

# Sales and delivery conditions (AGB) of WEHA Ludwig Werwein GmbH, Wikingerstrasse 15, D-86343 Königsbrunn, Germany

The following conditions shall apply as agreed to for all deliveries:

Our sales and delivery conditions apply exclusively. Contrary or conditions on behalf of the buyer that deviate from our own sales conditions shall not be recognised, unless we have already agreed to their validity in writing beforehand. Our sales and delivery conditions shall also apply if we execute the delivery to the ordering party without objections and with knowledge of contradictory conditions or conditions that deviate from our sales conditions. Only written confirmation shall render decisions and agreements binding for us, even if they alter the content of the contract. Agreements that deviate from our terms of service shall only apply to the transactions for which they were explicitly agreed to. They shall not be retroactively effective nor shall they apply for future transactions, provided they are not confirmed in writing again.

## 1. Offer

Our offers are provided subject to change. The first offer, provided not otherwise agreed, shall be submitted free of charge. Additional design work shall only be free of charge if the order is legally confirmed as accepted. Provided we have not explicitly accepted an obligation or liability, offer documents such as figures, drawings, plans, material, weight and dimensions shall only be approximately authoritative. All offer documents shall remain our property and are subject to copyright. The offer documents may not be imitated, reproduced, made accessible to third parties or competitor companies, and must be returned to us immediately upon request. Design drawings will not be submitted. The submission of an offer shall not obligate us to accept an order.

## 2. Order

Obligations shall only be acceptable following our written confirmation of the order, which shall be authoritative for the type and scope of the delivery. The ordering party may not decline partial deliveries. If patterns, drawings, and models of the ordering party re the basis of our delivery, then the ordering party shall assume liability for ensuring that the protective rights of third parties are not injured. In such cases, we shall be entitled to withdraw from the contract. Possible damages must be compensated by the ordering party. Protective equipment in the context of accident prevention regulations shall be included as has been agreed. Operating materials and lubrication material are not included in our scope of delivery. For electronic devices, the general conditions of the supplier of these products shall apply.

## 3. Prices and payment terms

Our prices are specified ex works, not including packaging. The respective valid prices applicable on the day of the delivery shall be calculated. The packaging shall be calculated at the cost price and may not be returned. Assembly is not included in the purchase price, unless a separate written agreement has been made. When setting up machines and systems, the ordering party must provide helpers, lifting equipment, and all materials required for assembly free of charge at the set-up location. The transport of heavy parts at the construction site is also the ordering party's responsibility. Masonry, scaffolding, finishing carpentry, painting, and glass work shall be assumed by the employer. If the costs for assembly are included in the purchase price, then only the costs for regular normal working times shall be included. Additional costs caused by overtime will be invoiced additionally. Payments must be made as follows, provided nothing else has been agreed to: 1/3 upon ordering, 1/3 upon notification of readiness for delivery, and 1/3 four weeks following notification of readiness for delivery. If it has been agreed that a partial payment must be paid following delivery of the machine, then delivery shall apply as the day upon which the goods are delivered to the company grounds of the ordering party, without assembly, commissioning, and instructions. Interest shall be applied to payments after they become due without any prior reminder at 8 percentage points above the respective applicable base interest rate according to Section 247 BGB, provided the ordering party is a company. The application of interest shall not exclude the enforcement of further damages due to arrears. The acceptance of bills of exchange and cheques shall not be permitted as payment, rather only their redemption for cash. Discount, bill stamps, domicile, and collection expenses shall be borne by the ordering party unless otherwise agreed to in writing. A notice of defects shall not release the ordering party from payment obligations.

## 4. Reservation of title

- We reserve title of property to the goods delivered by us until the ordering party has settled all of our claims resulting from the transaction, especially until the outstanding balance has been cleared. In case the order violates the contract, especially in case of payment in arrears, we shall be entitled to take back the goods. If the delivered goods are taken back by us, this shall not represent withdrawal from the contract, unless we have explicitly declared this in writing. If we pledge the goods delivered by us, this shall always represent a withdrawal from the contract.
- The ordering party shall be obligated to treat the objects delivered by us with care until the complete transfer of ownership to him, and he shall also be obligated to ensure these sufficiently at his own cost against fire, water, and theft at the replacement value.
- In case of pledging or other third-party interventions, the ordering party must inform us of this immediately in writing so that we may take legal action as per Section 771 ZPO. In case the third party is not capable of repaying the legal and out-of-court costs of this legal action to us according to Section 771 ZPO, then ordering party shall be liable to us for any resulting costs.
- The ordering party shall be entitled to sell the purchased item in a regular business transaction; nevertheless, he hereby assigns all claims to us in the amount of the final invoice agreed to with us (including value added tax) that result from the further sale against the recipient or third parties, regardless of whether the delivered objects have been sold with or without further processing. The ordering party shall also be authorised to collect these claims after assignment. Our authorisation to collect the claim ourselves shall remain unaffected by this. Nevertheless, we shall not be obligated to collect these claims as long as the customer is not in arrears for payment obligations resulting from the revenues gained, and in particular as long as no application for the opening of insolvency proceedings has been filed or payments have not been suspended. However, if this is the case, we may request the ordering party must indicate the assigned claims and their debtors to us, to indicate all of the information required to collect them, to provide us all of the associated documents, and to inform the debtor (or the third party) of the assignment.
- Processing or conversion of the delivered goods shall always be completed by the ordering party for us. The ordering party's entitlement to the delivered object shall persist for the converted object. If the delivered goods are processed together with other objects that do not belong to us, then we shall acquire joint ownership of the new object in proportion of the objective value of the object delivered by us to the other processed objects at the time of processing. The reservation of title for object resulting from processing shall remain the same as for the object delivered.
- If the delivered object is mixed together with other objects that do not belong to us in a way that makes them inseparable, then we shall acquire joint ownership of the new object in proportion of the objective value of the object delivered by

