



WTN. Know-how made perfect.



# General Terms and Conditions of Sale, Delivery and Payment of Werkzeugtechnik Niederstetten GmbH & Co. KG

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## I. Scope, general information

1. These General Terms and Conditions of Sale, Delivery and Payment ("Terms") apply to all business relations of Werkzeugtechnik Niederstetten GmbH & Co. KG ("WTN") with its Buyers ("Buyer"). The general terms and conditions shall only apply if the Buyer is an entrepreneur (§ 14 BGB (German Civil Code)), a legal entity under public law or a special fund under public law.
2. The general terms and conditions in their respective version shall also apply as a general agreement for future contracts with the same Buyer.
3. These general terms and conditions shall apply exclusively; WTN shall not recognise any terms and conditions of the Buyer that are contrary to or deviate from these terms and conditions unless WTN has expressly agreed to their validity. The present general terms and conditions shall also apply exclusively if WTN carries out the delivery to the Buyer without reservation in the knowledge of conflicting or deviating terms and conditions of the Buyer. Unconditional delivery to the Buyer does not constitute consent to the validity of deviating or conflicting terms of business.
4. Individual agreements made with the Buyer in individual cases (including ancillary agreements, supplements and amendments) shall in all cases take precedence over these general terms and conditions. Subject to proof to the contrary, a written contract or a written confirmation by WTN is decisive for the content of such agreements.
5. Legally relevant declarations and notifications to be made by the Buyer to WTN after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) must be made in writing to be effective.
6. References to the validity of legal regulations only have a clarifying meaning. Even without such a clarification, the statutory provisions shall therefore apply, insofar as they are not directly amended or expressly excluded in these general terms and conditions.

## II. Conclusion of contract

1. All offers of WTN are subject to change and non-binding. This shall also apply if WTN has provided the Buyer with catalogues, technical documentation, other product descriptions or documents – also in electronic form.
2. The ordering of the goods by the Buyer is considered a binding offer of contract. Unless otherwise stated in the order, WTN is entitled to accept this contractual offer within 4 weeks after receipt by WTN.
3. Acceptance of the order can be declared either by delivery of the goods to the Buyer or by written order confirmation, whereby transmission of the order confirmation by remote data transmission is sufficient for compliance with the written form. An automatic confirmation of the receipt of the order ("order confirmation") does not constitute an acceptance by WTN of the purchase offer of the Buyer.
4. If additional costs are incurred as a result of subsequent changes, extensions and additions to the order, these costs shall be remunerated under the conditions of the calculation on which the order is based, even without written agreement.



### III. Prices and conditions of payment

1. All prices of WTN are ex works (Incoterms 2020) plus the statutory value added tax applicable at the time of delivery.
2. In the case of sale to destination (section VI, clause 1), the Buyer shall bear the transport and packaging costs ex warehouse (including the costs of transport packaging and loading) and the costs of transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.
3. Unless otherwise agreed, the agreed purchase price is due and payable within 20 calendar days of invoicing and delivery of the goods.
4. For all means of payment, the day of receipt of payment is the day on which WTN can dispose of the amount owed by the Buyer.
5. Upon expiry of the payment period specified in section III, clause 2, the Buyer shall be in default. During the period of default, the purchase price shall bear interest at the statutory default interest rate applicable at the time. WTN reserves the right to assert further damages caused by default. WTN's claim to the commercial maturity interest (§ 353 HGB (German Commercial Code)) against merchants remains unaffected.
6. The Buyer shall only be entitled to rights of set-off or retention insofar as the claim made by the Buyer for set-off or retention has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's reciprocal rights shall remain unaffected.

### IV. Retention of title

1. Until complete payment of all present and future claims arising from the purchase contract and the current business relationship (hereinafter referred to as "secured claims"), WTN reserves the title to the sold goods.
2. The goods under reservation of title of WTN (hereinafter referred to as "reserved goods") may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer undertakes to inform WTN immediately in writing if an application for the opening of insolvency proceedings on its assets has been filed or if third parties have access to the reserved goods, in particular by way of seizure. In case of access by a third party to the reserved goods, the Buyer undertakes to inform the third party about the reserved property of WTN. If the third party is not able to reimburse WTN for the judicial or extrajudicial costs arising in this connection, the Buyer shall be liable to WTN.
3. In case of breach of contract by the Buyer, especially in case of non-payment of the due purchase price, WTN shall be entitled to withdraw from the contract according to the statutory provisions and to demand the return of the goods on the basis of the retention of title and the withdrawal from the contract (hereinafter: in the event of enforcement). The demand for return does not simultaneously include the declaration of withdrawal from the contract; WTN is entitled to demand only the goods and to reserve the right of withdrawal. If the Buyer does not pay the due purchase price, WTN may only assert these rights if WTN has previously unsuccessfully set the Buyer a reasonable deadline for payment or such setting of a deadline is dispensable according to the statutory provisions.
4. Until revocation, the Buyer is authorised 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 additionally apply.
  - a) The retention of title extends to the products resulting from the processing, mixing or combination of the reserved goods at their full value, whereby WTN is considered the manufacturer. If in case of processing, mixing or combining with goods of third parties their ownership or the ownership of the Buyer remains, WTN shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Otherwise, the same applies to the resulting product as to the goods delivered under retention of title.



