



## **General Terms and Conditions of Sale and Delivery V4heat GmbH**

### **§ 1 General – Scope**

- 1) *All our deliveries are subject to and shall be governed exclusively by the terms and conditions set forth herein; any conflicting or deviating terms and conditions of the relevant buyer or ordering party (hereinafter referred to as "Customer") will not be accepted by us unless we have expressly agreed to them in writing. Our terms and conditions of delivery shall also apply in the event that we effect delivery unconditionally while being aware of the Customer's deviating or conflicting terms and conditions. These terms and conditions of delivery apply both to purchase contracts and to contracts for work and services (purchased goods and goods to be produced or other works are hereinafter uniformly referred to as "Goods").*
- 2) *All agreements made between us and the Customer for the purpose of executing the respective contract or order must be documented in writing.*
- 3) *Our terms and conditions of delivery only apply to companies within the meaning of Section 14 of the German Civil Code (Bürgerliches Gesetzbuch – BGB), to legal entities under public law, and special funds under public law.*
- 4) *These terms and conditions of delivery shall also apply to all future transactions with the Customer.*

### **§ 2 Offer – Offer Documents**

- 1) *Our offer is not binding unless otherwise stated in the order confirmation or unless we have expressly stated to the contrary in writing.*
- 2) *We retain any and all titles, copyrights and interests in illustrations, drawings, calculations and other documents, which must not be disclosed to third parties. This applies in particular to such written documents designated as "confidential"; the Customer requires our express written consent before forwarding them to third parties.*
- 3) *Information within the meaning of Section 2 and in public statements issued by us, by the manufacturer and relevant assistants (Section 434 (1), no. 3 of the German Civil Code) shall only become an integral part of the desired quality if explicit reference is made to it in the respective contract.*

### **§ 3 Prices – Terms of Payment**

- 1) *Unless otherwise stated in the order confirmation, our prices are "ex works" or "ex warehouse".*
- 2) *The minimum order value is €200 net. Orders below this value are subject to a surcharge of €40.*
- 3) *The price stated in our order confirmation is binding. If the Customer is in default of acceptance, we shall be entitled to charge the price applicable at that time after a period of 2 weeks.*
- 4) *All prices are exclusive of the applicable value added tax (VAT). The deduction of discounts shall require separate written agreements.*
- 5) *Unless otherwise agreed in writing, the purchase price shall be due for payment net (without deductions) immediately after receipt of the delivered Goods. If the Customer fails to pay on time, we shall be entitled to claim default interest in the amount of 9 percentage points p.a. above the base interest rate and a lump sum for expenses in the amount of €40. The right to claim further damages shall remain unaffected.*
- 6) *The Customer may only offset due payments against its own counterclaims if these are legally established, undisputed or acknowledged by us. The Customer shall only be entitled to exercise a right of retention if its counterclaims are legally established, undisputed or acknowledged by us, and to the extent that its counterclaims are based on the same contractual relationship.*
- 7) *If we are obliged to provide advance performance and if circumstances become known to us after conclusion of the contract according to which a significant deterioration in the Customer's assets can be assumed, we may, at our discretion, either demand security within a reasonable period or concurrent payment against delivery. If the Customer does not comply, we shall be entitled, subject to further statutory rights, to withdraw from the contract. The presumption of a significant deterioration in the Customer's assets is given in particular if the Customer does not honor bills of exchange or checks for reasons for which the Customer is responsible.*

### **§ 4 Delivery period**

- 1) *The delivery period specified by us shall not start until all technical issues have been clarified. Notwithstanding anything to the contrary contained herein or unless otherwise agreed, the delivery period indicated by us shall always be non-binding.*
- 2) *We shall not be held liable for any delay in delivery due to force majeure or any impediment which could not reasonably have been foreseen by*

us and which is beyond our control such as operational disruptions, strikes, lock-outs, lack of means of transport, difficulties in procuring raw materials, official directives or delays in delivery on the part of our suppliers. The agreed delivery period shall be extended by the duration of the impediment plus a reasonable start-up recovery period. If the impediment lasts longer than two months, both parties shall be entitled to withdraw from the contract with regard to the part not yet fulfilled once a reasonable extension has elapsed to no avail. In this.

