

# General Delivery and Payment Terms and Conditions (Allgemeine Liefer- und Zahlungsbedingungen (ALB)) of Wagner Elektrogeräte GmbH

- As of: January 2017 -

## § 1 General - Area of Validity

- 1.1 These ALB apply to all business transactions between Wagner Elektrogeräte GmbH (hereinafter: "Wagner") and its customers (hereinafter: "Customer"), even if they are not mentioned in later agreements. These Business Terms and Conditions apply only, if Customer is a businessperson (Section 14 of the German Civil Code (Bürgerliches Gesetzbuch (BGB)), a legal entity under public law or special fund under public law. These ALB apply exclusively. Any additional terms and condition of Customer differing from these ALB do not become an integral part of the agreement, unless Wagner expressly consented to their effectiveness.
- 1.2 These ALB also apply, if Wagner executed the delivery knowing of any opposing or deviating provisions or if these ALB is not enclosed in every future business transaction.
- 1.3 Any individual agreements concluded with Customer in a particular case have priority over these ALB. Wagner's rights beyond these ALB under legal provisions shall remain unaffected thereby.
- 1.4 The contract language is German. The German Version of these ALB is the determining version in the event interpretation questions and in the event of any disputes.

## § 2 Offer and Contract Conclusion

- 2.1 Offers of Wagner are subject to change and non-binding, unless expressly designated as binding offer. They only constitute the invitation to the Customer, to make a respective proposal to Wagner by ordering.
- 2.2 Customer's order include binding offers. Wagner can accept orders within 14 days after their receipt. Orders are accepted by separate order confirmations, delivery of the ordered goods or performance of the service.
- 2.3 The point in time that determines the contract conclusion is the point in time, the order confirmation from Wagner is received by Customer, or in the event of immediate order processing, it is the delivery of the ordered goods.
- 2.4 The contract conclusion and the performance are subject of no hindrances opposing them due to German, U.S. and any other applicable national, EU or international provisions of the foreign trade laws or embargos or other sanctions. Customer is obliged to provide any and all information and obtain any and all documents along with the approvals, permits, and releases required for export, transport and import. Customer agrees not to export the goods to a country, to which an export is banned.

## § 3 Description of Products

- 3.1 If the contract refers to goods, which are subject to technical advancement, Wagner is entitled to modify the goods, provided the use as intended under the contract is not impaired. In addition, standard deviations and deviations due to legal provisions are permissible, provided the use as intended under the contract is not impaired. Customer is obliged to point this out to Wagner, if Customer's interest is restricted to the ordered type and does not want any deviations under no circumstances.
- 3.2 Information about the goods sold by Wagner (such as weights, dimensions, utility values, capacity, tolerances and technical specifications) and the illustrations of same (such as drawings and illustrations) do not constitute a warranty as to their condition or durability.
- 3.3 If goods are produced in accordance with Customer's specifications, then the drawings prepared by Wagner and approved by Customer are decisive. Samples of Wagner are prototypes and they do not constitute a warranty as to the condition of the goods without an express written agreement. It is imperative to comply with the applicable tolerance ranges.

## § 4 Successive Delivery Agreements

- 4.1 Successive delivery agreements, where the Customer orders a certain quantity of goods, which should be delivered in several partial deliveries over one specific period, are only possible upon separate agreement with fixed dates specified for the individual deliveries. Unless otherwise agreed, the master order may not exceed a term of twelve months.
- 4.2 In master orders, Customer must call off individual deliveries no later than 12 weeks prior to the desired delivery date. After the expiration of a reasonable grace period, Wagner is entitled to deliver and invoice the goods or rescind the agreement, or if Customer has acted culpably to demand compensation for damages instead of performance.

