

GENERAL TERMS AND CONDITIONS OF SALES OF WEMHÖNER SURFACE TECHNOLOGIES GmbH & Co. KG

1. General

- a) All our deliveries shall be subject exclusively to the Terms and Conditions set out below. Diverging terms and conditions of Buyer will not be accepted by us even where we fail to raise an objection in an individual case.
- b) Any future deliveries shall also be ruled by these Terms and Conditions even where we fail to refer to these Terms and Conditions in an individual case.
- c) All our proposals shall be subject to change without notice. A contract shall be brought about only if confirmed by us in writing, or upon delivery of the goods.

2. Price, payment, setoff, right of retention

- a) All prices shall be ex works, including loading at the factory, and exclude packaging; all price indications are subject to VAT at the rate applicable from time to time.
- b) Except as otherwise agreed the following payment terms shall apply:
 - 1/3 advance payment due after receipt of the order confirmation,
 - 1/3 due immediately after we have notified Buyer that the main parts are ready for dispatch,
 - 1/3 due within one month of passage of risk
- c) Buyer shall not be entitled to set off claims against counterclaims unless such counterclaims are undisputed or have been finally determined. Buyer shall not be entitled to assert any right of retention unless such right is based on the same agreement or if counterclaims are undisputed or have been judicially determined.
- d) If Buyer defaults on payment, 12% interest on arrears, however not less than 8% above the base lending rate, will be charged in accordance with para. 2 of section 288 of the BGB (German Civil Code). Where the interest rate applicable in accordance with the foregoing sentence exceeds the interest rate due under the provisions of section 288 of the BGB, Buyer shall be free to provide evidence that no damage or a lesser damage than alleged has been caused by default. Where we can prove damage caused by default we reserve the right to claim damages.
- e) If Buyer defaults on payment, all receivables shall become immediately due even if we previously accepted bills of exchange for the settlement of such payment or otherwise allowed such payment to be deferred.
- f) In the event that Buyer suffers a major deterioration in its financial circumstances, thus putting at risk any claims we may have against Buyer, we shall be entitled to demand cash in advance or provision of security. The foregoing sentence shall be effective also in the event that such circumstances which already existed before the conclusion of the contract are disclosed only

after signing of the contract. If no cash in advance is paid and no security is provided within the period of grace notwithstanding a notification of default and an extension of the original term, we shall be entitled to rescind the agreement and/or to claim damages for non-performance.

In the cases specified in the foregoing sentence payment or provision of security must not be made contingent on the return of current bills of exchange.

3. Delivery period/delivery

- a) We shall be entitled to dispatch part shipments unless Buyer cannot reasonably be expected to receive such part shipments.
- b) The delivery deadlines and periods of delivery are approximate dates. If the goods are collected by Buyer as agreed, the period of delivery shall be deemed to have been complied with if the goods are ready for dispatch not later than on the day of delivery. If the goods are forwarded to Buyer at Buyer's request, the period of delivery shall be deemed to have been complied with if the goods were handed over to the forwarding agent not later than upon expiry of that period.
- c) Deliveries shall be subject to our own punctual and faultless receipt of supplies. If it is anticipated that a delay may occur we shall notify Buyer immediately.
- d) Where a delay in delivery (concerning us as well as our own suppliers) is caused by acts of God, riot, strike, lockout or a plant interruption beyond our (or our suppliers') control, the period of delivery shall be extended by no less than the period of time required to remedy such interruption. In the event of a permanent delay of performance we shall be entitled to rescind the entire contract or parts of it and all claims for damages shall be excluded. We shall notify Buyer of the beginning and the end date of such hindrances at the soonest possible time.
- e) Our compliance with the period of delivery is subject to Buyer's fulfilment of Buyer's duties under the applicable contract.
- f) Where acceptance of the delivery item is delayed for reasons that can be attributed to Buyer, we shall be entitled to invoice Buyer for any costs incurred by such delay, beginning one month after our advance notice that the goods are ready for dispatch and/or collection. In the event that the delivery item is stored at our own premises, we shall be entitled to charge reasonable expenses for storage, such charges not falling below the expenses we would incur if we had the delivery item stored by a third party. Further legal claims shall be reserved.