- b) The Buyer hereby assigns to WTN as security all claims against third parties arising from the resale of the goods or the product or from the connection of the goods subject to retention of title with a property, in total or in the amount of the possible co-ownership share of WTN according to the preceding paragraph. WTN accepts the assignment. The obligations of the Buyer mentioned in clause 2 shall also apply in consideration of the assigned claims. The assignment also applies to other claims that take the place of the reserved goods or otherwise arise with regard to the reserved goods, such as insurance claims or claims in tort in the event of loss or destruction.
- c) In addition to WTN, the Buyer remains authorised to collect the claims. This direct debit authorisation can be revoked by WTN in the event of enforcement. WTN undertakes not to collect the claims against third parties from the resale of the goods as long as the Buyer duly fulfils its payment obligations towards WTN, it is not in default of payment, no application for the opening of insolvency proceedings has been filed, there is no other deficiency in its ability to pay and WTN does not assert the reservation of title by withdrawing from the contract or demanding the return of the goods according to clause 3. In the event of enforcement, WTN can demand that the Buyer notify WTN of the assigned claims and its debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. In addition, WTN is entitled to revoke the authority of the Buyer to further sell and process the goods subject to retention of title in the event of enforcement.  
If the Buyer makes use of its collection authority, WTN is entitled to the collected proceeds in the amount of the agreed gross delivery price for the reserved goods.
- d) If the realisable value of the goods subject to retention of title and the goods or claims replacing them exceeds the value of the secured claims of WTN by more than 10%, WTN will release securities on request of the Buyer. The choice of the securities to be released is incumbent on WTN.

## **V. Delivery period, delivery date, force majeure and default of delivery**

1. Periods of delivery or performance and dates of delivery or performance will be agreed individually or stated by WTN upon acceptance of the order. Unless expressly stated as binding, these are non-binding information about the delivery time.
2. The beginning of the individually agreed or by WTN indicated delivery or service period presupposes the clarification of all technical requirements and the fulfilment of possible obligations to cooperate of the Buyer.
3. If WTN does not receive deliveries or services from suppliers or subcontractors for reasons for which it is not responsible despite proper congruent covering, does not receive them correctly or not in time or if events of force majeure occur, i.e. impediments to performance through no fault of WTN with a duration of more than 14 calendar days, WTN will inform the Buyer in time. In this case WTN is entitled to postpone the delivery or service for the duration of the hindrance or to withdraw from the contract in whole or in part due to the unfulfilled part of the contract, provided that WTN has complied with its aforementioned duty to provide information, has not expressly assumed the procurement risk or production risk and the hindrance to performance is not only of a temporary nature. Force majeure is equal to strike, lockout, official intervention, epidemic, shortage of energy and raw materials, transport bottlenecks through no fault of WTN, operational hindrances through no fault of WTN, e.g. fire, water and machine damage and all other hindrances which, from an objective point of view, have not been culpably caused by WTN. WTN is not responsible for these circumstances even if it is already in default of delivery before the event occurs.
4. If a delivery or service date or a delivery or service period has been bindingly agreed and the agreed delivery or service date or the agreed delivery or service period is exceeded by more than four weeks as a result of events in accordance with the above section 3, or if, in the case of



a non-binding service date, adherence to the contract is objectively unreasonable for the Buyer, the Buyer is entitled to withdraw from the contract with regard to the part not yet fulfilled.

5. The occurrence of the delay in delivery by WTN is determined by the statutory provisions. In any case, however, a reminder from the Buyer is required. If WTN is in default of delivery, the Buyer can demand lump-sum compensation for the damage caused by the default. The lump-sum compensation shall amount to 0.5% of the net value of the goods for each completed calendar week of the delay, but in total not more than 5% of the net value of the goods delivered late. WTN reserves the right to prove that the Buyer has not incurred any damage or only a considerably lower damage than the above lump sum.
6. The rights of the Buyer according to section IX of these general terms and conditions and the legal rights of WTN especially in case of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the performance and/or subsequent performance) remain unaffected.

