

## Sales and delivery terms

### 1. Validity of the terms:

- a) Our sales terms apply exclusively to all quotations, orders and agreements to the exclusion of all of the buyer's purchasing terms; differing agreements require our explicit written confirmation.
- b) Our terms are considered to have been accepted on issue of the order or acceptance of the delivery, even without written confirmation. The buyer recognizes them in the currently valid version as binding even for all future transactions.
- c) The law of the Federal Republic of Germany applies to all contractual relationships. The application of common UN purchasing law (CISG) is excluded.
- d) As the written form is required for declarations in these general terms and conditions, the written form is the same as the electronic form (§126a BGB) and the text form (§126b BGB).

### 2. Quotations:

- a) Our quotations are non-binding and subject to prior sale. They only become binding on immediate acceptance and our written order confirmation.
- b) Telephone, verbal and telegraphic agreements must be confirmed in writing to be effective.
- c) If delivery has already taken place, our invoice or delivery note is also valid as the order confirmation.
- d) The documents that make up the quotation, such as diagrams, drawings, weight or dimension statements and technical data are only binding if these are explicitly confirmed in writing. The delivering party retains the ownership and copyright to cost estimates, drawings and other documents. Documents normally or recognizably subject to confidentiality may only be made accessible to third parties with the agreement of the delivering party.
- e) The delivering party reserves the right to design and form changes to the item to be delivered during the delivery period if this does not represent a fundamental change to the item to be delivered when considering the notified use.

### 3. Delivery:

- a) A delivery deadline is only agreed if it is assured in the text of the order confirmation. The seller is obliged to comply with an agreed delivery deadline. The delivery deadline is considered to have been complied with if the goods are provided before the deadline or within 4 weeks of the end of the deadline from the delivering party's plant. The postmark or the confirmation of the forwarding company applies to the goods is valid for the delivery date.
- b) If the delivery deadline is exceeded by more than 6 weeks, the buyer has the right to set the seller an appropriate subsequent period. If the seller does not deliver by the end of the subsequent period, the buyer may withdraw from the contract using a written declaration.

The stated periods only lapse if they are explicitly excluded in writing. If the seller deliberately commits to delivery deadlines in a binding manner that he cannot comply with or deliberately does not comply with delivery deadlines assured as binding, he is obliged to reimburse the buyer for the damage incurred as a result of non-compliance. The seller is also obliged to pay damages if he with gross negligence agrees to fixed delivery dates whilst excluding the stated periods in writing and does not comply with these. In addition, claims for damages due to non-fulfillment or default are excluded. If the seller is unable to perform for reasons for which he is not responsible, force majeure or other unforeseen hindrances, e.g. riots, disruptions, strikes or lock-outs, the withdrawal right takes immediate effect even if these circumstances occur with sub-suppliers.

The obligation to comply with the delivery period requires the fulfillment of all contractual obligations by the ordering party.

- c) Should the delivery be delayed at the customer's request or should the customer be in default of acceptance, the customer will receive the costs resulting from the storage four weeks after confirmation of readiness for shipment. It will be charged a minimum 0.5% of the invoice amount for the object of purchase (excluding VAT) per month.

### 4. Transfer of risk:

- a) The delivery takes place from Trier.
- b) If the ordering party or their appointee does not accept handover by the stipulated delivery deadline, which the ordering party must declare at least a week before this deadline, the delivering party is authorized to send the item to be delivered at the expense and risk of the ordering party. In the event of handover and dispatch the risk transfers to the ordering party as soon as the item to be delivered is handed over by the delivering party to the ordering party or their appointee, transport company or freight forwarder. At the request of the ordering party and at his expense, the shipment is to be insured by the delivering party against breakage, loading, transport, fire and water damage.
- c) If the shipment is delayed as a result of circumstances for which the delivering party is not responsible, the risk is transferred to the ordering party on the day on which it was ready for shipment, but the delivering party is obliged to arrange insurance at the request and expense of the ordering party.
- d) Delivered items, even if they have insignificant defects, must be received by the ordering party, notwithstanding the rights in Section 7.
- e) Partial deliveries are permissible.
- f) We are authorized to subcontract with third party companies in particular to commission subcontractors with execution of the contract. We are authorized to do test drives and transfer cruises.
- g) As far as an acceptance of the object needs to take place, this concludes the transfer of risk. An acceptance is deemed complete when the customer is informed about the readiness of the acceptance and he's invited to do it or if the service or delivery has been completed and any eventual installation has been done. The acceptance of the object is deemed complete also if the customer is already using the object. If the customer doesn't inform the company within the first ten days using the object about a big deficiency which makes it impossible to work in the required degree, the acceptance of the object is deemed complete.

