

**General Terms and Conditions of Sale****Version: January 2024****§ 1 Scope**

- 1.1 Our General Terms and Conditions of Sale – hereinafter referred to as **GTC** - shall apply exclusively to all – including future – contractual relationships between the parties.
- 1.2 Deviating or additional terms and conditions of the contracting party – hereinafter referred to as Purchaser – shall not apply – even if we do not object in individual cases – unless we expressly accept such terms. In such case, the terms of the Purchaser apply only for the particular contract. This requirement of acceptance shall apply in any case, even if we carry out the delivery to the Purchaser without objections in the full awareness of the Purchaser's general terms and conditions.
- 1.3 Our GTC only apply towards entrepreneurs [*Unternehmer*] as defined in § 14 German Civil Code [*BGB*], legal entities under public law [*juristische Personen des öffentlichen Rechts*] or special funds under public law [*öffentlich-rechtliche Sondervermögen*].
- 1.4 Should any provision contained in our GTC prove to be or become invalid the validity of all remaining provisions shall not be affected thereby.

**§ 2 Offer and offering documentation**

- 2.1 The order of the goods by the Purchaser shall be deemed a binding contractual offer. Unless otherwise stated in the order, we can accept such contractual offers within a period of 10 working days. The said period commences upon receipt of order.
- 2.2 Offers from us are subject to change and are non-binding, unless expressly marked as binding or containing a specific acceptance period.
- 2.3 A contract incorporating these GTC is not concluded until the Purchaser has accepted our binding offer in due time, or we have accepted the Purchaser's order or purchase order in due time and confirmed it in writing, or we have carried out the delivery.
- 2.4 The scope of our delivery or services is specified in our written order confirmation. Warranties regarding characteristics, amendments or ancillary agreements must be in text form to take legal effect.
- 2.5 Product descriptions, documents and information provided by us to the Purchaser - also in electronic form - such as weights, dimensions, utility values, tolerances or technical data are not warranted attributes. Deviations that are customary in the trade and deviations that occur due to legal regulations as well as minor other deviations are permissible insofar as they do not impair the usability for the intended contractual purpose.
- 2.6 For customized products we reserve the right to an over or under-delivery rate of 10%. The over or under-delivery shall be invoiced accordingly.

**§ 3 Prices and terms of payment**

- 3.1 Prices and terms of payment are set out in the offer or in our order confirmation.
- 3.2 Should proven cost changes occur between the day of the conclusion of the contract and the delivery (also within the framework of multiple delivery contracts) which change our production costs (also between individual deliveries within the same contract), we shall be entitled to demand a correspondingly adjusted price, whereby - when determining the cost changes - we shall always conduct an overall balancing of the various components of the production costs.
- 3.3 The invoice amount shall be due immediately upon receipt of the invoice and - unless otherwise agreed or stipulated in the invoice - shall be payable without deduction within thirty (30) days after the invoice date.
- 3.4 The Purchaser may only set-off against an undisputed or legally established claim. This exclusion of set-off does not apply regarding a counterclaim that arises from a defect which is based on the same contractual relationship. The Purchaser is only so far entitled to exercise a right of retention as such counterclaim is based on the same contractual relationship.

**§ 4 Product information and product modifications**

- 4.1 The Purchaser undertakes to provide us with a comprehensive description of every aspect and detail of the conditions under which the goods supplied shall be used.
- 4.2 We reserve the right to introduce product modifications in the interest of technical progress provided the latter does not involve any changes in the function of the goods.

**§ 5 Delivery period**

- 5.1 Information regarding delivery periods is unbinding unless the delivery date has been exceptionally agreed as 'binding'.
- 5.2 The delivery period shall commence with the date of the order confirmation, but not before provision of items required to be provided by the Purchaser i.e. supporting documentation, approvals and releases as well as receipt of any agreed payment, opening of any letter of credit required or evidence of arrangement of any collateral agreed.
- 5.3 In principle, the delivery period shall be deemed to have been observed if the goods have left the warehouse or have been hands over to the carrier within the delivery period. If Incoterms conditions other than ex works (EXW Incoterms) are agreed, the delivery period shall be deemed to be met if the goods are handed over to the Purchaser in accordance with the agreed Incoterms.
- 5.4 If a binding delivery period is exceeded, the Purchaser shall grant us a reasonable grace period of at least 20 working days, in the case of custom-made products at least 2 months ('Grace Period'). The Purchaser shall only be entitled to withdraw from the contract due to delay in delivery and to claim damages due to delay in delivery or in lieu of performance after expiry of the Grace Period and only if we are responsible for the delay in delivery. In the event of the impossibility of our performance, the Purchaser shall be entitled to such right even without a Grace Period, but only if we are responsible for the impossibility. Claims for damages (including any consequential losses) shall be excluded without affecting the provisions of Section 9; the same shall apply in the case of reimbursement of expenses. If we have delivered in part, the Purchaser may only withdraw from the contract or claim damages in respect of the part not delivered. For the delivered part of partial deliveries all claims are excluded. In this case, the liability for damages shall be limited to 50% of the damage

**General Terms and Conditions of Sale****Version: January 2024**

incurred, unless a commercial fixed-date transaction is given or a limitation of liability is excluded within the provisions of § 9.

