

# General Terms and Conditions - Josef Weischer GmbH & Co. KG

## Section 1 General, Scope

(1) The following General Terms and Conditions of Sale ("GTC") shall apply upon inclusion to all contracts, in particular purchase and work supply contracts, between Josef Weischer GmbH & Co. KG, Sternbusch 14, 48282 Emsdetten ("Supplier") and the Supplier's customers, provided that the customer is a merchant, an entrepreneur (Section 14 BGB), a legal entity under public law or a special fund under public law (hereinafter: "Buyer").

(2) The GTC apply in particular to contracts for the sale and/or manufacture/delivery of movable goods (hereinafter also referred to as "Goods"), regardless of whether the Supplier manufacture the goods himself or purchase them from suppliers (Sections 433, 651 of the German Civil Code).

(3) The Supplier's GTC shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Buyer shall only become part of the contract if and to the extent that the Supplier has expressly consented to their application in writing. This consent requirement shall apply in any case, for example even if the Supplier carry out the delivery to the Buyer without reservation in the knowledge of the Buyer's GTC.

(4) Individual agreements made with the Buyer in individual cases (including subsidiary agreements, supplements and amendments) shall in any case take precedence over these GTC. A written contract or the Supplier's written confirmation shall be authoritative for the content of such agreements.

(5) References to the applicability of statutory provisions shall only be of a clarifying nature. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC.

## Section 2 Conclusion of contract, confidentiality

(1) The Supplier's offers are always subject to change and non-binding. This shall also apply if the Supplier has provided the Buyer with catalogs, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which the Supplier expressly reserves property rights and copyrights. The transfer to third parties is not permitted without the Supplier's express prior consent.

(2) The Buyer's order shall be deemed a binding offer of contract that the Supplier may accept within 4 weeks upon receipt. Acceptance shall be effected by written order confirmation or delivery of the goods.

(3) All business secrets or confidential information of the supplier which become known in the course of the business relationship shall be kept confidential by the purchaser even after termination of the business relationship and may not be disclosed to third parties.

## Section 3 Delivery period, force majeure

(1) The delivery period shall be specified upon acceptance of the order.

(2) If the Supplier is unable to meet binding delivery deadlines for reasons for which he is not responsible (non-availability of the service), the Supplier shall inform the Buyer of this without delay and at the same time notify the Buyer of the expected new delivery deadline. If the service is also not available within the new delivery period, the Supplier shall be entitled to withdraw from the contract in whole or in part; the Supplier

shall immediately refund any consideration already paid by the Buyer. A case of non-availability of the performance in this sense shall be deemed to be in particular the non-timely self-delivery by the Supplier's supplier if he has concluded a congruent hedging transaction, neither the Supplier nor his supplier are at fault or the Supplier is not obliged to procure in the individual case as well as in cases of force majeure. In this context, force majeure shall include in particular cases of war, threat of war, civil unrest, political instability, terrorist attacks on a major scale, epidemics, pandemics or severe weather/natural disasters, fire, storm, hail, earthquakes, landslides, floods as well as governmental prohibitions (e.g. lack of issuance of necessary permits or approvals, plant closures, etc.) on the Supplier's part or on the part of his suppliers.

## Section 4 Delivery, Transfer of Risk, Acceptance, Default of Acceptance

(1) Delivery to the Buyer shall be EXW Sternbusch 14, 48282 Emsdetten (INCOTERMS 2020), which is also the place of performance. At the request and expense of the Buyer, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, the Supplier shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging) himself.

(2) If the Buyer is in default of acceptance, fails to cooperate or if the Supplier's delivery is delayed for other reasons for which the Buyer is accountable, the Supplier shall be entitled to demand compensation for the resulting damages including additional expenses (e.g. storage costs). For this purpose, the Supplier shall charge a lump-sum compensation of 1% of the respective delivery value per week, beginning with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for shipment, but not exceeding a total of 5% of the delivery value. The Supplier's proof of a higher damage and legal claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be set off against further monetary claims. The Buyer shall be entitled to prove that the Supplier has not suffered any damage at all or that the damage is significantly less than the aforementioned lump sum.