#### **5. Prices, payment, retention, offsetting:**

- a) Our prices are non-binding from the Trier factory and exclude statutory value-added tax and packaging. The buyer must bear the costs of transportation, including freight, loading, transport insurance, export and customs duty. If the buyer explicitly requests a special shipment type, he must bear the additional costs incurred.
- b) The calculation is in euros at the prices applicable on the date of delivery if no special agreements are reached.
- c) All payments are to be made in the currency calculated at the seller's location without deducting expenses.
- d) Only payments in cash made at the latest on receipt of delivery are considered to be cash payments. Transfers are considered to have been paid on the date they are credited and checks under the usual restrictions.
- e) If payments are made late, interest of 5 percentage points above the relevant base interest rate is charged.
- f) We reserve the right to accept drafts with the condition that they can be discounted. Discounting fees are charged to the buyer.
- g) Payment instructions, checks and drafts are only accepted after special agreement and on account of payment whilst calculating all collection and discount fees. Transfer and extension are not considered to be fulfillment.
- h) Such discounts as for cash payment, rebates or other reductions are only granted based on special written agreements. Discounts of all types lapse if at the time of payment other due claims are pending or if an application to start insolvency proceedings is made for the buyer's assets.
- i) The buyer may only offset against our claims or assert a retention right if his counterclaim is undisputed by us or there is a legally binding title. Notifications of defects and other complaints also do not give the customer any right of retention of money.
- j) Dispatch takes place against payment in advance or cash on delivery if a buyer does not have adequate references. If our claims appear to us to be at risk, we may request collateral.
- k) If the contract is subsequently terminated, the customer will be charged for services already provided, such as planning or design work.
- l) Werner Forst- und Industrietechnik Scharf GmbH has the right to adjust prices if cost increases occur after conclusion of the contract. This is particularly due to material price increases. On request, these can be explained to the customer.
- m) If further services, which were not planned at the time of contract conclusion, are necessary for the fulfillment of the contract or if the customer desires them, these will be charged additionally.
- n) The customer must pay all costs of the company which are caused by the customer by reporting unfounded defects.
- o) Independent of other agreement there will be no discount under a minimum order value of 100 €.
- p) Complaints about the goods and their return can only be accepted 4 weeks after delivery. Restocking fees of 10% of the order value can be charged.
- q) The customer has to pay for returns, in particular for replacement parts ordered by telephone or online. § 357 Abs. 6 S. 1 BGB.

#### **6. Retention of title:**

- a) Items to be delivered remain the property of the delivering party if nothing further is agreed below until complete payment of the debt including interest and costs; for existing liabilities from several deliveries until payment of the full debt. The retention of title remains in place even if the claim is included in a current invoice and the balance is drawn and recognized. The following extended retention of title (letters e-g) also applies to protecting a complete debt.
- b) If the ordering party does not fulfill the payment obligations, the delivering party is permitted to request the issue of the retained goods due to the protected claims and obtain satisfaction from these by means of compulsory enforcement or sale by commercial contract. The costs of compulsory enforcement and sale, in particular the repair costs, are charged to the ordering party.
- c) For the duration of the retention of title, at the request of the supplier the retained goods are to be insured by the ordering party against fire, water, theft and machine breakage under the condition that the rights from the insurance policy are with the delivering party and the insurance certificate is handed over to the delivering party. The ordering party has the obligation for the duration of the retention of title to keep the retained goods in proper condition and to implement repairs that become necessary.
- d) The ordering party may neither pledge nor hand over as security the retained goods. He must inform the delivering party without delay about pledges, confiscations or other uses by third parties. The costs of resolving such measures are charged to the ordering party.
- e) For as long as the retention of title is in place for the delivering party, the onward sale or transfer based on other legal reasons, even if there is a change of state to the retained goods, is only permitted to a buyer as a normal business process and only under the condition that the claims from the onward sale against the third party are considered to be assigned at the invoice amount of the initial sale of the retained goods by the delivering party to the ordering party plus 20% to the delivering party without this requiring a special assignment declaration in the individual case. If the retained goods are sold by the ordering party together with goods that were not delivered, whether without or after processing or connection, the assignment of the purchase price claim for the invoice value applies to the initial sale of the retained goods plus 20%.
- f) The ordering party is no longer authorized to collect the assigned claim on behalf of the delivering party from the time he no longer complies with the payment obligations to the delivering party and the delivering party withdraws the direct debit. From the time of the payment default, the delivering party may demand that the amounts to which the delivering party is entitled are paid into a trust account stipulated by the delivering party. He may also demand that the ordering party's debtors make payment to the delivering party and that the ordering party lists the delivering party as a debtor for the assigned claims for this purpose and notifies debtors of the assignment.
- g) If the retained goods are connected to other objects as per Paragraph 947 of the German Civil Code (BGB), Paragraph 947 BGB applies. If retained goods are connected with a main item owned by the ordering party under Paragraph 947 Section 2 BGB, the ordering party hereby gives the delivering party joint ownership to the whole item in line with the value ratio of the retained goods to the complete item and stores the whole item without charge for the delivering party.
- h) If the value of the collateral provided to the delivering party exceeds the claims by more than 20%, the delivering party is obliged at the ordering party's request to release collateral as selected by the delivering party.

