

**1. Scope of these Terms and Conditions**

1.1 The delivery of goods, the services rendered and the offers made by WMF Group GmbH (hereinafter „SUPPLIER“) are always subject to the following „Terms and Conditions“. They shall be deemed to be accepted by the Purchaser at the receipt of the goods and/or services at the latest. Terms and conditions of the Purchaser which are in conflict with or deviating from these Terms and Conditions shall not apply unless the SUPPLIER expressly agrees. Even if SUPPLIER delivers goods and/ or renders services to the Purchaser being fully aware that his terms and conditions are in conflict with or deviate from SUPPLIER's terms and conditions the latter shall apply.

1.2 The terms and conditions herein shall apply to companies within the meaning of §§ 14, 310 German Civil Code (hereinafter „BGB“) and to all future business with SUPPLIER unless the parties expressly agree otherwise. The contracting party may use the product portfolio of b2b exclusively for advertising purposes in the course of trade.

**2. Offer and signing**

2.1 Orders become binding on SUPPLIER if they are confirmed in textform (e.g. fax, e-mail). All other agreements are subject to SUPPLIER's written confirmation. The same applies to supplements, amendments and auxiliary provisions.

2.2 The information, illustrations and details on goods and/or services in catalogues, price lists and/or offers are approximations usual for this type of business unless it is expressly stated in the order confirmation that they shall be binding.

**3. Prices / Terms and Conditions of Payment**

3.1 Unless otherwise agreed all prices are net prices "ex works" (Incoterms 2010) and do not include the VAT on the date of delivery, packaging, freight, shipment or insurance costs.

3.2 SUPPLIER's invoices shall be due and payable in cash thirty (30) days after issue and receipt. If this payment period is exceeded SUPPLIER shall be entitled to interest payments in the amount of 9% over the applicable basic rate pursuant to §247 BGB and shall have the right to additional damages for delay without further notice.

3.3 Should SUPPLIER generally increase or reduce the prices between signing and delivery then the new prices on the date of shipment shall apply. In case of a price increase the Purchaser shall be entitled to terminate the contract within fourteen (14) days after being notified of such increase.

3.4 SUPPLIER reserves the right to use payments received to settle the longest outstanding invoices and all and any interest accrued and other damages of delay in the following order: costs, interest, principal claim.

3.5 The Purchaser may only have the right to set off if his counterclaims have become res judicata, are undisputed or have been accepted by SUPPLIER.

3.6 If SUPPLIER becomes aware of any material adverse change in the Purchaser's financial situation after signing the agreement which according to SUPPLIER's best judgement may endanger its claims SUPPLIER shall be entitled to an appropriate security within a reasonable period of time until the contract is fulfilled or to advanced payments or payments in consideration for the goods and/or services delivered. SUPPLIER is also entitled to revoke payment periods granted. If the Purchaser does not meet SUPPLIER's justified demands or not on time SUPPLIER may withdraw the agreement or claim damages instead of the payments.

3.7 If the Purchaser is partially in default then SUPPLIER may demand the immediate payment of the total amounts outstanding and withdraw from the agreement without further notice or demand damages instead of the payments. In other cases than a material adverse change in the Purchaser's financial situation SUPPLIER may withdraw from the agreement if the Purchaser has not paid before expiration of a reasonable time limit.

**4. Delivery**

4.1 Terms for delivery are non-binding unless the parties expressly agree otherwise. Partial delivery is permissible. If the parties agree on a fixed delivery date then the Purchaser shall set a reasonable new term of at least four weeks for the delivery if delivery is not made on time. If delivery is not made before that new deadline the Purchaser has the right to withdraw from the contract.

4.2 The term for delivery begins at the day the order confirmation is issued and it is complied with (i) if the goods have left the warehouse/works on the last day of the term for delivery or (ii) in case the shipment is not possible if the Purchaser has been notified of the readiness for shipment.

