

General terms and conditions of business of Wassmer Spezialmaschinen GmbH 08/2008

I. Scope

1. These general terms and conditions of business apply to all contracts entered into between us and businesses within the meaning of Article 14,310, section 1 of the BGB (German Civil Code), with regard to the sale of goods.
2. These terms and conditions apply exclusively. Any conditions at variance imposed by the customer – even if not specifically contradicted - place us under no obligation, unless expressly acknowledged by us. Our terms and conditions also apply in the event that we unreservedly carry out the supply in the knowledge of contradictory or variant terms imposed by the customer.
3. In the case of existing current business relationships our terms and conditions of business shall also apply to all future contracts made with the customer, unless otherwise agreed with the customer.

II. Quotations, prices, payment, discounting, offsetting, retention

1. A purchase order signed by the customer is a binding offer unless otherwise agreed.
2. (a) We may accept a customer's offer within ten days.

(b) Following the stated acceptance of the customer's offer [to purchase] we are authorised to withdraw from the contract if we are unable to effect the supply of the goods due to force majeure, long-term strike, shortage of raw materials or equivalent reasons.

(c) The mutual right to disengagement from the contract (rescission) for breach of contract remains unaffected by (b).
3. We reserve all property rights and copyrights over illustrations, drawings, calculations and other (quotation) documents. Such documents may be handed to other parties only with our express permission. The same applies to documents, data and similar, designated as "confidential". The above also applies correspondingly to customer documents handed to us with the proviso that the documents may be made available to such third parties as we may use to carry out the contract.
4. Where we contract to supply an item for which our firm is not sufficiently equipped to manufacture such item – whether with regard to material resources or in terms of personnel - we are entitled to transfer the services to sub-contractors, without the need to seek agreement from the customer. The appointment of sub-contractors shall not affect the contract between us and the customer, and in particular there is no change to the parties to the contract.
5. We reserve the right to supply an article equivalent in type and quality to the ordered item at the same price, or a later model based on technical progress, provided that this is reasonable for the customer.

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6. Our prices apply ex our place of business (Steinmattenstr. 5, D-79423 Heitersheim), and exclude transportation and unloading costs, unless otherwise stated on the confirmation of order. Value added tax is not included in the sales price stated; this is shown separately at the rate applicable on the date that the invoice is produced.
7. In the event that after the contract has been signed, and through no fault of our own, our costs should increase or go down – in particular in the purchase of materials or as the result of collective wage agreements - we reserve the right to adjust our prices to the new circumstances. We will provide evidence to customers of these changes upon request.
8. The purchase price is to be paid on collection or on delivery. In the case of payment on account the purchase price is due for payment in 14 days from receipt of the invoice, unless an extension has been agreed, or other agreement was stated on the confirmation of order.
9. The deduction of a discount is permitted only on the basis of an express agreement. An undertaking to give a discount shall end if the customer falls into arrears with other existing payment obligations also due to us.
10. The customer is entitled to offset payments only if we have recognised the counterclaim as being undisputed or established in law.
11. The customer has a right to withhold payment only on the basis of counterclaims based on the same contractual relationship.

III Place of performances, despatch, partial deliveries

1. Unless otherwise stated in the confirmation of order, we are under an obligation to supply the goods "ex works". The place of performance is therefore our place of business.
2. Goods are despatched at the expense of the customer. At the customer's request we insure the consignment under a transport insurance policy.
3. Separate agreements apply to the return of the packaging.
4. A delivery agreed with the customer covers delivery to the premises, provided that it is possible to do so on roads suitable for traffic. The customer is responsible for unloading the goods. Should we have undertaken to carry out the unloading, the unloading will take place at the heavy goods vehicle, or within the radius of the crane. The customer must ensure that sufficient parking space is available for this purpose.

IV. Delivery date, partial deliveries, delay, delay in acceptance

1. For us to keep to the delivery date stated requires that all technical queries should have been clarified.
2. Further, our obligation to supply requires the timely and proper fulfilment of all obligations by the customer. We reserve the right of the defence of an unperformed contract.

