

General Terms and Conditions of Sale of Wemhöner Surface Technologies GmbH & Co. KG

I. Validity of the Terms and Conditions

1. We conclude contracts exclusively on the basis of our General Terms and Conditions of Sale (hereinafter referred to as "Terms and Conditions"). They shall apply to all - including future - contracts with the Customer, even if they are not expressly agreed again. Any provisions deviating from the contents of these Terms and Conditions shall require our written confirmation. General terms and conditions of the Customer which we do not accept in writing shall not be binding on us. No express objection is required.
2. Individual agreements with the Customer - insofar as they are made in writing - shall take precedence over these Terms and Conditions. Legally relevant declarations and notifications which the Customer has to submit to us after conclusion of the contract (e.g. setting of deadlines, notifications of defects) shall also require the written form. The written form shall be deemed to have been complied with by the text form.
3. These Terms and Conditions shall only apply if the Customer is an entrepreneur as defined by § 14 of the German Civil Code (BGB). Consumers are not supplied by us.

II. Offers, Scope of Delivery

1. Our offers are subject to change.
2. The documents appertaining to our offers, such as illustrations, drawings, weights and dimensions, are only approximate unless we expressly designate them as binding. We reserve the property rights and copyrights to cost estimates, drawings and other documents as well as data irrespective of the form in which they are embodied. These documents may not be made accessible to third parties without our consent.
3. Our order confirmation alone shall be decisive for the scope of delivery. Partial deliveries are permissible insofar as this is reasonable for the Customer.
4. The Customer may only assign claims against us with our consent. This shall not apply to any claims of the Customer for payment against us.

III. Prices and Terms of Payment

1. Prices are net prices plus value added tax. Unless otherwise agreed, prices for deliveries shall apply ex works without packaging; in the case of deliveries abroad or to a foreign branch of the Customer, we shall deliver ex works (EXW) Incoterms 2020.
2. We shall be entitled to make necessary price adjustments if we can prove that cost increases for which we are not responsible (in particular for material, energy or wages) have occurred after conclusion of the contract. Irrespective of this, we may renegotiate prices if

the basis of the contract has changed significantly after its conclusion.

3. Unless otherwise stated in our order confirmation, the following terms of payment shall apply:
 - 30% after receipt of the order confirmation
 - 60% after notification that the main parts are ready for dispatch
 - 10% one month after transfer of risk.
4. In the event of default on the part of the Customer, we shall be entitled to demand interest on arrears at a rate of 9% above the prime rate. In addition, in accordance with § 353 of the German Commercial Code (HGB), we are entitled to demand interest on arrears in the amount of 5%.

If, after the conclusion of the contract, it becomes apparent that our claim to the contract price is jeopardized by the Customer's inability to pay, we shall be entitled to refuse performance until security has been provided or payment has been made by the Customer.
5. The assertion of rights of set-off and retention by the Customer is only permissible with undisputed or legally established claims from the same contractual relationship.

IV. Shipping Time

1. The deadlines agreed in the order confirmation or otherwise with the Customer shall be decisive. Compliance with these deadlines shall be conditional upon the timely receipt of all documents to be supplied by the Customer and compliance with the agreed terms of payment and other obligations. If these preconditions are not fulfilled in time, the time limit shall be extended by the duration of the delay.
2. In the case of deliveries, the deadline shall be deemed to have been met if the ready-for-use consignment is dispatched or collected within this period. If delivery is delayed for reasons for which the Customer is responsible, the time limit shall be deemed to have been observed if notification of readiness for dispatch is given within the agreed time limit. If the goods ready for dispatch are not called for reasons for which the Customer is responsible, we shall be entitled to charge the Customer for the costs incurred as a result of the delay, starting one month after notification of readiness for dispatch or handover. If we store the delivery item on our premises, we shall be entitled to charge reasonable costs for this storage, at least to the amount that would be incurred by storage with a third party.
3. In the event of disruptions to our operations caused by force majeure which temporarily prevent us, through no fault of our own, from fulfilling our contractual obligations on the agreed date or within the agreed period, the agreed dates or periods shall be extended by

the duration of the disruptions to performance caused by these circumstances plus a reasonable adjustment period. If such events make it considerably more difficult or impossible for us to fulfill the contract and the hindrance is not only of a temporary nature, we shall be entitled to withdraw from the contract. If such a disturbance leads to a hindrance in performance of more than six months or to a doubling of the originally agreed delivery period, the Customer may withdraw from the contract. If it is unreasonable to expect the Customer to adhere to the contract for a period equal to twice the originally agreed delivery period, he shall be entitled to withdraw from the contract at an earlier point in time.

4. Force majeure in the aforementioned sense shall include natural disasters, war, embargo, pandemic situations, energy supply difficulties and other disruptions in the supply chain due to circumstances which are unforeseeable and/or uncontrollable for us.

The above provisions shall apply accordingly in the event of delays due to strikes or lockouts.

5. An impediment to performance for which we are not responsible shall also exist in the event of late delivery by our suppliers, if we have concluded a congruent hedging transaction, as well as in the event of other disruptions in the supply chain - for example due to force majeure - or if we are not obligated to procure the goods in the individual case.
6. In the event of impossibility for one of the aforementioned reasons, we shall be released from our obligation, the Customer's obligation to counter-performance shall lapse and we shall immediately return any payments already received.
7. If the aforementioned circumstances occur for the Customer, the same legal consequences shall also apply to the Customer's acceptance obligation.
8. Both contracting parties shall be obliged to notify the other immediately of any disruptions in performance.

