

# General Conditions of Sale of WEMA GmbH

As of September 2016

## 1. General, Area of Application

- a) These General Conditions of Sale shall apply to all business relationships between our customers and us. Only entrepreneurs within the meaning of § 14 BGB (German Civil Code) and legal entities under public law shall be deemed customers within the area of application of these General Conditions of Sale.
- b) Our deliveries, services and offers shall result exclusively from these Conditions of Sale. They shall hence apply as well to all future business relationships even if they are not explicitly agreed again.
- c) These Conditions shall be deemed accepted at the latest upon acceptance of the goods or services. Counter-confirmations of the purchaser, which refer to his terms and conditions or conditions of purchase respectively, are hereby objected to.
- d) Deviations from these Conditions of Sale shall only be effective if confirmed by us in writing.

## 2. Conclusion of Contract, Duties to Furnish Information in Electronic Business Dealings

- a) Our offers shall be subject to change and non-binding. We reserve the right to make technical modifications in the framework of what is reasonably acceptable as well as to adjust our products to later standardisation.
- b) Orders for our products may be placed by postal mail, by fax, by e-mail, by telephone or through our online shop.
- c) By ordering a product from our catalogue along with the underlying price list or through our online shop, the customer provides a binding declaration that he intends to acquire the ordered goods (offer of contract). We shall be entitled to accept this offer of contract within two weeks as from the time of receipt of the offer by us. Acceptance of the offer shall be possible in written or text form; shipping of the ordered goods shall be equivalent to acceptance of the offer of contract. Should the customer's offer not have been accepted by us within two weeks after receipt, the offer shall be deemed declined, and a contract between the customer and us will not be concluded.
- d) Where the customer orders goods not contained in our catalogue or our online shop, the order shall constitute a request for us to submit an offer to the customer.
- e) In electronic legal transactions, confirmation of receipt of the order shall not yet constitute binding acceptance of the offer of contract unless such acceptance is stated explicitly in the confirmation of receipt.
- f) If an order is submitted by electronic means, the text of the contract will be stored by us and made available to the customer on request by e-mail together with the present Conditions of Sale.

## 3. Pricing

- a) Prices shall be understood as net euro prices ex our store or, in the case of direct delivery by another manufacturer, ex manufacturer from his plant store, excluding packing costs. The valid statutory amount of value-added taxes shall be indicated and added on. Packing costs will be invoiced separately.
- b) The product prices and packing costs stated in our order confirmation shall be relevant, plus the respective statutory value-added tax. Prices that have been confirmed for an order shall not be binding for repeat orders for parts of a similar type.
- c) Our minimum order value shall amount to EUR 50.00 net. In case of orders below this value, we reserve the right to invoice a surcharge of up to EUR 50.00 net for orders below the minimum value.

## 4. Delivery Time

- a) Delivery dates or periods, which are to be agreed on a binding basis, shall require written form. Delivery periods shall begin on the date, on which the corresponding agreement is reached. As long as details of execution still require clarification or are in need of regulation in the opinion of only one of the parties, the delivery periods shall not begin before the complete clarification of all such details.
- b) Adherence to the delivery periods shall require prior fulfilment of the contractual obligations, which the customer is obliged to fulfil.
- c) We shall not be responsible for delays in delivery due to force majeure and on account of events that make delivery essentially more difficult or impossible for us – which includes, in particular, strike, lockout, official directives etc. even where they occur with our suppliers or their suppliers – even if periods and dates have been agreed on a binding basis. Such events shall entitle us to postpone the time of delivery or performance by the duration of the hindrance plus a reasonable lead time.
- d) If the delay specified in letter c) lasts longer than one calendar month, both the customer and we shall be entitled to withdraw from the contract in respect of the part that has not yet been fulfilled. The setting of a period of grace by the customer prior to withdrawing from the contract shall not be necessary.

- e) Where the delivery period is extended or we are released from our obligation to make delivery, the customer shall not be entitled to derive any claims for the compensation of damages from such circumstances.
- f) We shall only be entitled to refer to the circumstances stated in letters c) and d) if we notify the customer immediately after the occurrence of events, which lead to a delay in delivery, has come to our knowledge.

