

**General Terms and Conditions of Business
of Aug. Winkhaus GmbH & Co. KG**

(valid from 1 January 2013)

1. Validity of the Terms and Conditions

- 1.1 All our deliveries, services and offers are carried out exclusively on the basis of these General Terms and Conditions of Business. These are an integral part of all contracts which we conclude with our contract partners (hereinafter referred to as "Customer(s)") for the deliveries and services offered by us. They shall also apply to all future deliveries, services or offers to Customers, even if they are not separately agreed again.
- 1.2 The business conditions of the Customer or third parties are inapplicable also in cases in which we do not object to their validity in an individual case. Even if we refer to a letter which contains the business conditions of the Customer or a third party or a letter refers to such this shall not be deemed our consent to the validity of such business conditions.

2. Conclusion of contract and prohibition to assign

- 2.1 An effective contract shall be concluded only upon our written order confirmation or by manufacturing the ordered goods (hereinafter referred to as "contract").
- 2.2 The rights of the Customer under the contract are not assignable.

3. Prices

- 3.1 Our prices are valid ex works plus the statutory VAT as a basic principle. Prices are calculated based on the prices valid on the date of the written order confirmation. In case of delivery ex warehouse, our prices are valid ex warehouse.

4. Terms of payment and delay of payment

- 4.1 The price to be paid by the Customer is due and payable within 14 days after the date of the invoice and delivery or acceptance of the goods. Upon the expiry of the payment period the Customer is in delay. This shall not

apply as long as the payment is not fulfilled for a reason for which the Customer is not liable.

4.2 In case of a delay of payment, we are entitled to:

- a) demand security from the Customer for further services,
- b) realise security furnished under the contract affected by the delay of payment at the amount of the delayed payment,
- c) withdraw from the contract,
- d) demand interest on payments in delay at the currently applicable statutory default interest rate, whereby our claim to commercial interest from the due date remains unaffected in relation to merchants (§ 353 of the German Commercial Code [*HGB*]),
- e) claim damages caused by delay which exceed the interest for delay.

4.3 The Customer may only offset a counterclaim if it is uncontested or has been declared legally valid by a court of law.

4.4 The Customer has no right of retention, unless it is based on the same contract and the counterclaims are uncontested by us or has been finally decided by a court of law.

5. Packing

5.1 Unless otherwise agreed, the ordered goods shall be packed according to our reasonable discretion.

6. Delivery

6.1 The goods ordered are delivered ex works which is also the place of performance. Upon demand and at the expense of the Customer, the goods shall be sent to a different destination (hereinafter referred to as: "sales shipment"). We reserve the right to decide on the type of dispatch, the transport route and the choice of the forwarding company, unless this is specified in a contract.

6.2 The goods are delivered at the expense of the Customer.

- 6.3 The risk of accidental loss and accidental deterioration of the goods passes to the Customer upon delivery at the latest. However, in the case of a sales shipment, the risk of accidental loss and accidental deterioration of the goods and the risk of delay already passes upon delivery of the goods to the forwarding agent, the carrier or the person or institution otherwise designated to execute the shipment. If a declaration of acceptance is agreed, the transfer of the risk of delivery takes place at the same time as the declaration of acceptance is made. Furthermore, the statutory provisions of the law governing contracts for work and services shall accordingly apply for an agreed declaration of acceptance. If the Customer is in delay with acceptance, this shall be deemed equivalent to delivery or acceptance.
- 6.4 If the Customer is in delay with acceptance, if he fails to provide assistance or cooperation or our delivery is delayed for other reasons for which the Customer is liable, we are entitled to claim damages incurred as a result thereof, including additional expenses (e.g. storage costs). For this we shall charge a lump-sum compensation of 5% of the price of the goods for which acceptance is delayed per calendar week, beginning with the time of delivery or - if there is no time of delivery – with the notification of the readiness of dispatch of the goods. Proof of greater damage and our legal claims (in particular the reimbursement of additional expenses, reasonable compensation, termination) remain unaffected; the lump sum shall, however, be offset against further monetary claims. The Customer shall be entitled to furnish proof that we did not suffer any damage at all or much less damage than the lump sum hereinbefore.
- 6.5 The delivery or service periods shall be understood as approximate information. They do not represent any binding commitment regarding a delivery or service deadline, unless otherwise agreed.
- 6.6 If we are unable to comply with binding time of delivery for reasons for which we are not liable (unavailability of the goods), we shall immediately notify the Customer hereof and notify him of the expected new time of delivery at the same time. If the goods are not available within the new delivery period, we are entitled to either withdraw from the contract in whole or in part. We shall immediately refund any payments already made by the Customer. An unavailability of the goods in this context is defined in particular as the delivery of our sub-suppliers to us not in due time if we have concluded a congruent covering transaction. Our legal rights of