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3. We are entitled to make partial supplies and services, provided that this is reasonable for the purchaser.
4. If the contract made with the customer is a firm deal (articles 286 sect. 2 no. 4 BGB, 376 HGB [German Commercial Code] and should we fall into arrears, we are liable under statutory provisions, whereby our duty to compensate is restricted to the predictable damages typical of such contracts. The same applies if, as a result of our delay in supplying the goods, the customer is entitled to invoke the discontinuance of its interest in a continuation of the contract performance.
5. Should we fall into arrears and this is due to our deliberate or grossly negligent breach of contract, we shall be liable in accordance with the statutory provisions. In the event of our grossly negligent breach of contract, our liability for damages compensation is limited to the predictable damages typical in such cases.
6. In the event that our delay in performance should affect or concern the breach of a contractual obligation, we are liable in accordance with statutory provisions; this limits our liability for damages to predictable damages typical of such cases.
7. Otherwise we shall be liable to pay a fixed-rate delay penalty of 0.5% of the value of the goods for each full week of delay for which we are to blame, limited in total, however, to maximum 5% of the value of the goods.
- 8 (a) Further legal claims and rights by the customer are unaffected by the above conditions.

(b) Furthermore the distribution of the burden of proof is unaffected thereby.
9. A fault by our representatives or agents will be attributed to us <in each case as appropriate>.
10. Should the customer delay in accepting the goods, or culpably breach any other duty of co-operation, the statutory provisions shall apply.

V. Material defects, warranty, defect liability, period of limitations

1. Any non-compliance between the sample and the purchased item with regard to structure and colour that are inevitable or to be expected of the nature of the purchased item, and which are reasonable to the purchaser, shall not constitute a material defect.

2. In cases of doubt, the technical datasheets <the operating and user instructions> take priority over any information given by us in the form of non-binding recommendations.

3. Statements made in brochures, descriptions and documents attached to the contract form no basis of any guarantee of quality or durability, unless expressly stated as such, or accepted by us.
4. Should as a result of a lack of guaranteed quality or durability, damages should arise beyond the purchased item, we shall be liable for this regardless of the regulations stated below, if the compensation for such damages is included in the guarantee declared in each case.

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5. Within the scope of article 377 of the HGB the customer is subject to the duty of inspection and disclosure as stated in that article.

6. Over and above Article 377 of the HGB the customer must inspect the goods immediately upon receipt and must point out any obvious defects to us within ten days, otherwise recourse to such defect is refused.

7. (a) If within the date of limitation, a defect appears on the purchased item – we are under an obligation – provided that we do not refuse to do so on the basis of the law – to rectify the matter, whereby the purchaser may choose whether this should be by repairing the fault or by supplying new goods.

(b) The purchaser must grant us a reasonable period to carry out such rectification, during which period no reduction in the price (diminution) or cancellation of the contract may take place.

(c) The costs associated with rectification (such as transportation, the cost of materials and labour) shall be payable by us, provided that such are not increased by the fact that the purchased items have to be brought to a place other than the place of performance.

(d) In the event that the rectification work should fail, the purchaser shall be entitled, at its choice, either to have a reduction in price or to cancel the contract. Cancellation of the contract and a reduction in the purchase price shall be defined as stated in statutory provisions. This does not exclude any claim to damages by the customer.

8. If the customer is entitled to a claim for damages, which have been caused by deliberate or grossly negligent behaviour by us, we shall be liable in accordance with statutory provisions. Section IV, number 9 applies accordingly. Unless we are charged with deliberate breach of contract, our duty of liability is limited to typically predictable damages.

9. (a) In the event that we are culpably in breach of a substantial contractual duty, we shall be liable to pay compensatory damages according to statutory provisions.

In this context a contractual duty is essentially where the customer has relied upon and had a right to rely upon its performance. Provided that we are not in this respect accused of deliberate conduct, our duty of compensation is limited to the typical predictable damages that may occur. The distribution of the statutory burden of proof is unaffected hereby.

(b) Clause (a) applies accordingly to claims by the customer for damages in place of the performance.

10. The period of limitation for making a claim for defective goods is, within the meaning of Article 438, section 1. no. 3 of the BGB, twelve months from the date of transfer of risks.

VI. Overall liability

1. We are liable for impairment to life, physical injury and the health of the customer in line with statutory regulations. The same applies to damages that are eligible for compensation in accordance with the Product Liability Act.

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2. (a) Any liability for damages going further than that provided in Section V and in sub-section 1, such as slightly negligent breach of insignificant contractual obligations is excluded without regard to the legal nature of the claim made.

(b) Paragraph (a) includes in particular a tortious claim for compensation for material damages as set out in Article 823 of the BGB, unless it is due to our deliberate or grossly negligent behaviour.

3. The above sub-section 2 also applies in the event that the customer, demands reimbursement for expenditure to no avail, in place of making a claim for damages instead of performance.

4. To the extent that our liability is excluded or restricted, this applies also to the personal obligation to assume liabilities of its staff, employees, workers, representatives and agents.

