



Westfalia Metallschlauchtechnik GmbH & Co. KG General Terms & Conditions (Sales)

1.0 General provisions

- 1.1 Our deliveries and services are exclusively made based on the following terms and conditions. Any purchaser's terms and conditions of purchase are hereby waived and these are not part of the contract.
- 1.2 Our quotations are provided without commitment. Any contracts and other agreements only become binding upon our written confirmation.
- 1.3 The interpretation of trade clauses is based on INCOTERMS in the version applicable at the time of contract conclusion.

2.0 Prices, terms of payment

- 2.1 Our prices are quoted ex works unless agreed otherwise. In the event of VAT obligation, we will also bill the VAT. If factor costs, particularly those for wages, prematerial or energy, are subject to major change in the period up to the delivery date, the agreed price may be adjusted in line with the revised factor costs.
- 2.2 Unless otherwise agreed in writing, payments shall be received by us by the 15th of the month following delivery ex works net. If payment terms are exceeded, we will bill as of the due date interest at 8 % above the applicable basic interest rate of the European Central Bank.
- 2.3 The purchaser may set off payments only against uncontested or legally established receivables. The purchaser only has rights of detention as far as these are based on the same contractual relationship.
- 2.4 If our pecuniary claim is jeopardized due to circumstances occurring following contract conclusion, we are authorized to declare it due irrespective of the term of any accepted bill. If the purchaser becomes in default of payment, we are authorized to take back the goods or access the purchaser's premises to take possession of the goods. In the event of a payment default, the purchaser's right to process delivered goods will be terminated. The fact that goods have been taken back does not imply withdrawal from the contract. In both events, we may revoke collection authorization as per paragraph 7.7 and may request prepayment of any outstanding deliveries. The purchaser may avert these legal consequences by providing securities in the amount of our jeopardized payment claim.
- 2.5 We are entitled to common securities for our receivables in terms of type and scope, even if they are conditioned or temporary.
- 2.6 The legal provisions applicable to default of payment remain unaffected.

3.0 Dimensions, weights, qualities, industrial property rights

- 3.1 Any deviations in dimensions, weights and qualities are permissible within the scope of the DIN standard or if this is common practice. Any other deviations require specific agreement.
- 3.2 We are eager to comply with third party industrial property rights (patents, utility models) existing in our product sectors. However it is impossible to identify all the industrial property rights existing for products and their application in the various fields of processing. We are therefore unable to accept liability for compliance with applicable industrial property rights. In the event of products specifically manufactured for the purchaser and which are not part of our standard range, the purchaser releases us from any third party claims resulting from the infringement of industrial property rights.
- 3.3 An excess or shortage of up to 10 % of the ordered quantity is permissible. If it has been explicitly agreed that shortages in quantity are not permitted, excess quantities of up to 20 % are permissible. If it has been explicitly agreed that excess quantities are not permitted, a shortage in quantity of up to 20 % is permissible. Complaints about the delivered quantity must be logged at the latest within 8 days following goods receipt at the place of destination.

4.0 Shipping and transfer of risk

- 4.1 Unless explicitly agreed, the transport route and means of transport as well as the shipping company are at our discretion.
- 4.2 If loading or transport of goods is delayed for reasons attributable to the purchaser, we are authorized to store the goods at the purchaser's cost and risk at our discretion and to take all the measures we deem suitable to preserve the goods and to bill the goods as being delivered. The legal provisions applicable to default of acceptance remain unaffected.

- 4.3 In the event of transport damage, the purchaser must immediately inform the office in charge and must notify us forthwith.
- 4.4 The risk is transferred to the purchaser at the time of handover of goods to the shipping company or the purchaser if he/she is picking up the goods himself/herself, however at the latest when the goods leave the shop or the warehouse. This also applies if we transport the goods with our own vehicles.
- 4.5 We may make partial deliveries.
- 4.6 Unless otherwise agreed, goods are delivered without packaging and are not protected against corrosion.

