

General Terms and Conditions of ETW Wollmershäuser GmbH (GTC)

On the following pages you will find the current terms and conditions of
ETW Wollmershäuser GmbH (GTC).

Status: January 2017

General Terms and Conditions of ETW Wollmershäuser GmbH

1. Scope

1.1 These General Terms and Conditions of Business apply to all contracts for deliveries and services of ETW Wollmershäuser GmbH. This also applies if the contractual partner has communicated its own deviating general terms and conditions. Terms and conditions of the contractual partner shall not be recognised even if we do not expressly object to them again after receipt by us.

1.2 The express written consent of ETW Wollmershäuser GmbH is required for the effective agreement of deviating or supplementary conditions. This written form requirement can only be waived by a written agreement. Verbal agreements are non-binding for both contracting parties.

1.3 Any amendment to these General Terms and Conditions shall become part of the contract between ETW Wollmershäuser GmbH and the contractual partner if the contractual partner agrees to this amendment or does not object in writing within one month after notification of the amendment. Our General Terms and Conditions of Business shall form the basis of any subsequently concluded transactions between us and the contractual partner, even if no reference has been made to our terms and conditions in the individual case.

2. Offer and conclusion of contract

2.1 Offers made by ETW Wollmershäuser GmbH are subject to change and non-binding unless the offer is expressly designated as binding in writing. A contract is concluded by written confirmation of the order by ETW Wollmershäuser GmbH or by signing of a contract by the contractual partner and ETW Wollmershäuser GmbH. Cost estimates are non-binding and - unless otherwise agreed - subject to a charge.

2.2 The written order confirmation of ETW Wollmershäuser GmbH is decisive for the scope, type and quality of the deliveries and services. Other specifications are only binding if ETW Wollmershäuser GmbH has confirmed them in writing as binding.

2.3 Unless expressly agreed otherwise, ETW Wollmershäuser GmbH reserves its property rights and copyrights to cost estimates, drawings, other documents, models and samples. They may not be used for other purposes, reproduced or handed over to third parties. They remain the property of ETW Wollmershäuser GmbH and are to be returned to ETW Wollmershäuser GmbH after completion of the contract by fulfilment or termination or in any other way or if the contract is not concluded.

2.4 The offeree undertakes that without the prior written consent of ETW Wollmershäuser GmbH the offer made to him will not be made known to third parties, either in whole or in part, not even in an edited version.

3. Delivery

3.1 Delivery dates and deadlines are only binding if they have been agreed with the contractual partner or confirmed in writing by ETW Wollmershäuser GmbH. The period begins with the conclusion of the contract, but not before the contractual partner has fulfilled existing obligations to cooperate, in particular the provision of documents, materials, approvals, releases to be procured by the contractual partner and, if applicable, after the agreed down payments have been made or after final clarification and agreement on all technical details. In addition to the fulfilment of existing duties to cooperate by the contractual partner, the prerequisite for compliance with the dates and deadlines is the correct and timely delivery by the upstream supplier, provided that ETW Wollmershäuser GmbH has selected the upstream supplier with the care customary in commercial transactions. If, prior to delivery, the contractual partner requests a different design of the delivery item in any respect, the delivery period shall be interrupted until the day of notification of the desired design and extended by the time required for the different design.

3.2 For its part, ETW Wollmershäuser GmbH has the right to withdraw from the contract if, after order confirmation and prior to delivery, it becomes aware of circumstances in the economic circumstances of the contractual partner as a result of which its claims do not appear to be adequately secured.

3.3 If non-compliance with delivery dates and deadlines is due to force majeure and other disruptions for which ETW Wollmershäuser GmbH is not responsible, such as war, civil unrest, terrorist attacks, orders by authorities, import and export restrictions, labour disputes, operational disruptions due to raw material and/or energy bottlenecks, non-delivery by upstream suppliers, failure of employees and/or technical equipment, as well as other circumstances, the delivery dates and deadlines shall be extended. -by the delay time caused by this. This also applies if the disruptions occur at a time when ETW Wollmershäuser GmbH is in default.