## Section 5 Prices and terms of payment

(1) Unless otherwise agreed in individual cases, the Supplier's current prices at the time of conclusion of the contract shall apply, namely EXW Sternbusch 14, 48282 Emsdetten (INCOTERMS 2020), plus statutory VAT.

(2) In the case of a sale by delivery to a place other than the place of performance (Section 4 para. 1), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer. The Supplier does not take back transport packaging and all other packaging in accordance with the Packaging Ordinance; it becomes the property of the Buyer, with the exception of Euro pallets.

(3) Unless otherwise agreed, the purchase price shall be due and payable within 14 days from the date of invoice and delivery or acceptance of the goods. The Supplier reserves the right to assert further damage caused by delay. With respect to

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merchants, the Supplier's claim to the commercial due date interest rate (Section 353 HGB) shall remain unaffected.

(4) The Supplier shall be entitled to perform or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, the Supplier becomes aware of circumstances which are likely to substantially reduce the creditworthiness of the Buyer and as a result of which the payment of the Supplier's outstanding claims by the Buyer under the respective contractual relationship (including under other individual orders to which the same framework agreement applies) is jeopardized. The Supplier shall declare a corresponding reservation at the latest with the order confirmation. Discounts, rebates or other allowances shall only be deductible upon separate written agreement.

(5) The Buyer shall only be entitled to rights of set-off or retention to the extent that his claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter rights shall remain unaffected, in particular pursuant to Section 7 para. 6 sentence 2 of these GTC.

### Section 6 Retention of title

(1) The Supplier retains title to the Goods sold until all his present and future claims arising from the business relationship have been paid in full. All drawings, samples, specifications and other business documents made available to the Buyer shall always remain the property of the Supplier and shall be returned to the Supplier without undue delay upon the latter's request.

(2) Until revoked, the Buyer shall be authorized in accordance with item (c) below to resell and/or process the Goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply additionally:

a) The retention of title shall extend to the products resulting from the processing, mixing or combining of the Supplier's Goods at their full value, whereby the Supplier shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, the Supplier shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the resulting product as to the Goods delivered under retention of title.

(b) The Buyer hereby assigns to the Supplier by way of security any claims against third parties arising from the resale of the goods or the product in total or in the amount of the Supplier's co-ownership share, if any, in accordance with the preceding paragraph. The Supplier accepts the assignment. The obligations of the Buyer stated in paragraph 2 shall also apply in respect of the assigned claims.

(c) The Buyer shall remain authorized to collect the claim in addition to the Supplier. The Supplier undertakes not to collect the claim as long as the Buyer meets his payment obligations towards the Supplier, is not in default of payment, no application for the opening of insolvency proceedings has been filed and there is no other deficiency in his ability to pay. If this is the case, however, the Supplier may demand that the Buyer inform the Supplier of the

assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. In addition, in this case the Supplier shall be entitled to revoke the Buyer's authorization to further sell and process the Goods subject to retention of title.

(d) If the realizable value of the securities exceeds the Supplier's claims by more than 10%, the Supplier shall release securities of his choice at the Buyer's request.

### Section 7 Claims for defects of the purchaser

(1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including wrong delivery and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below. In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the goods to a consumer, even if the consumer has processed them further (supplier recourse pursuant to Sections 478, 445a, 445b BGB). Claims from supplier recourse are excluded if the defective goods have been further processed by the Buyer or another entrepreneur, e.g. by incorporation into another product.

