

General Terms and Conditions of Supply/Delivery and Payment of Weitmann & Konrad GmbH & Co. KG

1. Scope

These terms and conditions of supply/delivery and payment shall apply for transactions with entrepreneurs exclusively. Our general terms and conditions of supply/delivery and payment shall apply exclusively. They shall also apply to all and any future business transactions, even if they are not expressly agreed again. Their deviating terms and conditions shall not apply; they are herewith contradicted.

2. Offer, Order Confirmation, Duty to provide Information

2.1 Our offers shall be subject to change and unbinding.

2.2 In case we have not accepted your order by delivery, we shall retain the right to confirm orders placed with us either in writing, by fax / computer fax or by email. In case we confirmed an order, it shall only be our order confirmation that is decisive for the subject terms of the contract.

All and any supplements, changes, subsidiary agreements or oral statements shall require written confirmation sent by fax / computer fax or email to be legally valid.

2.3 You shall undertake, as soon as possible during the offering stage, to inform us on any unusual demand/exposure, intended use of special kind, as well as on increased risks that could incur by you using our supplies or performances.

2.4 Until the transfer of risk, you shall be obligated to care for all and any generally applying regulations, technical and physical specifications and regulatory requirements in accordance with the declaration of materials being complied with.

3. Prices

Our prices shall be stated ex works Leinfelden-Echterdingen, excluding packing and packaging, travel and transportation cost, insurance and customs duty. If not otherwise confirmed, our prices valid on the date of conclusion of the contract plus statutory value added tax applicable at that time shall be invoiced. If more than 4 months are between the conclusion of contract and the delivery, we shall be entitled to invoice the net list prices valid on the date of delivery plus statutory value added tax. The prices stated on our price lists are regarded customary and adequate in our place of business.

4. Scope of Delivery, Partial Deliveries, Authority to Replace

4.1 Either our unchanged offer or our order confirmation shall be decisive for our scope of performance. Partial deliveries and partial performance shall be allowed as far as reasonable for you.

4.2 If a product is not in stock any longer, we shall replace it by a similar product of the same value. If you don't agree, please note this on your purchase order.

4.3 Adherence to prices agreed for our supplies and performances shall require that the items on which the agreement is based, remain unchanged and can be rendered without any hindrances for which the customer is responsible. Any subsequent supplements and changes shall require to be agreed in writing. You shall pay in addition for any additional efforts caused by this.

5. Due Date for Payment

5.1 If not otherwise agreed, our invoices shall be paid immediately after delivery or completion, without any deductions.

5.2 If the delivery is delayed for reasons for which you are responsible, then invoicing shall be done on notification that we are prepared to deliver, at the earliest, however, on the originally agreed date of delivery.

5.3 If you are in delay with paying any of our invoices, then all the other invoices still unpaid shall become due for payment immediately.

6. Right of Set-Off, Right of Retention, Prohibition of Assignment, Payment by Cheque, Direct Debit Mandate

6.1 You shall only be entitled to rights of set-off or retention if your counterclaims are final, undisputed or acknowledged by us. You may, however, claim such rights only if your counterclaim is based on the same contractual relationship.

6.2 You shall not be entitled to assign any claims, regardless of kind, from our business relationship to third parties.

6.3 Cheques shall only be regarded accepted if covered.

6.4 For SEPA direct debit mandate / SEPA direct debit mandate for companies: In order to facilitate the payment transactions and to accelerate the orders handling, the normal 2-week period for the notification before directly debiting a payment due can be reduced to up to one day before debiting.

7. Risk of Loss

Even if we pay for transportation and dispatch of a supplied good, you shall bear the risk of loss from the time when the delivery leaves our works or distributing warehouse. You may take out transportation or other insurance cover at your cost.

8. Redemption Provision

If you do not provide for a redemption provision, we shall be allowed to do so. Section 366 Civil Code (BGB - Bürgerliches Gesetzbuch) shall be waived.

9. Transfer of Risk

In as far as the risk had not yet passed to you before, the risk shall pass to you as follows, at the latest:

9.1 Transfer of Risk on Collection, Loading, Delivery

The risk shall pass to you as follows: Either on collection, loading or on delivery to the carrier or forwarder, independent of us dispatching or you collecting, whether we or you assign third parties and independent of whether dispatch is done carriage paid, freight forward or against costs lump sum, and also if partial deliveries are made.

