

## GENERAL CONDITIONS OF PURCHASE OF WINKLER GMBH

### 1. Scope

- 1a. These conditions of purchase shall apply to all business transactions with us, provided that you are a businessman, a legal entity under public law or a separate fund under public law, even if no specific reference is made to these conditions. We shall not accept any opposing or deviating terms and conditions, unless we have given our express consent to their validity. In particular, the acceptance of deliveries, services or payments shall not imply a confirmation.
- 1b. Our conditions of purchase shall also apply, in their applicable version, to all future business transactions with you, even if they are not attached in the individual case.
- 1c. Verbal orders and agreements or those by phone shall only become legally binding when a written order is placed.

### 2. Conclusion of Contract

- 2a. Your offers shall be free of charge for us. If these deviate from the inquiry, you must explicitly indicate this.
- 2b. We shall only be bound to our order if it is confirmed in writing within a period of three working days.
- 2c. Should we make any mistakes upon the conclusion of contract for which we are not responsible, e.g. due to transmission errors, misunderstandings etc., any claim for damages towards us shall be excluded according to section 122 of the German Civil Code [BGB].

### 3. Blanket Order / Call

- 3a. With regard to blanket and standing orders, we will indicate quantities and types to be delivered by means of separate calls. These calls shall be binding, unless they are revoked within a week after receipt of the call and no other provision has been agreed on.
- 3b. If you are not able to promptly deliver upon call, you have to inform us about this immediately and must suggest deadlines suitable to you.

### 4. Dates and Delay in Delivery

- 4a. Dates and deadlines agreed shall be binding and must be met exactly. The decisive factor for this shall be the receipt of goods at our site or at the point of receipt / delivery address agreed and / or indicated by us.
- 4b. As soon as you become aware of possible delays in delivery, you must promptly inform us on this. Our rights with regard to the delay of the service shall remain unaffected by this duty to inform.
- 4c. If the delivery takes place prior to the date indicated, we shall have the right to refuse it. In the same way, we can refuse partial deliveries. Where required, we shall have the right to return the goods or to store them with third parties at your expense and risk.
- 4d. Should you be in default, we shall be entitled to demand a penalty for the delay to the amount of 1.0% of the total order value per calendar week of the delay commenced, however to no more than 5% of the total order value. We can assert the reservation required according to section 341 (3) of the German Civil Code [BGB] until the service has been fully paid. The assertion of further damage shall be reserved.
- 4e. In the case of a delay and after the unsuccessful expiry of a reasonable grace period granted by us, we shall be entitled to have the service not provided by you carried out by a third party at your expense. The right to rescission and to compensation for the loss incurred shall remain unaffected. You must reimburse us for all additional costs incurred by the delayed delivery.
- 4f. If we are hindered from accepting the delivery due to circumstances which we cannot prevent despite reasonable care, the point of acceptance shall be postponed by the duration of the hindrance. If the acceptance is not possible due to these circumstances for more than 6 months, we shall be entitled to rescind the contract. In this case, you shall not be entitled to compensation for damage.

### 5. Delivery and Passage of Risk

- 5a. The place of performance for your deliveries and services shall be the point of receipt / delivery address as determined by us. The risk of transport shall be borne by you. The risk of entire or partial perishing, damage or other deterioration of the goods shall be transferred to us upon acceptance at the point of receipt.
- 5b. With regard to deliveries and services on the basis of which you enter our work premises, you commit, together with your employees and other vicarious agents, to observe our site regulations.
- 5c. Verifiable delivery notes shall be enclosed to each delivery. Furthermore, a comprehensive dispatch note or photocopy of the delivery note shall be sent to us in good time regarding drop shipping. Delivery and dispatch notes must not contain any pricing information.