- 3) In the event of a delay in delivery, the Customer can set us in writing an appropriate extension period of at least three weeks. The Customer shall be entitled to withdraw from the contract or to claim damages instead of performance after the extension period has expired without effect.
- 4) The limitations of liability pursuant to Section 3 shall not apply if a commercial transaction for delivery by a fixed date has been agreed; the same shall apply if the Customer can assert that as a consequence of the delay, for which we are responsible, its interest in performance of the contract ceases to apply.
- 5) If the Customer is in default of acceptance or violates other duties to cooperate, we shall be entitled to request damages including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the Goods shall also pass to the Customer at the point in time when the Customer is in default of acceptance.
- 6) We shall be entitled to make partial deliveries.

**§ 5 Transfer of risk**

- 1) Unless otherwise stated in the order confirmation, delivery shall be agreed "ex works" or "ex warehouse". The risk shall pass to the Customer when the delivery item is handed over to the carrier appointed by the Customer.

At the explicit request of the Customer, we will take out transport insurance to cover the delivery; the costs incurred in this respect shall be borne by the Customer.

**§ 6 Warranty for defects**

- 1) Warranty claims by the Customer require the Customer to duly comply with the inspection obligation and provisions regarding notification of defects pursuant to Sections 377 and 381 of the German Commercial Code (Handelsgesetzbuch – HGB). Any complaints must be made in writing, specifying the defect and the delivery note number. The Customer must give us the opportunity to examine the Goods claimed to be defective..
- 2) Variations in weight of +/- 15% per sqm. shall not constitute a defect. Excess and short deliveries of up to 5% are permitted and will be invoiced accordingly. The Customer may not refuse payment or any necessary acceptance due to material defects which only insignificantly impair the value and the suitability of the Goods for the use recognized by us.
- 3) If the Goods display a material defect upon transfer of risk, we shall be entitled and obliged to remedy the defect. It is at our discretion whether we remedy the defect by repair or replacement. We shall bear all costs necessary to remedy the defect, including but not limited to transport, labor and material costs. If these costs account for more than 50% of the delivery value, we shall be entitled - without prejudice to further claims of the Customer regarding material defects - to refuse remedy of the defect. We shall bear the costs of installation and removal of defective Goods only if and to the extent that we were originally obliged to install or are liable for the defect.
- 4) If remedy of the defect fails, does not take place within a reasonable period set by the Customer, or is refused, the Customer shall be entitled, at its sole discretion, to withdraw from the contract, demand a reduction of the purchase price corresponding to the value of the defect or – within the limits specified by the following sections – claim damages instead of performance.
- 5) We shall only be liable for damages in so far as – on whatever legal grounds – we are found guilty of intent and/or gross negligence. In the event of simple negligence, we shall only be liable for damages resulting from the breach of a material contractual obligation (obligation whose fulfillment makes the implementation of this contract possible and on the fulfillment of which the contracting parties may therefore generally rely); in this case, however, our liability shall be limited to compensation for typical, foreseeable damage. Further claims for damages and reimbursement of expenses on the part of the Customer - irrespective of the legal grounds - are excluded.
- 6) The above exclusion of liability shall not apply in the event of injury to life, limb or health, in the event of a breach of warranty or in the event of fraudulently concealed defects. The right to claim damages under the Product Liability Act or other statutory provisions remains unaffected.
- 7) If orders and contracts are based on samples, these shall only be deemed as standard or type samples for general consideration; the provisions of Section 454 of the German Civil Code (purchase on approval) shall not apply unless expressly agreed otherwise.

**§ 7 Other liabilities**



- 1) *The provisions in Section 6, subsections 5-6 shall also apply to claims for damages, in particular for claims in tort, from breach of duty resulting from or in connection with the conclusion and implementation of contracts between us and the Customer.*
- 2) *In the event of a breach of a pre-contractual obligation or an impediment to performance already existing at the time of conclusion of the contract (Sections 311 (2), 311 a BGB), our obligation to pay compensation shall be limited to reliance damages ("negatives Interesse").*
- 3) *Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, workers, staff, representatives and vicarious agents.*
- 4) *Any information and advice provided is always without obligation on our part. We shall therefore only be liable for false advice and information provided intentionally. This shall not apply if we have entered into a contractual commitment to provide information. In this case, we shall be liable pursuant to the provision of subsection 1.*