## § 5 Prices/Price Adjustment

- 5.1 Unless otherwise agreed, the prices specified in Wagner's order confirmation apply. The prices are exworks and apply only to the scope of performance and delivery specified in the order confirmation. Excluded are particularly costs for packaging, freight, insurance, customs, public dues and value-added-tax.
- 5.2 The statutory value-added-tax is itemized in the amount applicable on the date the invoice is issued.
- 5.3 If between the contract conclusion and the delivery of the goods ordered from Wagner the costs increase unjustifiably and unforeseeably at the point in time the contract was concluded, particularly due to market price, material and raw material price changes, which were unforeseeable at the time the contract was concluded with the Customer, Wagner is entitled to adjust the prices agreed with Customer to reflect the changed circumstances, if the goods should only be delivered at least two months after the contract was concluded. If the purchase price agreed with Customer increases by more than 10%, Customer can rescind the concluded contract.
- 5.4 Wagner has the right to execute any outstanding deliveries and services only against advance payment or against the provision of security, if circumstances become known, which are suitable to reduce the creditworthiness of Customer significantly and which endangers the payment of any outstanding receivables. This applies accordingly, if Customer refuses to pay or does not pay any outstanding invoices of Wagner and there are no undisputed or legally determined objections against the invoices from Wagner.

## § 6 Payment Terms

- 6.1 Unless otherwise agreed in writing, all invoices from Wagner must be paid immediately without discount, but no later than within 30 days of the date on the invoice.
- 6.2 If Customer defaults on an invoice due and payable, then Wagner can charge as of the due date 9 percentage points above the applicable base interest rate plus a late fee of EUR 40.00, reasonable collection charges and attorney fees and all outstanding invoices become due and payable immediately.

- 6.3 Bills of exchange and checks are accepted only upon express written agreement and only for payment. Discount charges and other bills of exchange and check fees must be paid by Customer. Wagner's rights under § 10 of this ALB remain until all bills of exchange have been paid in full.
- 6.4 Wagner has the right to deduct any of Customer's payments from Customer's oldest debt. If costs and interest have already been incurred, then Wagner is entitled to deduct any payments first from the costs, then from the interest and finally from the principle claim.
- 6.5 If Customer does not accept the ordered goods after a grace period granted to Customer (acceptance default), then the delivery price is due and payable as of the date Wagner declared its readiness to deliver. At the same time, Wagner can charge a flat rate for storage fees as of the date of acceptance default. It is 1% of the purchase amount per started week without special proof and it is limited to 5% of the purchase price amount. Customer and Wagner are free to provide proof that the storage fees incurred in connection with the non-acceptance of the goods are lower or higher or that no storage fees have been incurred. Any other claims shall remain unaffected thereby.

## § 7 Setoff, Retention, Assignment

- 7.1 Customer can set off any of its counterclaims and Customer can only claim a retention right, if these claims were determined by a court of law or if they are undisputed. If the delivery is defective, then Customer's counter-rights remain unaffected thereby.
- 7.2 If Customer wants to assign any of its claims against Wagner under this contractual relationship, it requires for the effectiveness the written consent of Wagner. Wagner shall only withhold its consent for justifiable interests.

## § 8 Delivery, Delivery Time and Partial Deliveries

- 8.1 Deliveries are exworks (Incoterms 2010 "EXW").
- 8.2 Any delivery deadlines and dates Wagner specifies are estimates and unbinding deadlines and dates. Wagner shall not be liable for delays in deliveries. Delivery deadlines and dates are for Wagner binding only, if Wagner expressly specified and confirmed them in writing as binding. Unless otherwise agreed, Wagner delivered within a timely manner, if the goods were transferred to a transport person at Wagner's place of business or warehouse or if Wagner notified Customer of Wagner's readiness to deliver the goods after Customer is in acceptance default.
- 8.3 Any agreed delivery terms do not begin prior to the complete provision of the materials, tools, documents, permits and releases, the clarification of all production relevant questions as well as the receipt of the agreed advance payment. Compliance with delivery terms presupposes the timely and proper performance of Customer's remaining obligations. Compliance with agreed delivery dates is subject to the condition precedent that Wagner receives its delivery on time and properly.
- 8.4 Wagner will notify Customer in writing and in a timely manner, if Wagner does not receive deliveries or services from manufacturers, upstream suppliers or subcontractors for reasons, for which Wagner is not responsible and despite proper congruent inventory, or Wagner does not receive them correctly or on time or if any events of force majeure occur, i.e. service hindrances beyond Wagner's control lasting more than four weeks. In this event, Wagner has the right to delay delivery for the period of hindrance or Wagner may rescind the contract in whole or in part for the portion of it not yet fulfilled, provided Wagner complied with its duty to inform and the service hindrance lasts longer than 2 months. Examples for force majeure are strike, lockout, government interventions, energy and raw material shortage, involuntary transport bottlenecks, involuntary operational hindrances such as caused by fire, water and machine damages along with all other hindrances, for which Wagner could not be held responsible if objectively considered.
- 8.5 If a delivery date has been bindingly agreed and this period or date is exceeded by more than two months for the events mentioned under the above Item 8.4 or if it is no longer reasonable for Customer to accept the goods due to the delay, then Customer can rescind the contract for the unfulfilled portion after a grace period granted to Wagner informing Wagner of the acceptance denial has passed unsuccessfully. Whether the delivery is in default is determined by legal provisions.
- 8.6 Partial deliveries are permissible only, if the partial delivery is usable for Customer within the framework of the use intended under the contract, the delivery of the remaining goods that were ordered is certain and Customer does not incur any significant additional expenditures or costs in connection therewith.
- 8.7 Wagner reserves the right to deliver up to 5% more or less of the scope of delivery for technical production reasons. No costs will be refunded if the delivery falls short.

