

**General Terms and Conditions (industry and trade)**  
**WätaS Wärmetauscher Sachsen GmbH, Lindenstraße 5, 09526 Olbernhau**

**1. General**

a) Our General Terms and Conditions (GTCs) shall apply to all business relations with our customers ("Purchaser") if the Purchaser is an entrepreneur (§ 14 German Civil Code), a legal entity under public law or a special fund under public law.

b) In particular, our GTCs shall apply to contracts concerning the sale and/or the delivery of movable objects ("Goods"). This shall apply regardless of whether the Goods were produced by us or purchased from suppliers (§§ 433, 651 German Civil Code).

c) As a framework agreement with the same Purchaser, our GTCs shall also apply to future contracts concerning the sale and/or delivery of moveable objects. A reference to our GTCs in the individual case is not required.

d) Our GTCs shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Purchaser shall only become part of the contract if we have explicitly consented to their validity. This consent requirement shall apply in any case and, in particular, when we execute the delivery to the Purchaser without reservation with the knowledge of the Purchaser's GTCs.

e) If we enter into individual agreements and/or arrangements with the Purchaser in individual cases (including side agreements, supplements and amendments), they shall take precedence over our GTCs. A written contract or a written confirmation on our part shall be decisive for the content of such agreements and/or arrangements.

f) Statements and notifications issued by the Purchaser (e.g. setting of deadlines, notifications of defects, declarations of withdrawal or notices of reduction), which are to be submitted to us after the conclusion of the contract, must be made in writing in order to be effective.

g) The reference of our GTCs to statutory provisions shall only serve the purpose of clarification. The statutory provisions shall also apply without such a reference, unless they are amended or excluded by the GTCs.

**2. Conclusion of the Contract**

a) All our offers are non-binding and without engagement. This shall also apply if we have provided the Purchaser with catalogues, technical data sheets (e.g. drawings, calculations, DIN standard references), other product descriptions or documents - also in electronic form. We reserve the property rights and copyrights to these documents. These documents may neither be made accessible to third parties nor be used for commercial purposes without our prior consent. Upon request, they shall be surrendered to us immediately. We reserve the right to correct calculation and printing errors.

b) The Purchaser may only oppose any own property rights or know-how to us if it has informed us in writing of the existence of own rights at the latest within one week after receipt of our documents.

c) By ordering the Goods, the Purchaser makes a binding contractual offer. This contractual offer can be accepted by us within three 3 weeks after the receipt of the order, unless arising otherwise from the order. This contractual offer is accepted by a written order confirmation or by delivery of the Goods to the Purchaser.

d) If the Purchaser cancels an order confirmed by us, we shall be entitled to demand the full amount of the costs incurred by us, but at least 20 % of the order value (net), from the Purchaser.

e) Upon request of the Purchaser, we provide a set of revision documents in German language. These documents shall only be sent by e-mail. For sending the documents on CD, we charge an additional fee amounting to € 5.00.

f) We have to charge the following fees for the provision of further documents:

- € 0.30 per additional page in German language
- € 0.50 per additional page in English language.

**3. Prices and Terms of Payment**

a) Prices quoted by us shall apply ex works, exclusive of freight and value added tax.

b) In the event of substantial changes of order-related costs factors, we shall be entitled to make a corresponding adjustment of our prices. Metal price determinations shall only apply subject to the possibility of stocking up with raw metals and foreign exchanges.

c) Unless agreed otherwise, disposable packaging deemed necessary shall be charged by us at cost price. If we use rental containers, the corresponding rent shall be charged. We shall not take back transport packaging and all other packaging in accordance with the Packaging Ordinance. They shall become the property of the Purchaser, with the exception of euro-pallets and wire mesh crates.

d) In case of a sales shipment (no. 5 a)), the Purchaser shall bear the transport costs ex works up to a net invoice amount of EUR 1,250.00. If the Purchaser requires a transport insurance for the Goods, the costs shall be borne by the Purchaser. Any customs, fees, taxes and other public charges incurred shall also be borne by the Purchaser.

e) If no other term of payment is specified in our order confirmation, the purchase price is due and payable within 10 days after invoicing and delivery or acceptance of the Goods. In case of contracts with a delivery value from EUR 5,000.00, we shall be entitled to demand a down payment amounting to a maximum of 30% of the purchase price (net). The corresponding down payment shall be due and payable with the technical and/or commercial release.

