



seit 1905

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Drahtbiede- und Walztechnik

GENERAL TERMS AND CONDITIONS

1 Scope of application

1.1 These General Terms and Conditions of Sale (GTCS) apply to all our business relationships with our customers ("Buyer"). The General Terms and Conditions of Sale shall only apply if the Buyer is an entrepreneur (Section 14 BGB), a legal entity under public law or a special fund under public law within the meaning of Section 310 (1) BGB.

The UN Convention on Contracts for the International Sale of Goods (UN Sales Convention) shall apply to transactions with purchasers domiciled outside the Federal Republic of Germany, insofar as it is not amended or supplemented by the following clauses. External terms and conditions of purchase shall not apply.

1.2 Our General Terms and Conditions of Sale 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 we have expressly agreed to their validity. This requirement of consent shall also apply if the Buyer refers to its General Terms and Conditions of Business in the context of the order and we have not expressly objected to the General Terms and Conditions of Business.

1.3 These General Terms and Conditions of Sale apply to contracts for the sale and/or delivery of movable goods ("Goods"). It is irrelevant whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the General Terms and Conditions of Sale in the version valid at the time of the Buyer's order or in the version last communicated to him in text form shall also apply as a framework agreement for similar future contracts, without us as the Seller having to refer to them again on a case-by-case basis.

1.4 Individual agreements made with the Buyer in individual cases (including collateral agreements, supplements and amendments) and information in our order confirmation shall take precedence over these General Terms and Conditions of Sale. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

1.5 Legally relevant declarations and notifications by the Buyer with regard to the contract (e.g. notifications of defects, setting of deadlines, withdrawal or reduction) must be made in writing, i.e. in written and text form (e.g. letter, e-mail, fax). Further statutory formal requirements and further evidence (if necessary in case of doubt about the legitimacy of the declaring party) remain unaffected.

1.6 If references are made to the validity of statutory provisions, it should be noted that these are only of clarifying significance. The statutory provisions shall apply - even if no corresponding clarification has been made - to the extent that they are not amended or excluded by the General Terms and Conditions of Sale.

2 Offer and conclusion of contract

2.1 Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards) and other product descriptions or documents (including in electronic form). We reserve ownership rights and copyrights to all documents provided to the Buyer in connection with the order placement. These documents may not be made accessible to third parties unless we give the Buyer our express written consent to do so.

2.2 The order of the goods by the Buyer is a non-binding contractual offer in accordance with § 145 BGB. In the event that nothing to the contrary results from the order, we shall be entitled to accept this contractual offer within two weeks of its receipt by us.

2.3 Acceptance of the contract offer on the part of the Buyer can be declared either in writing (e.g. by an order confirmation) or by delivery of the goods to the Buyer. In the event that we as the Seller do not accept the Buyer's offer within the period specified in Section 2.2, any documents sent to the Buyer must be returned to us immediately.

3 Prices and payment agreements

3.1 Unless otherwise agreed in writing in individual cases, our current prices at the time of conclusion of the contract shall apply ex warehouse, plus statutory VAT. The costs of packaging shall be invoiced separately. Unless a fixed price agreement has been made, we reserve the right to make reasonable price changes due to changes in wage, material and distribution costs for deliveries made 3 months or more after conclusion of the contract.

3.2 In the case of a sales shipment, the Buyer shall bear the transportation costs ex warehouse and the costs of any transportation insurance requested by the Buyer. In the event that we do not invoice the transportation costs incurred in the individual case, we shall charge a flat-rate transportation fee (excluding transportation insurance). Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.

3.3 Payment of the purchase price must be made exclusively to the account specified in the invoice. The deduction of a discount is only permitted if a special written agreement has been made.

3.4 Unless otherwise agreed, the purchase price is due and payable within 30 days of invoicing. However, we are entitled at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.

3.5 The Buyer shall be in default if the above payment period expires. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate pursuant to Section 288 (2) BGB (German Civil Code) in the amount of nine percentage points above the respective base interest rate. We reserve the right to claim further damages for default. Our claim against merchants for commercial maturity interest in accordance with § 353 HGB remains unaffected.

3.6 If it is foreseeable after conclusion of the contract that our claim to payment of the purchase price is jeopardized due to the Buyer's inability to pay (e.g. due to an application for the opening of insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and, if necessary after setting a deadline, to withdraw from the contract (Section 321 BGB). In the case of contracts for which the manufacture of non-fungible items (custom-made products) is owed, we may declare our withdrawal immediately. The statutory provisions on the dispensability of setting a deadline shall remain unaffected in this respect.

4. rights of retention

The Buyer shall only be entitled to rights of set-off or retention in the event that his claim has been legally established or is undisputed and his counterclaim is based on the same contractual relationship. In the event that defects occur within the scope of the delivery, the Buyer's counter-rights, in particular in accordance with Section 8.6 sentence 2 of these General Terms and Conditions of Sale, shall remain unaffected.

