

## **General Terms and Conditions of Wihag Composites GmbH & Co. KG**

### **1. General**

1.1. Our General Terms and Conditions (GTCs) shall apply exclusively to all contracts concluded with us. We do not recognise terms of the purchaser that conflict with or deviate from our GTCs, unless we have expressly agreed to their application in writing.

1.2. These GTCs shall also apply to all future business relations, even if they are not expressly agreed again. These terms shall be deemed to have been accepted on receipt of our goods or services at the latest.

1.3. Divergent terms of the purchaser that we do not expressly recognise in writing shall be non-binding for us, even if we do not expressly contradict them or deliver without reservation to the purchaser. Counter confirmations by the purchaser and references to its terms and conditions of business and/or terms and conditions of purchase are hereby contradicted.

### **2. Offers and Orders**

2.1. Our offers shall always be non-binding. The contract shall only come about by our confirmation of order in writing. To comply with the written form a confirmation of order being sent as a pdf-file in e-mail-attachment is sufficient, even without signature.

2.2. Drawings, illustrations, dimensions, weights, technical data or other data are only binding if expressly agreed in writing.

### **3. Prices**

3.1. Price setting is in EURO. Decisive is the respective confirmation of order. The prices are ex works plus the applicable sales tax.

3.2. Shipping and packaging costs are borne by the purchaser.

### **4. Terms of payment**

4.1. The purchase price shall fall due for payment net (without deduction) within 30 days of the date of the invoice unless something different is stated in the confirmation of order. Should the purchaser default on payment, we shall be entitled to demand interest at the legal rate of interest.

4.2. If circumstances come to our attention that call into question the purchaser's creditworthiness, especially if the latter ceases making payments, or if other circumstances become evident that call the purchaser's creditworthiness into question, we shall be entitled to declare the entire residual debt to be due, even if we have accepted cheques. Furthermore, we shall be entitled to demand advance payments or the furnishing of security.

4.3. In the case of the existence of defects, the purchaser has no right of retention, unless the delivery is obviously flawed. In such a case, the purchaser is only entitled to withhold if the retained amount is proportionate to the defects and the likely cost of remedy.

4.4. The purchaser shall only be entitled to a right of set-off if its counterclaims have been established in court or are undisputed or recognised by us.

### **5. Delivery dates and delivery deadlines**

5.1. Delivery dates or delivery deadlines must be agreed in writing. They shall be deemed to have been met if the consignment is ready for dispatch by the time they expire. If, in the event of our being in default of delivery, the purchaser grants us a reasonable extension of time under threat of rejection, the purchaser shall be entitled to withdraw from the contract if this extension expires without effect. If we are responsible for non-compliance with bindingly promised time-limits and deadlines or are in default, the purchaser shall be entitled to default compensation amounting to 1/2% for each complete week of default, but to no more than a maximum of 5% of the invoice value of the deliveries and performances affected by the default. Further claims shall be excluded, unless the default was caused by at least gross negligence on our part.

5.2. Even if deadlines have been bindingly agreed, we shall not be deemed responsible for delays in delivery or performance caused by force majeure or by events that make delivery by the seller considerably more difficult or impossible – and not only temporarily; these shall be deemed to include in particular strikes, government orders, etc., even if they affect our supplier or sub-supplier. They shall entitle us to postpone delivery or performance by the period of the hindrance plus an appropriate start-up period, or to completely or partly withdraw from the contract because of the part that has not yet been performed. If our supplier fails to supply the required merchandise, or if deliveries are incomplete, we shall transfer to the purchaser all claims against the supplier to which we are entitled because of the latter's late delivery. If the hindrance lasts longer than three months, the purchaser shall be entitled to withdraw from the contract because of the not yet- fulfilled part thereof after

granting a reasonable extension of time. If the delivery period is extended or if we are released from our obligation, the purchaser may not derive claims for damages from this. We can only invoke the circumstances mentioned if we inform the purchaser immediately.

5.3. In order for us to adhere to our delivery obligation, the purchaser must duly and punctually meet its obligations. In particular, all forms of default of delivery or service shall be excluded if advance payments agreed with the purchaser, and due before delivery, are not made.

5.4. We shall be entitled to make partial deliveries, or performance by successive instalments, at any time, unless the purchaser is not interested in partial deliveries or performance by successive instalments.

