

## Conditions of Sale of HEWI G. Winker GmbH & Co. KG

As per 1.1.2005

### 1. General – scope

- (1) Our Conditions of Sale shall apply exclusively; we do not acknowledge conditions of the customer that are contrary to or deviate from our Conditions of Sale, unless we had expressly agreed to their applicability in writing. Our Conditions of Sale shall also apply if we unreservedly execute the delivery to the Customer while being aware of conditions of the Customer that are contrary to or deviate from our Conditions of Sale.
- (2) All of the agreements that are made between us and the Customer for the purpose of implementing this contract must be laid down in writing.

### 2. Offer – offer documents

- (1) If the order from the Customer qualifies as an offer in accordance with § 145 BGB (German Civil Code), we may accept it within 4 weeks. Our offers shall always be non-binding.
- (2) We reserve title and copyright to illustrations, drawings, calculations and other documents; these may not be made accessible to third parties. The Customer may not forward them to third parties without our express written consent.
- (3) Descriptions of our products shall merely be information about their nature and shall in no way constitute a guarantee of the goods' condition.

### 3. Prices – terms of payment – default

- (1) Our prices shall be deemed “ex works“ if nothing to the contrary is provided for in the order confirmation.
- (2) The statutory level of VAT is not included in our prices; it is stated on the invoice separately at its legal level on the date of invoicing.
- (3) The deduction of cash discounts shall require a special written agreement.
- (4) If our order confirmation provides for nothing to the contrary, the purchase price shall be payable immediately net (with no deduction). The Customer shall fall behind schedule if he fails to settle due payments no later than thirty days after receipt of an invoice or an equivalent demand for payment. We shall reserve the right to bring about the default by issuing a reminder scheduled after the due date at an earlier date. In derogation of sections 1 and 2, the Customer shall fall behind schedule if it is agreed that the purchase price should be paid on a specific or specifiable date and the Customer does not pay by this date at the latest.
- (5) If the Customer defaults on payment, we shall be entitled to demand default interest of 9 % above the prevailing base rate per year. If we are able to prove that greater loss or damage is caused by default, we shall be entitled to assert a claim for this.
- (6) The Customer shall have offsetting rights only if his counterclaims have been established legally, are uncontested or have been acknowledged by us. In addition, he shall be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.
- (7) If, after the contract has been concluded, circumstances arise which cast doubt upon the reliability of receivables from the Customer, we may demand payment in advance or rescind the supply contract.

### 4. Delivery period

- (1) The commencement of the delivery period that we specify shall presuppose the clarification of all technical questions. If nothing to the contrary is agreed, a delivery period specified by us shall be non-binding.
- (2) If we default on delivery for reasons beyond our control, the liability for damages that result directly from the delayed delivery shall be limited to the amount of the foreseeable loss or damage.

- (3) If the Customer grants us a reasonable period of grace after we have fallen behind schedule, he shall be entitled to rescind the contract after this extension period has lapsed. If a reasonable extension period has lapsed, the Customer shall be obliged to declare within a period of two weeks of the period expiring whether he is rescinding the contract or still insisting on its fulfilment.
- (4) If we are, over and above that, liable for compensation rather than performance, claims in the event of customary negligence shall be limited to the amount of the foreseeable loss or damage.
- (5) In the event of customary negligence we shall never be liable for consequential losses arising from the delayed or defaulted performance, particularly for lost profits of the Customer or other costs resulting from loss of production.
- (6) Compliance with our obligation to deliver presupposes the timely and proper fulfilment of the Customer's obligations.
- (7) If we prove that, despite the careful selection of our suppliers and despite the conclusion of the contracts on reasonable terms, we are not supplied in good time by our suppliers, the delivery period shall be extended by the length of the delay that is caused by the unpunctual delivery by the supplier. If it is impossible for the supplier to deliver, we shall be entitled to rescind the contract.
- (8) If the Customer defaults on acceptance or infringes other cooperation obligations, we shall be entitled to demand the loss or damage that we incur, including any additional expenses. In such cases, the risk of the accidental perishing or an accidental deterioration of the item being purchased shall pass to the Customer at such time as the latter defaults on acceptance.

## 5. Passing of risk – partial consignments

- (1) If the order confirmation provides for nothing to the contrary, delivery “ex works“ shall be agreed. The risk shall pass to the Customer when the item to be delivered leaves the works, even if there are partial consignments or we have assumed other performances, e.g. dispatch costs or delivery and erection. If a formal acceptance is to be carried out, this shall be authoritative for the passing of risk. It must be carried out without delay on the acceptance date, alternatively immediately after our notification of readiness to accept. The Customer may not refuse acceptance if an immaterial defect is evident.
- (2) In the dispatch or acceptance is delayed or fails to take place as a result of circumstances that cannot be imputed to us, the risk shall pass to the Customer from the date of the announcement of readiness to dispatch or accept.
- (3) Partial consignments shall be permissible if they are reasonable for the Customer. Since production does not permit compliance with exact numbers, we reserve the right to deliver 10 % more or less than the quantity ordered.

