



## General Terms and Conditions of Sale of Walter Werner GmbH Metallveredelung

### Article 1 General – Scope of Application

(1) Our General Terms and Conditions of Sale apply exclusively; when the customer's terms contradict, or differ from, our Terms and Conditions of Sale they shall not be recognised, unless we have explicitly accepted their validity in writing. Our General Terms and Conditions of Sale apply even if we carry out the delivery without reservation in the knowledge of the customer's contradictory or different terms.

(2) Our General Terms and Conditions of Sale are valid only vis-à-vis entrepreneurs pursuant to Section 310 (1) of the German Civil Code (BGB).

### Article 2 Offer – Offer Documents

(1) If a purchase order is to be qualified as an offer as in Section 145 of the German Civil Code (BGB), we can accept it within two weeks.

(2) We reserve the right to ownership and copyright of illustrations, drawings, calculations and other documents. That shall also apply to written documents which are classified as 'confidential'. The customer requires our explicit written consent before these can be disclosed to third parties.

### Article 3 Prices – Terms of Payment

(1) Unless otherwise provided for in the order confirmation, our prices are valid "ex works" excluding packaging; which shall be charged separately.

(2) We reserve the right to change our prices **correspondingly**, if, after conclusion of the agreement, cost reductions or increases occur due to wage agreements, or because of material and/or energy price changes. We shall supply evidence of these at the customer's request.

(3) In the case of contracts with an agreed delivery period of more than four months, we reserve the right to increase or lower our prices, due to increasing costs, in particular, due to wage agreements, or because of changes in the price of materials and/or energy. We shall inform the customer of such a change in price at least four weeks in advance in writing. In this case, the customer has the right to cancel or withdraw from the agreement at the time when this change in price becomes effective.

(4) Our prices do not include the statutory VAT; the latter is shown separately at the applicable rate on the invoice date.

(5) The deduction of discounts requires a special agreement in writing.

(6) The acceptance of bills of exchange or cheques always requires special agreements.

(7) Unless otherwise provided for in the order confirmation, the net sales price (without deduction) is payable within thirty days of the date of the invoice. The statutory provisions with respect to consequences of default shall be applicable.

(8) The customer is entitled to counterclaim only after their rights have been established in court and considered uncontested or have been approved by us. Moreover, they shall be authorised to exercise a right of retention only insofar as their counterclaim is based on the same contractual relationship.

(9) A possible ban on assignment by the customer concerning our claims is expressly rejected.

### Article 4 Terms of Delivery

(1) The commencement of the delivery period which we have stated is subject to all technical issues being resolved.

(2) Another precondition for the compliance with our delivery commitment is the timely and orderly fulfilment of the customer's obligations. The defence of an unfulfilled agreement remains reserved.

(3) We are entitled to provide partial services to a reasonable extent.

(4) If the customer is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled, if applicable, to demand compensation for losses incurred, including any additional expenses. We reserve the right to claim further rights and damages.

(5) In the event that the prerequisites of paragraph (3) are fulfilled, the risk of possible accidental loss or deterioration of the purchased item shall pass to the customer at the moment in which they are in default of acceptance or payment.

(6) We shall be liable under statutory provisions insofar as the underlying contract is a firm bargain as defined by Section 286 (2) number 4 of the *BGB* [German Civil Code], or of Article 376 of the *HGB* [German Commercial Code]. We shall also be liable under statutory provisions when the customer is entitled to claim that their interest in the further performance of the contract has been forfeited as a consequence of a delay in delivery for which we are responsible.

(7) We shall also be liable in accordance with the statutory provisions if the delay in delivery is caused by a deliberate or grossly negligent breach of duty on our part; any fault on the part of our representatives or agents is attributable to us.

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Insofar as the delay in delivery has been caused by a grossly negligent breach of contract on our part, the liability for damages shall be limited to typically foreseeable damage.

(8) We shall also be liable in accordance with the statutory provisions, insofar as the delay in delivery for which we are responsible is based on a culpable violation of a significant contractual obligation on our part; however, in this case, the liability for damages shall be limited to typically foreseeable damage.

(9) Moreover, in the event of a delayed delivery, we are authorised to demand payment of a contractual penalty to the amount of 3 % of the value of the delivery, for each complete week of delay, albeit no more than a maximum of 15% of the value of the delivery.

(10) The customer's further statutory claims and rights remain reserved.

#### **Article 5 Transfer of Risk – Packaging Costs**

(1) Unless otherwise provided for in the order confirmation, our deliveries will be made "ex works".

(2) Separate agreements apply to the return of packaging.

(3) We can provide transport insurance on a delivery if the customer so desires; the resulting costs shall be borne by the latter.

#### **Article 6 Liability for Defects**

(1) Customer claims arising from defects assume that the customer has, in accordance with Article 377 of the German Commercial Code (HGB), duly met their responsibilities to check the consignment and provide notification of defects.

(2) If the object of sale has a defect, the customer is, at their choice, entitled to demand either rectification of defects or delivery of new, faultless items. In the event of a rectification of the defect or of a substitute delivery, we shall be obligated to bear all costs incurred in the course of subsequent performance, especially transport, travel, labour and material costs, unless such costs increase due to the fact that the purchased object has been transported to a place other than the place of performance.