**§ 8 Statute of Limitations**

- 1) *Subject to Section 438 (1), nos. 1 and 2, and Section 634a (1), no. 2 of the German Civil Code, the Customer's claim for subsequent performance shall become statute-barred two years after delivery of the Goods and one year after delivery of used Goods. To this end, the right to withdrawal and reduction is excluded in accordance with the statutory provisions.*
- 2) *The limitation period for claims for damages shall be one year pursuant to Section 438 (1), nos. 1 and 2, and Section 634a (1), no. 2 of the German Civil Code.*
- 3) *The above statute of limitations shall not apply to supplier's recourse claims in the event of final delivery to a consumer (Section 445b and Section 478 (2) of the German Civil Code). Instead of the limitation periods pursuant to Section 445b of the German Civil Code, however, only the limitation periods according to the above subsections 1) and 2) of Section 8 shall apply if the last sale in the supply chain is not a sale of consumer goods.*
- 4) *For claims arising from the German Product Liability Act (ProdHaftG) due to injury to life, limb or health, and in cases of malice, intent and gross negligence, the statutory limitation period shall remain in effect.*

**§ 9 Retention of title**

- 1) *We shall retain title to the Goods supplied until receipt of all payments resulting from our business relationship with the Customer. If a current account relationship exists within the context of the business relationship, we shall retain title to the Goods supplied until receipt of all payments from the current account relationship with the Customer and settlement of the acknowledged balance. If payment is made by check, title shall not pass to the Customer until the check amount has been finally credited to our account; in the case of a bill of exchange, not before it has been honored.*
- 2) *The Customer is obliged to treat the delivered item with care.*
- 3) *In the event of seizures or other interventions by third parties, the Customer must inform us immediately in writing. If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to Section 771 of the German Code of Civil Procedure (Zivilprozessordnung – ZPO), the Customer shall be liable for any loss incurred by us.*
- 4) *The Customer shall be entitled to resell the Goods supplied in the ordinary course of its business; however, the Customer hereby assigns to us any and all claims in the amount of the final invoice amount (including value added tax) of our claims, which the Customer may have against its own customers or third parties resulting from the resale of such Goods, irrespective of whether the Goods have been resold without or after processing. The Customer shall remain authorized to collect the claim even after it has been assigned to us. This shall not affect our authority to collect the claim ourselves. We undertake not to collect the claim as long as the Customer meets its payment obligations from the proceeds collected, does not default in payment and, in particular, no application for the opening of insolvency proceedings has been filed nor payments been suspended. Should the latter be the case, we shall be entitled to request the Customer to advise us without delay of the assigned claims and respective debtors, provide all the information required for the collection, including the corresponding documents and to inform the debtors (third parties) of the assignment.*
- 5) *The working or processing of the delivered Goods shall always be deemed to be made by the Customer on our behalf. If the supplied Goods are processed with other products of a third party, we shall acquire title to the new product in proportion to the value of the supplied Goods as compared to the value of the new product at the time of the processing. The provisions pertaining to Goods supplied subject to the retention of title shall also apply to any product resulting from the processing.*
- 6) *If the supplied Goods are inseparably mixed with other products, we shall acquire title to the new product in proportion to the value of the supplied Goods as compared to the value of the new product at the time of the mixing. If the mixing is carried out in such a way that the Customer's product is deemed to be the prevailing product, we shall acquire joint ownership in the new product in proportion to the value of the processed Goods. The Customer shall be custodian of the arising sole or joint ownership and protect our interests.*
- 7) *To secure our claims against the Customer, the Customer shall also assign to us any claim against third parties resulting from the combination*



*of the Goods with a plot of land.*

- 8) *We undertake to release the securities to which we are entitled at the request of the Customer to the extent that the value of our securities exceeds the claims to be secured by more than 20%; the choice of the securities to be released is incumbent on us.*

**§ 10 Place of Jurisdiction – Place of Performance**

- 1) *The sole place of jurisdiction for all disputes arising from or in connection with the respective contractual relationship shall be Bayreuth/Germany. We may, however, file legal action against the Customer at any competent court at the Customer's place of business.*
- 2) *Unless otherwise stated in the order confirmation, the place of performance is our respective place of delivery; for claims pertaining to the purchase price, the place of performance is Marktschorgast/Germany.*

**§ 11 Applicable Law, Severability Clause**

- 1) *The contracts concluded between the parties shall be subject exclusively to German law, excluding the UN Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG) and Conflict of Laws rules.*
- 2) *If any provision of the contract is or becomes invalid, the validity and legality of the remaining provisions shall not be affected or impaired thereby.*

*Marktschorgast, 02/2019*