

General Terms of Sale and Supply ("Terms of Sale") (Current as of June 2010)

§ 1 General information - scope of application

1. Our Terms of Sale apply exclusively; unless we expressly agreed in writing that the client's conditions deviating from or opposing our Terms of Sale shall apply, we do not recognize such conditions. Our Terms of Sale also apply in the event that we unconditionally effect delivery to the client even though we are aware of conditions deviating from or opposing our Terms of Sale on the client's part. Our Terms of Sale further apply to future orders; they need not be expressly agreed unless the client expressly objects to their applicability for future orders.
2. There are no oral subsidiary agreements, and oral assurances offered by our agents or employees shall only have effect if and to the extent that (i) our company confirms them in writing or (ii) they are provided by an individual or individuals vested with the requisite powers of representation (managing director, executive officer, authorized representative).
3. Our Terms of Sale only apply to enterprises as well as bodies corporate or special funds organized under public law within the meaning of § 310 (1) of the civil code (BGB).

§ 2 Offer - offer documents

1. Our quotes are subject to change and merely represent an invitation to its recipient, for its part, to submit an offer on the basis thereon. This does not apply to the extent that we expressly identified a quote as legally binding in nature. Accordingly, a contract does not have effect until the client places an order on the basis of our quote and we confirm such order.
2. In the event that an order from the client is to be qualified as an offer within the meaning of § 145 BGB, we may accept such offer within two weeks.
3. All property rights and copyrights relating to images, drawings, calculations and other documents are reserved. Irrespective of whether such documents are protected by law, they represent valuable business know-how; the client must neither disclose such information to third parties nor use it for commercial purposes outside of the purposes of the relevant supply contract without our express consent. This does not apply to documents that are generally known.
4. Both parties undertake not to (i) put to commercial use outside of the purposes of the relevant supply contract and (ii) disclose to third parties any of the other party's business secrets of which they gain knowledge in the course of their cooperation or deliveries. Such duty of confidentiality lapses if and to the extent that business secrets have become public knowledge through no fault of the other party's own. It further expires five years after the termination of the parties' cooperation. Business secrets are trade secrets within the meaning of § 17 of the unfair competition act (UWG).

§ 3 Prices - terms of payment

1. Unless the order confirmation provides otherwise, our prices are ex works and exclude packaging, transport and insurance.
2. VAT is not included; it is stated separately in the invoice in the legal amount in effect as of the invoice date and shall be paid separately by the client.
3. A discount for early or cash payments is subject to a separate written agreement.
4. Unless the order confirmation provides otherwise, the purchase price is due and payable (in full) within 30 days of invoice date. Payment default shall have the consequences prescribed by applicable law. Payments are deemed to have been made on time if they are received in our account on or before the due date.
5. The client may exercise rights of set-off only if and to the extent that its counter-claims have been legally established, are undisputed or were recognized by us. In addition, it may exercise a right of retention to the extent that its counter-claim arises from the same contractual relationship.
6. In the event of the client's default in payment, we are entitled to exercise the rights under § 321 BGB.
7. In the event that the parties agreed to a delivery more than four months after the execution of the relevant supply contract, we reserve the right to raise our sales prices if and to the extent that doing so is made necessary by increases in the costs of materials, energy and/or wages in the metal industry affecting our company, whereby we undertake, upon request, to furnish proof of the amount of our purchase costs. In the event that raises of this nature lead to a price increase in excess of 10%, the client is entitled to rescind the contract.

§ 4 Delivery period - default in delivery

1. Delivery periods are binding in nature only to the extent that we have confirmed them in writing.
2. A delivery period or date agreed with the client is deemed to have been extended in the event that, following the placement of an order, technical problems or technical questions which require clarification arise for reasons beyond our control.
3. To enable us to comply with our duty to deliver, the client must promptly and properly discharge its own duties. The right to invoke the defence of non-performance is reserved.
4. In the event that the client fails to accept deliveries or if it culpably breaches other duties of cooperation, we are entitled to demand indemnification against any related damages, including additional expenditures, if any. Additional claims are not affected thereby.
5. If the conditions of para. 3 are met, the risk of the accidental loss, destruction or deterioration of the object of purchase passes to the client with effect at the time it finds itself in default of acceptance or payment.