5.0 Delivery times, delays in delivery, call-off of goods

- 5.1 The agreed delivery times apply provided that all order details are clarified in good time and that the purchaser meets his/her obligations in good time.
- 5.2 If the purchaser fails to comply with his/her contractual obligations, including the obligation to co-operate and secondary obligations such as opening of a documentary credit, provision of German or foreign certificates, down payment etc., we are authorized to appropriately extend our delivery times in line with our production flow requirements not withstanding our rights resulting from the purchaser's default
- 5.3 For compliance with delivery time, the time of despatch ex works is decisive. If goods cannot be despatched in good time without our fault, the delivery times are deemed to be met at the time the goods are ready for despatch.
- 5.4 If we are impeded from complying with our obligations due to unforeseen events concerning us or suppliers and which we cannot prevent with reasonable care, because of specific circumstances, e.g., war, Force Majeure, national riots, natural disasters, accidents, other disruptions to operations and delays in the delivery of major operating supply items or prematerials, the delivery time is extended for the duration of the impediment plus an appropriate ramp-up time. If delivery becomes impossible or unreasonable for us due to such impediment, we may withdraw from the contract; the purchaser has the same right, if acceptance of goods is unreasonable due to the delay. For the purpose of this paragraph, strikes and lock-outs are considered an impediment beyond our control.
- 5.5 Notwithstanding our rights resulting from the purchaser's default, the delivery time will be extended by the period during which the purchaser is in default towards us.
- 5.6 If we are in default, the purchaser may, after fruitless expiry of an appropriate period of grace which he/she has set in writing, withdraw from the contract. The same applies if delivery of goods becomes impossible for us due to reasons attributable to us.
- 5.7 Any withdrawal right of the purchaser or us as per paragraph 5.4 or 5.6 basically only applies to the unfulfilled part of the contract unless a partial delivery is unusable by the purchaser.
- 5.8 If a deadline has been agreed for obligations other than payments, we are only in default based on a dunning letter if such a deadline has not been explicitly agreed to be "fixed" in our order confirmation.
- 5.9 In the event of orders on call, the agreed call-off time must be strictly complied with. If goods are not called off in line with the agreed delivery schedule or within an appropriate period, we may notwithstanding our other rights withdraw from the unfulfilled part of the contract or bill the goods as delivered. In the latter case, the goods will be stored at the purchaser's expense and risk. If an acceptance period has been agreed, we are not obliged to make deliveries beyond the expiry of such period.

6.0 Defects, warranty

- 6.1 In the event of a justified and immediate notice of defects, we may at our discretion repair the defect or provide a replacement ("supplementary performance"). If such supplementary performance fails twice, the purchaser may, after fruitless expiry of an appropriate period of grace and by exclusion of any further claims, request the right to reduce the purchase price or withdraw from the contract. Claims for damages only apply under the conditions specified in paragraph 8.