## 6. Warranty for defects – warranty limitation period

- (1) The warranty rights of the Customer presuppose that he has fulfilled his examination and defect notification obligations in accordance with § 377 HGB (German Commercial Code) properly within 8 working days.
- (2) If the item being purchased has a defect for which we were responsible, we shall be entitled to choose whether to rectify the defect or to deliver a faultless item.
- (3) If we are not prepared or able to rectify the defect or deliver a replacement, particularly if these are delayed beyond reasonable time limits for reasons for which we are responsible, or if the rectification of defects or replacement delivery fails in some other respect, the Customer shall be entitled to choose whether to rescind the contract or demand an appropriate reduction in the purchase price. When a reasonable extension period has lapsed, the Customer shall be obliged to declare within a period of two weeks of the period expiring whether he is rescinding the contract or still insisting on its fulfilment.
- (4) Should nothing to the contrary be stipulated below, further-reaching claims by the Customer – on whatever legal grounds – shall be excluded. We shall therefore not be liable for loss or damage that does not affect the delivered item itself; in particular, we shall not be liable for the lost profit or other pecuniary losses of the Customer. Should liability for such loss or damage nevertheless apply, damages claims shall be limited to the amount of the foreseeable loss or damage.
- (5) The exclusion of liability specified above shall not apply if the loss or damage was caused intentionally or through gross negligence. It shall also not apply if we have assumed a guarantee for a certain attribute of the item being purchased and this attribute is lacking.

- (6) Insofar as we negligently infringe an obligation that is material to the contract, our liability shall be limited to the foreseeable loss or damage. If claims on grounds of damages covered by our manufacturer's or product liability insurance are asserted, our liability for compensation shall be limited to the compensation covered in this insurance policy.
- (7) The warranty period shall be two years, starting with the delivery of the goods. This period shall be a limitation period and shall also apply to claims for compensation for consequential damage caused by defects if no claims arising from unlawful acts are asserted.

## 7. Securing reservation of title

- (1) We reserve the title to the item being purchased until all of the payments arising from the business relationship with the Customer have been made. Every time the Customer acts in a manner contrary to the terms of the contract, particularly when he defaults on payment, we shall be entitled to exercise our legal rights and take back the item being purchased. After taking back the item being purchased we shall be authorised to exploit it, with the exploitation proceeds being set off against the liabilities of the Customer, less reasonable exploitation costs.
- (2) In the event of attachments or other interventions by third parties, the Customer must notify us immediately in writing so that we can file an action in accordance with § 771 ZPO (German Code of Civil Procedure). Insofar as the third party is able to reimburse us with the legal and extra-judicial costs that such an action involves, the Customer shall be liable for the shortfall.
- (3) The Customer shall be entitled to resell the item being purchased in the proper course of business; however, he hereby assigns to us all of the receivables in the amount of the final invoiced sum (including VAT) that accrue to him vis-à-vis his customers or third parties from the resale, irrespective of whether the item being purchased was sold with or without being further processed. Even after this assignment, the Customer shall retain the right to collect this receivable. Our authorisation to collect the receivable ourselves shall remain unaffected by this. We undertake, however, not to collect the receivable for as long as the Customer fulfils his payment obligations from the proceeds received, does not default on payment and, in particular, if no application has been made to institute insolvency proceedings and payment has not been discontinued. If this is the case, however, we may demand that the Customer discloses the assigned receivables and their debtors to us, provides all of the information necessary for their collection and hands over the associated documents to us.
- (4) The processing or reconstruction of the item being purchased by the Customer shall always be carried out for us. If the item being purchased is processed using objects that do not belong to us, we shall become co-owners of the new item in the ratio of the value of the item being purchased to that of the other processed items at the time of processing. In other respects, the item resulting from the processing shall be governed by the same terms as the item being purchased that is delivered with reservations.
- (5) We undertake to release the collateral to which we are entitled at the request of the Customer insofar as the value of our collateral exceeds the receivables to be secured by more than 20 %; the selection of the collateral to be released shall be incumbent upon us.

## 8. Place of jurisdiction – place of performance

- (1) If the Customer is a company, the place of jurisdiction shall be the competent court in Spaichingen. We shall nevertheless be entitled to file an action against the Customer at the competent court in his place of residence.
- (2) Place of performance shall be Spaichingen if the order confirmation provides for nothing to the contrary.
- (3) The laws of the Federal Republic of Germany shall apply exclusively to this contract.