#### **5. Overdelivery, Underdelivery**

- a) By way of exception, overdelivery or underdelivery by up to  $\pm 10\%$  (at least  $\pm 1$  unit) shall be anticipated in the case of custom-made products. This is attributable to production-related reasons and customary in the trade.
- b) In the case of underdelivery, the price agreed with the customer shall be reduced and re-calculated in due consideration of the delivered shortage of quantity.

#### **6. Trade Mark Rights**

The customer is under the contractual obligation to avouch that goods manufactured and/or delivered by us in accordance with the customer's specifications do not infringe the trade mark rights of third parties. Where claims are raised against us by third parties on account of the infringement of trade mark rights resulting from the manufacturing and/or delivery of such items, the customer shall indemnify us from all claims. He shall reimburse any expended lawyer's fees and costs of court proceedings to us as far as they were necessary for purposes of legal defence on condition that the customer was informed beforehand on the assertion of claims by the third party.

#### **7. Copyrights**

- a) The customer shall be under obligation to use any documents made available to him in the framework of contract initiation or contract implementation (images, drawings, calculations etc.) as well as any constructive services and proposals provided by us, only for the agreed purpose. In this regard, we reserve the right to exercise proprietary rights and copyrights. Without our prior consent, the customer shall be prohibited from publishing the aforementioned documents and constructions, from making them accessible to third parties or from using them beyond the period of contract performance.
- b) If no contract is concluded between us and the customer, the documents and constructions made available in the framework of contract initiation shall be returned to us without delay.

#### **8. Terms of Payment, Default**

- a) The customer is under the contractual obligation to pay the purchase price within 30 days after receipt of the goods. Following expiry of this time limit, the customer shall be in default of payment. We shall be entitled, despite the different designation of a payment by the customer, to set off payments initially against our older receivables from the customer. Where costs and interest have already been incurred, we shall be entitled to set off the payment first against costs, then against interest and finally against the principle claim.
- b) Payment shall not be deemed effected until we are able to dispose of the amount. In the case of payment by documents (e.g. cheques), the acceptance of which we reserve in the specific case, payment shall not be deemed effected until the document has been redeemed.
- c) In the case of new customers, we reserve the right not to deliver the products ordered to the customer until the amount invoiced has been paid (prepayment). Prior to contract conclusion, we will provide the new customer with corresponding explicit information.
- d) The customer shall pay interest of 9 percentage points above the base-lending rate on a money debt during the period of default. The right to assert more far-reaching damage caused by default, of which specific evidence must be presented, shall remain explicitly reserved.
- e) Where the customer does not meet his payment obligations, especially if a cheque cannot be cashed or if the customer ceases his payments, or if other circumstances come to our knowledge that provide indication of the customer's inability to pay, we shall be entitled to demand immediate payment of all still outstanding accounts receivable even if we have accepted cheques or bills of exchange. In this event, we shall furthermore be entitled to demand advance payment or the provision of a security.
- f) The customer shall only be entitled to offsetting or to the assertion of a right of retention if his counterclaims have been established as final or are undisputed. The exercise of a right of retention shall only be admissible if the mutual claims derive from the same legal relationship.

#### **9. Shipment and Transfer of Risk**

- a) The risk shall pass over to the customer as soon as the shipment has been handed over to the person(s) executing the transportation or has left our warehouse for purposes of shipping.
- b) We shall be at liberty to choose the mode of shipment.

- c) In case of damage in transit, the customer shall see to it that a legally binding breakage certificate is issued by the delivering forwarding agent immediately after receipt of the shipment.
- d) If international commercial terms are agreed, the Incoterms in their respective applicable version shall apply in addition to our present "General Conditions of Sale". The scope of delivery shall be indicated in the order confirmation.
- e) On request of the customer, we will take out transport insurance on his behalf and at his expense that covers the risk of damage and loss/destruction of the delivery being the subject of the contract, from the warehouse to the customer or the agreed place of destination.

