



## General terms and conditions

valid from 1<sup>st</sup> of January 2018

### 1. Preamble

- 1.1 These General Terms and Conditions shall apply unless the contracting parties have expressly agreed otherwise in writing
- 1.2 The following provisions on the delivery of goods also apply analogously to services
- 1.3 The buyer's conditions of purchase shall not be valid

### 2. Conclusion of contract

- 2.1 The contract is considered concluded when the seller has sent a written order confirmation after receiving the order
- 2.2 Changes and additions to the contract require the written confirmation of the seller to be valid
- 2.3 The offers of the seller are subject to change
- 2.4 Plans, sketches and other documents as well as samples, catalogues, brochures, illustrations and the like shall always remain the intellectual property of the seller. Any utilization, duplication, distribution, publication and presentation may only be carried out with the express consent of the owner.

### 3. Packaging

- 3.1 Unless otherwise agreed:
  - a) the prices quoted are without packaging
  - b) the goods shall be packed in the usual manner in order to avoid damage to the goods under normal transport conditions on the way to the specified destination, at the buyer's expense
  - c) The packaging is only taken back by the seller by agreement

### 4. Transfer of risk

- 4.1 Unless otherwise agreed, the goods are considered sold "ex works"
- 4.2 The seller is only obliged to take out insurance if and insofar as this has been agreed in writing
- 4.3 In all other respects, the INCOTERMS in the version valid on the day the contract is concluded are applicable.

### 5. Delivery deadline

- 5.1 Unless otherwise agreed, the delivery period begins at the latest of the following dates:
  - a) Date of the order confirmation
  - b) Date of fulfilment of all technical, commercial and financial obligations of the buyer
  - c) Date on which the seller receives a deposit to be paid before delivery of the goods and / or if a letter of credit to be issued by the buyer has been properly opened
- 5.2 The seller is entitled to partial and advance deliveries
- 5.3 If the delivery is delayed due to a circumstance on the part of the seller that constitutes a reason for relief within the meaning of Article 10, a reasonable extension of the delivery period shall be granted.
- 5.4 If the seller is responsible for a delay in delivery, the buyer can either demand performance or declare withdrawal from the contract by setting a reasonable deadline. In the case of custom-made products, it must be taken into account when calculating the period of grace that the seller may not be able to use parts that have already been processed for other purposes.
- 5.5 Any claims of the buyer against the seller other than those referred to in article 5 on the grounds of the seller's delay are excluded.
- 5.6 If the buyer does not accept the goods provided in accordance with the contract at the contractually agreed place or at the contractually agreed time and if the delay is not caused by an act or default of the seller, the seller may either demand performance or withdraw from the contract, setting a deadline for acceptance. If the goods have been segregated, the seller may store the goods at the buyer's expense and risk. The seller is also entitled to demand reimbursement for all justified expenses that had to be made for the execution of the contract and that are not included in the payments received, to the exclusion of all other claims against the buyer due to the latter's delay

## **6. Price**

- 6.1 The indicated prices are in EURO
- 6.2 Unless otherwise agreed, the prices apply ex works of the seller without packaging and without loading
- 6.3 If delivery has been agreed, the prices are without unloading and without loading, unless otherwise agreed

## **7. Payment**

Payments have to be made according to the agreed/offered payment terms

- 7.1 50% of the offer value (goods and services) immediately upon receipt of the order confirmation, net without discount. As a guarantee, the seller will provide a bank guarantee for the advance payment made. The remaining 50% are to be paid after receipt and control of the delivery immediately before delivery of the goods
- 7.2 100% of the offer value (goods and services) by means of bank guarantee from the buyer
- 7.3 Delivered goods remain the property of the seller in any case until full payment has been made. In the event of seizure or other claims on the buyer, the buyer is obliged to assert the seller's right of ownership and to inform the seller immediately.
- 7.4 The buyer is not entitled to withhold payments due to warranty claims or other counterclaims not recognized by the seller
- 7.5 If the buyer is in default with an agreed payment or other services, the seller can insist on fulfilment of the contract and
  - a) postpone the fulfilment of their own obligations until the payments in arrears or other services have been effected
  - b) make use of a reasonable extension of the delivery period
  - c) declare the entire outstanding purchase price due
  - d) unless the Buyer has a reason for relief as referred to in Article 10, may charge interest on arrears from the due date at the rate of 5% of the amount due per month. Any further costs incurred are not covered by this default interest and will be charged separately
  - e) declare withdrawal from the contract, granting a reasonable period of grace
- 7.6 If the customer is a consumer within the meaning of the Consumer Protection Act and has been in arrears for at least 6 weeks with a (partial) payment despite the fact that he has been reminded under threat of losing the deadline and setting a grace period of two weeks, the deadline is lost and the entire remaining amount is due immediately
- 7.7 If the buyer has not made the due payment or other performances by the end of the grace period according to 7.5, the seller can cancel the contract by written notification. Upon request by the seller, the buyer must return to the seller any goods already delivered and compensate the seller for any reduction in value of the goods and reimburse the seller for all justified expenses which the seller had to incur for the performance of the contract. With regard to goods not yet delivered, the seller is entitled to make the finished or processed parts available to the buyer and to demand the corresponding share of the sales price for this.
- 7.8 Any claims of the seller against the buyer other than those referred to in article 7 on account of the buyer's default are excluded.