f) The Purchaser shall be in default with the expiration of the aforementioned period for the payment of the purchase price. During the period of default, the interest to be paid on the purchase price is the legal interest rate. The entitlement to maturity interest in accordance with the German Commercial Code (§ 353 German Commercial Code) shall not be affected by this. We reserve the right to claim for further damages caused by default.

g) The Purchaser can only set off against our claims with counterclaims established as final and absolute or undisputed counterclaims. The Purchaser shall also be entitled to set off against our claims if it asserts complaints of defects or counterclaims arising from the same contract. The Purchaser can only assert a right of retention against us if the counterclaim of the Purchaser is based on the same purchase contract.

h) If our entitlement to payment towards the Purchaser is jeopardised after the conclusion of the contract due to the Purchaser's lack of performance (e.g. by filing for insolvency), we shall be entitled to refuse performance according to the statutory provisions and - after setting a deadline (if applicable) - to withdraw from the contract (§ 321 German Civil Code). If the contract covers the production of unreasonable objects (custom-made items), we shall be entitled to withdraw immediately. The statutory provisions on the dispensability of setting a deadline shall remain unaffected.

i) Cheques and bills of exchange shall only be accepted due to a special arrangement and only on account of performance. Furthermore, bills of exchange shall only be accepted subject to their discountability. The costs of discounting, tax collection and expenses shall be borne by the Purchaser.

**4. Delivery Period and Delay in Delivery**

a) The delivery period for the delivery of the Goods shall be individually agreed between us and the Purchaser or indicated by us when accepting the order.

b) If we cannot meet binding delivery periods for reasons for which we are not responsible (non-availability of the service), we shall inform the Purchaser and communicate the expected new delivery period. If the service is not available within the new delivery period, we shall be entitled to stop the delivery or withdraw from the contract in whole or in part. We shall immediately reimburse any consideration already provided by the Purchaser. In particular and in addition to official orders or measures, force majeure, strike, lockout, traffic and business disruptions, shortage of raw materials or any other similar obstruction, the non-timely self-delivery by our suppliers is deemed a case of non-availability of the service within this meaning if we have concluded a congruent covering transaction.

c) We shall be entitled to make partial deliveries if they are reasonable for the Purchaser. If delivery periods are agreed, the periods for transportation are added up. The delivery time shall commence with the issuing of the order confirmation, but not before the provision of the order information, documents and approvals to be supplied by the Purchaser or the receipt of a payment to be made. The day of delivery shall be the day of dispatch. If the dispatch is delayed without any fault on our part, the day of provision shall be deemed the day of delivery.

d) We shall only be in delay in delivery if we receive a reminder from the Purchaser. Otherwise, the statutory provisions shall apply. If we are in delay in delivery, the Purchaser can demand a lump-sum compensation for its damage caused by the delay. The corresponding lump-sum compensation amounts to 0.5% of the net price (delivery value) for each full calendar week of delay. However, in total, it must not exceed a maximum of 5 % of the delivery value of the Goods delivered too late. We shall reserve the right to prove that the Purchaser has suffered no loss at all or only a substantially smaller loss than the above lump sum.

e) In case of framework agreements, covering purchases and call orders, we can demand a binding allocation 1 month after the order confirmation. If the Purchaser does not comply with this request within 2 weeks or if it is in default of acceptance, we shall be entitled to set a two-week period of grace and withdraw from the contract or claim damages after its expiry.

f) If an acceptance by the Purchaser or a third party appointed by it according to special conditions is agreed, it shall be carried out at our works immediately after notification of the readiness for acceptance by us. If the acceptance is not carried out despite the granting of a reasonable period of grace, we shall be entitled to dispatch the Goods or store the Goods at the expense and risk of the Purchaser. Thus, the Goods are considered as accepted.

g) The statutory rights of withdrawal and termination as well as the statutory provisions on the performance of the contract in the event of an exclusion of the performance obligation (e.g. impossibility or unreasonableness of performance and/or supplementary performance) shall remain unaffected. The Purchaser's rights of withdrawal and termination according to no. 8 of our GTCs shall remain unaffected as well.