(2) The basis of the Supplier's liability for defects is above all the agreement reached on the quality of the Goods. The product descriptions designated as such (including those of the manufacturer) which were provided to the Buyer prior to his order or which were included in the contract in the same way as these GTC shall be deemed to be an agreement on the quality of the Goods. Information provided by the Supplier on the Goods (in particular colors, weights, dimensions, utility values, load capacity, tolerances and technical data) as well as his representations of the same (e.g. drawings and illustrations) are only approximately authoritative, unless the usability for the contractually intended purpose requires an exact match. They are not guaranteed characteristics, but descriptions or identifications of the delivery or service. Deviations customary in the trade and deviations which occur due to legal regulations or technical specifications or which represent technical improvements as well as the replacement of components by equivalent parts are permissible insofar as they do not impair the usability for the contractually intended purpose.

(3) Insofar as the quality has not been agreed, it shall be assessed in accordance with the statutory regulation whether a defect exists or not (Section 434 Para. 1 S 2 and 3 BGB). However, the Supplier shall not be liable for public statements made by the manufacturer or other third parties (e.g. advertising statements).

(4) The Buyer shall be obliged to inspect the Goods upon receipt and to give notice of defects in accordance with Section 377 of the German Commercial Code (HGB).

(5) If the delivered item is defective, the Buyer has a right to rectification of the defect (subsequent improvement).

(6) The Supplier shall be entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a reasonable part of the purchase price in relation to the defect.

(7) The Buyer shall give the Supplier the time and opportunity required for the subsequent performance owed, in particular to hand over the goods complained about for inspection

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purposes. In the event of a replacement delivery, the Buyer shall return the defective item to the Supplier in accordance with the statutory provisions. Subsequent performance shall neither include the removal of the defective item nor its re-installation if the Supplier was not originally obliged to install it.

(8) The Supplier shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions if a defect is actually present. Otherwise, the Supplier may demand reimbursement from the Buyer of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not apparent to the Buyer.

(9) Claims of the Buyer for damages or reimbursement of futile expenses shall also exist in the event of defects only in accordance with Section 8 and shall otherwise be excluded.

### Section 8 Liability

(1) Insofar as nothing to the contrary arises from these GTC including the following provisions, the Supplier shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

(2) The Supplier shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, the Supplier shall be liable, subject to a milder standard of liability in accordance with statutory provisions (e.g. due diligence in own affairs) only

a) for damages resulting from injury to life, body or health,

b) for damages arising from the not inconsiderable breach of a material contractual obligation (obligation the fulfillment of which is a prerequisite for the proper performance of the contract and the observance of which the contractual partner regularly relies on and may rely on); in this case, however, the Supplier's liability shall be limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from Section 8 para. 2 shall not apply insofar as the Supplier has fraudulently concealed a defect or has assumed a guarantee for the quality of the Goods. The same shall apply to claims of the Buyer under the Product Liability Act.

### Section 9 Limitation

(1) Notwithstanding Section 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) The shortened periods contained in Section 9 para. 1 shall not apply to claims for damages of the Buyer arising from injury to life, body or health or from intentional or grossly negligent breaches of duty by the Supplier or its vicarious agents as well as from the Product Liability Act, each of which shall become statute-barred in accordance with the statutory provisions.

(3) If, however, the goods are a building structure or an item that has been used for a building structure in accordance with its customary manner of use and has caused its defectiveness

(building material), the limitation period shall be 5 years from delivery in accordance with the statutory provisions (Section 438 para. 1 no. 2 BGB). Special statutory provisions on the limitation period shall also remain unaffected, in particular those for claims in rem for surrender by third parties (Section 438 para. 1 no. 1 BGB), in the event of fraudulent intent on the part of the supplier (Section 438 para. 3 BGB) and for claims in supplier recourse (Sections 444, 445b BGB).

(4) The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the Goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in the individual case. However, claims for damages of the Buyer pursuant to Section 8 para. 2 sentence 1 and sentence 2 a) as well as pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

### Section 10 Choice of Law and Place of Jurisdiction

(1) The laws of the Federal Republic of Germany shall apply to these GCS and all legal relationships between us and the Buyer to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) The exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Emsdetten, Germany, unless a legally mandatory exclusive place of jurisdiction exists. However, the Supplier is also entitled to bring an action at the general place of jurisdiction of the Buyer.