9.2 Transfer of Risk on Default of Acceptance

On delay in regard to the above mentioned facts and circumstances for which you are responsible, or in as far as you are in default of acceptance for any other reason, the risk shall pass to you on notification of preparedness to deliver.

10. Securities

You shall grant us the following securities until payment of all and any claims, irrespective of which cause in law, we are entitled to against you now and in future:

10.1 Retention of Title

All and any goods supplied by us shall remain our property until completely paid and all and any claims from the business relationship cleared (goods subject to retention of title). This shall also apply to disputed claims and/or conditional claims. You shall be entitled to process and sell the goods in the normal course of business as long as your payments are not delayed.

On conduct contrary to the terms of the contract, notably on delay in payment, we shall be entitled to take back the goods that are subject to the retention of title if we granted a reasonable period for payment and we rescinded the contract upon unsuccessful expiry. The statutory provisions on the dispensability of appointment of a date (*Entbehrlichkeit der Fristsetzung*) shall remain unaffected.

10.2 Prolonged Retention of Title

Already now, by way of security, you assign us to the full extent the claims receivables from the further sale or any other cause in law in regard to the goods that are subject to retention of title. We herewith accept the assignment. In as far as we include our claims in an account current relationship with you, the assignment in advance shall also extend to the relevant claim of the balance.

You shall be obligated, on request, to give us the information we require for claiming and to provide all and any required documents. Other disposals, notably pledging or transferring by way of security in regard to our goods that are subject to retention of title shall not be allowed.

If your assets deteriorate or if you become insolvent, the entitlement to sell our goods which are subject to retention of title shall expire. In this case, you may only sell if you grant us reasonable security in advance.

10.3 Authorisation to Directly Debit, Cancellation of Direct Debiting, No Other Assignment, Notification on Access by Third Persons

10.3.1 We authorise you in a revocable way to directly debit the claims assigned for our account, in your own name. This direct debit mandate can only be revoked if you are in delay with your payment obligations or if we learn about protest of cheques or bills of exchange, suspension of payments or any other negative information about you.

10.3.2 You shall not be entitled to other assignment. You shall be entitled to collect these claims as long as you fulfil your payment obligations. You shall notify us immediately on any garnishment and other access of third parties by which our goods or rights are affected.

10.4 Evidence on Acceptors

On request, you shall be obligated to evidence individually all and any claims acquired according to 10.2 and to notify the subsequent acquirers on the assignment made, with the request to pay to us

only. We shall be entitled to notify the subsequent acquirers on the assignment at any time and collect the claims ourselves.

10.5 No Direct Debit Mandate on Insolvency

This direct debit mandate shall be deemed revoked if an application to open insolvency proceedings on your property or an application to issue information on financial status is filed.

10.6 Release of Security

You shall be entitled to demand partial or complete release of securities if their liquidable value exceeds 20 % of the claims to be secured.

10.7 Authorisation to Collect

10.7.1 In order to secure our property rights, notably on delayed payment, or if you are obligated to return goods subject to retention of title, you shall grant us or third persons assigned by us the right to access the rooms, construction sites, premises and other locations for the preparation of the collection of the goods sold to you and being our property. The same shall be applicable if our goods must be collected at your customers.

10.7.2 In order to avoid necessary cost, you herewith expressly agree to this way of proceeding.

10.7.3 You shall be obligated to reimburse to us any additional expenses and cost in connection with our claims for return or collection of our materials.

11. Warranty

Your rights related to defects have the prerequisite that you duly complied with the review and objection duties according to section 277 Commercial Code (HGB - Handelsgesetzbuch).

We shall be liable as follows for defects in delivery, by excluding further claims, irrespective of 11.4.2., as follows:

11.1 Duty to Object in Regard to Obvious and Recognisable Defects

You have to review the good and its wrapping immediately on delivery or collection. Obvious and recognisable defects, lacking quantities and wrong articles delivered shall be complained of immediately and in writing. Otherwise, claiming warranty defects shall be excluded. It shall do to send the notification on good time to adhere to the deadline.

The prerequisite for the right to claim damages shall be the factual correctness and completeness of the information you provided for us to render our supplies and performances, as well as the proper and purposeful use of the supplies and performances by you. We shall not be liable for defects resulting from the performance data provided to us or other wrong or incomplete data.