(3) If the subsequent performance fails, the customer shall be entitled to demand either to withdraw from the agreement or a price reduction.

(4) We shall be liable in accordance with the statutory provisions in the event that the customer asserts compensation claims for damages based upon intent or gross negligence, including those based upon the intent or gross negligence of our agents or vicarious agents. If we are not

held liable for intentional breach of contract, liability for damages shall be limited to typically foreseeable damage.

(5) We shall be liable in accordance with the statutory provisions if we culpably violate an essential contractual obligation; however, in this case, the liability for damages shall be limited to typically foreseeable damage.

(6) Liability due to culpable injury to life, body or health remains unaffected; this also applies to the mandatory liability pursuant to the *Produkthaftungsgesetz* [German Product Liability Act].

(7) Unless otherwise specified above, liability shall be excluded.

(8) The limitation period for defect claims is twelve months from the transfer of risk.

(9) The period for reporting claims pursuant to Articles 478 and 479 of the BGB shall remain in full force and effect; it is five years, beginning from delivery of the defective object.

#### **Article 7 Total Liability**

(1) A more extensive liability for damages than stipulated in Article 6 is excluded - regardless of the legal nature of the claim. This applies, in particular, to claims for damages based on culpa in contrahendo, because of other breaches of duty, or due to tortious claims for damages according to Article 823 of the BGB.

(2) Limitation according to para. (1) is also applicable insofar as the customer claims reimbursement of useless expenditure instead of a claim for damages.

(3) As far as our liability for damages is excluded or restricted, this also applies with regard to the personal liability for damages of our salaried employees, workers, employees, representatives, or vicarious agents.

#### **Article 8 Retention of Title**

(1) We retain title to goods purchased until such time as all payments under the supply contract have been received. In the event of breach of contract by the customer, especially in the event of payment arrears, we will be entitled to recover the goods purchased. Our recovery of goods purchased constitutes a withdrawal from the agreement. After taking back goods purchased we will have authority to realise same, whereupon the proceeds of sale will be offset against the customer's liabilities – less reasonable selling costs.

(2) The customer is under a duty to handle the goods purchased carefully; they shall be obliged, in particular, to adequately insure them at their own expense against fire, theft and water damage at replacement value. Insofar as

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maintenance and inspection work is required, the customer must carry this out at the proper time at their own expense.

(3) The customer must promptly inform us, in writing, in the event of seizure or intervention by a third party so that we can issue proceedings under Article 771 of the *ZPO* [German Code of Civil Procedure]. If the third party should be unable to reimburse us the judicial and extra-judicial costs of a claim under Article 771 of the *ZPO*, the customer shall be liable for the shortfall sustained by us.

(4) The customer has the right to resell the goods purchased in the ordinary course of business; however, they hereby assign to us all accounts receivable in the amount of the final invoice sum (including VAT) which accrue to them from their purchaser or a third party as a result of such resale, irrespective of whether the goods purchased are resold with or without being processed. The customer shall still have authority to collect such accounts receivable even after the assignment. Our authority to collect such accounts receivable ourselves shall remain in full force and effect. However, we do reserve the right not to collect such accounts receivable, provided that the customer meets their payment obligations from the proceeds collected, does not fall into arrears with their payments and provided, in particular, that no application is filed for the institution of insolvency or composition proceedings and that they have not suspended their payments. Should this be the case, however, we may require the customer to make the assigned accounts receivable and debtors known to us, to provide us with all necessary data to effect collection, to hand over the documentation concerned and give the debtors (third party) notice of the assignment.

(5) The customer's processing or conversion of goods purchased is always undertaken on our behalf. If goods purchased are processed along with other items not

belonging to us, we will acquire joint title to the new object in the proportion that the value of the goods purchased (final invoice sum, including VAT) bears to the other processed items at the date of processing. The same principle applies to any object resulting from processing, as applies to goods purchased subject to retention of title.

(6) Where goods purchased are inseparably combined with other items not belonging to us, we shall acquire joint title to the new object in the proportion that the value of the goods purchased (final invoice sum, including VAT) bears to the other combined items at the date of such combination. Where combination is effected in such a way that the customer's object is considered to be the principal object it is deemed agreed that the customer shall assign to us the proportionate joint title. The Customer shall safeguard such resultant sole or joint title on our behalf.

(7) As collateral for our accounts receivable due from them, the customer shall also assign to us their accounts receivable from a third party which derive from goods purchased being attached to real estate.

(8) We undertake, at the customer's request, to release collateral provided to us, insofar as the realisable value of our collateral exceeds the accounts receivable to be secured by more than 10 %; selection of the collateral to be released shall be our responsibility.

#### **Article 9 Place of Jurisdiction & Performance**

(1) If the customer is a merchant, our place of business shall be our place of jurisdiction; however, we are also entitled to sue the customer at the court of their registered office.

(2) The laws of the Federal Republic of Germany apply; the validity of the UN Convention on Contracts for the International Sale of Goods shall be excluded.

(3) Unless otherwise provided for in the order confirmation, our registered office shall be the place of performance.

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