

General terms and conditions of WISCHEMANN Kunststoff GmbH

§ 1 Scope of validity

Any deliveries, services and legal transactions between WISCHEMANN Kunststoff GmbH - hereinafter referred to as the "Seller" - and businesses and consumers as "Buyers", are subject to these Terms and Conditions, unless specific arrangements have been made in writing or they are explicitly distinguished between businesses and consumers below. These Terms and Conditions also apply to all future business relationships between the Seller and the Buyer which arise from sales contracts, contracts for services and contracts in which the supply of manufactured or produced movables count as underlying assets ("work performance contracts"), even if these have not been agreed specifically at a later stage. These conditions shall be accepted as legally binding and recognised no later than when goods are received for the first time. Should any other conditions have been valid previously, then these shall become effective during the same period of time. Any conflicting confirmations or orders from the Buyer referring to the Buyer's own General Terms and Conditions or Sales Terms are herewith rejected. Should our order result in Terms and Conditions different to those confirmed by the Buyer, then only the Seller's Terms and Conditions shall apply, even if the Seller fails to dispute them. In addition, any changes shall only apply if they have been explicitly identified by the Seller in writing.

§ 2 Scope of delivery duties

1. Any written order confirmation, a Seller invoice or delivery note, or a confirmation of a sale shall be decisive for the nature and scope of the delivery. Any public statements, in particular those advertising information, are not statements and do not constitute an agreement or representation of being fit for purpose, pursuant to Art. 434 of the German Civil Code. Any guarantees shall not be specifically assumed within the meaning of Art. 443 of the German Civil Code unless stated explicitly within the order confirmation.
2. All offers, prices, orders and commitments on a specified delivery date are non-binding, if these have not been confirmed in writing. Any collateral agreements entered into verbally remain invalid.
3. The Seller or its carrier are only responsible for the transportation of any goods if a ramp or a loading bay require free access to heavy good vehicles with a height of up to 400 cm.
4. The Seller is entitled to provide contractual performance in partial deliveries, provided that these are deemed reasonable by the Buyer. Should the delivery be agreed on call, then the Buyer must request an appropriate deadline.
5. Should the Buyer delay acceptance, then the Seller may claim compensation for any additional costs which result in an ineffective delivery, and for any storage and preservation of the object which is owed; the Buyer shall assume any risk for accidental deterioration and for any accidental loss caused to the Buyer as a result of a delay in acceptance.

§ 3 Risk assumption

1. Any delays in delivery and service caused as a result of force majeure or similar events, in particular industrial action, lockouts, official instructions, etc., shall entitle the Seller to postpone the delivery or service by the duration of any inconvenience which may have been caused, plus a reasonable lead time, even if these occur on the supplier's side.
2. The shipment to the Buyer, even if occurring at the same place of dispatch, remains at the expense and risk of the Buyer, unless the goods are being transported by vehicles owned by the Seller. The Buyer also assumes risk in the event of deliveries where carriage has been paid. The Seller shall select the method of dispatch, provided that the Buyer has not issued any specific instructions. The Seller shall take out transportation insurance within the scope requested by and at the expense of the Buyer. Any existing routine weight loss, which occurs during transportation, shall be borne by the Buyer.
3. The risk of loss or deterioration of any goods under the retention of title (see § 5) shall be transferred to the Buyer. Any liability for defects specified in § 4 shall remain unaffected.

4. The goods will be packed to commercial standards at the Buyer's expense. Any returnable packaging with carriage paid by the Buyer must be emptied immediately by the recipient and returned in perfect condition. It should not be filled with other goods or used in other ways. An individual cost price will be calculated for any empty goods which are not returned immediately (pallets, containers, etc.).

§ 4 Liability for defects

1. The Buyer must examine the goods immediately upon receipt with regards to defects, quality and texture and is obliged to record any obvious defects on the delivery receipt. Otherwise, § 377 of the German Commercial Code (HGB) applies in relation to businesses.