withdrawal and termination and the statutory provisions on handling contracts in case of an exclusion of the duty to perform (e.g. due to impossibility or unreasonableness of the work/services and/or supplementary performance) remain unaffected.

- 6.7 We are entitled to execute partial delivery if a contract has been concluded on several goods and this can be reasonably expected from the Customer when taking our interests into consideration.

7. Liability for defects

- 7.1 The Customer is obliged to examine the ordered goods immediately after receipt for any obvious defects, in particular for obvious short quantities or damage and to notify us of a defect in writing immediately, within 14 days after receipt of the goods at the latest, stating the nature and scope of the defect (hereinafter referred to as "notification of defects"). The dispatch of the notification of defects in due time shall be sufficient to comply with the time limit. Defects which even on careful examination cannot be discovered within this period shall be notified immediately after discovery.
- 7.2 Liability is excluded for any defects not notified at all or not notified in due time.
- 7.3 Goods for which a notification of defects has been given may only be returned after obtaining our express consent.
- 7.4 If the ordered goods are defective, we shall remedy the defects at our discretion through supplementary performance by either repairing the goods or replacing them with goods free of defects. If deliveries contain short quantities, we shall provide a sufficient and adequate subsequent delivery.
- 7.5 If the supplementary performance should fail, be impossible or be unreasonable for the Customer, the Customer may reduce the price or withdraw from the contract.
- 7.6 We are entitled to refer the Customer to his right to reduce the price or to withdraw from the contract instead of rendering supplementary performance.
- 7.7 Our liability for defects does not include the customary wear and tear of the goods and such defects arising after delivery, e.g. through external

influences or operating errors nor shall we accept any liability for defects if goods are treated improperly by the Customer.

- 7.8 Claims based on defects in quality by the Customer under this section 7 become time-barred one year after the risk passes to the Customer. The statutory provisions of limitation periods apply to construction services, the sale of construction materials and to the sale of consumer goods according to § 474 German Civil Code (BGB).

8. Liability for other breaches of duty

- 8.1 Our liability in case of any breach of contractual or non-contractual duties which does not consist in a defect or which caused a damage over and above the defect itself is based on statutory provisions, unless otherwise specified hereinafter.
- 8.2 We are liable for damages – irrespective of the legal grounds – only in case of wilful intent and gross negligence. In addition, we are liable for simple negligence in case of
- a) injury to life, physical injury or damage to health;
 - b) a breach of an essential contractual duty. Furthermore, in this case our liability is limited to compensation of the foreseeable damage which typically occurs.
- 8.3 Claims of the Customer based on guarantees expressly granted by us and under the Product Liability Act remain unaffected by the regulations hereinbefore. The supply with specimens or samples is not deemed to be an expressly granted guarantee.

9. Software

- 9.1 For the delivery of software products, the Customer purchases from us merely the data carrier and obtains a non-exclusive right of unrestricted use in terms of territory and time of the software saved on the data carrier.
- 9.2 With regard to the relationship of the contract partners to each other, only we are entitled to the copyright, patent rights, trademark rights and all other ancillary copyrights to the software and to any objects which we permit the Customer to use or which we make accessible during the initiation and

execution of the contract. Insofar as third parties have rights, we have appropriate exploitation rights.

- 9.3 The Customer shall not make any copies of the software or its documentation in whole or in part apart from back-up and archiving purposes. The back-up copies must, as far as technically possible, be provided with the copyright notice of the original data carrier and be stored safely. Copyright notices may not be erased, modified or suppressed. Copies no longer required shall be deleted or destroyed. The user manual and other documents provided by us may only be copied for internal purposes.
- 9.4 Any inadmissible use of the software by the Customer automatically results into the loss of all and any rights of use for the Customer.
- 9.5 In addition, the software terms of licence shall apply which shall be made available to the Customer.

