

I. Scope of Application

These General Terms and Conditions of Sale shall apply to all - including future - contracts and offers of Wilhelm Oberste-Beulmann GmbH & Co. KG - hereinafter also referred to as "we" or "us" - with entrepreneurs, legal entities under public law and special funds under public law concerning deliveries and other services, including contracts for work and services and the delivery of non-fungible items, unless otherwise agreed in individual contracts. In the case of drop shipments, the conditions of the price list of the commissioned supplier plant shall apply in addition.

This document, together with all other documents agreed between us and the Buyer, constitutes the undivided and sole agreement between the parties with respect to the supply of goods and/or services by us to the Buyer.

The applicability of any general terms and conditions (in particular purchasing conditions) of the Buyer is hereby expressly rejected, regardless of whether they are part of the scope of orders, order confirmations, specifications or similar documents. The Buyer waives all other rights that would enable it to invoke these terms and conditions. The Buyer's terms and conditions of purchase shall not be recognized by us even if we do not expressly object to them again after receipt by us.

In case of doubt, the Incoterms as amended from time to time shall be decisive for the interpretation of commercial clauses.

Our offers are subject to change. Declarations of acceptance and orders must be confirmed in writing or by telex to be legally effective. The same applies to supplements, amendments or subsidiary agreements. Verbal agreements and assurances made by our employees in connection with the conclusion of the contract shall only become binding upon our written confirmation.

Illustrations, drawings, dimensions, weights or other performance data in brochures, advertising literature or comparable documents serve only as general descriptions of the goods. They are only to be regarded as binding if this is expressly agreed in writing. Dimensions and weights are subject to deviations customary in the trade. The weights shall be determined by our master weighers or the master weighers of the supplying plant and shall be decisive for the calculation. Proof of weight shall be provided at the request of the purchaser in an incontestable manner by presentation of the weighing slip. The total weight of the consignment shall apply to the calculation, irrespective of the means of transport used for the delivery. Differences compared to the calculated individual weights shall be distributed proportionately among them. No guarantee shall be assumed for a number of pieces or bundles or the like specified in the invoice.

Only those properties are warranted which are expressly designated as "warranted properties" on the order form and order confirmation. For all sales, the material may be supplied by plants of our choice.

We expressly point out that we do not provide original works certificates or copies thereof. We only issue certificates on our own forms and guarantee therein that the values correspond to those of the present original certificate.

We are entitled to unilaterally amend these General Terms and Conditions for good cause, e.g. due to new technical developments, changes in case law or legislation or other equivalent reasons. We shall inform the Buyer of any amendment in text form (incl. e-mail, fax), stating the content of the amended provisions. The amendment shall become part of the contract if the Buyer does not object to its inclusion in the contractual relationship in text form (incl. e-mail, fax) within six weeks after dispatch of the amendment notification. The objection to the inclusion of the amended GTC does not constitute a termination of the buyer with respect to the underlying contractual relationship. We have the right to terminate the contractual relationship in case of objection by the buyer.

This version of the GTC replaces all previous versions that were announced by us to the buyer.

II. Prices

The prices stated in the order confirmation shall be decisive. Unless otherwise agreed in individual contracts, all prices and conditions are based on our price and conditions list valid at the time of delivery, excluding value added tax at the statutory rate and other statutory taxes and duties.

The price does not include shipping and packaging costs and other ancillary costs. All prices are ex works or ex base or, in the case of delivery from the warehouse, ex warehouse.

Our prices assume normal unhindered transport conditions. Additional costs shall be borne by the Buyer, irrespective of whether they are due to the nature of the goods, complication and/or hindrance of the transport conditions; the same shall apply to incorrect freight. These additional costs shall not be borne by the Buyer if we are responsible for their occurrence.

If duties or other external costs included in the agreed price change later than four weeks after conclusion of the contract, or if they arise for the first time, we shall be entitled to change the price accordingly.

III. Grades, dimensions and weights, warranted characteristics

Unless otherwise agreed, we deliver goods of customary quality.

Grades and dimensions shall be determined in accordance with the DIN/EN standards or material sheets applicable at the time of conclusion of the contract or, in the absence of such, in accordance with commercial practice. References to standards, material sheets or works test certificates as well as information on qualities, dimensions, weights and usability shall not be deemed to be warranties or guarantees within the meaning of Section 459 (2) of the German Civil Code (BGB), nor shall they be deemed to be declarations of conformity, manufacturer's declarations and corresponding marks such as CE and GS.