5 Delivery period and delay in delivery

5.1 The delivery period shall be agreed individually or specified by us upon acceptance of the order.

5.2 In the event that we are unable to meet contractually agreed delivery deadlines for reasons for which we are not responsible, we shall inform the Buyer of this circumstance without delay and at the same time inform the

Buyer of the expected or new delivery deadline. If a delayed delivery cannot be made due to non-availability of the service even within the newly announced delivery period, we are entitled to withdraw from the contract in whole or in part; we must immediately reimburse any consideration already provided by the buyer (in the form of the purchase price payment). The non-availability of the service is given, for example, if our supplier has not delivered to us on time, if we have concluded a congruent hedging transaction, if there are other disruptions in the supply chain (for example due to force majeure) or if we are not obliged to procure in individual cases.

5.3 Whether we as the seller are in default of delivery shall be determined in accordance with the statutory provisions. However, the prerequisite for a delay in delivery by us as the seller is a reminder from the buyer.

6 Delivery, transfer of risk, acceptance, default of acceptance

6.1 Delivery shall be ex warehouse. The warehouse is also the place of performance for the delivery and the place for any subsequent performance. In the event that the buyer wishes to have the goods sent to a different destination (sale to destination), he shall bear the costs of shipment. In the event that nothing has been contractually agreed, we may determine the type of shipment (packaging, shipping route, transport company) ourselves.

6.2 The risk of accidental loss and accidental deterioration shall pass to the Buyer when the goods are handed over to the Buyer. In the case of a sale involving the carriage of goods, the risk of accidental loss of the goods, accidental deterioration of the goods and the risk of delay shall pass to the Buyer upon delivery of the goods to the forwarding agent or carrier. In the event that acceptance of the goods is contractually agreed, this shall be decisive for the transfer of risk. Further statutory provisions of the law on contracts for work and services shall remain unaffected. If the Buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance of the goods.

6.3 In the event that the Buyer is in default of acceptance or our delivery is delayed for other reasons for which the Buyer is responsible, we shall have a claim against the Buyer for compensation for the damage incurred, including additional expenses (e.g. storage costs).

7 Retention of title

7.1 We reserve title to the delivered goods until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).

7.2 The goods subject to retention of title may not be pledged to third parties or assigned as security until the secured claims have been paid in full. The Buyer must notify us immediately in writing in the event that an application is made to open insolvency proceedings or if third parties seize the goods belonging to us (e.g. by way of attachment). If the third party is not in a position to reimburse us for

the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the Buyer shall be liable for the loss incurred by us.

7.3 In the event of a breach of contract by the Buyer, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for return does not at the same time include a declaration of withdrawal; rather, we are entitled to demand only the return of the goods and reserve the right to withdraw from the contract. In the event that the buyer does not pay the purchase price due, we must have set the buyer a reasonable deadline for payment without success before asserting these rights. This shall only apply if such a deadline is not dispensable under the statutory provisions.

7.4 Until revoked in accordance with clause 7.4.c, the Buyer is authorized 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 in addition:

(a) The products of our goods resulting from combination, mixing or processing shall be subject to retention of title at their full value, whereby we shall be deemed to be the manufacturer. In the event that, in the event of combination, mixing or processing with the goods of third parties, their right

of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the combined, mixed or processed goods.

b) The Buyer assigns to us already at this point in time in total or in the amount of our possible co-ownership share pursuant to Section 7.4.a for security purposes the claims against third parties arising from the resale of the goods or the product in the amount of the final invoice amount agreed with us (including VAT).

c) The Buyer shall remain authorized to collect the claim in addition to us. As long as the Buyer meets his payment obligations to us, there is no deficiency in the Buyer's ability to pay and we do not assert the retention of title by exercising a right in accordance with clause 7.3, we undertake not to collect the claim. If we assert the exercise of a right pursuant to Section 7.3, we may demand that the Buyer disclose the assigned claims and their debtors and that the Buyer provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, we are entitled to revoke the Buyer's authorization to resell and process the goods subject to retention of title.

8. claims for defects of the buyer

8.1 The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise specified below. This shall not affect the statutory provisions on the sale of consumer goods (Sections 474 et seq. BGB) and the Buyer's rights arising from separately issued guarantees, in particular from the manufacturer.

8.2 Agreements that we have made with buyers regarding the quality and the intended use of the goods (including accessories and instructions) regularly form the basis of our liability for defects under the warranty. A quality agreement includes all product descriptions and manufacturer's specifications that are the subject of the individual contract or were made public by us (in particular in catalogues or on our Internet homepage) at the time the contract was concluded. In the event that no quality has been agreed, it must be assessed in accordance with the provisions of Section 434 (3) BGB whether a defect exists. Against this background, it should be noted that public statements made by the manufacturer in the context of advertising or on the label of the goods take precedence over statements made by other third parties.

8.3 We shall not be liable for defects which the Buyer is aware of or is grossly negligent in not being aware of at the time of conclusion of the contract in accordance with § 442 BGB.