3.4 In the event of culpable non-compliance with a binding delivery date/period for reasons other than those stated in section 3.3, the contractual partner may only withdraw from the contract after the expiry of a reasonable grace period set in writing. At the request of ETW Wollmershäuser GmbH, the contractual partner is obligated to declare within a reasonable period of time whether it will withdraw from the contract because of

wants to withdraw from the contract due to the delay in delivery and performance or insists on delivery/performance.

3.5 If the delivery date or the delivery period is delayed at the request of the customer, ETW Wollmershäuser GmbH may, within one month after notification of readiness for delivery, charge the actual costs incurred by the storage or 1% of the invoice amount (net) for each month or part thereof. The contractual partner reserves the right to prove that no or lower costs were incurred.

3.6 ETW Wollmershäuser GmbH is entitled to make partial deliveries including corresponding invoicing. As long as the contractual partner is in default with a liability from the business relationship, the delivery obligation shall be suspended.

4. Dispatch and transfer of risk

4.1 Any shipment requested by the contractual partner shall always be ex works and at the risk of the contractual partner (EXW, Incoterms 2000). ETW Wollmershäuser GmbH shall not assume any warranty from any shipping instructions issued.

4.2 No liability is assumed for the cheapest freight.

4.3 The risk of damage, loss, theft, etc. shall pass to the contractual partner at the time of notification of readiness for dispatch by ETW Wollmershäuser GmbH. The transfer of risk also extends to agreed partial deliveries and to orders which are dispatched carriage paid or on the basis of special agreements fob or cif. Complaints due to damage, loss, theft, delay, etc. during transport must be addressed by the contractual partner to the transport company or to the last carrier before acceptance of the goods to be transported.

4.4 Unless expressly agreed otherwise, the contracting party shall always insure the goods in transit.

4.5 Before accepting the consignment, the external condition and weight of the packages must first be checked. If there are traces of previous opening, damage or loss, the consignment may only be accepted with a legally binding reservation to the transport company.

5. Long-term and call-off contracts, price adjustment

5.1 Unlimited contracts can be terminated with four weeks' notice to the end of the month.

5.2

If, in the case of long-term contracts (contracts with a term of more than 12 months and unlimited contracts), there is a significant change in wage, material or energy costs, each contracting party shall be entitled to demand an appropriate adjustment of the price taking these factors into account.

5.3

In the case of delivery contracts on call, the contractual partner is obliged, unless otherwise agreed in writing, to notify the binding quantities by call at least four months before the delivery date. Additional costs caused by a delayed call or subsequent changes to the call with regard to time or quantity by the contractual partner shall be borne by the contractual partner; the calculation of ETW Wollmershäuser GmbH shall be decisive in this respect.

6. Prices

6.1

Unless otherwise agreed, invoicing shall be based on the ETW Wollmershäuser GmbH price list valid at the time of delivery.

6.2

The prices are in euros plus the value added tax applicable on the day of invoicing. They apply to deliveries and services ex works. The costs for packaging, freight, postage, insurance and other ancillary costs are not included. These are to be borne separately by the contractual partner.

6.3

Subsequent reductions in the order quantity or subsequent reductions in the number of pieces in the case of agreed partial deliveries as well as reductions in agreed call-offs shall result in an increase in the unit prices and, if applicable, the agreed tooling cost shares.

7. Terms of payment

7.1

Unless otherwise agreed in writing, payment must be made within 14 calendar days from the date of the invoice, free of charge to the place of payment. ETW Wollmershäuser GmbH is entitled to make delivery dependent on payment on delivery or advance payment. Other means of payment, e.g. cheques, shall only be accepted after special written agreement. In such cases, the amount owed shall be deemed to have been paid only when it is credited to the account of ETW Wollmershäuser GmbH. ETW Wollmershäuser GmbH is entitled to offset payments against the oldest claim due.

7.2

If the contractual partner is in arrears with a payment, ETW Wollmershäuser GmbH is entitled to charge interest in the amount of the credit interest usually charged by banks, but at least interest in the amount of the statutory default interest. In case of default of payment on the part of the contracting party, ETW Wollmershäuser GmbH is entitled to demand immediate payment of all outstanding claims and all claims falling due until settlement, to demand advance payment, to retain goods not yet delivered, to retrieve deliveries not yet paid for at the contracting party's expense, or to withdraw from the contract after setting an appropriate deadline. Further claims of ETW Wollmershäuser GmbH remain unaffected.