6. In the event of default of delivery, the client may rescind the contract subject to (i) applicable legal requirements and (ii) an adequate grace period having been allotted for the discharge of our obligations. A grace period allotted to us for performance purposes must not be shorter than one month.
7. Claims for damages suffered by the client as a result of default are subject to the provisions in § 7 below.
8. We are entitled, following the expiration of a grace period allotted by the client pursuant to § 323 BGB, to demand that the client declares within ten days whether he will (i) continue to insist on performance or (ii) exercise its right of rescission. If the client does not provide such a declaration in a timely fashion, we are, for our part, entitled to rescind the contract.

§ 5 Transfer of risk - packaging costs

1. Unless the order confirmation provides otherwise, supply is effected ex works. We are entitled to make partial deliveries.
2. Transport and other packaging required under the packaging ordinance are not taken back, save for pallets. The client must dispose of packaging at its own expense.
3. On request of the client, we shall arrange coverage for transport insurance for the delivery, with related costs to be borne by the client.
4. The risk passes to the client as soon as the goods leave our plant, an external storage facility or, in the event of deliveries of third-party goods, the facility of the supplier. In the event that delivery or pick-up is delayed due to circumstances attributable to the client, the risk passes to the client upon the receipt of the notice of delivery readiness, in which case we are entitled, following the allotment and unsuccessful expiration of an adequate grace period, to put the objects of delivery to alternative uses and supply the client under an adjusted delivery schedule.

§ 6 Liability for defects

1. Pursuant to § 377 of the commercial code (HGB), the client shall immediately examine any goods we deliver. Unless it cites defects within seven days of receipt, the delivery is deemed to have been approved. Complaints of this nature must be made in writing but may be transmitted by facsimile or email. The seven-day period for complaints does not apply to defects that cannot be detected by means of a proper examination pursuant to § 377 HGB; in this case, the defect must be cited within seven days of its discovery, and the client must furnish proof of the time at which such defect became known. We are entitled to impose reasonable requirements on the manner in which goods delivered by us are to be examined immediately upon receipt.

2. In the event that the object of purchase is defective, we may, at our option, take remedial action (e.g., removal of defect) or supply a new object, which is free from defects. Whenever defects are removed, we shall bear any expenditure related to the purpose of defect removal, including but not limited to the costs of transport, tolls, labour and materials – unless such costs increase as a result of the object of purchase having been brought to a location other than the place of delivery.
3. In the event that two attempts at remedial action fail, the client may, at its option, rescind the contract or demand a reduction of the purchase price.
4. We are entitled to refuse remedial action if and to the extent that the total related expenditures exceed 20% of the purchase price. The purchaser's right to adjust the purchase price or rescind the contract as permitted by law are not affected thereby; any resulting claims for damages are subject to § 7 below.
5. Any and all of the client's claims based on defects found in products delivered expire one year from such products' delivery.
6. The client's claims for damages due to defective products are subject to § 7 below.

§ 7 Liability and claims for damages

1. All claims for damages against us shall be excluded if there is neither deliberate misconduct nor gross negligence on the part of the directors the senior staff, employees and other vicarious agents of WEBER HYDRAULIK GMBH. This limitation of liability does not apply to the violation of obligations (i) the performance of which is essential to the proper implementation of the contract and (ii) compliance with which is something the contractual partner may typically rely on ("cardinal obligations"). Even in the event of the violation of such cardinal obligations, however, the damages to be borne by WEBER HYDRAULIK GMBH are limited to the purchase price under the relevant supply contract, furthermore the maximum amount of damages is limited to the amount of common and foreseeable damages, provided that there is neither deliberate misconduct nor gross negligence on the part of WEBER HYDRAULIK GMBH.
2. The above limitation of liability further does not apply in cases of injuries to life, body or health.
3. Any and all of the client's claims for damages against WEBER HYDRAULIK GMBH expire after one year from the onset of the period of limitation as prescribed by law.
4. The above limitation of liability applies to any and all of the client's claims for damages under the contractual relationship, including but not limited to those due to default, non-performance, product defects or breaches of instruction and/or information obligations. The above limitation of liability also applies to the costs of recall campaigns the client undertakes due to defects found in products we delivered, and this is true irrespective of whether the client's claim for the reimbursement of costs is based on (i) damage claims under tort law or the relevant contract, or (ii) unauthorized agency (*Geschäftsführung ohne Auftrag*).