8.4 Claims for defects on the part of the Buyer shall only exist if the Buyer has complied with its statutory inspection and notification obligations (Sections 377, 381 HGB). If the goods are building materials or other goods intended for installation or other further processing, an inspection must be carried out immediately before processing. We must be notified immediately in writing if a defect is discovered during delivery, inspection or at a later date. Obvious defects must be reported in writing within

30 working days from delivery and non-apparent defects within the same period from discovery of the defects. In the event that the buyer fails to fulfill or does not fulfill his obligation to properly inspect and/or report defects, we shall not be liable for the defect that was not reported or not reported in time or not reported properly in accordance with the statutory provisions. If the goods were intended for fitting, mounting or installation, this shall also apply if the defect only became apparent after the corresponding processing as a result of non-compliance with or breach of one of these obligations. In this case, the buyer is not entitled to any claims for compensation for the "installation and removal costs".

8.5 If the delivered goods are defective, we as the seller shall be entitled to choose whether we provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free item (subsequent delivery). In the event that the type of subsequent performance chosen by us is unreasonable for the buyer in the individual case, he may refuse it. However, we reserve the right to refuse subsequent performance under the statutory conditions. In addition, we are entitled to make the subsequent performance to be provided by us 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 proportion to the defect.

8.6 The Buyer shall grant us the necessary time and opportunity for the subsequent performance to be rendered. In particular, the Buyer shall hand over to us the item for which he has asserted a defect for inspection purposes. In the event that we make a subsequent delivery of a defect-free item, the buyer must return the defective item to us in accordance with the statutory provisions. However, the buyer is not entitled to a claim for return.

8.7 Unless we are contractually obliged to do so, subsequent performance shall not include the dismantling, removal or disassembly of the defective item or the installation, attachment or assembly of a defect-free item. This shall not affect the Buyer's claims for reimbursement of the "installation and removal costs".

8.8 We shall reimburse the expenses which are necessary for inspection purposes and for subsequent performance (transport, labour and material costs and, if applicable, removal and installation costs) in accordance with the statutory provisions and these General Terms and Conditions of Sale in the event that a defect exists. However, we may demand reimbursement from the Buyer for costs incurred due to an unjustified request to remedy a defect in the event that the Buyer knew or could have recognized that there was in fact no defect.

8.9 The Buyer shall have the right to remedy the defect itself and to demand reimbursement of the expenses objectively necessary for this if there is an urgent case (e.g. in the event of danger to operational safety or to prevent disproportionate damage). The buyer must inform us immediately in the event of self-performance. In the event that we would be entitled to refuse subsequent performance in accordance with the statutory provisions, the Buyer shall have no right to self-performance.

8.10 The Buyer may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions if a deadline to be set by the Buyer for subsequent performance has expired unsuccessfully or is dispensable in accordance with the statutory provisions. In the event of a minor defect, however, the Buyer shall not be entitled to withdraw from the contract.

8.11 Claims for damages or claims for reimbursement of futile expenses of the Buyer (§ 284 BGB) shall only exist in accordance with Section 9 and Section 10, even in the event of a defect.

9 Limitation period

9.1 The general limitation period for claims resulting from material defects or defects of title is one year from delivery, in deviation from Section 438 (1) No. 3 BGB. In the event that acceptance has been contractually agreed, the limitation period shall commence upon acceptance.

9.2 In accordance with the statutory regulation, the limitation period is 5 years from delivery (§§ 438 para. 1 no. 2 BGB) in the event that the goods are a building or an item that has been used for a building in accordance with its normal use and has caused its defectiveness (building material). This applies subject to the other special statutory provisions on the limitation period (in particular Section 438 (1) No. 1, (3), Sections 444, 445b BGB)

9.3 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 pursuant to Sections 195, 199 BGB would lead to a shorter limitation period in individual cases. The Buyer's claims for damages pursuant to clauses 10.1 and 10.2.a) and those pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

10 Other liability

10.1 Unless otherwise provided for in these General Terms and Conditions of Sale, including the following provisions, we as the Seller shall be liable for breaches of contractual and non-contractual obligations in accordance with the statutory provisions.

10.2 Within the scope of fault-based liability, we shall be liable for damages, irrespective of the legal grounds, only in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty), only

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

b) for damages resulting from the breach of an essential contractual obligation (obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner relies and may also rely). In this case, however, our liability shall be limited to compensation for foreseeable, typically occurring damage.

10.3 The limitations of liability arising in accordance with clause 10.2 shall also apply to third parties and in the event of breaches of duty by persons whose fault we are responsible for in accordance with statutory provisions. Insofar as a defect has been fraudulently concealed and a guarantee for the quality of the goods has been assumed, the limitations of liability shall not apply. This also applies to claims of the buyer under the Product Liability Act.

10.4 The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not result from a defect in the event that we as the Seller are responsible for the breach of duty.

10.5 The Buyer's right of termination (in particular pursuant to Sections 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

11 Choice of law and place of jurisdiction

11.1 The law of the Federal Republic of Germany shall apply to these General Terms and Conditions of Sale and the contractual relationship between us as the Seller and the Buyer.

11.2 The place of jurisdiction and place of performance for all disputes arising directly or indirectly from the contractual relationship, including actions on bills of exchange, shall be the court with local and subject-matter jurisdiction for Sprockhövel.