4.3 Compliance with the agreed term for delivery is subject to the receipt in good time of all the documentation required from the Purchaser, necessary approvals and releases, especially all relevant technical drawings, as well as compliance with the terms and conditions of payment and all other contractual obligations by the Purchaser. In case of non compliance with these obligations on time the aforementioned terms shall be extended adequately unless SUPPLIER is responsible for any such delay.

4.4 Call-off orders shall – unless otherwise agreed – be made within six months after notification by SUPPLIER of its readiness for shipment. After expiry of that period SUPPLIER is entitled to demand acceptance of the goods or services.

4.5 If the non-compliance with any terms is due to force majeure, regardless of whether this affects SUPPLIER's factories or those of their Suppliers, then such terms shall be extended adequately. Force majeure includes but is not limited to state interventions, interruptions of operations, industrial disputes and delays in the delivery of essential raw or other materials or the like, including strikes and lockouts. If any such event makes it impossible to deliver goods or services then SUPPLIER shall be released from their obligations and the Purchaser shall not be entitled to any damages on these grounds. If the goods and/or services to be delivered are of no further interest to a party due to any such delay then the party is entitled to withdraw from the agreement after setting a reasonable new term. The parties shall promptly inform the other party if any such obstacles occur.

4.6 If the Purchaser does not accept the contractual goods and/or services then SUPPLIER is entitled to withdraw from the agreement after setting a reasonable new term or to seek damages in lieu of performance. The Purchaser shall have the right to prove that SUPPLIER suffered no or lesser damage.

**5. Transfer of risk**

5.1 The risk is transferred to the Purchaser at the moment the goods are handed over to the shipping agent even in case of a carriage paid to delivery. The same applies to transport on own account, pick up by the Purchaser and partial deliveries.

5.2 If the Purchaser is responsible that the shipment is delayed then the risk is transferred to the Purchaser when he is notified of the readiness for shipment.

5.3 Shipment is carried out ex works on the Purchaser's account and risk. SUPPLIER cannot accept any liability for damage or loss during shipment. Unless otherwise agreed SUPPLIER will choose shipment and packaging according to its best judgement. SUPPLIER will not accept any obligation to take out insurance.

**6. Warranty claims**

SUPPLIER accepts liability for defects as follows:

6.1 All goods and/or services which show material defects within the limitation period will be repaired at no cost or replaced at SUPPLIER's discretion provided the cause of the material defect was existing at the time the risk was transferred.

6.2 Claims based on material defects shall be time barred after the expiry of 12 (twelve) months respectively 6 (six) months in case of demonstration models from the date the risk has been transferred. The aforementioned periods do not apply if longer periods are provided by law, e.g. § 479 paragraph 1 BGB (entrepreneur's right of recourse).

6.3 The Purchaser has to notify SUPPLIER in writing without delay of any material defect detected. Return shipments of goods free of defects will not be accepted but returned to the sender at the latter's expense.

6.4 In case of a material defect the Purchaser may withhold payments in a reasonable amount in relation to the material defects. The Purchaser may only withhold payments if there is no doubt that such complaint is legitimate. Should any such complaint not be legitimate the Purchaser shall compensate SUPPLIER for any expenses incurred in that matter.

6.5 Initially SUPPLIER shall always have the right to subsequent performance (*Nachbesserung*) pursuant to clause 6 provision 1 within a reasonable new term. The Purchaser must make the defective goods or a sample thereof available to Purchaser.

6.6 The Purchaser shall have no claims based on defects in case of insignificant deviations from the agreed characteristics, in case of natural wear and tear and in case of damage due to improper use, improper or negligent treatment, excessive use or unsuitable operating equipment after the transfer of risk. Should the client or any third party undertake improper modification or repair then SUPPLIER cannot accept any liability whatsoever for same or for any consequential damage.

6.7 In all other respects damages claims are governed by clause 8 herein.

**7. Impossibility; contractual adjustment**

7.1 Inasmuch as delivery is not possible, the Purchaser is entitled to claim damages to the extent that it is attributable to the SUPPLIER. The Purchaser's right to withdrawal from the agreement is not affected by this.