## § 9 Risk Transfer/Shipment

- 9.1 The risk of accidental loss or worsening of the goods transfers to Customer, at the time the goods are handed to the carrier, freight forwarder or any other person responsible for shipment but no later than at the time the goods are handed to Customer. The same applies to partial deliveries or if shipment is, as agreed with Customer, free of freight charges and costs for Customer. Upon Customer's request and expense, Wagner will insure the goods against the specified perils by taking out a transport policy.
- 9.2 If transfer or shipping is delayed for circumstances, for which Customer is responsible, then risk transfers to Customer at the point in time, at which Wagner notified Customer that the goods are ready to ship.
- 9.3 If Wagner chooses the type of shipment, the transport route and/or the shipping person, Wagner shall only be liable for intent or gross negligence in its respective selection.

## § 10 Retention of Title

- 10.1 The delivered goods remain the property of Wagner until payment in full of all invoices, to which Wagner is entitled from Customer under the business transactions with Customer. Customer is obliged to treat the goods with retained title diligently during the period of retained title. In particular, Customer is obliged to insure the goods sufficiently at its own expense for the replacement value against fire and water damages as well as theft. Customer already assigns to Wagner at this time any and all claims for compensation Customer has under this policy. Wagner hereby accepts this assignment. Any of Wagner's additional claims shall remain unaffected thereby. Upon Wagner's request, Customer must prove that the goods are insured.
- 10.2 Customer may only sell the goods with retained title within the framework of the proper course of business. Customer is not authorized to pledge the goods with

retained title, to assign them as collateral or to dispose of them in any other manner, which could endanger the property of Wagner. Customer pays for all costs, for which Customer is responsible, and which are incurred to discharge the attachment and to replace the goods, provided they cannot be charged by third parties.

- 10.3 Customer already assigns to Wagner at this time any and all of its receivables from the resale of the goods including all ancillary rights, regardless whether the goods with the retained title are sold without or after further processing. Wagner hereby accepts this assignment already at this time. If an assignment is not permissible, Customer hereby informs the third party debtor irrevocably to pay only to Wagner. Customer is irrevocably authorized to collect any receivables assigned to Wagner in trust on behalf of Wagner. Wagner can revoke this authorization of Customer to collect and the right of Customer to resale, if Customer does not meet its payment obligation toward Wagner in a proper manner, if Customer gets with its payments in arrears, stops payments or insolvency proceedings are filed involving Customer's assets. Any resale of receivables requires the prior written consent of Wagner.
- 10.4 If Customer gets into arrears with its payments, Wagner can rescind the contract irrespective of Wagner's additional rights. Customer must grant Wagner or any third party authorized by Wagner immediate access to the goods with the retained title, surrender them and inform Wagner of their whereabouts.
- 10.5 If Customer processes or modifies the goods with the retained title, then Customer does so on behalf of Wagner. If these goods are processed, combined, or mixed with other items not belonging to Wagner, then Wagner acquires co-ownership in the new item relative of the value the delivered goods have at the time of processing in relation to the other items used for processing.
- 10.6 On Customer's request, Wagner is obliged to release any securities to the extent that the value that can be realized with these securities in consideration of deductions in valuations customary by banks exceed Wagner's receivables from this business relationship with Customer by more than 20%.
- 10.7 Customer hereby grants Wagner an appropriate right of security for its goods, if the goods are delivered to areas with other legal systems, where the provision of the retention of title under § 10 items 1 to 6 does not have the same collateral effect as in the Federal Republic of Germany.