V. Shipping and Transfer of Risk

1. The risk shall pass to the Customer upon dispatch. If the shipment is delayed for reasons within the sphere of influence of the Customer or his vicarious agents, the risk shall already pass to the Customer on the day of the notification of readiness for shipment.
2. Insurance shall only be taken out at the written request of the Customer and against advance payment.

VI. Rights of the Customer in Case of Defects

1. Claims of the Customer due to defects presuppose that the delivery item does not have the contractually agreed quality or, if such a quality was not agreed, is not suitable for the use presupposed according to the contract or for the usual use. In the case of delivery

items which are manufactured on the basis of a drawing or other specifications of the Customer, the delivery item shall be free of defects if it corresponds to the drawing or other specifications.

2. In the event of justified notices of defect, we shall have the right, within a reasonable period of at least 15 working days, to either repair or replace the goods at our discretion. If the subsequent performance fails, the Customer may reduce the price or - if the lack of conformity is not only minor - withdraw from the contract. In addition, he may be entitled to claim damages or reimbursement of expenses. If the Customer withdraws from the contract, he shall return the delivery item to us and - irrespective of any other claims - pay a reasonable fee for the period of use in the amount of the usual rent.
3. Claims of the Customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labour and material costs, shall be excluded insofar as the expenses increase because the delivery item has been subsequently transported by the Customer or a third party to a location other than the place of delivery, unless the transport corresponds to the intended use of the delivery item or was agreed with us upon conclusion of the contract.
4. Customer's claims for defects shall become time-barred after 12 months starting from the date of delivery or constant operation of the delivery item. This shall not apply if longer periods are prescribed by law in §§ 438 para. 1 no. 2, 479 para. 1 and 634 a para. 1 no. 2 of the German Civil Code, namely for buildings and items for buildings, claims under a right of recourse and construction defects.
5. Claims for damages of the Customer against us, our legal representatives and vicarious agents as well as persons employed in the performance of our obligations due to defects shall be excluded, unless the claim for damages is based on

- injury to life, limb or health, if it is caused by an intentional or negligent breach of duty

or

- intentional or negligent breach of an essential contractual obligation. An essential contractual obligation is an obligation the fulfillment of which makes the proper execution of the contract possible in the first place and on the fulfillment of which the Customer may rely. Furthermore, an essential contractual obligation is an obligation whose breach jeopardizes the achievement of the purpose of the contract.

- the fraudulent concealment of defects

or

- an intentional or grossly negligent breach of duty

or

- a violation according to the product liability law.

In the event of a breach of an essential contractual obligation due to simple negligence, a claim for damages shall be limited to the typically occurring and foreseeable damage.

The burden of proof of the circumstances justifying a limitation of liability lies with us.

6. We shall only be liable for consequential harm caused by a defect in the event of fraudulent concealment of defects or if the defect underlying the consequential harm caused by a defect is based on an intentional or grossly negligent breach of duty by us or by our executive bodies or vicarious agents.

VII. Limitation of Liability, Compensation

1. The following limitations shall apply to our (including our legal representatives, vicarious agents and assistants) contractual and non-contractual (tortious) liability as well as to liability for culpa in contrahendo. The burden of proof for the limitation of liability or an exclusion of liability justifying facts lies with us.
2. We are not liable for the slightly negligent breach of immaterial contractual obligations.

In the event of a slightly negligent breach of essential contractual obligations, the claim for damages shall be limited to the foreseeable damage typical for the contract. In the event of a grossly negligent breach of non-essential contractual obligations, we shall be liable for the foreseeable damage typical of the contract. In all other respects our liability shall not be limited. In the event of a slightly negligent breach of duty due to delay, our liability shall be limited to 5% of the agreed net price.

Essential contractual obligations are those whose fulfillment makes the proper execution of the contract possible in the first place and on whose compliance the Customer may rely.

3. Limitation of liability shall not apply if we are liable for injury to life, limb or health.
4. Any claims of the Customer under the Product Liability Act shall not be affected by the above limitations of liability.
5. We shall be liable for consequential harm caused by a defect only in the event of fraudulent concealment of defects or if the defect underlying the consequential harm caused by a defect is based on an intentional or grossly negligent breach of duty by us or by our executive bodies or vicarious agents.
6. With regard to the limitation period, Section VI.5 shall apply accordingly.

VIII. Retention of Time

The delivered goods remain our property until full payment of the agreed price.

IX. Property Rights

1. If we develop or modify products for the Customer, we reserve all rights to these product developments/modifications. All drawings, samples and models shall remain our property.
2. If we manufacture items according to information or documents provided by the Customer, the Customer shall indemnify us against any property rights of third parties.

X. Place of Performance, Place of Jurisdiction and Applicable Law

1. Place of performance for all obligations arising from the contractual relationship is Herford.
2. The place of jurisdiction for all disputes arising from the contractual relationship shall be Herford if the Customer is a merchant, a legal entity under public law or a special fund under public law. However, we shall be at liberty to appeal to the court having jurisdiction for the registered office of the Customer.
3. German law shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Convention/CISG) is excluded.

XI. Data protection

The data protection information on our homepage applies.