4. Transport/passage of risk

- a) Buyer shall be responsible for the cost of transport.
- b) The risk shall pass to Buyer as soon as the delivery item has been removed from the factory; this shall apply also if part shipments are made. The goods shall be moved at Buyer's risk irrespective of the place or manner of shipment. This shall apply also where goods are delivered ex works by way of an exception.
- c) If Buyer collects the delivery item from the factory, the risk shall pass to Buyer upon notification that the goods are ready for dispatch.

If dispatch is delayed due to circumstances beyond our control, the risk shall pass to Buyer as of the date of notification that the goods are ready for dispatch.

If Buyer fails to take delivery as agreed, the effective legal provisions shall not be affected.

5. Reservation of ownership

- a) We reserve the right of ownership to all goods delivered by us (Reserved Goods) until any and all of our claims resulting from the business relation on whatever legal basis, including but not limited to all contingent liability (payment by cheque, bill of exchange), have been paid.
- b) Buyer shall be entitled to process and resell the goods in the ordinary course of business provided that Buyer is not in default regarding the fulfilment of its obligations towards us and provided further that Buyer does not suspend payments. More specifically, the following provisions shall apply:
 - aa) Any act of processing or finishing of the Reserved Goods shall not be binding upon us in our capacity as manufacturer of the goods pursuant to Section 950 of the BGB. Processing or finishing the Reserved Goods shall not give Buyer the right of ownership to the newly created goods in accordance with Section 950 of the BGB.

If the Reserved Goods are processed, commingled, combined or amalgamated with other objects, we shall acquire co-ownership in the resulting new product in proportion with the relation between the invoice value of our Reserved Goods and the total value.

The provisions applicable to the Reserved Goods shall equally apply to any co-owner's shares created under the foregoing provisions.

- bb) Buyer herewith assigns to us all claims from the resale or any other disposal including all ancillary rights and covering also our co-owner's shares to the extent that the goods have been processed, commingled or combined thus leading to our co-ownership to such goods in the amount of our invoice value. To the extent that the Reserved Goods have been processed, commingled or combined, such an assignment shall entitle us to receive

a fraction of the claim from the resale corresponding to the relation between the invoice value of our Reserved Goods and the invoice value of the object. In the event that Buyer sells the Reserved Goods together with other goods supplied by a third party, Buyer herewith assigns to us a share in the claim from the resale equal to the invoice value of our Reserved Goods.

In the event that Buyer sells the claim within the scope of a factoring transaction, Buyer herewith assigns to us the substitute claim against the factor. In the event that Buyer places the claim from the resale under an open account relationship with Buyer's client, Buyer herewith assigns to us Buyer's claims from the open account relationship to the amount of the invoice value of the Reserved Goods.

We herewith accept the above assignments.

Buyer shall be entitled to resale only if Buyer also reserves right of ownership until full payment of its claims from the resale has been effected.

- cc) Buyer shall be entitled to collect the claims assigned to us until revoked. The authorisation to collect claims shall cease when revoked; revocation shall be effected if Buyer gets into arrears or suspends payment. In that case we shall have Buyer's authorisation to notify customers of the assignment and to collect the claim ourselves.
- dd) Buyer undertakes to submit to us upon request a detailed list of the claims due to Buyer including the names and addresses of customers, the amount of each of the claims, the invoice date etc. and to provide us with all information and documents required for the assertion of the claims assigned to us and to permit us to verify any information provided.
- dd) Any sums of money received by Buyer on the basis of claims assigned to us must be separately deposited to our credit until remitted.