7.2 Inasmuch as unpredictable events in the meaning of clause 4.5 significantly alter the economic significance or the content of the delivery or have significant influence on SUPPLIER's operation, the agreement shall be appropriately adjusted observing good faith. Inasmuch as this is not appropriate, SUPPLIER shall be entitled to withdraw from the agreement. If SUPPLIER wishes to make use of this right to withdrawal, it shall notify this to the Purchaser without delay after seeing the significance of the event even if, at first, an extension to the delivery period was agreed with him.

**8. Claims for damages**

8.1 If the Purchaser in case damages because of a negligent violation of major contractual obligations by the SUPPLIER than the claim for damages of the Purchaser is limited to foreseeable damage typical for such a contract except in case of a fatal injuries, bodily harm or damages to the health.

8.2 If the SUPPLIER negligently violates ancillary contractual obligations the SUPPLIER, his representatives and his agents shall not be liable except in case of a fatal injuries, bodily harm or damages to the health.

8.3 This does not apply in case the liability is mandatory under statutory law e.g. composition or durability guarantees (*Beschaffheits- oder Haltbarkeitsgarantien*), liability in accordance with the German Product Liability Act, in the case of intent, gross negligence, due to fatal injury, bodily harm or damage to the health or the violation of significant contractual duties. Any alteration to the onus of proof to the disadvantage of the Purchaser is not connected to the above-mentioned regulations.

8.4 The legal representatives and the agents of the SUPPLIER shall not be liable for negligence except in case of a fatal injuries, bodily harm or damages to the health.

**9. Reservation of title**

9.1 Up to fulfilment of all claims, which are due to SUPPLIER from the present and future business relation with the Purchaser, the delivered goods shall remain the property of SUPPLIER (goods subject to reservation of title – *Vorbehaltsware*). Inasmuch as the value of all of the SUPPLIER exceeds the amount of all secured claims by more than 10%, SUPPLIER shall release a corresponding part of the securing interests at the request of the Purchaser. In case of breach of duty on the part of the Purchaser, in particular in case of default in payment, SUPPLIER is entitled to withdraw from the agreement without previously setting a period for performance of the agreement. The Purchaser is obliged to return the purchased goods without delay.

9.2 The Purchaser is entitled to re-sell the goods subject to reservation of title within the ordinary course of business. However, he assigns SUPPLIER all claims amounting to the final invoice sum of the SUPPLIER's claims which accrue for him against his purchasers from resale irrespective of whether the goods subject to reservation of title have been resold without or after processing. The Purchaser is still authorised to debit these demands even after assignment. The authority of SUPPLIER to debit the SUPPLIER's claim itself is not affected by this. SUPPLIER undertakes, however, not to debit the claim as long as the Purchaser correctly meets his payment obligations. If the latter condition is not fulfilled, SUPPLIER can demand that the Purchaser make the assigned demands and the debtors thereof known to SUPPLIER, provides information necessary for direct debit, surrender the necessary documents and notify the debtors (third parties) of the assignment.

9.3 Processing or conversion of the goods subject to reservation of title shall take place for SUPPLIER as the manufacturer in accordance with section 950 BGB without obligation for SUPPLIER.

9.4 If the goods which are owned by SUPPLIER are processed together with other items, SUPPLIER shall effect co-ownership of the new item in the ratio of the market value of its items to value of the other processed items at the point of time of processing.

**11. Prohibition of assignment**

Purchaser shall not assign any claim against SUPPLIER to another party without the prior written approval of SUPPLIER.

**12. Place of performance, place of jurisdiction and applicable law**

12.1 The place of performance is Geislingen (Steige) unless another place is confirmed in the order confirmation.

12.2 The sole place of jurisdiction for all disputes arising from the contractual relationship directly or indirectly is Geislingen (Steige). SUPPLIER is entitled, however, to take action at the seat of the Purchaser.

12.3 German law shall apply for the contractual relations excluding the Convention on Contracts for the International Sale of Goods (CISG) and the rules on conflict of laws.

12.4 In the case of ineffectiveness of one or more provisions of this agreement, the contractual partners shall replacement such provision with a provision which economically most closely approaches the ineffective provision.