#### § 11 Claims for Defects, Limited Use and Liability

- 11.1 The prior agreed condition of the goods forms the basis for any of Wagner's liability for defects. Any attachments, lists and other documents of Customer do not become part of the agreement on the condition of the goods, unless Wagner expressly consented to their application.
- 11.2 The shipped goods are only for the purpose intended by Customer or the purpose he is told. These purposes do not cover the use of the goods in life-sustaining or life-supporting medical equipment, in military systems, in nuclear facilities, in aerospace technology, in combustion control systems, in safety equipment and in devices or systems, where the failure or malfunction of the goods can lead upon reasonable estimate to injury of life, body or health or to an extraordinarily high property damage and financial loss (hereinafter: "**reserved purposes**"), unless Wagner has expressly approved the use of the goods for such reserved purposes. If Customer still uses a product for such reserved purposes without the express consent, then it is used at the sole risk of Customer. The same applies, if Customer uses goods contrary to German, U.S. and any other applicable national, EU or international provisions of the foreign trade laws or embargos or other sanctions. Wagner does not assume any liability for a use for reserved or prohibited purposes without the express prior consent. Customer agrees to indemnify Seller from all third party claims, if these claims arose in connection with the use of the goods for prohibited or reserved purposes without the express prior consent of Wagner.
- 11.3 Customer is responsible for the suitability and safety of the goods' application as intended by Customer, unless otherwise expressly agreed.
- 11.4 Customer's claims for defects require that Customer complied with its legal duties to inspect and report (Sections 377, 381 HGB); in particular, that Customer inspected the goods upon receipt and notified Wagner of any obvious defects and any defects recognizable during such inspection immediately upon receipt of the goods in writing. Customer must notify Wagner of any hidden damages promptly upon their discovery in writing. Prompt notification is defined as a notification within two weeks, whereby the deadline is met, if the notice or complaint was sent on time. If Customer fails to inspect the goods properly and/or to notify Wagner of the defect on time, then Wagner shall not be liable for the unreported or untimely reported defect. In the event of a defect, Customer must specify for Wagner the symptoms of the defect of the affected goods in writing and in detail.
- 11.5 Customer must afford Wagner the time required and opportunity to rectify the defect, particularly, to send Wagner the goods for test purposes on request. Wagner shall pay any expenses necessary for the purpose of testing and rectification, particularly the transport, travel expenses and material costs as stipulated in Section 439 (2) BGB, provided it is determined that there is a defect; however, Wagner shall not have to pay any expenses for the part of the expenditures, which have increased due to the fact that Customer has shipped the goods to a location other than the delivery address.
- 11.6 If the goods are defective, Wagner may choose subsequent performance by rectifying the defect within a reasonable time or delivery goods without defect. Wagner's right to refuse subsequent performance under legal condition shall remain unaffected thereby.
- 11.7 Wagner is entitled to make the subsequent performance owed conditional on Customer paying the delivery price owed. However, Customer has the right to retain a reasonable portion of the delivery price relative to the defect.
- 11.8 If Wagner is not ready or unable to rectify the issue within a reasonable time, then Customer may choose to rescind the contract or reduce the price. The same applies, if the subsequent performance fails or is unreasonable for Wagner. There is no right of rescission, if the defect is insignificant.
- 11.9 If Wagner is responsible for the defect, then Customer has the right to claim damages based on the conditions specified in § 11.13.
- 11.10 Customer has no warranty claims, if Customer tries to repair or modify the goods or a third party tries to repair or modify the goods without the consent of Wagner and if these actions make it impossible or unreasonably more difficult for Wagner to rectify the defect.
- 11.11 Customer's claims for compensation of expenditures instead of damages instead of performance are excluded, if these were not required or if any reasonable third party would have incurred these expenditures.
- 11.12 Any return shipments of defective goods to Wagner for the purpose of subsequent performance, require the prior written approval of Wagner and must be carried out in accordance with Wagner's existing rules. The risk of accidental loss or

worsening of the goods transfers only at the time they are accepted by Wagner at Wagner's place of business.