us to the other mixed objects at the time of mixture. If mixture takes place in a way that the object of the ordering party may be considered the main object, then it shall hereby be agreed that the ordering party shall transfer proportionate joint ownership. The ordering party shall safeguard the resulting sole ownership or joint ownership for us.

- The ordering party shall also assign the claims to us as a security of our claim against him, which result against a third party via the connection of the object delivered by us with a piece of real estate.
- We shall be obligated to release securities available to us upon request by the ordering party, provided the resulting value of our security exceeds the claims to be secured by more than 20%; the selection of the securities to be released shall be our decision.
- If the ordering party falls completely or partially into arrears regarding his obligation to pay or the redemption of bills of exchange or cheques that are due, excessive debt or cessation of payment occurs or a settlement petition or bankruptcy application is submitted, then we shall be entitled to recover all goods for which we still reserve title of property; we may also enforce additional rights resulting from the reservation of title; the same shall also apply to significant degradation of economic conditions of the ordering party. The ordering party shall ensure us and our agents access to all of his business premises during the transaction period. The demand to release or relinquish property does not represent a withdrawal from the contract. We shall be entitled to salvage the reserved goods with the care of a prudent commercial agent and enjoy the proceeds offset by any open claims.

## 5. Delivery deadlines

The ordering party shall not be entitled to withdraw from the contract if delivery delays or limitations due to force majeure, uselessness of an important workpiece, operative disturbances, production interruptions due to disputes resulting from labour laws, or delayed or sporadic delivery of raw materials or semi-fabricates, or due to other reasons. Covering purchases at our cost will not be admitted. In the cases named above, the delivery deadline shall be extended appropriately. This shall also apply in case these circumstances occur for sub-suppliers. The beginning and ending of these obstacles shall be indicated to the ordering party by us as soon as possible in important cases. The delivery deadline shall begin upon sending of the order confirmation, however not prior to provision by the ordering party of documents, approvals, and authorisations, and not prior to clarification of all technical details and receipt of the agreed advance payment. The notification of readiness for delivery shall be equivalent to delivery. If delivery is delayed upon request by the ordering party, then he shall be invoiced for the costs resulting from storage following one month after notification of readiness for delivery, and for storage at our factory, at least one half percent of the invoice amount shall be invoiced for each month. The ordering party has the option of proving that damages or reduced value have not occurred or is much lower than the flat rate. We shall be entitled to utilise the object of delivery in another way following unsuccessful expiry of an appropriate grace period and deliver to the ordering party within an appropriate grace period. If delivery is delayed upon request by the ordering party, then this shall not affect the agreed deadline for payment.

## 6. Delivery and transfer of risk

Delivery shall take place at the basic risk of the ordering party. This shall also apply if we organise delivery or are obligated to bear material costs, in which case we may freely determine the type of delivery and the route, provided nothing else has been agreed to in writing. The packaging shall be selected by us according to our knowledge and as we see fit. Nevertheless, liability for packaging defects or damages shall not be accepted by us. The goods prepared for delivery must be received immediately, otherwise, we shall be entitled to store them as we see fit at the cost and risk of the ordering party and to invoice them as delivered and to calculate storage fees. Transportation insurance shall only be included upon explicit request and at cost of the ordering party. The risk shall also transfer to the ordering party upon readiness for delivery.

## 7. Refusal to accept or delay by ordering party to accept or pay

If the ordering party falls into arrears with acceptance of the goods or with payment of the agreed advance payment, or if the ordering party refuses acceptance of the goods prior to the delivery deadline, then we may demand damage compensation due to violation of obligations (Section 280 BGB) or damage compensation due to delay in performance (Section 280 BGB in conjunction with § 286 BGB) following specification of an appropriate grace period, which must be at least 2 (two) weeks. In this case, we may demand 30% of the agreed net purchase price as a flat rate fee for damage compensation without providing proof of damages resulting from the violation or delay, provided that the ordering party is a company. The ordering party must nevertheless prove specifically that none or only significantly lower damages have resulted.