Should the Seller, when requested by the Buyer, dispatch any items which have been sold to a location other than the place of performance and damages occurred during transportation, then the Buyer cannot decline accepting delivery vis-à-vis the Seller.

If the Buyer represents a business, then any routine variations in terms of quality, colour, dimensions and quantities may not form a ground for complaint. The Seller shall only be liable for the suitability of the product for a specific use if this had been agreed accordingly.

Should the Seller manufacture any goods as instructed by the Buyer in terms of the good's material composition, construction etc., then the Seller cannot be held liable for correct functional capabilities of any such goods manufactured under the Buyer's instructions. The Seller will only be liable for correct manufacturing in accordance with the agreement entered into with the Buyer in relation to the respective material composition, construction, or incidents of a similar nature.

2. Any complaints made because of an obviously deficient or clearly divergent nature of the goods, or because of delivering goods other than those ordered must be submitted by the Buyer immediately in writing, but no later than eight days after receipt of the goods, or after the defect has become apparent.

3. If the Seller is responsible for any of the good's defects, then the Seller is required to provide the Buyer with all of the necessary expenditures relative to secondary performance, specifically those relating to transportation, labour, and material costs, provided that these do not increase as a result of having been transported to a location other than the place of performance.

4. Should supplementary performance not be possible within a reasonable time frame or prove to be impossible because of the condition of the goods, then the Buyer shall be entitled either to a right of withdrawal or reduction. The provisions of § 478 of the German Civil Code (BGB) remain unaffected.

5. The Seller is liable in any event of wilful intent or gross negligence on the side of the Seller or one of his representatives or vicarious agents within the scope of relevant legal provisions. In addition, the Seller shall only be liable under the product liability law, because of injury to life, limb or health, or for culpable violation of any essential contractual duties.

Any compensation resulting from the violation of fundamental contractual obligations is restricted to any routine, foreseeable damage, unless another one of the exceptional cases listed in either sentence one or sentence two of this paragraph exists at the same time.

Any liability vis-à-vis the Buyer, even in the event of gross negligence, is limited to the routine, foreseeable damage, unless another one of the exceptional cases listed in sentence two of this paragraph exists at the same time.

6. Any provisions quoted in paragraph 5 above shall apply to all claims for damaged, specifically for any damages besides performance and damages instead of performance, regardless of the legal grounds, in particular associated with defects, the breach of obligations resulting from the contractual relationship, or from tort. These also apply to any claims associated with reimbursing expenses for wasted efforts. A change in the burden of proof, detrimental to the Buyer, is not associated with the regulations specified above.

7. The limitation period for claims and rights on account of defects, regardless of the legal grounds, is one year, except for cases referred to in § 438. para 1, no. 1 and no. 2; in § 479, para. 1, and § 634 a para. 1 no. 2 of the German Civil Code. In relation to consumers, this period only applies to the sale of used mobile goods. Any above-stated limitation period shall also apply to all claims for damages and claims for reimbursement of fruitless expenses made against the Seller, regardless of the legal grounds of the claim itself. Any limitation period stated to above shall not apply in the event of wilful intent or in case in malicious concealment of a defect, or when the Seller provided a guarantee for the condition of the delivered item. The period of limitation does not apply to compensation claims made in the event of injuries to life, limb or health, violation of freedom, and to claims covered under the Product Liability Act, in the event of a grossly negligent breach of duty or a breach of contract. A change in the burden of proof, detrimental to the Buyer, is not associated with the regulations specified above.

8. Should the Buyer cause a delay in accepting delivery, then the Seller may, after expiration of a reasonable deadline, consider realising the goods, take possession or otherwise dispose of them, at the Buyer's expense and risk, if he had threatened to do earlier so vis-à-vis the Buyer.

9. Should the Buyer refuse to accept the goods, then they can only be sent or otherwise be made available given the Seller's consent, who must be granted the right to inspect the rejected goods at any time.