## 5. Delivery, Passing of Risk, Acceptance, Default of Acceptance

a) The Goods shall be delivered ex works. The place of performance is there as well. The Goods shall be shipped to another place of destination upon request and at the expense of the Purchaser (sales shipment). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular: transport company, shipment route and packaging) ourselves.

b) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Purchaser at the latest with the handover of the Goods. In case of an agreed sales shipment, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall already pass to the carrier, the freight forwarder or any person or institution entrusted with the execution of the shipment with the delivery of the Goods. If we have agreed on an acceptance with the Purchaser, this acceptance shall be decisive for the passing of risk. The statutory provisions of the law pertaining to contracts for work and services shall apply to an agreed acceptance accordingly. Default of acceptance by the Purchaser shall be equivalent to a handover or acceptance.

c) If the Purchaser is in default of acceptance of the Goods ("default of acceptance"), if it fails to provide an act of assistance or if our delivery is delayed for other reasons for which the Purchaser is responsible, we shall be entitled to claim compensation for the resulting damage including additional expenses (e.g. storage costs). For this, we shall charge a lump-sum compensation of EUR 20 per calendar day, commencing with the delivery period. In the absence of a delivery period, the charging commences with the notification that the Goods are ready for shipment. The proof that we have suffered a higher damage shall remain unaffected. Our statutory claims (in particular: reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected as well. If we claim the above-mentioned flat rate, it shall be set off against further monetary claims asserted by us against the Purchaser. The Purchaser can prove that we have suffered no loss at all or only a substantially smaller loss than the above lump sum.

## 6. Dimensions and weights

a) We specify dimensions, technical values and other properties of our products to the best of our knowledge.

b) The weights, quantities and numbers of units specified in our delivery notes shall be decisive for accounting. Our incoming weights shall apply to reworking material and provided material. Complaints relating to this information can only be taken into account if we receive them within one week after delivery.

## 7. Claims for defects by the Purchaser

a) Unless otherwise provided below, the rights of the Purchaser in case of material defects and defects of title (including wrong and short delivery or faulty assembly instructions) are determined by the applicable statutory provisions. In all cases, the special statutory provisions in case of final delivery of the Goods to a consumer (suppliers' recourse acc. to §§ 478, 479 German Civil Code) shall remain unaffected.

b) Warranty claims for damage arising from the transport ex works shall be excluded, unless we are the carrier ourselves. Warranty claims by the Purchaser shall also be excluded in the event of unsuitable or improper use of the Goods, incorrect assembly, commissioning, operation and handling by the Purchaser or a third party appointed by it, natural wear, inadequate replacement materials, defective construction work, unsuitable building ground and chemical, electrochemical and electrical influences, unless they are attributable to a fault on our part. The warranty shall also not apply if the Purchaser modifies the Goods or has them modified by third parties without our consent, thereby making the rectification of defects impossible or unreasonably difficult.

c) The agreement concluded on the quality of the Goods shall be the basis of our liability for defects. The product descriptions (referred to as such) handed over to the Purchaser prior to its order or included in the contract in the same way as these GTCs shall be considered as the agreement on the quality of the Goods.

d) If the quality has not been agreed, the statutory provision shall be applied to assess whether there is a defect or not (§ 434 (1) p. 2 and 3 German Civil Code). We assume no liability for public statements of a manufacturer (e.g. in case of covering purchases) or other third parties (e.g. advertising messages).

e) The assertion of claims for defects by the Purchaser requires that it has complied with the statutory obligations to inspect and notify defects (§§ 377, 381 German Commercial Code). Defects that are found during the inspection or later shall be reported to us immediately in writing. Regardless of this obligation to inspect and notify defects, the Purchaser shall immediately notify us of obvious defects (including wrong or short deliveries) in writing. The notifications shall be deemed immediate if they are made within two weeks, whereby the timely dispatch of the notifications shall be sufficient for the keeping of the period. A liability on our part because of a defect not notified shall be excluded if the Purchaser fails to perform the proper inspection and/or notification of defects. The aforementioned limitations shall not apply if the defect was fraudulently concealed by us.

f) If the Goods are defective, we shall be entitled - at our choice - to rectify the defect (rectification) or deliver a defect-free item (replacement delivery).