7.3

If the financial situation of the contractual partner deteriorates significantly, ETW Wollmershäuser GmbH is entitled either to demand security for its deliveries and services or to withdraw from the contract. The contractual partner is obliged to reimburse ETW Wollmershäuser GmbH for the costs incurred due to the withdrawal from the contract. The same applies if the significant deterioration of the contractual partner's financial situation already existed at the time of the conclusion of the contract but only becomes known to ETW Wollmershäuser GmbH after the conclusion of the contract. Further claims remain unaffected.

7.4

The contractual partner may only offset such claims that are recognised by ETW Wollmershäuser GmbH or have been legally established. The contractual partner is not entitled to assign its claims against ETW Wollmershäuser GmbH to third parties.

8. Warranty

8.1

The limitation period for warranty claims is one year after acceptance or notification of readiness for dispatch of the delivered goods. The same shall apply with regard to claims arising from breach of ancillary obligations and/or for compensation for material damage or financial loss not occurring on the delivered goods themselves. This limitation does not apply to liability due to fraudulent concealment of a defect, to liability under the Product Liability Act, to liability due to injury to life, body and health and to liability due to intentional or grossly negligent conduct.

8.2

The above limitation period shall not apply insofar as the law prescribes longer periods in accordance with §§ 438 para. 1 no. 2 (buildings and items for buildings) and § 634a (construction defects) of the German Civil Code (BGB).

8.3

If a material defect already existed at the time of the transfer of risk, ETW Wollmershäuser GmbH will, within the scope of supplementary performance, either remedy the defect or deliver a defect-free item at its discretion. The delivery item that is the subject of the complaint must be sent to the registered office of ETW Wollmershäuser GmbH. ETW Wollmershäuser GmbH will bear the costs of the most reasonable return shipment from/to the delivery address of the contractual partner agreed upon for the original delivery of the goods if the complaint proves to be justified. Replaced parts become the property of ETW Wollmershäuser GmbH.

8.4

Subsequent fulfilment shall only be deemed to have failed after two attempts. In this case, the contractual partner may reduce the remuneration or withdraw from the contract in accordance with the aforementioned clause. If only part of the delivery or service is defective, the contractual partner shall only be entitled to withdraw from the contract with regard to the defective delivery or service, unless the partial delivery or partial service is not usable for him. Further rights due to defects
- in particular contractual or non-contractual claims for damages which have not arisen on the delivery item - are excluded to the extent stipulated in clause 11.

8.5

In the event that a notice of defect raised by the contractual partner proves to be unjustified, the contractual partner is obliged to reimburse all expenses incurred by ETW Wollmershäuser GmbH.

8.6

The limitation period shall be suspended for the duration of the time necessary for subsequent performance. A new start is excluded.

8.7

The contractual partner is obliged to carefully inspect the delivery item immediately after receipt. Obvious defects must be reported in writing within 14 calendar days after receipt of the delivery item at the latest. Defects which are not obvious must be reported in writing immediately after discovery, but at the latest within six months after receipt of the delivery item. In the event of non-observance of the obligation to inspect and give notice of defects, the delivery shall be deemed to have been duly made. Further obligations to examine and give notice of defects according to §§ 377, 378 HGB (German Commercial Code) remain unaffected.

8.8

Any warranty shall be excluded if the delivery item is modified by third parties or by the installation of parts of foreign origin, unless the defect is not causally related to the modifications. The same applies if instructions for shipment, packaging, installation, handling, use or maintenance are not followed or if there is faulty assembly or commissioning by the contractual partner or third parties.

8.9

Damage due to improper handling or natural wear and tear is excluded from the warranty. In particular, ETW Wollmershäuser GmbH is not liable for changes in the condition or the mode of operation of the delivery item due to improper storage and maintenance or unsuitable operating materials as well as climatic or other effects. In the case of defects based on specifications of the contractual partner, e.g. design specifications, the choice of unsuitable material by the contractual partner or on material/tools provided by the contractual partner, the warranty is excluded unless the defect is not causally related to this.