10. Any complaints associated with weight may only be accepted if these can be substantiated by official weight tickets obtained from weighbridges.

11. We reserve the right to excess or short deliveries up to 10% of the agreed amount. The delivered quality of goods should be examined immediately in the presence of the driver of the seller. A later complaint cannot be accepted.

§ 5 Retention of title

1. The goods delivered remain the property of the Seller until full payment of the sales price has been made. If the Buyer is a business entity, delivered goods also remain the Seller's property until full payment of all existing or yet arising claims within the framework of the business relationship has been made, to include interests, costs and potential refinancing expenses or return bills.

2. As long as this retention of title is valid, the following shall apply:

(a) The handling and processing of any goods delivered by the Seller is carried out on behalf of the Seller, whereas the latter does not incur any obligations therefrom. If any of the delivered goods have been mixed, blended or combined with any other goods, the Buyer acquires co-ownership of that one single item at a pro-rata value of the goods delivered under the title retention, which is proportionate and corresponding to the value of the mixed or blended goods at the time of their mixture or combination. The Buyer shall store any reserved goods on behalf of the Seller free of charge. In order to safeguard our claims against the Buyer, the Buyer also agrees to assign any claims against a third party, accruing from the combination of the reserved goods with real property, to us; we hereby accept this assignment at this point in time.

(b) The Buyer is entitled to resell any delivered goods as part of routine business transactions. Any pledge or collateral assignment is only permitted given the Seller's written consent.

Should any goods be handed over by the Buyer to a third party, or should the third party acquire ownership of the goods in any other way, or if the goods will be sent by the Seller directly to a third party on the Buyer's instructions, Buyer will assign his claim arising from the resale or any other legal relations, to include any ancillary rights, against the third party to the Seller, proportionately in the total invoice amount agreed upon (including VAT), even if the resale takes place alongside other deliveries which have not been effected by the Seller.

The Seller hereby accepts this assignment. Upon Seller's request, the Buyer is committed to inform any third party of the assignment and hand over the letters of assignment. The Seller is entitled at any time to provide details of the assignment to the third party on behalf of the Buyer, should the Buyer fail to meet the payment terms. Upon request, the Buyer has to provide details on the creditors of the assignments.

(c) Until further notice, the Buyer is entitled to collect receivables outstanding from the resale of the goods on his own as long as he meets the payment obligations vis-à-vis the Seller. Should payments cease, bankruptcy proceedings be initiated, voluntary out-of-court settlements be reached, a cheque or currency exchange be disputed, or a seizure take place, the right to resell or process any goods and the right to recover any receivables is forfeited. The Buyer will immediately forward any payments received on the claims assigned, up to the amount of the secured claim, to the Seller. A potential return of goods is only possible by way of security; this does not constitute a withdrawal from the contract, even if subsequent partial payments have been made.

(d) The Buyer is committed to provide details of any change of address with immediate effect to the extent deliveries are still taking place or there are outstanding payments in favour of the Seller.

(e) The Buyer is obliged to notify the Seller immediately of any pledges or other limitations against the property.

(f) In the event of a breach of contract on the Buyer's side, especially in the event of default in payment, the Seller is entitled to take any reserved goods back or demand assignment of the Buyer's claims for surrender vis-à-vis third parties, if any. If the Buyer is a business entity, the Seller is entitled to the aforesaid rights without withdrawing from the contract. If the Seller takes the reserved goods back or seizes them, this does not constitute a withdrawal from the contract.

g) Upon request and to a reasonable extent, the Buyer must take out a routine insurance policy in terms of standard risks against any of Seller's goods at his own expense and assign any claims against the insurance to the Seller. The Seller is also entitled to pay for the insurance premium at the Buyer's cost.

h) Should the realisable value of the securities existing in favour of the Seller exceed the total claims by more than 20%, the Seller will be required upon Buyer's request to release collaterals at the Seller's discretion.