## 8. Guarantee

We shall be liable as follows for property and legal defects:

- We shall be entitled to correct damages or redeliver as we see fit within the scope of the ordering party's right to supplementary improvement, provided that the ordering party is a company. In case of a purchase of specific goods, the supplementary performance shall be reduced to correction of defects. Replaced parts shall transfer to our property.
- If the purchase for both parts is a commercial deal, then the ordering party must examine the goods immediately following receipt, provided this is feasible according to regular course of business, and, if a defect becomes apparent, notify us immediately in writing. If the ordering party fails to indicate this, then the goods shall be considered accepted, unless defects are involved that were not able to be detected during inspection. Furthermore, Sections 377 ff. HGB shall apply.
- Liability shall not be accepted for damages that result from the following circumstances: Unsuitable or incorrect use, unsuitable or incorrect or unplanned execution of foundation construction work or comparable preparation work on behalf of the customer, natural use (wear), incorrect or negligent treatment, unsuitable operating materials or replacement materials, unsuitable construction grounds, mechanical, chemical, electro-chemical, or electrical influences, provided we are not responsible for this.
- The right of the ordering party to enforce guarantee claims due to defects shall expire following one year; this period shall begin upon delivery of the object to the ordering party.
- In case of purchase of stone processing machines, the contractual parties shall hereby agree that the ordering party shall only use these in single-shift operation. Single-shift operation includes maximum 2,000 machine hours per year. We shall not be held liable for damage or premature wear to the machine that results from the ordering party of the machine operating the machine in excess of 2,000 hours per year.
- With regard to one and the same defect, we shall be entitled to execute three attempts at supplementary correction at our own cost, provided that the ordering party is a company.

- In order to complete all of the measures we deem necessary to correct the defects, the ordering party must allow us the required time and opportunity following notification to our company, otherwise, we shall be released from liability for defects. Only in urgent cases of danger to operating safety and to prevent disproportionately excessive damage, in which case we must be notified immediately, or if we fall into arrears regarding correction of defects, then the ordering party shall be entitled to correct the defects himself or have them corrected by a third party and to request compensation of the required costs from us.
- With regard to direct costs resulting from the correction of defects or supplementary delivery and provided the notification of defects are found to be justified, we shall bear the costs of the replacement parts delivery including shipping and appropriate costs for installation and removal, and, if this is able to be requested cost-effectively depending on the individual case at hand, costs for possible provision of installation technicians and service providers. The ordering party shall bear other costs, provided that it is a company.
- The liability for possible consequences resulting from any changes or repair work completed incorrectly by the ordering party or third parties and without our prior consent shall be excluded.
- Further claims on behalf of the ordering party, especially claims to compensation for damages that did not result to the delivered object itself shall be excluded. This liability exclusion shall not apply in case of intent, gross negligence, or culpable violation of important contractual obligations. The liability exclusion shall also not apply in those cases of liability applicable to personal or property damages according to the Product Liability Act due to defects of the object of delivery. In the event of culpable violation of important contractual obligations, we shall only be liable for contractually typical, reasonably foreseeable damages, however not for subsequent damages caused by defects, including lost profits, provided that the ordering party is a company.
- We may refuse to correct defects if the ordering party is in arrears with regard to his obligations, especially with regard to payment obligations.
- The guarantee rules stated above shall only apply to the purchase of new factory goods. The purchase of used machines shall exclude liability for material defects as far as legally permitted.
- Special specifications for machine including software controls:
  - The guarantee period for the delivered machine and control software shall amount to one year. This shall begin upon delivery. In case of a formal acceptance, upon the date of acceptance.
  - In principle, the liability is limited to types of damage that typically affect it. Atypical events are not included in this case.
  - Liability for consequential damages including loss of profit shall be excluded if the ordering party is a company.
  - Liability due to the Product Liability Act shall remain unaffected by this.

## 9. Withdrawal by the supplier

In case of unforeseeable events within the context of item 5 of these sales and delivery conditions and provided they have a significant effect on our operations, we shall be entitled to withdraw partially or completely from the contract. Degraded financial conditions on behalf of the ordering party or facts that become known later that speak against the credit rating of the ordering party shall also entitle us to withdraw from the contract. If we withdraw from the contract for the reasons indicated above, then the ordering party shall not have any claim to compensation for damages.

## 10. Court of jurisdiction and choice of law

- The contracts and legal actions that have led to their completion and to their execution shall be subject to the laws of Germany, with the exclusion of harmonised legal regulations, especially CSIG (Convention of Contracts for international Sale of Goods).
- The court at Augsburg, Germany shall be responsible for all disputes resulting from this contractual relationship, provided the ordering party is a commercial agent, a legal person subject or public law, or a publicly legal special asset. We shall also be entitled to take legal action at the headquarters of the ordering party.

## 11. Severability clause

Should any of the provisions of this contract be or become invalid, then this shall not affect the validity of the remaining provisions. The statutory provisions shall then apply (Section 306 I BGB).

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