8.10

In the event that the contractual partner was supplied with defective assembly instructions, ETW Wollmershäuser GmbH shall only be obliged to supply assembly instructions that are free of defects and this only if the defect in the assembly instructions is contrary to proper assembly.

8.11

Used equipment and used components are excluded from the warranty.

8.12

These provisions shall apply mutatis mutandis to defects of title that are not based on the infringement of third-party property rights.

9. Entrepreneur recourse

The contractual partner's right of recourse against ETW Wollmershäuser GmbH pursuant to § 478 BGB (German Civil Code) shall only exist insofar as the contractual partner has not entered into any agreements with its customer that go beyond the statutory claims for defects.

10. Property rights

If the goods are manufactured and/or delivered in a design specially prescribed by the contractual partner, for example according to a drawing, sample or other specific information, the contractual partner shall guarantee that the design does not infringe the rights of third parties, in particular patents, utility models and other industrial property rights and copyrights. The contractual partner undertakes to indemnify ETW Wollmershäuser GmbH against all claims of third parties which could arise from such an infringement.

11. Liability

11.1

Unless otherwise stipulated in these terms and conditions, ETW Wollmershäuser GmbH shall only be liable for damages and reimbursement of futile expenses due to the breach of contractual or non-contractual obligations,

- a) without limitation of the amount of damages for damages caused by intent or gross negligence of the legal representatives, executives or vicarious agents of ETW Wollmershäuser GmbH, caused by serious organisational fault, caused by injury to life, body or health.
- b) limited to the damages which are typical and foreseeable due to the contractually specified use of the delivery item, for damages from culpable violation of essential contractual obligations, insofar as there is no intent or gross negligence on the part of the legal representatives, the executive employees or the vicarious agents of the

ETW Wollmershäuser GmbH or due to injury to life, body or health. The above provision does not lead to a change in the burden of proof to the detriment of the contractual partner.

11.2

Statutory liability for fraudulent intent or for personal injury (e.g. under the Product Liability Act) shall remain unaffected by the above provisions.

12. Liability for subcontracting

12.1

The materials, material parts, semi-finished products or tooling provided or supplied by the contractual partner for contract work shall be processed or handled by ETW Wollmershäuser GmbH with care and conscientiousness. ETW Wollmershäuser GmbH is only obliged to carry out an inspection if this has been expressly agreed in writing and the inspection costs are borne by the contractual partner.

12.2

Any rejects shall be borne by the contractual partner up to 2% of the total quantity.

12.3

If the items mentioned under item 12.1 cannot be used due to material defects, ETW Wollmershäuser GmbH shall be reimbursed for the processing costs incurred.

13. Retention of title

13.1

ETW Wollmershäuser GmbH retains title to the delivery items until full payment of all claims arising from the business relationship.

13.2

The contractual partner is entitled to sell the goods in the ordinary course of business. The contractual partner hereby assigns his claims from the resale of the goods subject to retention of title to ETW Wollmershäuser GmbH. ETW Wollmershäuser GmbH accepts the assignment. Notwithstanding the assignment and ETW Wollmershäuser GmbH's right to collect, the contractual partner is entitled to collect as long as he meets his obligations to ETW Wollmershäuser GmbH and/or does not fall into financial collapse. At the request of ETW Wollmershäuser GmbH, the contractual partner must provide ETW Wollmershäuser GmbH with the necessary information on the assigned claims and inform the debtor of the assignment.

14. Place of performance and jurisdiction

14.1

The place of performance for all deliveries, services and payments is the registered office of ETW Wollmershäuser GmbH.

14.2

The place of jurisdiction for all current and future claims shall be the place of business of ETW Wollmershäuser GmbH, provided that the contractual partner is a merchant or a legal entity under public law or a special fund under public law. ETW Wollmershäuser GmbH is also entitled to sue at the general place of jurisdiction of the contractual partner.

15. Final provisions

15.1

The law of the Federal Republic of Germany shall apply to all legal relationships between ETW Wollmershäuser GmbH and the contractual partner - even in the case of contractual partners with their registered office abroad. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

15.2

ETW Wollmershäuser GmbH is entitled to have deliveries and services carried out by third parties.

15.3

Should any provision of these terms and conditions and/or the further agreements made be or become invalid, this shall not affect the validity of all other provisions.

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