#### **7. Liability for defects and deliveries:**

- a) There is no liability for used goods (§434 BGB). The following conditions apply exclusively to new manufactured goods.
- b) For defective deliveries including the non-existence of assured characteristics, the delivering party is liable under the exclusion of additional claims and rights no matter their legal basis for the duration of 12 months or 1000 hours of operation, whichever comes first, calculated from the date of delivery as follows. This does not apply to damage claims of the customer from injury to life, limb and health as well as grossly negligent breaches of duty in the name of the company, which become statute-barred after the legal regulations.
- c) All parts that, in the opinion and choice of the delivering party, are unusable, or for which the usability is significantly and adversely affected, as documented within the warranty period as a result of a circumstance related to the transfer of risk due to a defective construction, materials or workmanship must be improved or redelivered.
- d) The supplier alone takes the decision on where subsequent improvement takes place - in the plant, at a contractual workshop or location via a customer service assembler. The customer must provide the contractor with the contract object for repair at a location and period specified by the supplier.

The discovery of such defects must be reported to the supplier in writing without delay. Replaced parts are owned by the delivering party.

The right of the ordering party to assert claims from defects lapses 6 months after the prompt complaint.

- e) Optionally, an additional warranty can be extended to 24 months or 1500 hours, whichever comes first.

The delivering party may refuse to resolve defects if the ordering party has not fulfilled its obligations.

If the ordering party requests the resolution of a defect that is not recognized by the delivering party, the delivering party may make the resolution dependent on the advance payment of the costs expected to be incurred.

The ordering party is obliged to hand over the contested parts to the delivering party at his request.

The warranty conditions as for the original item to be delivered apply to the improved units or parts or spare parts delivered.

Claims for direct and/or indirect damages resulting from defects, if legally permissible, are excluded.

#### The liability for defects lapses:

- If the ordering party makes changes without the prior agreement of the delivering party
- For use and/or treatment that is not in line with the regulations, is defective, improper and/or negligent
- For non-observance of the operating instructions or stipulated operating data
- For incorrect and in particular excess strain
- For refusing insight into the whole plan or system
- For operating temperatures that are too low or high
- For the use of oils in unsuitable specifications or inappropriate resources and defective maintenance
- If the purchased item was repaired, maintained or supported by a business not approved by the manufacturer

Liability does not lapse if these facts could not have resulted in the defects that occurred.

Natural wear and tear are excluded from the warranty.

Technical consultations or assembly are conducted by our specialists to the best of their knowledge and ability.

Liability for subsequent damage is excluded if it was not caused by deliberate contractual infringements. Werner Forst- und Industrietechnik Scharf GmbH excludes the liability for damages that did not occur on the delivery item itself. Therefore a liability for lost profits and or other monetary damages or asset impairments is excluded.

The liability is limited to the function of the delivered contractual item. There are no liability claims for the correct planning of the contractual item in a complete system.

The buyer is only paid for exchanged parts or devices (motor, gearbox etc.) if the parts or devices submitted for exchange are complete and not disassembled. The seller may reject the return or exchange of the device in a disassembled or partially disassembled condition. Even if the seller accepts a disassembled device for exchange, no fee or credit note is due.

#### **8. Right of withdrawal by ordering party:**

- a) If delivery default as defined in Section 3 exists and the ordering party grants the delivering party who is in default an appropriate subsequent period with the explicit declaration that he will refuse to accept performance after this period, and if the subsequent period is not complied with due to the responsibility of the delivering party, the ordering party is permitted to withdraw.
- b) The ordering party also has a withdrawal right if the delivering party allows a subsequent period provided to him with a threat of withdrawal for the subsequent improvement or delivery relating to a defect for which he is responsible as defined by the delivery terms to pass without resolution due to his own responsibility. The ordering party's withdrawal right also exists if subsequent improvement or replacement delivery is impossible or the delivering party is incapable.
- c) The setting of a subsequent period is only binding for the delivering party if it is sent by registered letter. The withdrawal is only effective if it is declared within 2 months of the end of the subsequent period by registered letter.

- d) If a resignation is demanded by the customer, he must remunerate the deterioration of the value of the subject of the contract by the commissioning in monetary terms. This also applies if the defect triggering the withdrawal only arose after use or the processing of the contractual item by the customer, even if the latter acted with the utmost care.
- e) The maximum return period for end customers and spare part deliveries is two weeks including Sundays and public holidays.

**9. Availability of replacement parts:**

Spare parts are available for series and standard products for at least 15 years from the end of production.

**10. Place of fulfillment:**

The place of fulfillment for the delivery is Trier. The assembly location stated in our order confirmation is definitive for this.

The place of fulfillment for the services to be provided by the ordering party is always Trier.

**11. Court of jurisdiction:**

The court of jurisdiction for all disputes arising directly or indirectly from the contract, including for draft and check processes and proceedings for the issue of an embargo or injunction is Trier if no exclusive court of jurisdiction is stated. The delivering party is entitled to also select a court responsible for the ordering party.

**12. Validity:**

- a) If a provision in these terms is declared ineffective by a responsible authority, the other business terms remain in force.
- b) A gap thus created must be filled such as would have been done by the contracting parties if they had recognized the ineffectiveness of the relevant provision.