

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

**(valid from 15.11.2022)**

## **1. Validity of the conditions**

- 1.1 All our deliveries, services and offers shall be made exclusively on the basis of these General Terms and Conditions of Business and Delivery (GTC). These are an integral part of all contracts which we (hereinafter referred to as "Winkhaus") conclude with our contractual partners (hereinafter referred to as "clients") regarding the deliveries or services offered by us in the B2B business. They shall also apply to all future deliveries, services or offers to the clients, even if they are not separately agreed again.
- 1.2 The client's or third party's terms and conditions of business shall not apply, even if we do not separately contradict to their application in individual cases. Even if we refer to a letter that contains or refers to the client's or a third party's terms and conditions, this does not constitute an agreement to the validity of those terms and conditions.

## **2. Conclusion of contract and prohibition of assignment**

- 2.1 An effective contract shall in principle only be concluded upon written confirmation of the order or upon manufacture of the ordered goods by us (hereinafter referred to as "Contract").
- 2.2 The customer's rights under the Contract are not transferable.

## **3. Prices and surcharge**

- 3.1 Our prices are always ex works plus applicable value added tax. Invoicing shall be at the prices valid and applicable on the date of the written order confirmation. In the case of delivery ex warehouse, the prices are ex warehouse.
- 3.2 Winkhaus reserves the right to react to changes of energy, raw material and material prices by means of a TZ surcharge (TZ = price increase surcharge). The initial application of a surcharge as well as changes will be announced with a lead time of four weeks. The TZ is shown separately on the invoice.

## **4. Terms of payment and default**

- 4.1 Unless otherwise agreed, the price to be paid by the customer shall be due and payable within 30 days from the date of the invoice and delivery or acceptance of the goods. Upon expiry of the aforementioned payment period, the customer shall automatically be in default. This shall not apply as long as payment is not made due to a circumstance for which the customer is not responsible.
- 4.2 In the event of default in payment, we shall be entitled:
- a) to demand securities from the customer for further services,
  - b) to realise securities already provided under the contract affected by the delay in payment in the amount of the delayed payment,
  - c) to withdraw from the contract after setting a reasonable deadline for payment,
  - d) We are entitled to demand interest on overdue payments at the applicable statutory rate of interest on default, whereby our claim to the commercial interest on arrears (§ 353 HGB) remains unaffected for merchants,
  - e) to claim damages for delay in excess of the interest on arrears.
- 4.3 The customer may only charge up against an undisputed or legally ascertained counterclaim.
- 4.4 The customer shall not be entitled to a right of retention unless it is based on the same contract and the counterclaims are not disputed by us or have been legally ascertained.

## **5. Packing**

- 5.1 Unless and insofar as a separate agreement is not made, the ordered goods shall be properly packed at our dutiful discretion.

## **6. Delivery**

- 6.1 Delivery of the ordered goods shall be ex works, which is also the place of performance. At the customer's request and expense, the goods shall be shipped to another destination (hereinafter referred to as "sale by delivery to a place other than the place of performance"). We reserve the right to choose the mode of dispatch, the transport route and the choice of transport company, unless a separate choice is made in an individual contract. Subject to other agreements in individual cases, the delivery of the ordered goods to the customer shall be made on the basis of the Incoterms "Carriage Paid To" (CPT). For the interpretation of trade terms, the version of the Incoterms valid at the time of conclusion of the contract shall apply.
- 6.2 The goods shall be delivered at the expense of the Buyer.
- 6.3 The risk of accidental loss and accidental deterioration of the goods shall pass to the customer at the latest upon handover. However, in the case of sales shipment to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the customer upon delivery of the goods to the forwarder, the carrier or any other person or institution designated to carry out the shipment. Insofar as a separate acceptance has been agreed in the case of services under a contract for work and services, this shall be decisive for the transfer of risk.

In all other respects, the statutory provisions of the law on contracts for work and services shall also apply mutatis mutandis to an agreed acceptance. Handover or acceptance shall be deemed equivalent if the customer is in default of acceptance.