- 5.5 In the case of call-off orders calls shall be notified to us in a timely manner to enable orderly manufacture and supply and at least six (6) weeks prior to the desired delivery date. Call-off orders must be called forward within twelve (12) months from the date of order if no other fixed deadlines have been agreed. If call is not made or not made in full within twelve (12) months from the date of order or on the agreed call terms the Purchaser shall be deemed in default of acceptance.
- 5.6 Should the Purchaser fall into default of acceptance or infringe duties of cooperation we are entitled to claim compensation for losses incurred by us including any additional expenses. In such event risk of accidental loss or accidental deterioration of the item of purchase shall pass to the Purchaser if the latter is in default of acceptance.

**§ 6 Force majeure and contractual impediments**

- 6.1 Force majeure of any kind, unforeseeable operational, traffic or shipping disruptions, other disruptions in the supply chain, disruptions in telecommunications, fire, explosion, natural disasters, pandemics, epidemics, floods or low water, unforeseeable shortages of labor, energy, raw materials or supplies, strikes, lockouts, war, political unrest, acts of terrorism, official orders, incorrect or delayed delivery by suppliers or other impediments for which we are not responsible and which are beyond our control and which reduce, delay, prevent or render unreasonably the performance of the service, the availability of the goods or the shipment, shall release us from the obligation of performance for the duration and to the extent of the disruption.
- 6.2 In the event of a partial or complete discontinuation of our supply sources, we shall not be obliged to obtain supplies from other suppliers. In this case, we shall rather be entitled to distribute the available quantities of goods considering our own requirements and other internal and external delivery obligations.
- 6.3 If the events within the meanings of Section 6.1 last longer than six (6) weeks, we shall be entitled to withdraw from the contract in whole or in part in the event of a not only insignificant disruption; any consideration already rendered by the Purchaser shall in this case be refunded without undue delay. The Purchaser shall not be entitled to any other claims in the event of withdrawal due to force majeure. In the event of impediments of temporary duration due to events pursuant to Section 6.1, the delivery or performance periods shall be extended, or the delivery or performance periods shall be postponed by the duration of the impediment plus a reasonable ramp-up period.

**§ 7 Transfer of risk, packaging costs and insurance**

- 7.1 Upon handover to the forwarding agent or carrier and at the latest upon leaving our premises risk of accidental loss and accidental deterioration transfers to the Purchaser. Incoterms 2020 EXW applies, unless agreed upon differently in writing.
- 7.2 If the prices are not ex works (EXW Incoterms), the prices shall be based on the freight costs on the date of the order confirmation. In the event of changes in freight costs between the date of the order confirmation and the date of delivery we reserve the right to adjust the freight costs in accordance with any such change.
- 7.3 We shall be entitled to undertake partial deliveries, provided that this is reasonable for the Purchaser. Unless otherwise agreed, we shall also be entitled to determine the shipping method (in particular transport company, shipping route, packaging) ourselves. Additional costs caused by shipping methods requested by the Purchaser shall be borne by the Purchaser. The same shall apply to increases in freight rates occurring after conclusion of the contract, any additional costs for rerouting, storage costs, etc., unless freight paid delivery is agreed.
- 7.4 If the handover is delayed due to any circumstance for which the Purchaser is responsible or as a consequence of the latter's instructions, the risk shall transfer to the Purchaser with effect from the date of notification of readiness for dispatch. At the request of the Purchaser, which has to be given in text form, we undertake to insure goods stored with us at the Purchaser's cost. This also applies in those cases where a delivery period has not been expressly agreed with the proviso that risk transfers to the Purchaser seven (7) calendar days following notification of readiness for dispatch.
- 7.5 Transportation and all other packaging according to the German Packaging Ordinance [*Verpackungsverordnung*] shall not be returned. Pallets are excluded. The Purchaser undertakes to arrange disposal of packaging materials at his own cost.
- 7.6 Delivered goods shall be accepted by the Purchaser even if they have minor defects irrespective of his rights under the terms of §§ 433 ff. German Civil Code [*BGB*].

