

Werres GmbH's GENERAL CONDITIONS OF SALE

1. Scope

Our GENERAL CONDITIONS OF SALE below shall be applicable should nothing else have been expressly agreed in writing. We are not bound by diverging terms and conditions of the customer.

2. Quotations – side-agreements – contents of the contract

- 2.1. Our quotations are subject to change in the sense that a contract shall not come into existence until we have accepted the order.
- 2.2. Side-agreements to our quotations and order confirmations are only valid when confirmed by us.
- 2.3. Should the object of the order be the delivery of goods, we are permitted to exceed or to fall below the quantity ordered by up to 15%.

3. Reservation of the right to rescind the contract

We have the right to rescind the contract should its fulfilment meet with insurmountable technical difficulties or when we are aware of circumstances which make the customer's credit-worthiness appear doubtful.

4. Prices - deliveries

- 4.1. Provided that nothing to the contrary has been agreed, our prices shall be understood as delivery ex-factory or from one of our external warehouses, excluding Value Added Tax.
- 4.2. Should nothing to the contrary have been agreed, we shall charge additionally at full cost for packaging supplies.
- 4.3. We shall charge a flat processing fee of EURO 25.-- on orders below EURO 100.-- should nothing to the contrary have been agreed.

5. Insurance - dispatch – transfer of risk

- 5.1. We shall only insure shipments of goods if the customer expressly desires this, and then at his expense.
- 5.2. Should we receive no particular instructions regarding dispatch, we shall ship the goods by the mode of transport which is in our opinion the most favourable. The shipment shall be made for the account of and at the risk of the customer; this shall also be the case should we deliver the goods with our own vehicle or bear or advance the delivery costs.
- 5.3. The risks of the destruction or deterioration of the goods for reasons which are not our responsibility shall pass to the customer at the time the goods are loaded in our factory or external warehouse.

6. Call-off orders – product allocation – part-shipments

- 6.1. Unless anything to the contrary has been agreed, call-off orders will be delivered in approximately equal monthly amounts. The total order quantity shall be deemed to have been called-off one month after the date agreed for the call-off and, in the absence of such an agreement, twelve months after the date on which the contract was concluded.
- 6.2. We are entitled at our discretion to allocate and to deliver the goods should a customer not accept an allocation of goods ordered he is obliged to accept within at the most one month of the date agreed for the allocation and, in the absence of such an agreement, within one month at the most of our calling upon him to do so.; we may alternatively rescind the contract.
- 6.3. We are entitled to make part-shipments and to invoice each part-shipment separately.

7. Delivery periods and delivery dates

- 7.1. The delivery periods and delivery dates agreed for our shipments shall be considered approximate.
- 7.2. A delivery period determined solely by its length shall begin at the end of the day on which complete agreement on all the details of the order is reached, at the earliest however on the date the order is accepted by us.
- 7.3. A delivery period or delivery date shall be deemed to have been met when the goods leave our factory or external warehouse by the agreed date, or, in cases where the goods cannot or may not be shipped, when notification that the goods are ready for delivery is made by the agreed date.
- 7.4. Should the delivery be delayed by circumstances over which we have no direct control, in particular as a result force majeure, intervention by public authorities, measures due to labour disputes, difficulties in the procurement of materials, production breakdowns and the like, the delivery time shall be postponed for the duration of the hindrance; this shall also apply in the event that, for reasons for which are not responsible, we ourselves do not receive the right deliveries or do not receive these deliveries on time. A hindrance lasting longer than three months and the end of which cannot be foreseen shall entitle the customer and ourselves to rescind the contract, provided that the contract cannot be fulfilled as a result of this hindrance..
- 7.5. Should we be in arrears with a delivery, the customer may rescind the contract having first given us in writing an adequate grace period of at least four weeks and the delivery has not been made within this grace period in accordance with section 7.3.
- 7.6. The customer may not derive any claims against us for compensation as a result of a delivery period or delivery date being exceeded or of delivery arrears, unless the failure to adhere to a delivery period or delivery date is due to intent or to gross negligence on the part of one of our legal representatives or one of our agents.