If our instructions on use / processing instructions are not followed, if our supplies are assembled or commissioned by you or third parties faultily, if changes are made without prior written agreement, if parts are exchanged or materials inserted that do not correspond to the originals or that were not included in the as-delivered condition, then you are not entitled to any rights, notably not to warranty claims with defects thereby caused.

11.2 Duty to Object with Non-obvious Defects

Non-obvious defects shall be regarded approved if no immediate, written notification is sent after discovery. It shall do to send the notification on good time to adhere to the deadline.

11.3 Burden of Proof with Complaints; Reimbursement of Expenses

You shall bear the full burden of proof for all and any prerequisites for claims. If a complaint is made in an unjustified way, then you will reimburse our expenses incurred.

11.4 Supplementary Performance, Supplementary Performance not on Good Time

You shall be entitled to the following rights if a good is defective:

11.4.1 On justified complaints, you shall be entitled to either rectification of defects or defect-free replacement, on our option. Withdrawal from the contract or refusal of acceptance shall be excluded with insignificant defects. In case of supplementary performance, we shall be obligated to bear all and any expenses, notably transportation expenses, expenses for labour and materials in as far as such expenses do not increase because the purchased good has to be taken to a different place than the place of fulfilment.

11.4.2 You shall be entitled to withdraw from the contract if we are not able to fulfil your claim for rectification of defects or supply of defect-free replacement within reasonable time. You shall not be entitled to any further claims, not either to replacement of loss due to delay in performance.

11.4.3 If only parts of the supply are defective, your rights shall only relate to the defective parts of the supply unless you have no interest in a partial supply.

11.5 Legal Consequences on Grossly Negligent or Wilful Breach of Duty

You shall only be entitled to further claims if you can prove us grossly negligent or wilful breach of duty. The claim for damages on significant breach of contractual duties shall be limited to the predictable loss typical for the contract on slightly negligent breach of duty. We shall not be liable for slightly negligent breach of insignificant contractual duties.

11.6 Limitation Period

Claims for material defects not based on a purchase of consumables shall be limited in time after one year from the transfer of risk if we cannot be blamed for fraudulent intent. Transfer of risk can be collection, delivery, acceptance, notification of readiness to dispatch, sending of the notification that the good is ready, actual commissioning or actual start of use.

11.7 Limitation of Liability and of Limitation Period

The above mentioned limitations of liability and of limitation period shall not be applicable on claims from product liability and from damages to life, bodily harm or health. Statutory limitation of liability shall remain unaffected.

11.8 Right of Recourse pursuant to Section 478 Civil Code (BGB - Bürgerliches Gesetzbuch)

Your right of recourse as a buyer pursuant to section 478 Civil Code (BGB - Bürgerliches Gesetzbuch) shall exist only as far as you have not made agreements beyond the statutory rights to claim damages with your customer.

The limitation period in case of delivery recourse pursuant to sections 478, 479 Civil Code (BGB - Bürgerliches Gesetzbuch) shall remain unaffected. If you appear towards the customer as the last distributing trader, the limitation period shall expire maximum two months from the date on which you fulfilled the consumer's requirements.

If you appear towards the consumer as last distributing trader, there will be a period for preclusion of 18 months for the limitation of all and any claims that are not subject to limitation due to defect. It shall start on getting knowledge on the loss/damage and the person causing the loss/damage.

11.9 Information Included in Sales Documents, Internet Presence

11.9.1 Product data on our sales documents and Internet presence include neither properties nor warranties for properties. It is the order confirmation only that is decisive. In as far as we refer to licences or certifications; this shall mean that our products fulfil the requirements of such licences or certifications in the required scope.

11.9.2 This does not mean that our products fulfil the concretely intended purpose of use based on a licence or certification only.

11.9.3 Information on a certification or licence shall not discharge you from your duty as the user to inform yourself on all technical and statutory requirements to design, statics and purposes of use.

11.9.4 Our products must be used by you always by observing the real static requirements, local conditions and relevant regulatory and statutory requirements.

11.9.5 Defective Instructions for Assembly or Use

A defective instruction for assembly or use is a minor, insignificant breach of duty only. You will only be entitled to get a defect-free instruction for assembly or instruction for use if otherwise a proper use of our products is not possible.

12. Returns

Returns shall require our prior written approval.

13. Binding Periods for Delivery; Delivery Dates

Our periods for delivery and delivery dates shall only be binding if we confirmed this in writing. Your fixed periods or dates are contradicted.