## 6. Prices and Payment

- 6a. The prices agreed shall be fixed prices and shall apply free house to the point of receipt / delivery address indicated by us including freight, packaging as well as other ancillary costs. We shall only acknowledge an increase in price, for whatever reason, if an express arrangement has been agreed on. This shall also apply to standing orders.
- 6b. If you have taken on the erection or assembly and if nothing else has been agreed on, you shall bear all ancillary costs required, such as for example travel costs, the provision of tools as well as daily allowances. This shall be subject to deviating regulations.
- 6c. Upon the dispatch of the goods, the invoice for each order shall promptly be sent separately to our administration headquarters in Heidelberg in duplicate and indicating the order number. The invoices must meet the requirements according to section 14 of the German VAT Act [UStG]. Invoices which have not been issued according to these requirements shall be regarded as invalid. An invoice shall not simultaneously be regarded as an order confirmation.
- 6d. Unless otherwise agreed, payments shall be made within 30 days from delivery / service and upon receipt of invoice with a discount of 3% or after 60 days with a discount of 2% or after 90 days as a net payment. The discount shall be deducted from the invoice amount including VAT. The deadlines shall commence upon the receipt of invoice or, if the goods arrive after the invoice, upon the full acceptance of the goods, however under no circumstances prior to the date of goods received agreed.
- 6e. You may only assign any of your claims towards us with our prior consent. If you assign claims towards us to third parties without our consent, the assignment shall nevertheless be effective. However, at our discretion we may perform our service for you or the third party with discharging effect.

## 7. Inspection of Goods, Period for Making a Claim

- 7a. The acceptance shall take place with reservation to an examination regarding faultlessness, in particular with regard to correctness, completeness and fitness. Section 377 of the German Commercial Code [HGB] shall be waived in this respect. We shall promptly notify you of any defects of the delivery, as soon as they have been identified according to the circumstances of a due course of business.
- 7b. Under no circumstances do we accept incorrect deliveries or deliveries different to those ordered. Therefore, no express notification of a defect shall be required in such cases.

## 8. Warranty

- 8a. You must guarantee that the goods delivered and services performed meet the statutory regulations applicable for their distribution and use and do not violate industrial property rights or other third party rights.
- 8b. The deliveries and services must meet the state-of-the-art technology applicable at the time of delivery or foreseeable in the future as well as other statutory safeguarding provisions, technical test specifications and accident prevention regulations. In particular, DIN standards and the regulations of the Association for Electrical, Electronic & Information Technologies [VDE] must be observed. Moreover, you shall be responsible for the quality of the material used, the professional construction and implementation of the goods delivered by you as well as for the service indicated or agreed.
- 8c. We shall be entitled to statutory warranty claims without restriction. Apart from this, we shall be entitled, at our discretion, to demand you to remedy the defects or make a substitute delivery. In this case, you shall bear the expenses required for the purpose of remedying the defect or making a substitute delivery. Should you not perform the subsequent improvement or substitute delivery within a reasonable period or only to an insufficient degree or should an immediate remedy of the defects be necessary for urgent reasons, we shall be entitled to have the defects remedied at your expense or to make covering purchases at your expense.
- 8d. The limitation period for warranty claims shall be 5 years for constructions and things which have been used according to their intended use for a construction and which have caused its poor quality. Otherwise, the limitation period for warranty claims shall be 36 months from the passage of risk, unless explicitly otherwise agreed. The limitation of action for warranty claims on our part shall be interrupted by a written notification of defect to you. The warranty period shall only be resumed, when you declare in writing the completion of subsequent improvement and substitute delivery measures (date of receipt by Winkler) or when you have refused in writing any subsequent improvement or substitute delivery. If a longer warranty period is regulated by law in future, this longer warranty period shall apply.
- 8e. In the case of a lack of features which have been assured as well as in cases of culpable incorrect deliveries or deliveries different to those ordered, we shall be entitled to claim damages for non-performance instead of the usual warranty claims. In this regard, our damages shall include all consequential costs which are due to us. As far as this is concerned, you must indemnify us from all third party claims.
- 8f. With regard to delivery items, of which the handling is not or not yet generally known, assembly and operating instructions shall be forwarded separately without being requested and no later than with the delivery indicating our order number. Otherwise you shall be liable for all damages which would not have occurred had these documents been present.
- 8g. In the case of defects of title, you shall furthermore indemnify us from all possible existing third party claims.