§ 6 Payments

1. The invoice amount is due immediately and payable within 30 days of the invoice date without deduction. The Buyer has to make payment settlements at his own expense and regardless of the payment method. Payments via exchange are only permitted if agreed explicitly and on account of performance. If any exchange or cheque is presented as a payment, encashment will only be effected in form of a cash payment or credit towards the account. Credits to bank or giro accounts are deemed payments as soon as the Seller can dispose of the amounts. Discount and collection charges shall be borne by the Buyer and become due with immediate effect.

2. Should the parties agree to the payment of Seller invoices via direct debit, the Buyer shall agree to waive the right to cancel any direct debit after the mandate has been presented to the bank.

3. Any right of retention can only be reserved directly by the Buyer if associated with any counterclaims as part of the contractual relationship. The Buyer can only offset such claims against the Seller which are legally established or uncontested or recognised by the Seller, or form part of a synallagmatic contract as regards the Seller's claim.

4. Should the Seller become aware of any particular circumstances which challenge the Buyer's creditworthiness, in particular where the Buyer fails to honour a cheque or a direct debit payment, or if the Seller discovers other circumstances regarding the creditworthiness Buyer, the Seller is entitled to declare the entire remaining debt due, even if in possession of cheques. In this event, the Seller is also entitled to demand advance payments or a security deposit.

5. The buyer only may offset any demands of seller as the counterclaims are undisputed or legal detected and arise out of same contractual relationship.

§ 7 Intellectual property rights and copyright

When processing an order customised to the Buyer's requests, the Seller is not obliged to consider any third party proprietary rights. The Buyer warrants that third party rights are not affected and indemnifies the Seller from all third party claims for violating industrial property rights. The Seller retains copyright and the right to reproduce our designs, sketches, illustrations, diagrams, computer files and any written documentation. Reprinting or reproducing any of the designs which belong to the Seller is not permitted, including even those, which are not subject to copyright or other intellectual property rights.

§ 8 Moulds and tools

Any tools, devices and moulds shall become the property of the Buyer after payment has been made in full. Should the Buyer have made a partial payment towards any tools, devices and moulds, he will only acquire ownership after payment has been made in full for each item. When safe-keeping tools etc., the Seller is only liable for performing the diligence that would apply to his own possessions. He/she is not required to take out insurance. The Seller is entitled to destroy any tools, moulds or devices two years after he used them for the last time.

Besides, a separately issued tool leasing agreement will govern any subsequent legal relations.

§ 9 Place of performance and jurisdiction

1. If the Buyer is a business entity pursuant to the provisions of the German Commercial Code, or he forms part of a legal entity specified under public law, or represents a special fund under public law, or has a domicile based outside of the Federal Republic of Germany, the Seller's registered seat is the place of performance for deliveries and payment. The applicable law at the place of performance is decisive for all legal relations between the Seller and the Buyer, even if legal proceedings are instigated overseas.

2. If the Buyer is a business entity according to the provisions of the German Commercial Code, or if he forms part of a legal entity specified under public law, or represents a special fund under public law, the Seller may instigate legal proceedings within the area of jurisdiction of the place of performance, and action may only be brought against him at this court of jurisdiction. This also applies to actions regarding bills of exchange or cheques.

3. German law applies exclusively; the UN Sales Convention (CISG) is excluded, even for overseas deliveries.

§ 10 Privacy policy

The data received by the Seller will be stored in the Seller's electronic data processing systems. The Seller will use such data exclusively for the purpose for which it was provided by the Buyer. Any use for other purposes shall only take place after the Buyer has been informed accordingly or, where required, after obtaining the Buyer's consent.

§ 11 Miscellaneous

Should any individual components of the above Terms and Conditions become invalid because of prevailing law or special agreement, the validity of the remaining provisions will remain unaffected. Any invalid sections shall be replaced by valid provisions, which are as economically viable as is possible.