13.1 Information on Periods for Delivery, Delivery Dates, Scope of Delivery

The written confirmation only shall be decisive for periods for delivery, delivery dates and scope of delivery. Periods for delivery or delivery dates stated by us shall otherwise be unbinding and inform about the presumable date of dispatch or collection of the goods ex works Leinfelden-Echterdingen.

13.2 Compliance with Periods for Delivery, Delivery Dates

A period for delivery or a delivery date confirmed in writing shall be deemed complied with if

- We inform you about the good ready for dispatch on the delivery date or until expiry of the period for delivery;

- The good leaves our premises at Leinfelden-Echterdingen or is handed over to the carrier or forwarder or any other shipping person in a way that delivery on time can be expected under normal circumstances.

13.3 Prerequisite for Compliance with Periods and Dates

The compliance with any period or any date is subject to the cumulative condition that you submit on good time all and any documents, specifications and releases, as well as all and any approvals possibly required, to be provided by you and that you make the agreed payments on good time and fully and that you are not in delay with payments. If this is not the case, the periods or date shall be extended by the duration of the delay you are responsible for.

13.4 Extension of Time with Force Majeure

If we cannot comply with periods or dates due to force majeure, e.g. weather, strike or lockout, the contractual periods and dates shall be extended correspondingly.

If the non-compliance with dates and periods is caused by the occurrence of unpredicted hindrances beyond our influence and we are not responsible for them, these periods and dates shall be extended reasonably, at least by the duration of the hindrance or interruption. This shall be applicable notably in cases of force majeure, as well as on strike, lockout, and regulatory orders even if such circumstances incur with our suppliers and subcontractors. If such disturbances last longer than eight weeks in an uninterrupted way, then every contractual party shall be entitled to rescind the contract in whole or in part. No further unilateral or bilateral claims shall exist in this case.

13.5 Delay in Delivery

We shall be in delay of delivery if, at the earliest upon expiry of 2 weeks after the unbinding date of delivery, you set a reasonable extension of time and this time expired without result. Liability resulting from this shall be limited to the cases of wilful or grossly negligent breach of contract.

You may neither make replacement procurement nor can you rescind the contract until occurrence of delay in delivery.

14. Right to Rescind on Cheque or Bill Protest, Stoppage of Payment, Negative Information, Lump-Sum Claim for Damages

14.1 We shall be entitled to rescind the contract if we get knowledge on cheque and bill protests, stoppage of payment, and/or negative information on you.

14.2 If we rescind the contract for such reason, we shall be entitled to a lump-sum claim for damages of 20% of the net order value. You shall be entitled to prove that we have not suffered a loss or a lower loss only. You may not claim further rights.

15. Option on Problems with Procurement of Technology and Raw Materials

We shall be entitled to rescind the contract on unpredictable problems with procurement of technology or raw materials for which we are not responsible. No further unilateral or bilateral claims shall exist in this case.

16.1 Technical Advancement

Changes serving the technical advancement can be made at any time.

16.2 Copyright, Rights of Disposal, Disclosure of Documents and Data to Third Persons

16.2.1 We retain all and any rights to any documents and data provided to you, notably offers, technical drawings, images, and notably our right of disposal in regard to our property and copyrighted materials.

16.2.2 All and any documents and data provided to you by us may only be made accessible, surrendered, copied or stored on data carriers in whole or in part upon prior, written approval by fax /computer fax or e-mail.

16.3 Meaning of Image or Graphical Presentations, Design Data, Purpose of Use

16.3.1 Image or graphical presentations in regard to possible or real function, for a purpose of use or production flow, shall only be for example purposes and shall only serve for demonstrating the technical function. Image or graphical presentations shall in no way be binding promise in regard to kind, possible or allowed use, function or purpose of use.

16.3.2 Data or presentations in regard to a function, purpose of use or production flow shall only be an example and therefore not be binding.

11.9.3 Such data or presentations shall not discharge you from your duty as the user to inform yourself on all technical and statutory requirements, e.g. purpose of use.

16.3.3 Our products must be used by you by observing the real static requirements, local conditions and relevant regulatory and statutory requirements.

16.3.4 You shall be obligated to comply with and observe all and any technical, regulatory or statutory requirements that are pertinent for the concrete use.