§ 8 Retention of title

1. Title to the object of purchase shall pass to the purchaser if and when all payments due under the supply contract are made in full. In cases of the client's breach of contract, including but not limited to default in payment, we are entitled to reclaim the object of purchase. By reclaiming the object of purchase, we do not rescind the contract unless we specifically do so in writing. Pledging the object of purchase, by contrast, does entail our rescission of the contract without fail. Having taken possession of the object of purchase, we are entitled to dispose of it, with any proceeds – as adjusted by reasonable costs – to be credited against the client's liabilities.
2. The client is obligated to treat the object of purchase with care. Specifically, it shall adequately (i.e., at the replacement value) insure the object of purchase against damages caused by fire, water or theft at its own expense. In the event that maintenance and inspection work is needed, the client shall perform such work promptly and at its own expense. To secure the payment claims to which we are entitled, the client hereby already assigns to us such claims as it may have against third parties or insurers as a result of the goods subject to retention of title having been destroyed or damaged. The client is obligated to promptly provide notice of such damages and shall, upon first demand, disclose to the third party or insurer the above assignment.
3. In the event of seizures or other instances of third-party intervention, the client shall immediately notify us in writing so as to enable us to take legal action pursuant to § 771 of the code of civil procedure (ZPO).
4. The client is entitled to resell the object of purchase in the regular course of business. However, it hereby already assigns to us, in the amount of the final invoice amount (including VAT), such claims against its own clients or third parties as may accrue to it from the resale – irrespective of whether the object of purchase was resold with or without further processing. The client remains entitled to collect such claim even beyond the assignment. Our right to collect the claim ourselves is not affected thereby. However, we undertake not to collect the claim as long as (i) the client meets its payment obligations with regard to any proceeds, (ii) it does not default on payments, (iii) no petition has been filed for the institution of insolvency or composition proceedings and (iv) there is no case of insolvency. If this is the case, we may demand that the client discloses to us any assigned claims and their debtors, provides such information as may be needed for collection and informs the debtors (third parties) of the assignment.

5. Any work the client does to process or refashion the object of purchase is always done on our behalf. In the event that the object of purchase is processed along with other items that do not belong to us, we acquire an ownership share in the new object that reflects the proportion of the value of the object of purchase (final invoice amount, including VAT) to the other items being processed, at the time of processing. The object thus created by means of processing, moreover, is subject to the same provisions as the object of purchase supplied subject to retention of title.
6. In the event that the object of purchase is inextricably combined with items that do not belong to us, we acquire an ownership share in the new object that reflects the proportion of the value of the object of purchase (final invoice amount, including VAT) to the other items being combined, at the time of combination. In the event that the combination is done in such a way that the client's object must be deemed the principal object, it is agreed that the client shall assign to us pro-rated ownership and will hold the sole or shared property so created on our behalf.
7. In order to secure our claims the client further assigns to us such claims as may arise against third parties as a result of combining the object of purchase with real property.
8. We undertake, at the client's request, to release any security to which we are entitled to the extent that the realizable value of our security exceeds the claims to be secured by more than 10%; the choice as to which security to release is ours.

§ 9 Self-delivery - Force Majeure

1. We are exempted from our duty to deliver if and to the extent that deliveries are made impossible by Force Majeure, which includes war, earthquakes and other catastrophes as well as the destruction of production facilities by fire or strike, whether at facilities of our own or those of our supplies. In the event that the obstacle to delivery continues for more than four weeks, we may rescind the contract.
2. We are not liable for delivery delays that are due to our suppliers' failure to provide raw materials, components or semi-finished products on time or at all despite our having entered into a corresponding hedge transaction, provided that the supplier's delayed – or lack of – proper delivery is not attributable to us. In such cases, we undertake to immediately look for a replacement for the failed supply if and to the extent that such substitute through another supplier does not impose an unreasonable burden on us – i.e., its price and quality is equivalent to that of the originally agreed supply. We shall promptly inform the client of the reasons for such delivery delays, and if such circumstances would cause the delivery to be delayed by more than two months, both we and the client may rescind the contract. Goods and services already received shall be returned, and the parties waive any further claims.

§ 10 Legal venue - place of performance

1. The place of performance as well as the legal venue for supplies and payments, including matters related to checks and bills and any disputes arising from contracts that are subject to these terms between us and the client shall be the location of our registered offices. We may also sue the client at its place of business (or residence).
2. The parties' relations *inter se* are subject exclusively to the laws of the Federal Republic of Germany. The application of the UN Convention on the International Sale of Goods (CISG) is excluded.
3. In the event that one of the provisions of these General Terms of Sale and Supply is ineffective or void, the remaining provisions shall continue in full force and effect.