#### **10. Warranty, Compensation for Damages, Details of Property and Condition**

- a) For the goods delivered by us, we assume warranty in accordance with the following provisions, which contain a conclusive and exhaustive regulation. For purposes of clarification, we indicate that we do not assume any guarantee in the legal sense. In the case of commodities, possible manufacturer's guarantees shall remain unaffected by these provisions.
- b) The warranty period shall be 12 months unless the delivered product has been used for a building in accordance with its usual type of use and caused the defectiveness of that building. The period shall begin at the time of transfer of the risk. If our technical data sheets or installation instructions are not adhered to, or if changes are made to the products, possible warranty claims shall cease to apply unless the customer proves that the notified defect is not attributable to these circumstances.
- c) The customer shall be under obligation to notify us in writing of obvious defects immediately, but no later than within two weeks after receipt of the delivered products/goods, whereby the defect shall be described as precisely as possible. Defects, which cannot be discovered inside this time limit despite a careful inspection, shall be notified to us in writing immediately after their detection and likewise be described as precisely as possible within this context. Where these regulations are infringed, the assertion of warranty claims shall be ruled out.
- d) In the event of a justified notice of defect, we shall be entitled – at our choice – to provide supplementary performance through subsequent improvement or replacement delivery. If the customer sets us a deadline for subsequent improvement or replacement delivery, this period needs to be reasonable in due consideration of the circumstances of the individual case (availability, production time etc.).
- e) Where supplementary performance fails, the customer may demand – at his choice – reduction of the purchase price/remuneration (diminution) or rescission of the contract. In case of an only minor deviation of the services provided from the services owed under the contract, especially in the case of only minor defects, however, the customer shall not be entitled to the right of withdrawal.
- f) If the customer chooses rescission of the contract on account of a defect of title or defect as to quality after the supplementary performance has failed, he shall not be entitled, in addition, to a claim for compensation of damages on account of the defect. If the customer chooses compensation for damages after the supplementary performance has failed, the goods shall remain with the customer if this is reasonably acceptable to him.
- g) As a basic principle, only the manufacturer's product description shall be deemed agreed as details of properties and condition of the goods. Public statements, targeting or advertising shall constitute an additional description of properties and condition of the goods that may become a subject matter of the contract.
- h) Any liability for normal wear and tear shall be ruled out. Furthermore, if we work on the basis of corresponding customer specifications, liability shall be ruled out for the suitability of the product in respect of the designated purpose, for the appropriate construction, for adherence to safety provisions and design regulations as well as for the suitability of the basic material.
- i) Only our immediate contractual partner shall be entitled to assert warranty claims against us. Such warranty claims shall not be assignable.

#### **11. Liability limitations**

- a) If non-essential contractual obligations are infringed, through which the achievement of the contractual purpose is not put at risk, we shall not be liable for slight negligence. The same shall apply to corresponding slightly negligent breaches of non-essential contractual obligations by our (legal) representatives, salaried employees or other auxiliary persons, of whose job performance we make use for purposes of executing the contract.
- b) For other slightly negligent breaches of duty, our liability shall be limited to the foreseeable, direct average damage typical of the contract according to the type of goods. This shall also apply to slightly negligent breaches of duty by our (legal) representatives, salaried employees or other auxiliary persons, of whose job performance we make use for purposes of executing the contract.
- c) The limitations of liability stated above shall not apply to claims asserted by the customer on the basis of the German Limited Liability Act or in the event that injuries to life, body or health are attributable to us.
- d) Claims for the compensation of damages by the customer shall come under the statute of limitations after one year starting from delivery of the goods. This shall not apply to claims asserted by the customer on the

basis of the German Limited Liability Act or in the event that injuries to life, body or health are attributable to us.