16.3.5 It is expressly important to note that it is only you as the user of our products who is responsible for the compliance with the pertinent standards, generally acknowledged engineering rules, notably all and any rules on labour safety and industrial safety, by especially observing the accident prevention regulations.

16.3.6 As a supplement, also our information in the product documentation must be observed.

16.4.1 Consulting

Application-technological consulting has the prerequisite that you informed us fully about all and any circumstances significant for the consulting, as well as any requirements of real or legal kind. Under these prerequisites, application-technological consulting will be held to the best of our knowledge learnt from research, development and experience. Application-technological consulting shall only be binding if written.

Statements and information from us in regard to fitness for use, use and application of our products shall not release you from own reviews and tests whether or not the use planned by you or the use of our products can be implemented also on site.

16.4.2 Binding Written Information

Oral information from our employees is voluntary rendering of service. All and any oral statements of our employees shall only be legally binding if confirmed in writing.

17. Rights of Use, Defects of Title, Violation of Third-Party Property Rights

17.1 For especially developed supplies we shall ensure that these are free from third-party industrial property rights and copyrights in the country of the place of delivery and can be used in the scope of the contractual agreements. Any use deviating from the contractual use, irrespective of which kind, shall require our prior written approval.

17.2 In as far as we provided documents or supplies in regard to which we have got industrial property rights, patent rights or a copyright or in regard to which third parties have got any rights, we shall grant you a non-exclusive right of use for the contractual purposes. You shall undertake not to remove the manufacturer information from the supplies and not to change manufacturer information without our prior, express, written approval. Any other rights shall remain with us or the holders of the rights.

17.3 Claims for violation of property rights of any kind shall be excluded of you violate the property right by not using the supplies purposefully.

17.4 If a third party claims violation of property right against you anyway, then please inform us immediately in order to agree on defence and negotiations on compromise. If such third-party claims are justified, we, on our option and cost, shall either obtain a right of use for you or change our templates in a way that they do not violate third-party property rights or exchange the templates respectively. If we are not able to do so within a reasonable period, then you shall be entitled to rescind the contract. Any claims for damages in such case shall exclusively be based on item 11.5.

18.1 Place of Performance

Place of performance shall be our place of business in Leinfelden-Echterdingen.

18.2 Exclusive place of jurisdiction

The exclusive place of jurisdiction, also for lawsuits concerning bills of exchange, cheques and documents in case that the parties are fully qualified merchants, bodies corporate organised under public law or public separate estate shall be Stuttgart. The same shall apply if the purchaser has not got a general, domestic place of jurisdiction or moves to a foreign country from Germany after having concluded the contract or if the purchaser's whereabouts are unknown on filing the lawsuit.

19. No application of CISG

The law of the Federal Republic of Germany shall apply exclusively or primarily, as the case may be. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

20. Data Protection, Data Safety

20.1 We shall only record your personal data for the purpose for which you provide your data. Your personal data will only be used within Weitmann & Konrad GmbH & Co. KG, with the applicable provisions on data protection being observed.

If you provide personal data – such as your name, your address or contact information such as telephone or fax numbers or e-mail addresses – on our website, the provision of such information shall always be on a voluntary basis. As far as possible, you will be able to use the content and services offered on our website without providing any personal data.

20.2 You agree and hereby authorise us to process, store and evaluate the data received in connection with our business relationship within Weitmann & Konrad GmbH & Co. KG, with the applicable provisions on data protection being observed.

Your personal data will not be made accessible or sold to third parties.

20.3 Revocation of the Consent

You may revoke your consent to the use, processing or transmission of your data for marketing purposes of Weitmann & Konrad GmbH & Co. KG by sending a short written message to:

Weitmann & Konrad GmbH & Co. KG
Friedrich-List-Straße 20 - 24
70771 Leinfelden-Echterdingen

Phone: +49 (0) 711 / 79 88-0
Fax: +49 (0) 711 / 79 88-212

or by e-mail to:

info@weko.net

at any time with effect for the future.

The use of your data for marketing purposes of Weitmann & Konrad GmbH & Co. KG shall be in accordance with the requirements of data protection law.

20.4 Right to Information

You may request information on the personal data concerning your person which is stored by our company at any time.

20.5 Our data privacy statement and further notes on data protection can be found on our website at <http://www.weko.net/datenschutz>. They shall apply in addition to the provisions contained in this item 20.