## **VI. Delivery, transfer of risk, default of acceptance, return of goods**

1. Delivery is ex works (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 to destination). Unless otherwise agreed, WTN is entitled to determine the type of dispatch (in particular transport company, dispatch route, packaging) itself. The costs of shipment are determined in accordance with section III of these general terms and conditions.
2. Partial deliveries are permissible as long as this does not result in unreasonable disadvantages for the Buyer. In particular, partial deliveries are permitted if the partial delivery can be used by the Buyer within the scope of the contractual purpose and the delivery of the remaining ordered goods is ensured.
3. Under consideration of the interests in the individual case and within the scope of what is reasonable, WTN reserves the right of customary excess and short deliveries in case of custom-made products, which will be considered in the invoice.
4. The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer upon delivery. In the case of mail order purchases, the risk of accidental loss and accidental deterioration of the goods and the risk of default shall pass to the Buyer upon delivery of the goods to the forwarding agent, carrier or other person or institution designated to carry out the shipment. If the Buyer is in default of acceptance, this shall be deemed equivalent to handover.
5. If the Buyer is in default of acceptance, if it omits an act of cooperation or if the delivery is delayed for other reasons for which the Buyer is responsible, WTN shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this, WTN will charge a lump-sum compensation in the amount of 0.5% of the net value of the goods per week or part thereof, beginning with the delivery period or – in the absence of a delivery period – with the notification of the readiness for dispatch of the goods, but in total not exceeding 5% of the net value of the goods not accepted. The proof of a higher damage and legal claims of WTN (in particular compensation for additional expenses, appropriate compensation, termination or withdrawal) remain unaffected; however, the aforementioned lump sum compensation is to be set off against further monetary claims. The Buyer is allowed to prove that WTN has not incurred any damage at all or only a considerably lower damage than the above lump sum.
6. (1) The recipient/contractual partner of WTN assures that goods supplied that fall under the scope of Article 12g Regulation (EU) 833/2014, will not be sold, exported, or re-exported, either directly or indirectly, to the Russian Federation or for use in the Russian Federation.  
(2) The recipient/contractual partner shall undertake its best efforts to ensure that the purpose of paragraph (1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.





(3) The recipient/contractual partner shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph (1).

(4) Any violation of paragraphs (1), (2), or (3) shall constitute a material breach of contract and entitles WTN to terminate the supply relationship with immediate effect and to cancel orders already accepted without delay. The recipient/contractual partner shall indemnify WTN from all costs, third-party claims, and other disadvantages (e.g., fines) resulting from the breach of an obligation under the paragraphs (1), (2), or (3). This shall not apply if the recipient/contractual partner is not responsible for this breach of duty. Furthermore, WTN shall be entitled to demand a contractual penalty of 5% of the sales price of the goods sold in violation of the provisions of this regulation. Any further claims for damages shall remain unaffected by this.

(5) The recipient/contractual partner shall immediately inform WTN about any problems in applying paragraphs (1), (2) or (3), including any relevant activities by third parties that could frustrate the purpose of paragraph (1). The recipient/contractual partner shall make available to the WTN information concerning compliance with the obligations under paragraph (1), (2) and (3) within two weeks of the simple request of such information.

## VII. Proprietary rights

1. The Buyer undertakes to inform WTN immediately of any claims of third parties regarding the property rights of the products delivered by WTN. WTN is entitled, but not obliged, to assume the legal defence at its own expense and on its own responsibility.
2. The Buyer guarantees that provided goods and services, in particular drawings and 3D data that act as a basis for Buyer-specific orders are free of third-party industrial proprietary rights. In case of defects of title, the Buyer shall indemnify WTN from all corresponding claims of third parties, unless the Buyer is not responsible for the defect of title.
3. WTN reserves the property rights and copyrights to all documents or aids provided to the Buyer, such as in particular drawings, illustrations, diagrams, drafts, calculations, descriptions, plans, models, samples or specimens, technical specifications, documentation, data carriers and software programs, unless otherwise agreed in individual cases. Such documents and aids are to be used exclusively for the contractual performance and may not be made accessible to third parties without the express written consent of WTN. The Buyer has to return the aforementioned objects completely to WTN on request and to destroy any copies that may have been made if they are no longer needed in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. This does not apply to routinely made back-up copies of electronic data traffic or to confidential information and copies thereof which the respective other contractual partner must keep in accordance with applicable law.

