomes generally known or publicly accessible. The burden of proof is borne by the recipient.
3. The parties shall ensure by means of suitable contractual agreements with the employees and agents acting on their behalf, in particular with freelance staff, plants and service providers, that they, too, for five years from delivery, refrain from any and all personal use, disclosure or unauthorised recording of such business and trade secrets.

XIX. Copyright

We reserve the right to ownership and copyright for all documents, and in particular drawings, that were provided in connection with the order. These documents shall not be provided to third parties. They must be returned to us without delay if we are not assigned by the purchaser.

XX. Data protection

1. The parties mutually undertake to comply with the statutory provisions on data protection, in particular the EU General Data Protection Regulation („GDPR“) in the execution of the contract and to impose compliance with these provisions on their employees.
2. The parties process the personal data received (names and contact details of the respective contact persons) exclusively for the fulfillment of the contract (Art. 6 (1) (b) GDPR) and will implement these technical security measures adapted to the current state of the art (Art. 32 GDPR). The parties

undertake to delete the personal data as soon as their processing is no longer necessary. Any statutory restrictions shall remain unaffected

3. Should we process personal data for the customer on behalf of the contract, the parties will conclude an agreement on the processing of orders pursuant to Art. 28 GDPR.

XXI. Place of performance, jurisdiction, applicable law

1. The exclusive place of performance for the claims of both parties, unless otherwise agreed upon between the parties, is Frickenhausen. Courts of Frickenhausen/Württemberg shall have exclusive jurisdiction over all disputes arising from this agreement, as far as legally permissible.
2. German law and German procedural law shall apply to all disputes arising from the contractual relationship. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

XXII. Final provisions

1. Additional agreements, changes, additions, warranties of characteristics as well as agreements made verbally with our representative/sales person are only binding when they have been confirmed by us in writing.
2. The invalidity of any provision of these General Sales Terms shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provisions to the greatest extent possible.

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