The weighing/measurement carried out by us or our supplier shall be decisive for the weights. Proof of weight shall be provided by presentation of the weighing slip. We can also theoretically determine weights without weighing according to the length or area of the product, whereby we can determine the dimensions according to recognized statistical methods. We shall also be entitled to increase the theoretical weight by a customary mark-up (commercial weight) to compensate for production tolerances. In the case of goods invoiced by weight, the numbers of pieces, bundles, etc. stated in the dispatch note shall not be binding. Unless individual weighing is customary, the total weight of the consignment shall apply in each case. Differences compared to the calculated individual weights will be distributed proportionally to these. The weight determined shall be rounded up to full kilograms.

The delivery of excess and short quantities of the agreed scope of delivery, which are customary in the industry, shall be deemed to be agreed as customary in the trade.

We do not guarantee that the delivered goods are suitable for the purpose or process intended by the buyer..

IV. Acceptance

If acceptance has been agreed, it can only take place in our warehouse or in the supplying plant immediately after notification of readiness for acceptance. The personal acceptance costs shall be borne by the Buyer, the material acceptance costs shall be charged to him in accordance with our price list or the price list of the supplying plant.

If the acceptance is not carried out, not carried out in time or not carried out completely through no fault of our own, we shall be entitled to dispatch the goods without acceptance or to store them at the expense and risk of the Buyer and to charge him for them. In this case, the goods shall be deemed to have been delivered in accordance with the contract in every respect.

V. Execution of deliveries, transfer of risk

We determine the route and means of dispatch as well as the forwarding agent and carrier.

Goods which have been reported ready for dispatch in accordance with the contract must be called off immediately, otherwise we shall be entitled, after issuing a reminder, to dispatch them at our discretion at the expense and risk of the purchaser or to store them at our discretion and charge them immediately.

With the handing over of the goods to a forwarding agent or carrier, at the latest, however, when the goods leave the warehouse or the supplying plant, the risk, including the risk of seizure of the goods, shall pass to the Buyer in all transactions, including carriage paid and free domicile deliveries. We shall provide insurance only upon instruction and at the expense of the buyer. Duty and costs of unloading are at the expense of the buyer.

The goods are delivered unpacked. If customary in the trade, we deliver packed. We provide packing, protective and/or transport aids according to our experience at the expense of the buyer. They will be taken back at our warehouse. We do not assume any costs of the buyer for the return transport or for an own disposal of the packaging.

If a dispatch of shipping documents and other evidence owed by us is delayed after dispatch, we shall only be liable for the consequences in the event of gross negligence.

In the event of damage in transit, the purchaser shall immediately arrange for a statement of facts to be submitted to the competent authorities.

We are entitled to make partial deliveries to a reasonable extent. Customary excess and short deliveries of the contracted quantity are permissible.

In the case of contracts concluded with continuous delivery, the Buyer shall provide us with call-offs and grade classification for approximately equal monthly quantities; otherwise, we shall be entitled to make the determinations ourselves at our reasonable discretion.

If the individual call-offs exceed the contractual quantity in total, we shall be entitled, but not obliged, to deliver the excess quantity. We may charge for the excess quantity at the prices valid at the time of the call-off or delivery.

VI. Delivery times and dates, delays

Delivery dates or periods, which may be agreed upon as binding or non-binding, must be in writing. Details of delivery times are only approximate and non-binding if they are only agreed as "circa" or not agreed in writing as "fixed" or "binding".

Delivery periods shall commence on the date of our order confirmation and shall only apply on condition that all details of the order have been clarified in good time and that all documents required for the performance of the order have been received and that all obligations of the Buyer have been fulfilled in good time, e.g. provision of all official certificates, provision of letters of credit and guarantees or provision of advance payments.

The time of dispatch ex works or ex warehouse shall be decisive for compliance with delivery periods and dates. They shall be deemed to have been met upon notification of readiness for dispatch if the goods cannot be dispatched on time through no fault of our own.

We shall not be responsible for delays in delivery and performance due to force majeure and due to events which make delivery considerably more difficult or impossible - these include in particular strikes, lockouts, official orders, etc., even if they occur at our suppliers or their sub-suppliers and our vicarious agents - even in the case of bindingly agreed deadlines and dates. In addition, they entitle us to postpone the delivery or the service for the duration of the hindrance plus a reasonable start-up time or to withdraw from the contract in whole or in part because of the part not yet fulfilled. The purchaser shall be given the opportunity to comment beforehand.

Our delivery obligation is subject to correct and timely self-delivery, unless the incorrect or delayed self-delivery is our fault.