- c) The Goods Reserved or the claims assigned must not be pledged or transferred by way of security. Any seizure must be communicated to us without delay, specifying the name of the attaching creditor.
- d) If the realisable value of the security due to us exceeds the total of our claims against Buyer by more than 10% we shall insofar release the exceeding amount at Buyer's request.
- e) We shall be entitled to use at our discretion any Reserved Goods taken back for our satisfaction.
- f) Buyer shall hold the Reserved Goods in safe custody for us. Buyer shall insure the Goods Reserved on the usual scale against the usual risks such as fire, theft, flooding. Buyer herewith assigns to us its claims for any compensation due to Buyer from any insurance agency or other obligors for the damages mentioned above to the amount of our claims. We accept the above assignments.

6. Claims arising from defects / compensation for damages

- a) In case of justified complaints we shall effect subsequent performance – at our option – through rectification or replacement. Replaced parts shall become our property. We shall be responsible for the freight charges insofar as this does not lead to unreasonable expenses on our part. Where we are under obligation to remove defects, we shall bear all costs and expenses necessary for such purpose, in particular costs of transport, travel, labour, and materials; provided, however, that such costs are not increased by moving the purchased goods to a place other than the place of performance. In addition, Buyer shall have the right to pursue any other legal remedies available to Buyer and in particular to cancel the contract and to reduce the purchase price provided that the relevant legal requirements have been met. Article 377 of the HGB (German Commercial Code) shall remain unaffected.
- b) Buyer shall not be entitled to assert claims for damages against ourselves, our legal representatives and persons employed in performing an obligation for us or against our vicarious agents on whatever legal grounds, including, but not limited to those set down in Sections 280 et seq. of the German Civil Code (BGB), unless such claims are made for
- aa) injury to life, bodily injury or injury to health if caused by intentional or negligent breach of duty on the part of ourselves or any of our legal representatives or vicarious agents, **or**
- bb) for intentional or negligent breach of a material duty (fundamental breach of contract) on the part of ourselves or any of our legal representatives or vicarious agents. Material duties (cardinal duties) within the meaning of the above provisions are such duties whose due fulfilment orderer is entitled to rely on as they are of the essence of the contract. Material duties also include such obligations whose violation endangers the realisation of the intent of the contract, **or**
- cc) the fraudulent non-disclosure of a defect, **or**
- dd) for intentional or grossly negligent breach of duty on the part of ourselves or our legal representatives or vicarious agents, **or**
- ee) for damages asserted under the Product Liability Act.

In the event of breach of a material duty (fundamental breach of contract in accordance with sub-paragraph bb) due to slight negligence, the amount of claims for damages asserted against us shall be limited to the amount of the typical and foreseeable damage or loss occurred.

The legal provisions regarding the burden of proof shall remain effective.

- c) The above limitations shall not apply in cases where we have assumed a supply risk or a guarantee.

7. Statutory limitation of claims based on defects

Buyer's claims based on defects shall expire by limitation within one year unless:

- a) the product delivered by us is an item integrated within a building in accordance with that product's habitual manner of use, constituting the cause for the defectiveness of that building, **or unless**
- b) the claims are for compensation of expense under Section 478 para. 2 of the BGB, **or unless**
- c) the defect is due to intentional or fraudulent breach of duty on the part of ourselves or any of our legal representatives or vicarious agents.
- The cases listed in subparagraphs a) to c) and any claims for damages not excluded in accordance with Section 6 shall be subject to statutory periods of limitation. The legal provisions on suspension, interruption of the running of the statute of limitations, and on the renewed beginning of the statute of limitations shall remain effective.

8. Industrial property rights

If we develop or improve products for the Buyer, we shall retain all rights to such developments and improvements. All drawings, designs and model shall remain our property.

Where we deliver any item based on specifications or documents provided by Buyer, Buyer shall indemnify us against any industrial property rights of third parties.

9. Place of performance, place of jurisdiction and applicable law

- a) Place of jurisdiction for all claims, including those arising from bills of exchange and cheques, shall be Herford. However, we also reserve the right to make claims on Buyer at Buyer's place of jurisdiction.
- b) These Terms and Conditions shall be governed exclusively by the substantive law of the Federal Republic of Germany.