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- 6.2 The purchaser must immediately give us the opportunity to inspect the defect and in particular at our request provide the claimed goods or samples thereof. Furthermore, the purchaser must immediately stop re-sale or processing once a defect has been identified. If the purchaser infringes the above obligations, all the purchaser's claims resulting from defects of goods become void.
- 6.3 After an agreed acceptance inspection has been carried out, a notice of defects which would have been identifiable during acceptance is ruled out.
- 6.4 For goods sold as degraded material, e.g., so-called "Grade Ila" materials, the purchaser has no liability rights regarding any identified or foreseeable defects.
- 6.5 Claims for defects become time-barred 12 months after the transfer of risk.
- 7.0 Reservation of title**
- 7.1 All delivered goods remain our property (retention of title goods) until all claims have been settled, particularly any payment balance request, including full release from any contingent liabilities which we have accepted in the purchaser's interest. This also applies if the purchase price for deliveries identified by the purchaser has been paid and in the event of conditional claims.
- 7.2 The processing of retention of title goods is made on our behalf in our function as the manufacturer as defined in § 950 BGB (German Civil Code) without any obligation on our part. Processed goods are considered retention of title goods as defined in paragraph 7.1.
- 7.3 If retention of title goods are processed, combined or blended with other goods by the purchaser, we obtain co-ownership in the new item on a pro-rata basis of the invoice value of retention of title goods vs. the invoice value of other goods, and our co-ownership covers the value of processing on a pro-rata basis. If our ownership is terminated by virtue of legal provisions, the purchaser hereby assigns to us his/her ownership rights and remainders of the new items on a pro-rata basis of the invoice value of retention of title goods vs. the invoice value of other goods used and stores these free of charge for us. Our co-ownership rights are considered as retention of title goods as defined in paragraph 7.1.
- 7.4 The purchaser may only sell retention of title goods within the framework of usual business and under his/her usual terms and conditions and as long as he/she is not in default of payment, provided that he/she agrees with his/her purchasers a retention of title and that receivables resulting from such sale are assigned to us as defined in paragraph 7.5 and 7.6. The purchaser may not otherwise dispose of retention of title goods. The use of retention of title goods to fulfil service contracts is considered a re-sale.
- 7.5 The purchaser hereby assigns to us his/her claims from a re-sale of retention of title goods. They serve as securities to the same extent as retention of title goods as defined in paragraph 7.1.
- 7.6 If retention of title goods are re-sold by the purchaser together with other goods, he/she assigns to us the claims from the re-sale on a pro-rata basis of the invoice value of retention of title goods vs. the invoice value of other goods. In the event of a re-sale involving our co-ownership as per paragraph 7.3, the purchaser assigns to us a portion of the claims in relation to our co-ownership.
- 7.7 The purchaser may collect receivables from the re-sale unless we revoke such collection authorization in situations such as those stated in paragraph 2.4. At our request, the purchaser is under the obligation to inform his/her purchasers immediately of such transfer to us unless we do so ourselves, and he/she must provide us with a detailed list of our claims including the names and addresses of purchasers, the amount of individual receivables, the invoice date and any other information and documentation required to exert the assigned claim.
- 7.8 The purchaser is in no event authorized to assign the claim; this also applies to factoring business, and our collection authorization does not mean that the purchaser is authorized to perform factoring transactions. If an assignment becomes effective, the claim against the factor replaces our claim.
- 7.9 The purchaser must notify us immediately of any distress or other impairment by third parties and must name such persons. The cost for any intervention will be borne by the purchaser.
- 7.10 If the value of existing securities exceeds the total secured receivables by more than 10 %, we must at the purchaser's request release such securities at our discretion.
- 7.11
- 7.12 On request, the purchaser is under the obligation to provide a list of remaining retention of title goods including those which have been processed and to provide a list of receivables from garnishees including a copy of the invoices concerned.
- 7.13 The purchaser keeps retention of title goods on our behalf. He/she must insure these against fire, theft and flood. The purchaser hereby assigns to us his/her damage claims resulting from damage as defined in phrase 2 against insurance companies or other liable parties to the amount of our claims. If retention of title or assignment of receivables is ineffective due to inalienable foreign legal provisions, a security equivalent to such retention of title or assignment of receivables is hereby agreed. If the purchaser's co-operation is required, he/she must take any measures required to justify and maintain such securities.
- 8.0 Disclaimer**
- 8.1 Unless otherwise set out in these terms and conditions, we are only liable for damage under whatever legal ground in the event of intent or gross negligence. This does not apply to infringement of major contractual duties by managing directors or executives. In any case, liability is limited to the reasonably foreseeable damage.
- 8.2 Liability for the consequential harm caused by a defect, in particular for loss of profit, is limited to cases of intent or gross negligence.
- 8.3 Any claims resulting from personal injury, injury to life, body and health and/or claims under the product liability act shall remain unaffected of this provision (paragraph 8).
- 9.0 Applicable law**
- 9.1 Contracts are subject to the law of the Federal Republic of Germany, ruling out the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 10.0 Place of performance and place of venue**
- 10.1 The place of performance for both contract parties shall be Hilchenbach. The place of venue for both contract parties shall be Siegen. We may enforce claims towards the purchaser at his/her general place of venue.

Sitz Hilchenbach · Amtsgericht Siegen · HRA Nr. 6401
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