In the event of a delay in delivery and performance lasting longer than 3 months, the purchaser shall be granted a contractual right of withdrawal after setting a reasonable period of grace of at least 3 weeks, provided that the contract has not yet been fulfilled. If the delivery time is extended or if we are released from our obligation, no claims for damages can be derived from this on the part of the purchaser. We will inform the buyer immediately about any delaying circumstances.

If we are responsible for non-compliance with bindingly agreed deadlines and dates, or if we are in default, the Buyer may claim compensation for default in the amount of 1% of the net invoice value of the deliveries and services affected by the default for each full week of the default, but not more than 5% in total. Otherwise, claims for damages shall be governed by Section X of these Terms and Conditions.

The customer must point out if the product is used as a construction product in accordance with BauPVO.

VII. Payment and payment settlement, late payment

Payments are due immediately, unless a separate due date is shown on the invoice. The timeliness of payment shall be determined by the date of receipt of payment by us.

We are entitled, without prejudice to further claims, to suspend further delivery in the event of payment arrears until all due claims arising from the business relationship have been settled. In the event of default in payment, we shall be entitled to charge default interest in the amount provided for by law as well as reminder fees. If the Buyer continues to fail to pay for goods or services even after appropriate payment reminders have been sent, we shall be entitled to terminate the contract without notice. At that point, all outstanding amounts as well as accrued interest and all costs incurred by us in connection with the termination of the contract and the return of all deliveries shall become due immediately.

In particular, in the event of a single default of payment by the Buyer, we shall be entitled to make further deliveries only against advance payment.

The buyer may only offset claims against us if his claims are undisputed or legally binding.

We shall be entitled to offset with and against due and non-due claims, including future claims, to which we or a company in which we have a direct or indirect interest of at least 50% are entitled against the Buyer or which the Buyer has against one of the designated companies. If necessary, the Buyer shall receive information on the status of these participations upon request. We shall be entitled, despite any provisions of the Buyer to the contrary, to set off payments first against the Buyer's older debts; we shall then inform the Buyer of the nature of the set-off effected. If costs and interest have already been incurred, we shall be entitled to set off the payment first against the costs, then against the interest and finally against the main performance.

The purchaser must check invoices and account statements for accuracy. Objections must be raised with us within 14 days of receipt of the invoice or statement of account, otherwise the prices shown shall be deemed to have been accepted by the purchaser.

The invoice or the account statement has the effect of a balance confirmation.

We point out to the buyer in the invoice or in the account statement the effect of the expiry of the deadline.

The buyer is in default at the latest 3 days after the due date of our claim, without the need for a reminder.

If, after conclusion of the contract, it becomes apparent that our claim for payment is jeopardized by the Buyer's inability to pay, or if the Buyer defaults on payment of a substantial amount or if other circumstances arise which indicate a substantial deterioration in the Buyer's ability to pay after conclusion of the contract, we shall be entitled to the rights under Section 321 of the German Civil Code (BGB). We shall then also be entitled to declare due all claims not yet due from the current business relationship with the Buyer. In this case, we may also demand advance payments or the provision of security.

An agreed cash discount always relates only to the invoice value excluding freight and presupposes the complete settlement of all due liabilities of the Buyer at the time of the cash discount. Unless otherwise agreed, cash discount periods shall commence from the date of invoice.

VIII. Retention of title

The delivered goods shall remain our property until full payment of all claims, in particular also of the respective balance claims to which we are entitled against the Buyer within the scope of the business relationship (balance reservation). This reservation of balance shall finally expire upon settlement of all claims still outstanding at the time of payment and covered by this reservation of balance.

If the delivered goods are mixed or blended with other items, we shall acquire co-ownership of the new item in proportion to the value of the goods delivered by us to the value of the new item. The same shall apply if the goods supplied are processed during the production of the new item. Our co-ownership rights shall be deemed to be reserved goods.

The Buyer may sell the reserved goods only in the ordinary course of business under his normal terms and conditions and as long as he is not in default, provided that the claims arising from the resale are transferred to us in accordance with the provisions of the following two paragraphs. He shall not be entitled to dispose of the reserved goods in any other way.

The claims arising from the resale of the goods subject to retention of title shall already now be assigned to us together with all securities which the Buyer acquires for the claim. They shall serve as security to the same extent as the reserved goods. If the reserved goods are sold by the Buyer together with other goods not sold by us, the claim from the resale shall be assigned to us in the ratio of the invoice value of the reserved goods to the invoice value of the other goods sold. In the event of the sale of goods in which we have co-ownership shares pursuant to paragraph 2, a part corresponding to our co-ownership share shall be assigned to us.