- 11.13 Wagner has an unlimited liability for damages that occurred by breach of warranty or for any injuries to life, body or health. The same applies to intent and gross negligence, to the mandatory legal liability of Wagner for product defects (particularly those under the Product Liability Act) and to the liability for fraudulent concealment of defects. Furthermore, Wagner shall only be liable for simple carelessness with regard to breaching a cardinal contractual duty as a result of the nature of the agreement, the fulfillment of which the execution of the contract is only possible and on which Customer can customarily rely. Such essential contractual duties of Wagner are specifically its primary duty to perform such as deliver goods free of defects or protect body or life of Buyer and its personnel or protect its property against significant damages. If these essential contract duties are negligently breached, or in the event of default and impossibility, then Wagner's liability is limited to the foreseeable typically incurring damage for a maximum of EUR 50,000.00 per loss event. Unless otherwise agreed above, Wagner's liability is excluded.
- 11.14 The exclusions and limitations of liability specified in § 11.13 apply to the same extent to the bodies, legal representatives, employees and other agents of Wagner.
- 11.15 The expiry date for Customer to claim damages shall be one year, provided the defective goods were not used as intended for a structure and they have caused its defectiveness. The expiry term begins with the transfer of risk but no later than on the date the goods have been delivered. The above-referenced time limit on claims also applies to contractual and non-contractual damage claims of Customer, which are based on a defect of the product, unless the application of the statutes of limitations (Sections 195, 199 BGB) would lead to a shorter time limit in a particular case. The limited liability of Wagner for damages as a result of breach of warranty or injury to life, body or health, for intent and gross negligence shall remain unaffected thereby. Wagner's liability for reasons specified in sentence 3 is solely determined by the statutory limitations and particularly those under the Product Liability Act.
- 11.16 Any statement Wagner makes to Customer's claimed damages cannot be construed as acknowledgement or start of negotiations about a claim or circumstances substantiating a claim.
- 11.17 Place of performance and subsequent rectification is Wagner's place of business. Wagner is also entitled to undertake rectification and subsequent performance at Customer's place of business.
- 11.18 If a duty was violated that is not connected with a defect, Customer may only rescind or terminate the contract, if Wagner is responsible for the breach of duty. Any of Customer's free right to terminate -- particularly under Sections 651, 649 BGB -- is excluded. Moreover, the legal conditions and legal consequences apply.

#### § 12 Product Liability

- 12.1 Customer shall not modify the goods; in particular, he will not modify or remove any existing warnings about hazards if the goods are not used as intended. If this duty was violated, Customer indemnifies Wagner internally from third party claims under the Product Liability Act, provided Customer is responsible for the mistake that triggered the liability.
- 12.2 If due to a product error Wagner must recall the product or issue a warning, then Customer shall support Wagner and it will undertake all of Wagner's requests, provided they are reasonable. Customer is obliged to pay for the costs of the product recall or product warning, provided Customer is responsible for the product defect or the damage incurred therewith. Any of Wagner's additional claims shall remain unaffected thereby.
- 12.3 Customer will notify Wagner immediately in writing of any risks in using the product, of which Customer becomes aware, and of any potential product errors or product outages.

#### § 13 Final Clauses

- 13.1 Customer shall not transfer rights and duties to third parties, unless Wagner provided its express written consent.
- 13.2 Jurisdiction for all disputes under the contract is Wagner's registered place of business. Wagner may also take legal action at the domicile of Customer and before any other competent court.
- 13.3 The laws of the Federal Republic of Germany apply to the contractual relationship along with their interpretation and their execution. The U.N. convention on the international sale of goods (CISG) is excluded.
- 13.4 If one provision of these ALB is or becomes ineffective or unenforceable in whole or in part or if a gap is discovered in these AEB, it does not affect the validity of the remaining provisions. In its place the effective or enforceable provision, which comes closest to the intent of the ineffective and unenforceable provision shall apply. The same applies, if a subject matter in need of regulation has not been expressly regulated.