## **6. Dispatch and passage of risk**

6.1. Delivery ex-works shall be deemed to be agreed if nothing different is stated in the confirmation of order.

6.2. Risk shall pass to the purchaser on dispatch of the items to be delivered, even if partial deliveries are made. If dispatch is delayed at the request of the purchaser or due to circumstances beyond our control, the risk shall pass to the purchaser on the day when we notify the purchaser that we are ready to ship.

## **7. Reservation of title**

7.1. We reserve title to the object of sale pending receipt of all claims created at the conclusion of the contract, including all claims to follow-up orders and repeat orders.

7.2. At the request of the purchaser we undertake to release the collateral to which we are entitled, if the realisable value of our collateral exceeds the secured claims by more than 20%; the choice of the collateral shall be incumbent upon us.

7.3. The purchaser shall be entitled to resell the object of sale in the due course of business; however, the purchaser already assigns now all claims from customers or third parties that accrue from the resale, irrespective of whether the object of sale has been resold with or without an agreement. The purchaser shall be entitled to collect the receivables assigned to us in its own name on our account. Our right to collect the receivable shall remain unaffected by this. As long as the purchaser meets its liabilities, however, we undertake not to collect the receivable.

7.4. If the object of sale is combined with other objects that do not belong to us in such a way that it becomes an essential component part of a uniform object, we shall acquire pro-rata co-ownership of the new object in line with the value of the object of sale relative to the other combined objects at the time when they are combined. If the objects are combined in such a way that the purchaser's object must be regarded as the main object, it shall be deemed agreed that the purchaser transfers to us pro-rata co-ownership. The purchaser shall keep for us the object in which we have obtained sole ownership or co-ownership in this way.

7.5. The supplier must be notified immediately of any attachment or confiscation of the reserved goods by a third party.

7.6. In the event of behaviour by the purchaser that is in violation of the contract – in particular default in payment – we shall be entitled to demand temporary return of the goods to which we have title at the purchaser's expense, even without withdrawing from the contract or granting an extension.

## **8. Warranty for defects**

8.1. The purchaser's warranty rights shall be dependent on the purchaser duly meeting its obligation to inspect deliveries and to give notice of defects pursuant to sections 377 and 378 of the German Commercial Code [HGB].

8.2. If the object of sale has a defect for which we are responsible, we shall be entitled to choose between repairing and replacing it. If we are not willing or able to repair or replace the object of sale for reasons for which we are responsible, the purchaser shall be entitled to choose between withdrawing from the contract and demanding a corresponding reduction in the purchase price.

## **9. Liability**

9.1 Claims for damages shall be excluded, irrespective of the nature of the breach of duty, including unlawful acts, unless based on intentional or grossly negligent action.

9.2 In cases where we have violated essential contractual obligations, we shall be liable for all negligence, but only up to the value of the foreseeable damage.

9.3 The restrictions and exclusions of liability in subsections 1 and 2 shall not apply to claims pursuant to the (German) Product Liability Act or to damages relating to injury to life, body or health.

9.4 To the extent to which liability is excluded or limited, this shall also apply to our employees, workers, representatives and vicarious agents.

## 10. Limitation

10.1 The limitation period for claims and rights due to defects - for whatever legal reason - shall be one year.

10.2 The limitation of subsection 1 shall also apply to claims for damages against us in connection with the defect.

10.3 The limitation of subsections 1 and 2 shall not apply in case of gross negligence, wilful or fraudulent concealment of a defect, also not in cases of injury to life, limb or health or freedom, for claims under the (German) Product Liability Act or in cases of violation of essential contractual obligations.

10.4 The limitation period on all claims will begin with the delivery of the goods.

10.5 The above regulations will not cause a change in the burden of proof to the detriment of the purchaser.

## 11. Final provisions

11.1. Subsidiary agreements and changes shall require our written confirmation in order to be effective.

11.2. As soon as business relations have commenced, we shall be entitled to store and – if necessary – process the purchaser's data; this can also include personal data.

11.3. The place of performance for all obligations arising from this contractual relationship, i.e. also for delivery and payment, shall be our registered place of business (Rottenbach).

11.4. If the purchaser is a trader, our registered place of business shall be the place of jurisdiction; however, we shall also be entitled to institute legal proceedings against the purchaser at its domicile.

11.5. The laws of the Federal Republic of Germany shall apply for all claims arising from the present contract. The application of UN Sales Law (CISG) shall be excluded.

11.6. Should one or more provisions of these GTCs be ineffective, the effectiveness of the terms and conditions shall remain unaffected by this.

*This is a translation of the General Terms and Conditions written in German language. In the event of any discrepancy between the English and German text, the German text shall prevail.*

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