The buyer shall be entitled to collect claims arising from the resale. This authorization to collect shall expire in the event of our revocation, but at the latest in the event of default in payment, non-redemption of a bill of exchange or application for the opening of insolvency proceedings. We shall only exercise our right of revocation if it becomes apparent after conclusion of the contract that our claim for payment under this or other contracts with the Buyer is jeopardized by the Buyer's lack of ability to pay. At our request, the purchaser is obliged to inform his customers immediately of the assignment to us and to provide us with the documents required for collection.

In the event of conduct by the Buyer in breach of the contract, in particular in the event of default in payment or if it becomes apparent after conclusion of the contract that our claim to payment under this or other contracts with the Buyer is jeopardized by the Buyer's lack of ability to pay, we shall be entitled to set a reasonable deadline and, after its unsuccessful expiry, to take back the purchased item and, if necessary, to enter the Buyer's premises for this purpose. The taking back of the object of sale by us shall not constitute a withdrawal from the contract unless the Buyer is a consumer. The provisions of the Insolvency Code shall remain unaffected.

The buyer is not permitted to pledge or assign the reserved goods as security.

Pledges, seizures and any other impairment by third parties of the goods delivered by us under reservation of title shall be notified to us without delay so that we can file a suit pursuant to § 771 ZPO (German Code of Civil Procedure). Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs of an action pursuant to § 771 ZPO, the Buyer shall be liable for the loss incurred by us.

We retain the right to all intellectual property rights to our drawings, specifications, data and all other information and documents which have been produced by us for the Buyer, irrespective of the medium.

If the invoice value of the securities existing as a result of the retention of title exceeds the secured claims, including ancillary claims (interest; costs or similar), by more than 50% in total, we shall be obliged, at the Buyer's request, to release securities of our choice to this extent.

IX. Liability for material defects, notice of defects, subsequent performance, limitation period

The buyer has the opportunity to inspect the material before it leaves our warehouse. Material defects of the goods shall be notified to us in writing without delay, at the latest seven calendar days after delivery. Defects which cannot be discovered within this period even with the most careful inspection must be notified to us in writing immediately after discovery, at the latest before expiry of the agreed or statutory period of limitation, with immediate cessation of any processing.

Liability for consequential harm caused by a defect is excluded.

If a defect has remained unknown to the purchaser as a result of negligence, he may only assert rights on account of this defect if we have fraudulently concealed the defect or have given a guarantee for the quality of the item.

After performance of an agreed acceptance of the goods by the Buyer, the notification of defects that were detectable during the agreed type of acceptance shall be excluded. The same applies if the buyer does not carry out an agreed acceptance, not in time or not completely.

Notices of defects shall be excluded upon expiry of 3 months after transfer of risk of the goods.

Notices of defects shall only entitle the buyer to withhold invoice amounts if the existence of the defects is confirmed by us in writing. If the buyer does not immediately provide us with samples of the rejected material upon request, all warranty rights shall lapse. Claims for defects shall become statute-barred at the latest one month after written rejection of the notice of defects by us; the statutory provisions in other respects shall remain unchanged.

In the event of a justified notice of defect within the time limit, we may, at our discretion, remedy the defect or deliver goods free of defects (subsequent performance). The assertion of claims for damages by the Buyer as a result of defects in delivery and performance shall only be possible in accordance with the restrictions set out in Section X below. In the event of failure or refusal of subsequent performance, the Buyer may withdraw from the contract or reduce the purchase price after unsuccessful expiry of a reasonable period. If the defect is not substantial or if the goods have already been processed or removed, he shall only be entitled to the right of reduction.

We shall bear expenses in connection with the subsequent performance only to the extent that they are reasonable in the individual case, in particular in relation to the purchase price of the goods, but in no case in excess of 150% of the value of the goods. Excluded are costs in connection with the installation and removal of the defective item. We shall not bear any expenses arising from the fact that the goods sold have been taken to a place other than the agreed place of performance, unless this is in accordance with their contractual use.

In the case of goods that have been sold as declassified material, the purchaser shall not be entitled to any rights arising from material defects with regard to the stated reasons for declassification and such defects that he must normally expect. In the case of the sale of IIA goods, our liability for material defects is excluded.

In the case of drop shipments and other deliveries in which we - known to the Buyer - do not obtain direct possession of the goods at any time, our warranty shall be limited to the assignment of the rights of recourse against our upstream supplier.

The above provisions shall also apply in the case of deliveries of goods other than those in conformity with the contract.

Further claims of the Buyer shall be governed by Section X of these Terms and Conditions. The Buyer's rights of recourse according to §§ 478, 479 BGB remain unaffected.