## 9. Product Liability and Quality Assurance

- 9a. If a claim is raised towards us based on the German Product Liability Act [Produkthaftungsgesetz] or other regulations due to a product defect or if any other damage arises in connection with the delivery of a defective product, in particular due to a call-back, you shall indemnify us insofar as the damage is caused by an error of the delivery or the service on your part. You commit to take out sufficient product liability insurance and be able to provide proof of it upon our request.

- 9b. Depending on the type and scope, you must carry out an appropriate state-of-the-art quality assurance as well as document all relevant data. If a claim is raised towards us on the basis of product liability, you commit to submit the corresponding documentation and papers to make it possible to produce evidence of a defective product.

## 10. Property Rights, Confidentiality

- 10a. You shall ensure that the items delivered by you do not violate any domestic or foreign property rights and guarantee us the entire freedom and copyright permission with regard to their use and trade at home and abroad. Should a claim be raised towards us by third parties due to a violation of domestic or foreign property rights, with regard to the goods delivered, you shall exempt us from all claims and shall indemnify us for any loss arising from this.
- 10b. All order papers as well as drawings, models, samples etc. shall remain our property and you may neither pass them on to third parties nor use them for your own purpose without our express consent. They shall be protected against unauthorised inspection and use and must be returned to us in good condition no later than the time of delivery, unless otherwise agreed. You may not retain any copies either; a right of retention shall not exist.
- 10c. You shall keep confidential all technical data and other commercial and technical details, which are not common knowledge and which became known to you due to our business relationship. They may only be used for the execution of orders for us and be made accessible to those employees whose engagement is necessary to carry out the work.
- 10d. If you manufacture tools, drawings or other manufacturing equipment on our behalf, there shall be a general agreement that these items shall pass into our ownership after manufacture. In the case of partial cost sharing, we shall acquire the co-ownership according to the portion of costs. You shall be entitled on a revocable basis to keep these items in custody for us with care and free of charge. We shall receive all copyrights for the exclusive use of these items. You shall not have the right to use these items beyond the scope of the contract without our consent. You shall be entitled and obliged to keep these items in custody on a revocable basis. The items must be marked in a way that our property is also documented towards third parties. You have no right of retention with regard to these items.
- 10e. Sub-suppliers shall be obliged accordingly.
- 10f. You may only make reference to our business relation for advertising purposes with our prior written consent.

## 11. Limitation on Liability

- 11a. In the case of a violation of contractual or extra-contractual obligations, in particular with regard to impossibility, delay or fault in contract negotiations and tortious act, we shall be liable, also for our officers and other vicarious agents, only in cases of intent and gross negligence. This shall be restricted to the damage which is foreseeable and typical for the contract upon conclusion of the contract. These restrictions shall not apply in the case of culpable violation of material contractual obligations to the extent that fulfilling the purpose of the contract is endangered and in the case of damage to life, body and health.

## 12. Reservation of Title

- 12a. We shall accept the simple reservation of title for the goods delivered by you. Further form of securities shall only apply with our express consent.

## 13. General Provisions

- 13a. The place of performance for all liabilities arising from this contract, in particular for delivery and payment, shall be Heidelberg and / or the place of performance for both parties.
- 13b. The place of jurisdiction for all legal disputes arising from this contractual relationship as well as concerning its creation and validity shall be Heidelberg for both parties. We shall also have the right to take legal action at your headquarters.
- 13c. If one of the contractual parties ceases their payments, a provisional insolvency administrator shall be appointed or if a petition is filed for institution of insolvency proceedings against the party's assets or for extra-judicial composition proceedings, the other party shall be entitled to rescind the part of the contract, which has not been performed.
- 13d. If one of the provisions of these conditions and of the further agreed arrangements is or becomes invalid, the validity of the remaining contract shall hereby not be affected. The contractual parties commit to replace the invalid provision with a provision that comes as close as possible to its economic success.
- 13e. The contract relationship shall be governed by German Law. The UN Sales Convention (CISG) shall not apply.

Heidelberg, February 2011