g) The supplementary performance owed by us may be made dependent on the Purchaser paying the due purchase price. In this case, the Purchaser can retain an appropriate portion of the purchase price that is reasonable in the ratio to the defect.

h) In the event of supplementary performance, the Purchaser shall return the rejected Goods to us for inspection purposes. The Purchaser shall grant us the time and opportunity required for the supplementary performance. If we make a replacement delivery, the defective item shall be returned in accordance with the statutory provisions.

i) In the event of a defect, we shall bear the expenses necessary for the purpose of inspection and supplementary performance - in particular: transport, infrastructure, labour and material costs. If a request for the rectification of a defect by the Purchaser was unjustified, we shall be entitled to demand reimbursement of the costs incurred by us from the Purchaser.

j) The Purchaser may withdraw from the contract or reduce the purchase price if the supplementary performance has failed or if a reasonable deadline to be set by the Purchaser for the supplementary performance has expired without success or is dispensable according to the statutory provisions. In the event of an insignificant defect, the right of withdrawal shall be excluded.

k) The Purchaser may only assert claims for damages or reimbursement of fruitless expenses according to no. 8 of the GTCs. Otherwise, such claims are excluded.

## 8. Liability

a) In case of a violation of contractual and non-contractual obligations, we shall be liable according to the relevant statutory provisions, unless otherwise provided in our GTCs.

b) We shall only be liable for damages - for whatever legal reasons - if we, our institutions, legal representatives, employees or vicarious agents are guilty of wilful intent or gross negligence. In case of ordinary negligence, we shall only be liable:

1. For damage resulting from the injury to life, body or health,

2. For damage resulting from the breach of an essential contractual obligation (obligation whose fulfilment enables the proper execution of the contract at all and on the observance of which the contractual partner regularly relies and may rely, especially the delivery of goods free from substantial defects as well as advisory, protective and care duties that should enable the Purchaser to use the Goods in accordance with the contract or aim at protecting the life and limb of the personnel of the Purchaser or protecting its property against considerable damages). In this case, however, our liability shall be limited to the compensation for the damage foreseeable for us or typically occurring.

c) The limitations of liability arising from no. 8(b)) of the GTCs shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the Goods. The same shall apply to claims of the Purchaser according to the Product Liability Act.

d) If we are liable for ordinary negligence, our liability to pay damages for property damage and resulting further financial losses shall be limited to an amount of EUR 3,000,000,- per claim (corresponding to the current amount of coverage of our product liability insurance or liability insurance). The same shall apply in case of a violation of essential contractual obligations.

e) The Purchaser can only withdraw or terminate owing to a violation of an obligation which is not a defect if we are responsible for the violation of the obligation. A free right of termination of the Purchaser (especially according to §§ 651, 649 German Civil Code) shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.

f) If we have produced according to instructions or drawings of the Purchaser, the Purchaser shall exempt us - with the waiver of own claims - from any claims of third parties due to compensation for damages or property right violations to the extent that we are not guilty of wilful intent or gross negligence.

g) Technical information or consultancy services not included in the owed and contractually agreed scope of services shall be provided at no cost and under the exclusion of any liability.

h) Further liability due to operating failure, business interruption or lost profit shall be excluded. Furthermore, indirect damages and consequential damages resulting from defects of the Goods shall only be eligible for compensation if such damage can be typically expected when using the delivery item as intended. Liability for further other indirect damage shall be excluded.

i) We shall only be liable if defects occur within the period of limitation for liability claims for material defects according to no. 9 of the GTCs and if the Purchaser immediately notifies us in writing of the defect after the occurrence of the damage.

j) The above exclusions and limitations of liability shall apply equally to our institutions, legal representatives, employees and vicarious agents.

#### **9. Statute of limitation**

a) Notwithstanding § 438 (1) no. 3 German Civil Code, the general limitation period for claims due to material defects and defects of title shall be one year from the delivery of the Goods or from the date of acceptance if an acceptance has been agreed.

b) In all other respects, the statutory provisions on the limitation in case of material defects and defects of title -especially § 438 (1) no. 2 German Civil Code- shall remain unaffected. The special statutory provisions for in rem claims for return of third parties (§ 438 (1) no. 1 German Civil Code), in the event of malice on the part of the seller (§ 438 (3) German Civil Code) and for claims in the recourse against suppliers in case of final delivery to a consumer (§ 479 German Civil Code) shall remain unaffected as well.

c) The above sales-law limitation periods shall also apply to contractual and non-contractual claims for damages by the Purchaser which are based on a defect of the Goods, unless the application of the regular statutory limitation (§§ 195, 199 German Civil Code) would lead to a shorter limitation period in an individual case. The limitation periods of the Product Liability Act shall remain unaffected in any case. Otherwise, the statutory limitation periods shall apply exclusively to claims for damages by the Purchaser according to no. 8 of the GTCs.