Unless the Buyer is a consumer, claims for defects shall become statute-barred 12 months after the passing of risk. A consumer within the meaning of the following provisions is any natural person who enters into a legal transaction for purposes that can predominantly be attributed neither to his commercial nor to his independent professional activity ("consumer"). In the case of purchasers who are consumers, claims for defects shall become statute-barred after 24 months. If goods in a defect-free condition show a regular regularity of a period shorter than the limitation period for defect claims, we shall, in deviation from sentences 2 and 4, only provide warranty for the period of the regular regularity of the goods.

Insofar as the above provisions limit the statutory rights in respect of defects, they shall not apply if we have fraudulently concealed the defect or have assumed a guarantee for the quality of the item.

The Buyer's right of recourse against us pursuant to § 445a of the German Civil Code (BGB) shall only exist to the extent that the Buyer has not contractually granted its customer rights in respect of defects that go beyond the statutory rights in respect of defects.

X. Claims for damages

Our liability - irrespective of the legal grounds - is limited to damages caused by us or our vicarious agents intentionally, by gross negligence or by breach of duties essential for the fulfillment of the purpose of the contract due to slight negligence. Duties essential to the fulfillment of the purpose of the contract are those duties whose breach would jeopardize the purpose of the contract and on whose fulfillment the Buyer may rely.

In cases of grossly negligent breach of duty or slightly negligent breach of duties essential for the fulfillment of the purpose of the contract, our liability shall be limited in amount to the foreseeable, typically occurring damage. Liability for damages due to defects, consequential damages and financial losses as well as for loss of profit shall not be included in the foreseeable, typically occurring damage. The limitation of liability according to sentence 1 and sentence 2 of this paragraph shall not apply if the Buyer is a consumer.

The occurrence of the delay in delivery shall be determined in accordance with the statutory provisions. For the occurrence of the delay in delivery, a prior reminder by the Buyer is required in any case. If we are in default of delivery, the Buyer may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 1% of the net delivery value for each completed calendar week of the delay, but not more than a total of 5% of the delivery value of the delayed goods. We reserve the right to prove that the Buyer has not suffered any damage or that the damage is significantly less than the above lump sum. Any further liability for delay in delivery is excluded. The provisions of this paragraph shall not apply if the Buyer is a consumer.

Any further liability for damages than stipulated in the above paragraphs shall be excluded, irrespective of the legal grounds.

Claims for damages under the Product Liability Act, for lack of a warranty of quality and for injury to life, limb or health or on the basis of other mandatory statutory provisions shall remain unaffected by the above provisions.

A change in the burden of proof to our disadvantage is not associated with the above provisions.

XI. Force majeure

All events of force majeure shall release us from our contractual obligations for the duration and to the extent of their effects. Events of force majeure are all events by which we are prevented in whole or in part from fulfilling our contractual obligations and which are beyond our control. Events of force majeure shall include, in particular, war, riots, mobilization, natural disasters, fire, explosion, lightning, epidemics, pandemics, acts of government, strikes/lockouts, disruptions in the supply of energy or raw materials, embargoes, damage to machinery not due to improper maintenance, shortage of resources, cyberattacks and disruptions in operations, traffic or transport.

The above provisions shall also apply if the aforementioned circumstances occur at sub-suppliers.

If force majeure has occurred one or more times during the term of the contract, we shall be entitled to extend the term of the contract by a period equal to the cumulative number of days on which force majeure occurred during the original term.

If, due to force majeure, we are unable to supply the Buyer with goods from the normal source of supply, we shall be entitled to supply the Buyer through another source. In doing so, any additional justified costs incurred may be charged to the Buyer, unless the Buyer notifies us in text form (including email, fax) that the goods are not required for the duration of the force majeure.

XII. Confidentiality

Unless expressly agreed otherwise in writing, information submitted to us in connection with orders shall not be deemed confidential.

XIII. Place of performance, place of jurisdiction and applicable law

The place of performance for our deliveries shall be the supplying plant in the case of delivery ex works, and our warehouse in Remscheid in the case of all other deliveries. The place of jurisdiction shall be, at our option, our registered office in Remscheid or the registered office of the Buyer.

All legal relations between us and the Buyer shall be governed by German law, in particular by the BGB/HGB (German Civil Code), in addition to these Terms and Conditions. The provisions of the Vienna UN Convention of 11 April 1980 on Contracts for the International Sale of Goods shall not apply.

Note: the above is a translation of our General Terms and Conditions for Deliveries and Services (Allgemeine Geschäftsbedingungen für Lieferungen und Leistungen) into English. In all questions of interpretation, the German version shall prevail.