## **8. Warranty**

- 8.1 The seller is obliged, in accordance with the following provisions, to remedy any defect affecting the usability of the goods which is due to a defect in the design or material.
- 8.2 This obligation only applies to such defects that have occurred during a period of twelve (12) months from the date of transfer of risk or delivery.
- 8.3 The buyer can only invoke this article if he has immediately notified the seller in writing of the defects that have arisen in accordance with the provisions of this article, to be remedied by the seller, at his discretion:
  - a) repair the defective goods on the spot
  - b) to have the defective goods or the defective parts returned for the purpose of rectification of defects
  - c) replace the defective parts

An extension of the warranty period does not occur due to a correction of defects

- 8.4 Shipping costs (outward and return shipment) of defective goods shall be borne by the seller.
- 8.5 The defective goods or parts replaced in accordance with this article are the property of the seller
- 8.6 The seller shall only be liable for the costs of a remedy of defects carried out by the buyer himself if he has given his written consent.
- 8.7 The seller's warranty obligation applies only to defects that occur under the intended operating conditions and during normal use. In particular, it does not apply to defects resulting from poor installation by the buyer or his representative, poor maintenance, repairs or modifications carried out poorly or without the written consent of the seller or by a person other than the seller or his representative, biological or chemical influences and normal wear and tear.
- 8.8 For those parts of the goods which the seller has obtained from sub-suppliers, the seller is only liable within the scope of the warranty claims to which he himself is entitled against the sub-supplier. If a product is manufactured by the seller on the basis of design information, drawings or models provided by the buyer, the seller's liability does not extend to the correctness of the design, but rather to the fact that the product was manufactured in accordance with the buyer's specifications. In these cases, the buyer shall indemnify and hold harmless the seller in the event of any infringement of industrial property rights.
- 8.9 In the case of repair orders or changes/conversions of all and third-party goods as well as the delivery of used goods, the seller does not give any warranty
- 8.10 From the beginning of the warranty period, the seller does not assume any further liability than is stipulated in this article, not even for defects whose cause is prior to the transfer of risk.
- 8.11 Warranty claims are valid within the framework of the legal regulations. For locations with unusually high strain on the material, these claims are excluded if the seller does not explicitly refer to this circumstance in the purchase contract.

## **9. Liability**

- 9.1 It is expressly agreed that the seller shall not be liable to the buyer for personal injury, for damage to goods that are not the subject of the contract, for other damages and for loss of profit, unless the circumstances of the individual case indicate that the seller is guilty of gross negligence. In particular, the seller is not liable for improper storage or improper installation of the delivered goods.
- 9.2 The object of purchase only offers that level of safety which can be expected on the basis of operating instructions, the seller's regulations on the handling of the object of purchase - in particular with regard to any inspections which may be prescribed and other instructions given.
- 9.3 Any kind of claims for damages of the buyer against the seller and his vicarious agents (e.g. from fault at the conclusion of the contract, from breach of contract, because of default, because of impossibility of performance, due to consequential damages or due to torts) are excluded, unless they are based on intentional or grossly negligent conduct. They become time-barred within six months from the date on which the injured party became aware of the occurrence of the damage. This regulation does not affect claims of the customer according to the product liability law.
- 9.4 If the customer is a consumer within the meaning of the Consumer Protection Act, BGBI 1979/140 as amended, claims for damages by the customer against the seller and his vicarious agents are excluded, unless they are based on intentional or grossly negligent conduct. The shortening of the limitation period does not apply to consumers.
- 9.5 In order to ensure that a hall may be erected on the desired building site or that it corresponds to the local snow and wind loads, the buyer must check the documents provided. Upon delivery of the hall, the seller does not guarantee the approvability of the building. In extreme weather conditions in areas with heavy snowfall, the buyer must ensure that the hall

is kept free of snow to such an extent that the limit value specified by the seller for maximum snow loads is not exceeded and that no other loads (e.g. fixtures) impact the hall.

- 9.6 For the products mentioned in this contract a liability according to our general terms and conditions is valid. Beyond that, the buyer has no liability claim against the supplier Wavesteel GmbH. In particular, no liability will be accepted for goods and services that are not purchased from the supplier Wavesteel GmbH, even if they are related to products mentioned in this contract. For example: services, such as static calculations, assembly of the hall and the like or products such as assembly rails, foundations and other products purchased by the buyer. It is also noted here that there is no verbal promise in this regard!

#### **10. Reasons for exemption**

- 10.1 The following circumstances shall be deemed grounds for exemption if they occur after conclusion of the contract and stand in the way of its fulfilment: Labour disputes, strikes and all circumstances independent of the will of the parties, such as fire, mobilisation, seizure, embargo, prohibition of currency transfer, riot, lack of means of transport, unforeseen problems with sea transport, general shortage of supplies, restriction of energy consumption, environmental disasters. The consequences of these circumstances with regard to the obligations of the parties are defined in articles 5 and 7.

#### **11. Place of jurisdiction, applicable law, place of performance**

- 11.1 Place of jurisdiction for all claims arising directly or indirectly from the contract disputes, the place of jurisdiction for the registered office of the seller is the responsible Austrian court. However, the seller may also call in another court that has jurisdiction over the buyer. The parties to the contract may also agree on the jurisdiction of an arbitral tribunal.
- 11.2 The contract is subject to the rights of the seller. Changes or additions to the terms and conditions must be made in writing to be effective.
- 11.3 The place of performance for delivery and payment is the registered office of the seller.
- 11.4 Is a provision of these general terms and conditions void, contestable or invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a provision that corresponds to the economic purpose of the contract.

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