#### **10. Rights concerning the retention of title and security rights**

a) We shall retain title to the delivered Goods (goods subject to retention of title) until the full payment of all our debts owing and accruing from the contract and the ongoing business relations with the Purchaser.

b) If we have agreed on payment based on the cheque/bill of exchange procedure with the Purchaser, the retention of title shall also apply to the discharge of the bill of exchange accepted by us by the Purchaser and shall also not expire when we credit the cheque received. Payments of the Purchaser for fulfilling certain obligations as well as the inclusion of individual claims in a current invoice or the striking of balances and their acknowledgement shall not affect the retention of title. Only the receipt of the consideration shall be considered as payment.

c) The Purchaser shall be prohibited from pledging goods subject to retention of title to third parties or assign these goods in order to secure claims.

d) The Purchaser shall undertake to handle the reserved goods carefully and store them properly. The Purchaser is obliged to insure the reserved goods against theft, fire and water damage at its own expense, with the insured sum being adequate to cover the replacement value. If maintenance and inspection work has to be carried out, the Purchaser has to carry out the work in good time and at its own expense.

e) The Purchaser shall inform us immediately in writing if third parties access the reserved goods. The Purchaser shall immediately provide us with all information for instituting third party proceedings according to § 771 (1) Code of Civil Procedure. The Purchaser shall be fully liable to us for the loss of the judicial and extrajudicial costs claimed by us against the third party.

f) In the event of a Purchaser's behaviour contrary to the contract, especial in case of non-payment of the debt due, we shall be entitled to withdraw from the contract according to the statutory provisions.

g) The goods subject to retention of title may be sold, processed, mixed or combined with other items by the Purchaser in the proper course of business. If the Purchaser makes use of this, the following shall apply additionally.

h) The retention of title shall cover all products resulting from the processing, mixing or combination of our Goods at their full value. In this case, we shall be considered as the manufacturer.

i) If property rights to the product arise to the third party after processing, mixing or combining our Goods with the goods of third parties, we shall acquire co-ownership at the ratio of 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.

j) The purchaser shall already now assign the claims against third parties arising from the resale of the Goods or the product to us by way of security - in total or in the amount of our possible co-ownership share according to no. 10 (i). The obligations under no. 10 (c)) shall also apply to the assigned claim. If a claim is included in a current account existing with the Purchaser's buyer by a further delivery of the reserved goods by the Purchaser, the current account claim shall be assigned in full. After balancing has been carried out, it is replaced by the recognised balance which is deemed assigned up to the amount equal to the amount of the original claim. We accept the assignments.

k) Alongside us, the Purchaser shall be authorised to collect the claim. If the Purchaser fulfils its payment obligations towards us, if it is not in default of payment, if no application for opening of insolvency proceedings is filed and if there is no other lack of the Purchaser's performance, we shall undertake not to collect the debt. If such an event occurs, the Purchaser shall be obliged to notify us of the assigned claim and the debtor and provide all details necessary for the collection and hand over the necessary documents to us. The third party shall be informed of the assignment of the claim in writing.

l) If the realised value of our securities exceeds our claims by more than 10%, we shall release securities of our choice upon request of the Purchaser.

#### **11. Place of Jurisdiction and Governing Law**

a) If the Purchaser 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 national and international place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our place of business in Olbernhau. The same shall apply to claims arising from liabilities concerning bills of exchange and cheques. This shall not exclude the possibility of instituting legal proceedings at the place of jurisdiction of the Purchaser as well.

b) The contractual relationship shall be governed exclusively by the laws of the Federal Republic of Germany. All international and supranational (contract) laws, especially the United Nations Convention on Contracts for the International Sale of Goods, shall not apply.

As of: August 28<sup>th</sup>, 2017