- 6.4 If the customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this purpose, we shall charge a lump-sum compensation amounting to 5% of the price of the goods in default of acceptance per calendar week, starting with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for dispatch. The proof of a higher damage and our other legal claims (in particular compensation for additional expenses, reasonable compensation, termination rights) shall remain unaffected; however, the lump sum shall be offset against further monetary claims. The customer remains entitled to prove that we have not suffered any damage at all or only significantly less damage than the aforementioned lump sum.
- 6.5 The delivery or service times are in principle only to be understood as approximate indications. A binding confirmation of a delivery or service date is not associated with this, unless expressly agreed otherwise, at least in text form.
- 6.6 If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the goods), we shall inform the customer of this without delay and at the same time notify the customer of the expected new delivery deadline. If the goods are also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid by the customer. A case of non-availability of the goods in this sense shall be deemed to be in particular the failure of our supplier to deliver on time if we have concluded a congruent hedging transaction. Our statutory rights of rescission and termination as well as the statutory provisions on the performance of the contract in the event of an exclusion of the obligation to perform (e.g. impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected. Reference is made to clause 11 of these GTC.
- 6.7 We are entitled to make partial deliveries if a contract has been concluded for several goods and this is reasonable for the customer taking into account the interests of both parties.

## **7. Liability for defects**

- 7.1 The customer is obliged to inspect the ordered goods immediately after receipt for obvious defects, in particular also for obvious shortages or damage, and to notify us in writing of any defect immediately, at the latest within 14 days after receipt of the goods, stating the nature and extent of the defect (hereinafter referred to as "notice of defect"). The timely dispatch of the notice of defects shall be sufficient to keep the deadline. Defects which cannot be discovered within this period even after careful inspection must be notified immediately after their discovery.
- 7.2 If the notice of defect is not given or not given in time, our liability for the defect not notified or not notified in time is excluded in full.
- 7.3 Goods which are the subject of a complaint may only be returned with our explicit consent.

- 7.4 If the ordered goods are defective, the defect shall be remedied at our discretion by way of subsequent performance either by rectification of the defect or by replacement with goods free of defects. In the case of deliveries of insufficient quantities, a corresponding subsequent delivery shall be made.
- 7.5 If subsequent performance fails, is impossible or unreasonable for the customer, the customer may reduce the price or withdraw from the contract.
- 7.6 We are free to refer the customer to his right to reduce the price or to withdraw from the contract instead of subsequent performance.
- 7.7 Our liability for defects does not include normal wear and tear of the goods as well as defects that only arise after delivery, e.g. due to external influences or operating errors. There is also no liability for defects in the event of improper handling of the goods by the customer. Every security and locking system - whether mechanical or electronic - can be bypassed depending on the use of criminal energy.
- 7.8 The customer's claims for material defects under this Clause 7 shall become statute-barred one year after the transfer of risk to the customer. The statutory limitation provisions shall apply to building construction services and the sale of building construction products.
- 7.9 In the event of replacement of the defective goods delivered, which are installed in another item or attached to another item in accordance with their type and intended use, the liability for defects shall include the customary expenses for the removal of the defective goods and the installation or attachment of the repaired or delivered non-defective goods. This liability for defects requires that we are informed in writing in good time, but at least 7 working days before removal of the defective goods, in all cases in which there is no imminent danger.

## **8. Liability for other breaches of duty**

- 8.1 Our liability for breach of contractual and non-contractual obligations which do not consist in a defect or have caused damage exceeding the defect shall be governed by the statutory provisions if and to the extent that nothing to the contrary is stipulated below.
- 8.2 We shall only be liable for damages - irrespective of the legal grounds - in the event of intent and gross negligence. In addition, we shall also be liable in the event of simple negligence
- a) for damages resulting from injury to life, body or health
  - b) in the event of a breach of an essential contractual obligation. In this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.
- 8.3 Claims of the customer arising from guarantees expressly assumed by us as well as the Product Liability Act shall remain unaffected by the above provisions. The handing over of samples or specimens shall not be deemed to be an assumption of guarantee - of whatever kind - in this sense.

## **9. Software**

- 9.1 When software products are delivered, the customer acquires from us only the data carrier as well as a non-exclusive, spatially and temporally unlimited right to use the software stored on it.
- 9.2 The copyright, patent rights, trademark rights and all other ancillary copyrights to the software as well as to other objects which we provide or make accessible to the customer within the scope of the contract initiation and implementation shall be exclusively vested in us in the relationship between the contractual partners. Insofar as third parties are entitled to the rights, we shall have corresponding exploitation rights.
- 9.3 Except for backup and archiving purposes, the customer shall not make copies of the software or its documentation, either in whole or in part. The backup copies must, as far as technically possible, bear the copyright notice of the original data carrier and be stored securely. Copyright notices may not be deleted, changed or suppressed. Copies that are no longer required must be deleted or destroyed. The user manual and other documents provided by us may only be copied for internal company purposes.
- 9.4 Any unauthorised use of the Software by the customer shall automatically result in the loss of any rights of use for the customer.
- 9.5 In addition, the licence conditions provided for the software shall apply, which we shall make available to the customer upon conclusion of the relevant contracts and with which the customer must declare its consent.