8. Liability for defects

- 8.1. Deviations of quality, colour, width, weight, fittings or design which are either normal in the trade or insignificant and unavoidable from a technical point of view shall not be considered defects.
- 8.2. The correctness of the delivery shall be checked on receipt. The customer is required to check – if necessary by means of test operation – whether the goods delivered are free of defects and suited to the use intended. We are relieved of all liability should he not do this.
- 8.3. The customer is required to inform us immediately and in writing of any defects in the goods delivered as soon as they are discovered. The notification period for defects which can be identified by an obligatory examination under normal operating conditions is a maximum of one week and for other defects a maximum of eight weeks from the date the date of arrival of the goods at the customer. The customer shall forfeit all warranty rights should he omit to report defects immediately or within the prescribed period or should the goods be changed, cut to size, or processed after the defect has been discovered or could have been discovered.
- 8.4. Defects in a part of the goods delivered shall not entitle the customer to declare the whole delivery defective.
- 8.5. We have the option in the event of justified complaints either to remedy the defect or to deliver replacement goods free of defects within twenty days of the return of the goods. Should the customer be unable to return the goods, he may only demand a reduction of the purchase price.
- 8.6. The customer is not entitled to further claims, in particular to claims for compensation, including those relating to consequential damage and infringement of our warranty liability, even when a claim is made on our warranty liability due to the absence of a warranted quality. This restriction of the customer's rights shall however not apply when the defect or the infringement of our warranty liability is due to intent or to gross negligence on the part of one of our legal representatives or one of our agents.

8.7. Any claims made by the customer shall be restricted to the net value of the goods shipped upon which these claims are based .

9. Payment – payment arrears

- 9.1. We issue our invoice as soon as the goods ordered are ready for shipment. Delays in dispatch or in picking up the goods for which we are not responsible shall not postpone the due date of the invoice.
- 9.2. Should no other agreement have been made, our invoices are payable without deduction of payment discount within 30 days of the invoice date.
- 9.3. Should circumstances become known to us after the conclusion of the contract which make the customer's credit-worthiness appear doubtful, we have the option – notwithstanding our rights of rescission under section 3 – to demand either payment in advance or the provision of security. The same shall apply should the customer fail to fulfil a payment obligation to us on the date payment is due. Should one of these situations arise, then all of our accounts receivable due from the customer, including those relating to other transactions, shall become due immediately; should we have accepted a bills of exchange which are not yet due, we may demand immediate payment against the return of the bills of exchange.
- 9.4. We may, should the customer fail to pay on the due date and without the payment having to be in arrears, charge interest from the due date at the rate of interest charged by our house bank on overdrafts, at least however at the rate of four percentage points above the current discount rate of the German Federal Bank.
- 9.5. We shall only accept bills of exchange should the customer have previously made an appropriate agreement with us. Should we accept cheques and bills of exchange, this shall only be done on account of payment and not in fulfilment of the debt. The customer shall pay discounting fees, taxes and the costs of collection; he is required to pay these amounts as soon as he is called upon to do so..
- 9.6. The customer is not entitled to offset his claims against our payments or to exercise a right to withhold amounts which are due for payment. This shall however not apply to the offsetting of claims which are undisputed or have been established by law and to the exercise of a right to withhold payment until these claims are met.