**§ 8 Reservation of title**

- 8.1 Up to the full settlement of the purchase price including all subsidiary claims and prior to settlement of all other claims arising from the business relationship goods delivered shall remain our property. Up until that point the Purchaser is not entitled to pledge the goods to third parties or to assign them as security. The Purchaser shall store the reserved title goods for us at no charge.
- 8.2 In the event of processing, combination and mixing of reserved title goods with other goods by the Purchaser we shall acquire joint title to the new item in the ratio of the invoiced value of the reserved title goods to the total goods. The resulting goods shall be considered as reserved title goods as defined in Section 8.1.
- 8.3 The Purchaser is entitled to sell the reserved title goods in the due process of sale provided he is not in payment arrears in respect of our purchase price claims.
- 8.4 The Purchaser hereby assigns to us at this point in time all claims accruing to him as a result of resale of the reserved title goods vis-à-vis third parties. We hereby accept this assignment. If the reserved title goods are sold following processing, combination or mixing the assignment of the claim arising from resale shall apply only up to the extent of the value of the reserved title goods invoiced to the Purchaser by us. This shall also apply if the reserved title goods are resold together with other goods which similarly do not belong to us.
- 8.5 The Purchaser is also authorized to collect the claim even following assignment. We may restrict the said collection authorization on the basis of justifiable interest or revoke the same on due cause found, in particular in the event of payment arrears. We may require that the Purchaser shall notify us of the claims assigned to him and of related debtors plus all information necessary for collection and

**General Terms and Conditions of Sale****Version: January 2024**

surrender to us all associated documentation and disclose the said assignment to his debtors.

- 8.6 We undertake to release the securities due to us on the basis of the above provisions at our discretion upon the Purchaser's request to the extent that their realizable value exceeds the claim secured by 10% or more.
- 8.7 The Purchaser hereby declares his consent that the persons authorized by us to retrieve the reserved title goods may enter the property or building on or in which the items are situated in order to take possession of the reserved title goods.
- 8.8 The Purchaser shall immediately inform us in respect of any confiscation, compulsory enforcement or other third-party intervention adversely affecting our rights of ownership. The Purchaser shall bear the costs of measures to remedy third party interference in particular of any possible intervention procedures.