## VIII. Claims of defect by the Buyer

1. The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title, unless otherwise provided below.
2. The basis of WTN's liability for defects is the agreement made on the quality of the goods. Colour samples and illustrations may differ from the original for technical reasons. Agreements as to quality do not release the Buyer from the obligation to check the goods for their suitability for the intended purposes, processes and applications. Guarantees of quality are only those which were expressly designated as such by WTN in the order confirmation. If no quality has been agreed, the statutory provisions shall apply to assess whether a defect exists.
3. The Buyer's claims for defects presuppose that it has complied with its statutory duties of inspection and notification of defects (§§ 377, 381 HGB (German Commercial Code)). If a defect appears during the inspection or later, WTN must be notified of this immediately in writing and in



a specified form. The notification shall be deemed to be without delay if it is made within two weeks, whereby timely dispatch of the notification shall suffice to meet the deadline.

Irrespective of this obligation to inspect and give notice of defects, the Buyer must notify us in writing of obvious defects, incorrect and short deliveries and transport damage within two weeks of delivery. If the Buyer neglects the proper inspection and/or notification of defects, the liability of WTN for the unreported defect is excluded.

4. If the delivered goods are defective, WTN can first choose whether it will provide subsequent performance by eliminating the defect (rectification) or by delivering a defect-free item (replacement). The right of WTN to refuse subsequent performance under the legal requirements remains unaffected.
5. WTN is entitled to make the owed supplementary performance dependent on the fact that the Buyer pays the due purchase price. However, the Buyer is entitled to withhold a reasonable part of the purchase price in relation to the defect.
6. The Buyer has to give WTN the time and opportunity necessary for the owed supplementary performance, in particular to hand over the rejected goods for inspection purposes. In case of a replacement delivery, the Buyer has to return the defective item to WTN according to the legal regulations. The subsequent performance does not include the removal of the defective item nor the reinstallation if WTN was not originally obliged to install it.
7. Place of subsequent performance is the place of performance; WTN is free to provide subsequent performance also at the current location, provided that there are no legitimate interests of the purchaser to the contrary. The expenses necessary for the purpose of testing and subsequent performance, in particular transport, travel, labour and material costs shall be borne by WTN if a defect actually exists. If a demand for rectification of defects by the Buyer turns out to be unjustified, however, WTN can demand reimbursement of the costs incurred from the Buyer, unless the lack of defectiveness was not recognisable to the Buyer.
8. If the supplementary performance has failed or a reasonable deadline to be set by the Buyer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. In case of an insignificant defect, however, there is no right of withdrawal from the contract.
9. The Buyer's claims for damages or compensation for wasted expenditure shall only exist in accordance with the provisions of section IX and shall otherwise be excluded.

## **IX. Other liability**

1. Unless otherwise stated in these general terms and conditions including the following provisions, WTN shall be liable in case of a breach of contractual and non-contractual obligations according to the statutory provisions.
2. WTN is liable for damages – irrespective of the legal ground – in case of intent and gross negligence.  
In case of ordinary negligence, WTN is liable only
  - a) for damages resulting from injury to life, body or health,
  - b) for damages resulting from the violation of an essential contractual obligation (obligation whose fulfilment makes the proper execution of the contract possible in the first place and on whose compliance the Buyer regularly relies and may rely); in this case, however, the liability of WTN is limited to the compensation of the foreseeable, typically occurring damage.
3. The limitations of liability resulting from clause 2 shall not apply if WTN has fraudulently concealed a defect or has assumed a guarantee for the quality of the goods. The same applies to claims of the Buyer under the Product Liability Act.
4. Due to a breach of duty that does not consist in a defect of the delivered goods, the Buyer can only withdraw or terminate if WTN is responsible for the breach of duty. A free right of



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termination by the Buyer (in particular according to §§ 650, 648 BGB (German Civil Code)) is excluded, unless there is an important reason for which adherence to the contract is unreasonable for the Buyer. Otherwise, the legal requirements and legal consequences apply.

## **X. Statute of limitations**

1. Claims for material defects are subject to a limitation period of 12 months from the transfer of risk. Otherwise, the statutory periods of limitation shall apply.
2. The foregoing limitation periods of the law of sale shall also apply to contractual and non-contractual claims for damages of the Buyer which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. The limitation periods of the Product Liability Law remain unaffected in any case.

## **XI. Choice of law and place of jurisdiction**

1. These general terms and conditions and all legal relations between WTN and the Buyer shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Sales Convention. Conditions and effects of the reservation of title according to section IV are subject to the law of the respective location of the object, insofar as the choice of law made in favour of German law is inadmissible or ineffective.
2. If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of WTN in 97996 Niederstetten, Germany. However, WTN shall also be entitled to bring an action at the general place of jurisdiction of the Buyer.