## 12. Special Conditions for Constructions

Construction proposals (sketches) and complete construction plans shall be subject exclusively to the following warranty regulations:

- a) In the event that construction proposals (sketches) or complete construction plans delivered by us turn out to be defective, the customer shall have a claim for supplementary performance (subsequent improvement). Should subsequent improvement fail after the customer has set an appropriate time limit, the customer shall be entitled to demand – at his choice – reduction of the purchase price/remuneration (diminution) or rescission of the contract. In case of an only minor lack of conformity of performance, especially in the case of only minor defects, however, the customer shall not be entitled to the right of withdrawal.
- b) The setting of a deadline shall not be required, however, if resolution of the defect is impossible or refused by us or if immediate assertion of the right of withdrawal or the claim to diminution is justified by a special interest of the customer.
- c) The following shall apply to all claims for the compensation of damages by the customer:
  - aa) We shall only be liable for damages if we are charged with acts of wilful misconduct or gross negligence. In these events, the customer's claim for the compensation of damages shall be limited to three times the amount of the price, excluding VAT, which was agreed for the construction.
  - bb) The warranty period for constructions shall be 12 months.
- d) Unless the customer makes an explicit reservation, the construction shall be deemed accepted at the point in time, at which the customer or third parties authorised by the customer start manufacturing the item stipulated in the construction with the customer's consent.
- e) Constructions created by us shall be subject to inalienable copyright under § 2 no. 7 of the German Copyright Act even if instructions and specifications of the customer have been incorporated into the construction. The constructions shall be made available to the customer exclusively for purposes of use in the customer's own plant. Any transfer to third parties without our prior explicit permission shall be prohibited.

## 13. Reservation of Proprietary Rights

- a) Until full payment has been made of all our claims, to which we are entitled against the customer on the grounds of the business relationship, the goods delivered shall remain our property. The customer shall be under obligation to handle the goods with care. As far as maintenance or inspection works are to be carried out, the customer shall perform such works on a regular basis at his own expense.
- b) The customer shall be under a contractual obligation to inform us without delay of any access to the goods by third parties, e.g. by way of attachment, as well as of any damage caused to the goods or of the loss/destruction of the goods. The same shall apply to any change in ownership of the goods.
- c) The customer shall be entitled to sell and/or process items delivered by us in the framework of his ordinary business operations. In this event, the customer's account receivable resulting from the resale shall be assigned to us at the time of its accrual, to the amount of our claim against the customer. We accept this assignment already now. If goods delivered by us are processed with other items that do not belong to us, this shall always take place in our name and on our behalf. We shall acquire co-ownership of the new item according to the proportion between the value of the item under reservation of proprietary rights and the value of the other processed items. The same shall apply in case of mixing.
- d) In the event of payment by cheque following acceptance of a refinancing bill, our reservation of proprietary rights shall not expire already on encashment of the cheque, but only on encashment of the last refinancing document.
- e) In the case of behaviour by the customer contrary to the terms of the contract, especially in the case of default of payment or infringement of the obligations stated in letters a) and b), we shall be entitled to withdraw from the contract and demand release of the goods without prejudice to further legal rights on the grounds of the customer's corresponding breach of duty.

## 14. Drawings, Business Secrets

- a) In principle, we will store the drawings and other manufacturing equipment handed over by our customers for purposes of development and production, free of charge for a period of two years after the last delivery to the respective customer. Following expiry of this period of time, we will provide the customer with the opportunity to make a statement on the further storage within a period of 6 weeks. The storage period shall end if no statement is made or no new order is placed the 6 weeks. If a new order is placed inside this period of time, we shall proceed once again according to this clause.
- b) Just as we are, the customer shall be under obligation to treat as a business secret all commercial and technical details that are not obvious and mutually become known to the contracting parties as a result of the

business relationship. Drawings and other manufacturing equipment (models, moulds, samples and similar items) must not be made available or otherwise accessible to third parties. The duplication of such items shall only be admissible within the framework of operational requirements and copyright regulations.

**15. Data Protection**

The management of the business relationship will be supported by means of a data processing system. Accordingly, the data of the customer (address, products delivered, delivery quantities, prices, payments, cancellations etc.) will be recorded in an automated file and saved until the end of the business relationship. The customer is hereby notified of the data storage pursuant to § 33 BDSG (German Federal Data Protection Act).

**16. Place of Performance and Place of Jurisdiction**

The place of jurisdiction and place of performance for all disputes arising from the contractual relationship, including actions on a bill of exchange, shall be Lüdenscheid / Germany.