**§ 9 Guarantee, complaint period and liability**

- 9.1 Unless subjective requirements (§ 434 para. 2 German Civil Code *[BGB]*) for the goods are expressly agreed, the quality of the goods shall be exclusively determined by objective requirements (§ 434 para. 3 German Civil Code *[BGB]*) for the goods (which are subordinate to any subjective requirements), whereby our Technical Product Information (TPI) and Material Safety Data Sheet (MSDS) shall be exclusively applicable. Other technical descriptions or specifications in our presentations, offers, brochures or advertising materials or in those of our agents are initially non-binding and shall only become part of the contract if expressly referred to. Relevant identified uses for the goods according to the European Chemicals Regulation REACH do not constitute an agreement of a corresponding contractual quality of the goods nor a presumed use according to the contract.
- 9.2 The Purchaser shall notify us in writing (text form) of (i) obvious defects without undue delay after delivery and such defects which are detectable upon proper inspection of the goods, at the latest within two (2) weeks after receipt of the goods, (ii) hidden defects within seven (7) days after discovery; at the latest, however, twelve (12) months after delivery of the goods; stating the exact nature of the defect and providing supporting documents (e.g. photographs, CMR). Transport damages are to be noted on the shipping documents. Externally visible transport damages must be reported in writing immediately after delivery, externally not visible transport damages within 3 days after delivery of the goods. The notification of defects must be submitted by the Purchaser in writing with all relevant details of the alleged non-conformity, including the relevant documents and samples and, if applicable, photographs. Upon request, the Purchaser shall return the disputed goods to us properly packaged. If the Purchaser fails to notify us of a defect in due time, the delivery shall be deemed to be approved.
- 9.3 Should there be any defect for which we are responsible we are entitled to decide between rectification and replacement at our own discretion. A precondition in such an event is that the defect is not insignificant. In the event of rectification we undertake to bear the costs of transportation, labor and materials provided these are not increased due to the fact that the goods supplied have not been moved to a location other than the place of performance. Cost of dismantling and installation shall be only borne by us if it can be proven that the occurrence of the defect was our fault. Should one of or both forms of remedy prove impossible or disproportionate we are entitled to refuse them. We may refuse subsequent performance for as long as the Purchaser fails to meet his payment obligations towards us to an extent equating to the fault-free portion of the goods or services.
- 9.4 Should rectification or replacement fail to be made within an appropriate period – with due consideration of our supply options – or if rectification and/or replacement should fail the Purchaser may demand a reduction of remuneration (abatement) or withdraw from the contract or claim damages.
- 9.5 If nothing to the contrary is stipulated under Section 9.7 below further claims on the part of the Purchaser, irrespective of legal grounds (in particular claims arising from infringement of main and ancillary contractual obligations, reimbursement of expenses with the exception of those defined in § 439 para. 2 German Civil Code *[BGB]*, unauthorized action and any other tortious liability) are excluded; this applies in particular to damage not occurring to the item supplied itself including compensation claims for lost profit; also included are claims which do not result from the defectiveness of the purchased item.
- 9.6 The above provisions shall apply in the case of delivery of another item or a lesser quantity.
- 9.7 The liability disclaimer provision under Section 9.5 shall not apply in the event of injury to life, physical injury or damage to health which is due to intentional or negligent dereliction of duty on the part of us or intentional or negligent dereliction of duty on the part of any legal representative or vicarious agent of us; nor shall it apply if any exclusion or limitation of liability is agreed for other forms of damage caused by any intentional *[vorsätzlichen]* or grossly negligent *[grob fahrlässigen]* dereliction of duty on the part of any legal representative or vicarious agent of us. If we through ordinary negligence *[leichte Fahrlässigkeit]* infringe any essential contractual obligation or any 'cardinal' obligation liability shall not be excluded but shall be limited to typical foreseeable contractual damage whose occurrence we had to anticipate on conclusion of the contract based on the circumstances that were known to us; in other respects it is excluded under Section 9.5. A cardinal obligation *[Kardinalspflicht]* represents an obligation whose implementation is required for the appropriate execution of the contract and to its adherence the contractual partner may continuously rely on. The exclusion of liability does as well not apply in those cases where under product liability legislation in the event of defects in the goods supplied there is liability in the case of personal injury or damage to property relating to privately used items. Nor does it apply in the case of assumption of a guarantee and assurance of a characteristic feature if a defect covered thereby activates our liability. In the event of reimbursement of expenses the above shall apply accordingly.
- 9.8 No warranty is assumed in the event of damages attributable to inappropriate use, faulty assembly by the Purchaser or third parties, natural wear and tear, incorrect or negligent treatment, improper modifications carried out without our prior consent or servicing work by the Purchaser or third parties.
- 9.9 Claims for defects, which are not claims for recourse in accordance with § 445a German Civil Code *[BGB]*, shall be time-barred in the case of § 438 para. 1 no. 3 German Civil Code *[BGB]* in one (1) year from the commencement of the statutory limitation period. This does not apply to any item used in accordance with its customary purpose for a building and has caused faultiness in the latter in which case time-barring is after five (5) years. Claims for reduction of purchase price and exercise of any right of withdrawal are excluded if the claim for remedy is time-barred. In the event of operation of Sentence 3 however the Purchaser may only refuse payment of the purchase price to the extent that he would be entitled to do so as a consequence of withdrawal or abatement; in the event of withdrawal

**General Terms and Conditions of Sale****Version: January 2024**

exclusion and subsequent payment refusal we are entitled to withdraw from the contract.

9.10 For claims arising from the product liability law [*ProdHaftG*] the statutory periods of limitation apply.

**§ 10 Withdrawal by the Purchaser and other liabilities on our part**

10.1 The following provisions shall apply in the event of infringements over and above liability for defect and shall neither exclude nor limit statutory right of withdrawal. Similarly, statutory or contractual claims due to us shall be neither excluded nor limited.

10.2 The Purchaser may withdraw from the contract if the overall performance is definitively impractical, the same applying to incapacity. The Purchaser may also withdraw from the entire contract if in the event of an order for similar items implementation of part of the supply is impossible in terms of numerical quantity due to our representation obligation and if the Purchaser has no interest in partial supply; if this is not the case the Purchaser may abate the consideration accordingly; the right of withdrawal shall not apply in the case of immaterial infringement of obligation.

10.3 Should there be any delay in performance and provided the Purchaser grants us an appropriate period to complete performance following justification of the delay and should the said period fail to be observed the Purchaser shall be entitled to withdraw. In the event of partial delay in performance Section 10.1 Sentence 2 shall apply accordingly. If prior to delivery the Purchaser requires in any aspect alternative execution of the item supplied the delivery period shall be interrupted until the date of agreement regarding execution and if necessary extended by the time necessary for alternative execution.