## **10. Retention of title**

- 10.1 Our deliveries are made exclusively subject to retention of title. We reserve title to the delivered goods as long as and insofar as we are still entitled to claims from the business relationship with the customer (hereinafter referred to as "reserved goods").
- 10.2 The customer is entitled to process the goods subject to retention of title within the scope of his properly conducted business operations and/or to sell them to third parties subject to retention of title. The pledging or transfer by way of security of our goods by the customer is prohibited as long as they are under our reservation of title.
- 10.3 The processing or assembly of reserved goods subject to retention of title shall always be carried out on our behalf, without any liabilities arising for us as a result.
- 10.4 The retention of title extends to the products resulting from the processing, mixing or combining of our goods at their full value, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the reserved goods subject to retention of title.
- 10.5 If our reserved goods subject to retention of title are sold in the ordinary course of the customer's business without immediate payment or are connected to real property (§ 946 BGB [German Civil Code]), the customer hereby assigns to us in full its claim to counter-performance by way of security; we accept the assignment. The customer is entitled and obliged to collect the claim assigned to us as long as we have not revoked this authorisa-

tion. The customer shall book the collected amounts separately and pay them to us without delay. The customer shall bear the costs associated with this.

- 10.6 At our request, the customer shall be obliged to notify his customer of the assignment and to provide us with the information and documents required to assert our rights against the customer. We shall also be entitled to notify our customer's buyer of the assignment.
- 10.7 If third parties claim or assert a right to the goods subject to retention of title, the customer shall be obliged to notify us thereof in writing without delay.
- 10.8 If the customer acts in breach of contract, in particular if the purchase price is not paid, we shall be entitled to withdraw from the contract and to demand the return of the goods on the basis of the retention of title and the declaration of withdrawal.
- 10.9 As soon as the customer has stopped payments, he shall be obliged to send us a list of the goods subject to retention of title that are still available, even if they have been processed, as well as a list of the claims against the third-party debtors, and to do so immediately after notification of the cessation of payments. If the achievable value of the securities exceeds our secured claims against the customer by more than 10%, we shall release goods that have already been fully paid for at the customer's request.

## **11. Force majeure**

In cases of force majeure, such as in particular fire damage, floods, sovereign restrictions on the supply of electricity as well as gas to workplaces and businesses, strikes, lawful lockouts and epidemics (including epidemics and pandemics), insofar as a risk level of at least "moderate" is defined by the Robert Koch Institute, the contracting party affected thereby shall be released from the obligation to supply or purchase for the duration and to the extent of the effect.

## **12. Transfer of ownership in the case of participation of a purchasing association**

If a purchasing association is involved in the legal transaction on the part of the customer in such a way that the purchasing association satisfies the purchase price claim against us and the customer is obliged to satisfy the purchase price claim against the purchasing association, ownership shall not pass to the customer through satisfaction of the purchase price claim by the purchasing association to us, but only when the customer has also fulfilled its obligation towards the purchasing association. In all other respects, the above statements shall apply accordingly.

## **13. Third party property rights**

- 13.1 If designs and/or deliveries are made according to drawings or other information provided by the customer and if this infringes the property rights of third parties, the customer shall indemnify us against all possible claims of third parties.
- 13.2 Necessary costs of legal defence shall be borne by the customer in this case.

## **14. Duty to inform, place of jurisdiction, applicable law**

14.1 The customer must notify us in writing without delay of any changes in ownership, the legal form of the company or other circumstances affecting its financial circumstances as well as any change of address.

14.2 The exclusive place of jurisdiction for disputes with a customer who is a merchant, a legal entity under public law or a public special fund shall be the court responsible for the registered office of Aug. Winkhaus GmbH & Co KG.

We expressly reserve the right to take legal action at the customer's place of business or residence.

14.3 These General Terms and Conditions of Business and Delivery (GTC) have been originally drawn up in German. Any translation of this agreement into a language other than German shall be made exclusively for compliance with any legal requirements and / or for reference purposes. In the event of questions of interpretation and / or contradictions, the German version of the General Terms and Conditions of Business and Delivery (GTC) shall be exclusively authoritative.

14.4. All contracts in which these GTC are included, as well as the GTC themselves, shall be governed exclusively by German law, to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).