VII. Reservation of property rights

1. Until all claims already existing at the from this contract have been met, including claims arising from follow-up orders, subsequent purchase orders, and purchase orders for spare parts, we reserve property rights over the goods. In the event that we agree with the customer that the debt for the purchase price shall be settled by bill of exchange, the reserved property right extends until the bill of exchange accepted by us has been redeemed by the customer and does not expire at the time that we credit the cheque received.

2 (a) The customer must handle the goods to which we reserve the property rights with care, and must insure them sufficiently at their "as new" value, at its own expense, in particular against the risks of fire, water, and theft. The customer must arrange for the necessary maintenance and inspection work to be carried out in a timely manner, at its own expense.

(b) The customer shall inform us in writing without delay of any garnishment orders or other rights of seizure by third party over the goods to which we retain title, and shall indicate to such third parties that the goods are our property. The customer must reimburse us for all damages and costs arising as the result of a breach of this obligation.

3. (a) In the event of a breach of contract by the customer, namely a delay in payment, we shall be entitled, having previously set a deadline for payment without result – and provided that this is not legally superfluous – to take back the goods to which we retain title at the cost of the purchaser, and such shall be deemed to be a cancellation of the purchase contract.

(b) Once the reserved goods have been taken back, we are authorised to realise them. The yield from such realisation – less reasonable realisation costs - shall be offset against the customer's debt.

4. (a) The customer is entitled to dispose of the reserved goods as part of his proper and normal business processes. The claims arising from the onward selling of the reserved goods or other claims arising therefrom are assigned to us at the time of

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entering into the contract in the amount of the gross amount (including VAT) of our claim; regardless of the amount for which the sold item was sold on whether in a processed or unprocessed condition. We accept such assignment.

(b) Despite, and following, such assignment, the customer is revocably entitled to recover the claims assigned to us in its name and on its account. For us to revoke such entitlement requires a material reason and shall cease, provided that the customer meets its payment obligations towards us, does not fall into arrears, and makes no application to institute a composition or insolvency procedure over its assets.

(c) By exercising the revocation as stated in (b) we may demand that the customer should state to us the assigned claims together with their debtors, disclose the assignment to them, and hand to us the necessary documentation to recover them ourselves.

5. (a) The processing or restructuring of the purchased item by the customer will always be carried out for us.

(b) If the purchased item has been processed with other items, not emanating from us, we shall acquire co-ownership rights in the new item in a ratio of the value of the purchased item (gross purchase price) to the other materials or objects used at the time of the processing.

(c) Otherwise, the same applies to the item resulting from the process as to the purchased item to which we hold property rights.

6. (a) In the event that the purchased item has been combined or merged with other items not emanating from us, 5 (b) shall apply accordingly.

(b) If in the case of 6 (a) the customer's item is considered to be the main item, it is hereby agreed that the customer shall allocate to us the property rights in the proportion of the ratio of the value of the purchased item to the main item. The customer shall safeguard the co-ownership thus granted on our behalf.

7. To assure our claims asserted against the customer, the customer shall also assign to us such claims in the extent of the gross purchase price, that have arisen against a third party as a result of the purchased item being combined with a plot of land. Section 4 (b) shall apply accordingly.

8. Upon request by the customer we shall release the securities pertaining to us to the extent that, and at our choice, the achievable value of our securities may exceed our assured claims by more than 10%.

VIII. Work delivery contract, assembly services

1. These conditions, together with the supplementary statutory regulations, also apply to contracts of which the subject is the supply of items to be manufactured by us, or movable objects to be produced by us.

2. If, within the contract, we have contracted to handle the assembly of the purchased item and should we carry out the assembly in an improper manner, the purchaser's rights shall be defined in accordance with these terms and conditions, and – in

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supplementation thereof – the commercial law and statutory provisions, where the ownership and property rights to the purchased item form the central basis of the contract, our assembly activities are subsidiary to such, and further, have not been effected on existing property of the customer – land or building.

IX. Limitations of representation, legal authority, place of jurisdiction, supposition of completeness

1. Only the directors - and no other employees of Wassmer GmbH - are authorised to make verbal undertakings or to enter into verbal agreements at variance from the contract entered into under the principles of these General Terms and Conditions.
2. Contracts entered into on the basis of these general terms and conditions are subject exclusively to the law of the Federal Republic of Germany. In particular the UN Sales Convention for the International Sale of Goods does not apply.
3. All disputes arising from contracts made with commercial traders shall be addressed to the court of jurisdiction at our place of business, otherwise the statutory provisions shall apply.
4. All agreements made between us and the customer in the process of entering into the contract shall be stated in writing in the contract, these General Terms and Conditions of Business, and in any confirmation of order issued by us.