10.4 Withdrawal shall be excluded if the Purchaser is solely or to a large extent predominantly responsible for the circumstance entitling him to withdrawal or if the circumstance for which we are responsible occurs at the point in time of default in acceptance on the part of the Purchaser. In the event of impracticality, we retain in the above cases our claim to consideration as defined in § 326 para. 2 German Civil Code [*BGB*].

10.5 Further claims on the part of the Purchaser, irrespective of legal grounds (in particular claims arising from default at the point of conclusion of the Contract, infringement of main and ancillary contractual obligations, reimbursement of expenses, impermissible act and any other tortious liability) Sections 9.5, 9.7, 9.9 shall apply accordingly.

**§ 11 Intellectual property rights**

11.1 The Purchaser shall take into account all existing intellectual property rights (in particular patents and trademarks) with regard to the use of our goods.

11.2 It is not permitted to offer or supply substitute products to third parties instead of our goods with reference to these goods, nor to associate our goods' descriptions, regardless of whether they are protected or not, with the word 'substitute' or similar descriptions in price lists and similar business documents, or to place them alongside the descriptions of substitute products.

11.3 Furthermore, when using our goods for manufacturing purposes or for further processing, it is not permitted to use our goods descriptions, in particular our trademarks, on such products or their packaging or in the associated printed matter and advertising material without our prior written consent, in particular as a component indication. The supply of goods under a trademark shall not be deemed to constitute consent to the use of such trademark for the products manufactured therefrom.

11.4 We reserve all property and/or intellectual property rights to all documents provided by us or on our behalf. The Purchaser shall obtain our expressed written consent before passing these on to third parties.

**§ 12 Data protection**

The Purchaser undertakes, as we do, to observe the applicable data protection laws and to process personal data in accordance with these in order to achieve the purpose of the contract and to provide the services owed under the contract. Further information on the handling of personal data and data protection can be found at <https://www.weckerle-lacke.de/datenschutz/> [available in German only]. Supplementary information and agreements may be necessary on a product-related basis and will be communicated prior to any data processing.

**§ 13 Confidentiality**

13.1 The Purchaser undertakes to keep all information of which it becomes aware through the existing contractual relationship with us ('Contractual Relationship'), including prices, illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other information on inventions, ideas, concepts, drafts and designs (hereinafter collectively referred to as 'Information') strictly confidential and not to disclose such Information to third parties, even under a corresponding non-disclosure agreement with such third parties. The German Act on the Protection of Business Secrets [*GeschGehG*] shall apply mutatis mutandis, whereby all information made known to the Purchaser in the course of the Contractual Relationship shall be deemed business secrets, subject to Section 13.3 of these GTC. The Purchaser shall ensure by means of suitable contractual agreements that its employees and vicarious agents affected by the Contractual Relationship are also bound to secrecy in accordance with the provisions of this Section 13. Upon request, the Purchaser shall also provide us with written evidence of this.

13.2 The Purchaser undertakes to use Information only for the purposes of the respective Contractual Relationship, not to exploit it commercially and not to make it the subject of intellectual property rights.

13.3 The aforementioned obligations shall not apply to Information (i) which the Purchaser can prove to have lawfully known before receipt from us, (ii) which was available to the public prior to the receipt from us, (iii) which becomes available to the public after receipt from us without the Purchaser being responsible for this, and (iv) which is made available to the Purchaser at any time by a third party authorized to do so to the best of the Purchaser's knowledge. Finally, the aforementioned obligations shall also not apply if Purchaser is required by law to disclose Information in any judicial, regulatory or other proceeding.

13.4 References by the Purchaser to existing business relationship with us or the use of the name 'Weckerle', 'Berlac' or the 'Ball [*Kugel*] (fig.)' for advertising purposes shall require our expressed prior consent.

13.5 This confidentiality obligation with its restrictions shall apply beyond the time of the mutual performance of the respective contract concluded by us and a Purchaser for a further 10 (ten) years, unless a confidentiality obligation going beyond this arises from any legal

**General Terms and Conditions of Sale****Version: January 2024**

provisions.

**§ 14 Place of performance and jurisdiction**

- 14.1 Place of performance for the obligations of both parties arising from all legal relationships is Stuttgart.
- 14.2 In respect of the legal relationship between the Purchaser and us the laws of the Federal Republic of German shall apply. The application of the UN Convention on the Sale of Goods (CISG) is expressly excluded.
- 14.3 If the Purchaser is a merchant [Kaufmann], legal venue for all disputes arising from the contractual relationship is Stuttgart or at our discretion at the registered seat of the Purchaser.

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