10. Retention of title

- 10.1. Goods delivered by us remain our property until all of our accounts receivable arising from the business relationship are completely paid. Should we assume a new obligation or liability risk in connection with goods delivered by us, for example through the issue of a return bill or a bill of acceptance in cheque/bill proceedings, the new obligation or new liability risk shall also become part of our accounts receivable arising from the business relationship within the meaning of the first sentence until the complete elimination of which the goods shall remain our property.
- 10.2. In the event that goods delivered by us are treated or processed, the acquisition by the customer of rights of ownership is excluded. The treatment or processing of the goods takes place on our behalf in such a way that we are regarded as the manufacturer. In the event that goods from a different source are treated or processed which are also subject to a retention of title extending to processing, we acquire co-ownership of the new article in proportion to the relation of the invoice value of our goods to the value of the other goods present in the new article at the time of processing. Should, due to any circumstances, ownership or part-ownership by the customer arise as a result of the treatment or processing of the goods delivered by us or of their combination with other goods, then these rights of ownership or co-ownership shall pass to us as soon as they arise. The customer transfers to us with immediate effect all reversionary interests which could lead to his acquiring such rights of ownership. Any handover necessary for the acquisition of rights of ownership or co-ownership to us shall be replaced by the agreement that the customer looks after the goods on our behalf as a borrower or, should the customer not possess the objects, by the assignment to us herewith agreed of the claim of restitution against the owner.
- 10.3. All the customer's accounts receivable arising from a re-sale of goods of which we are the owner or co-owner are transferred to us on the conclusion of the purchase contract, irrespective of whether the goods are sold without or after treatment or processing or in combination with other goods or whether they are sold to one or several buyers. Should the goods sold not be fully our property or be sold together with other goods which are not our property, the assignment shall only extend to the value of our goods. The customer may collect the assigned accounts receivable but may not assign them, also not as part of a factoring transaction. We may revoke this authority should the customer fail to fulfil on time an obligation to us or should circumstances become known to us which make our rights appear in danger. The customer's right to collect accounts received shall end automatically should he cease payments, be ordered by a court to reveal his asset situation, settlement or bankruptcy proceeding in a court of law be opened with respect to his assets or should he seek an out-of-court settlement. The customer is required at our request to notify those owing the assigned accounts receivable of the assignment, to apprise us of these debtors and the amounts owed and to give us the documents we require to collect the assigned accounts receivable.
- 10.4. The customer may only sell, treat or process or combine with merchandise from some other source goods which are our property or to which we have rights of co-ownership (retained goods) in the course of his normal business activity. Disposal is only permissible by way of sale and subject to the condition that the customer's accounts receivable derived from the sale shall, as established above, pass to us; the customer is not authorised to dispose of the reserved goods in any other way; he may neither mortgage them nor transfer title by way of security. The customer is required to inform us immediately of a seizure of the reserved goods or assigned accounts receivable by third-parties, either pending or which has already occurred. The costs of intervention incurred by us shall be borne by the customer.
- 10.5. Should the customer be completely or partly in arrears in meeting an obligation secured by retention of title or should circumstances become known to us which make our rights appear in danger, we may demand the restitution of the retained goods without having first declared the rescission of the contract in accordance with § 455 of the German Code of Civil Law (BGB) and without having set a grace period for the fulfilment of the payment obligation in accordance with § 326 of the same code. The existence of the purchase contract and the customer's obligations shall not be impaired by such a demand and the restitution of the goods. Should we take back goods and thereby relieve the customer of his obligation to accept the goods, we may demand 25% of the invoice value of the goods as compensation for non-fulfilment.
- 10.6. The retention of title shall be extinguished in such a way that, with the complete payment of all our accounts receivable deriving from the business relationship, ownership of the retained goods passes immediately to the customer and the assigned receivables are restored to him. We undertake at the request of the customer to release securities of our choice to which we are entitled in accordance with the above rules (goods and accounts receivable) should their value exceed the claims to be secured by more than 20%.

11. Place of fulfilment – place of jurisdiction – applicable law

- 11.1. The place of fulfilment for the shipment is the place where the goods are loaded and for payment Korschbroich.
- 11.2. The exclusive place of jurisdiction for all disputes concerning or arising from the contract, also litigation relating to cheques and bills of exchange, is Korschbroich. We are however entitled to initiate litigation against the customer in some other court having jurisdiction over him. Should the customer not be a general merchant, a public law legal entity or a public law special asset, but have a general place of jurisdiction in Germany, then these provisions shall apply should the customer relocate his registered office or normal place of residence outside the Federal Republic of Germany after the conclusion of the contract or should his registered office or normal place of residence be unknown at the time legal proceedings are started.

11.3. In the case of foreign transactions and provided that some other jurisdiction does not become mandatory, the whole contractual relationship shall be subject to law of the Federal Republic of Germany . The application of the uniform law on the conclusion of international purchase contracts for movable goods and the uniform law on the international purchase of movable goods is excluded.

12. Partial validity

Should individual provisions of these GENERAL CONDITIONS OF SALE be or become invalid for whatever reason, this shall not impair the validity of the remaining provisions.