10. Reservation of title

- 10.1 Our deliveries are made solely with reservation of title. We reserve ownership to the delivered goods as long as and insofar as we still have claims against the Customer under the business relationship (hereinafter referred to as "reserved goods").
- 10.2 The Customer shall be entitled to process the reserved goods in the ordinary course of his business and/or to sell them to third parties with reservation of title. The Customer is prohibited from pledging or assigning our goods by way of security as long as our ownership of the goods is still reserved.
- 10.3 The processing or assembly of reserved goods is always conducted and arranged on our behalf without any obligations arising from this for us.
- 10.4 The reservation of title includes the created products through the processing, mixing or combination of our goods at their full value whereas we are considered as the manufacturer. If when processing, mixing or combining our goods with the goods of third parties their ownership continues, we acquire co-ownership according to the ratio of the invoice sums of the processed, mixed or combined goods. Furthermore, for created products the same provisions shall apply as for the reserved goods.

- 10.5 If our reserved goods are sold in the Customer's ordinary course of business without immediate payment or are joined with real estate (§ 946 of the German Civil Code [BGB]), the Customer hereby assigns his claim by way of security to us; we accept this assignment. The Customer is entitled and obliged to collect the claim assigned to us as long as we have not revoked this authorisation. The Customer is obliged to register the collected amounts separately and to transfer them immediately to us. The Customer shall be obliged to pay any related costs hereto.
- 10.6 Upon our demand, the Customer is obliged to notify his buyer of the assignment and provide us with the information and documents required to assert our rights against the buyer. We are also entitled to notify our Customer's buyer of the assignment.
- 10.7 If third parties claim or assert a right to the reserved goods, the Customer is obliged to immediately notify us thereof in writing.
- 10.8 In case of a breach of contract by the Customer, in particular if he fails to pay the purchase price, we are entitled to withdraw from the contract and demand the return of the goods based on our reservation of title and our withdrawal.
- 10.9 As soon as the Customer has stopped to make payment, the Customer is obliged to send us a list of the reserved goods still available, even if they have been processed and a list of claims to third-party debtors immediately after the announcement of his stopped payments.

Should the realizable value of the securities exceed the aggregate of our claims against the Customer which are to be secured by more than 10 %, we shall release fully paid goods upon the Customer's request.

11. Transfer of ownership in case of participation of a purchasing association

If a purchasing association is involved in the legal transaction on the Customer's side in such a way that the purchasing association pays the purchase price to us and the Customer is then obliged to pay the purchase price to the purchasing association, the ownership does not pass to the Customer when the purchasing association has paid the purchase price to us but only as soon as the Customer has also fulfilled his obligation towards

the purchasing association. Furthermore, all and any provisions hereinbefore shall apply accordingly.

12. Third-party proprietary rights

12.1 If deliveries are made based on drawings or other information provided by the Customer and third-party proprietary rights are violated as a result thereof, the Customer shall indemnify us against all third-party claims.

12.2 The Customer shall pay the costs required for legal defence in such a case.

13. Duty to inform, place of jurisdiction, applicable law, safety instructions

13.1 The Customer shall inform us of changes in ownership, the legal form of the company and any other circumstances affecting his financial conditions and of any change in address in writing without delay.

13.2 The exclusive place of jurisdiction in case of disputes with a Customer being a merchant, a legal entity under public law or a special public fund is the court competent for the official business location of our company.

However, we reserve the right to launch legal action against the Customer at the official business location or residence of the Customer.

13.3 The laws of the Federal Republic of Germany excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are applicable to all contracts which include these General Terms and Conditions of Business and to the General Terms and Conditions of Business themselves.

Note on locking systems: You have decided in favour of a high-class, modern Winkhaus organisational system which, due to its high level of functionality and technology, speaks for itself. However, we would like to point out that, depending on the amount of criminal energy applied, any locking system - whether mechanical or electronic - can be bypassed.

If you would like to know more, please contact us at info@winkhaus.de or +49 (0) 251/49 08-110.