

Messrs. WEISSHAAR GmbH & Co. KG's General Terms and Conditions

I. General

1. The following conditions will apply to all our deliveries and services (including assembly work and repairs) – subject to section X. The orderer's standard business conditions or any other general conditions will only apply to the extent they have been expressly approved by us for every single order.
2. Our following conditions will also apply if we have not expressly referred to them in every single case.
3. Our written order confirmation – or if the latter has not been received – our order will be decisive for the subject terms of contract.
4. All agreements will be subject to our express confirmation in writing.
5. Our offers will be non-binding and will be subject to prior sale.
6. All the indicated dimensions, services and weights will only be deemed as approximate values, unless certain values have been explicitly warranted. This will also apply to brochures and printed matters etc. as well as to records relating to the offer and drawings to which we reserve the property and copyrights. Records relating to the offer and drawings –however, with the exception of brochures and printed matters - will not be made available to third parties without our prior written consent.

II. Prices

1. Our prices will be valid ex stock Bad Salzuffen plus turnover tax, unless otherwise agreed in writing. Installation and assembly costs will not be included in our prices, unless expressly mentioned, and they will be charged separately.
2. For contracts as per section X. we will be entitled to charge any price and salary increases that become effective after submission of the offer and/or after placing the order. Otherwise this right will only be applicable if we are not obliged to render the service within four months from the conclusion of the contract.
3. All the work for which prices have not been agreed will be charged based on the expenses for wages and material.
4. Fees and other costs in connection with the fulfillment of licensing requirements will be borne by the orderer.

III. Payment

1. Payments will become due immediately after submission of the invoice. The orderer will be in default not later than 30 days from the date of the invoice. If payment is made within 8 days from the date of the invoice 2 % discount may be deducted unless otherwise agreed. Invoices for assemblies will be paid immediately without any deductions.
2. If the orderer is in default we will be entitled to charge interest equal to the interest rate charged by commercial banks for unsettled current account advances as of the date concerned.
3. In the case of default in payment we will be entitled to grant the orderer an additional 3-week respite. After this term has lapsed we will be entitled – even if we have expressly made a relevant notice – to demand at our discretion instead of fulfillment total or partial indemnities because of non-fulfillment, notwithstanding claims for damages based on a threatened or declared cancellation.
4. If the orderer gets into arrears with the payment or the acceptance of the delivery, we will be entitled, by the revocation of any deferral agreements, to demand advance payment for all the deliveries and services ordered by the orderer. This will also apply when we have justified reasons for supposing after the conclusion of the contract that the orderer is in an unfavorable financial situation. A set off by the orderer against any counterclaims that have been contested by us and not been legally ascertained will be excluded.
5. The orderer will not be entitled to a right of retention.
6. If only part of our due claims is settled by a payment, we will be entitled to an offset at our discretion without taking any of orderer's conditions into account.
7. Payments to agents without the submission of a power for collection will be ineffective.

IV. Time of performance

1. Our indicated delivery time will only be binding if we have explicitly guaranteed it in writing. If so, delivery will be made in due time provided that the following conditions have been fulfilled prior to expiration of the delivery time
 - a) For a delivery without assembly: If the goods are ready for dispatch and the orderer has been notified accordingly;
 - b) For a delivery with assembly: If the plant is ready for operation.
2. Any agreed time of performance will be non-binding if the service cannot be rendered in due time because of Acts of God, strike, lock-out, or other reasons for which we are not responsible (such as the non-compliance with technical requirements, authorizations, etc.).
3. The right to compensation for damages caused by delays will be limited. The maximum indemnity will be 0.5 % for every week of delay, however, the maximum total will be 5 % of the value of that part of the complete service which could not be used in time or for the intended purpose because of the delay. If this refers to contracts acc. to section X, the before-mentioned restriction will apply unless it is a case of willful negligence.

V. Transfer of risk and transport

1. The risk will be transferred to the orderer not later than with the dispatch from the delivery point. This will also apply for partial deliveries or if we have taken over other services (such as transport, assembly) or the forwarding charges. Unless otherwise agreed the consignment will be insured by us at the orderer's expense.
2. If the dispatch is delayed for reasons for which we are not responsible the risk will be transferred to the orderer from the day when the goods are ready for dispatch.
3. If we have not been given any special instructions the parts to be supplied will be sent to the address known by us. We will choose the means of transport at our best discretion and without any liability for the cheapest and quickest shipment, unless special instructions have been received from the orderer.

VI. Export/import/foreign trade law/customs legislation

The buyer will solely be responsible for meeting any and all approval requirements and for making notifications relating to the goods regarding (re-)exports or imports as well as customs regulations. For obtaining any necessary approvals and making notifications concerning the goods to be (re-)exported or imported as well as regarding customs regulations Weisshaar will exclusively act to fulfill their own obligations. Consequently the buyer will not be entitled to put forward any claim, or claims for services or damages against Weisshaar.

If the goods are collected by a buyer having his company seat outside the Federal Republic of Germany or by the latter's representative, and if the goods are forwarded to the foreign territory, the buyer will be obliged to provide the proof of export required by Weisshaar for their tax authorities; otherwise the buyer will engage himself to settle the turnover tax rate which is normally to be paid for deliveries in the Federal Republic of Germany.

For deliveries within the EU the buyer will engage himself to provide to Weisshaar - immediately after delivery - a proof of export complying with the relevant turnover tax obligations.

VII. Assembly

1. All the assembly work being directly connected with the installation of the plant will be finished when commissioning is carried out for test purposes.
2. Any possibly necessary mason's, carpenter's and painter's services as well as laying electric lines, water pipes, their connection to the units and their protection are not part of the assembly services. Assembly scaffolds and unskilled workers will be made available by the orderer.
3. The invoicing for assembly/customer service work will be made based on the current assembly cost rates.
4. If assembly or commissioning is delayed for reasons for which we are not responsible the orderer will bear all the costs for the waiting time and for any further necessary journeys.
5. Agreed lump sums for assembly work will not include any possible overtime, night shift, Sunday and bank holiday premiums which will be charged separately.

VIII. Liability for deficiencies

1. The delivery will be checked immediately upon receipt. Visible defects must be notified within eight days from receipt, otherwise the delivery will be deemed as accepted.
2. We will eliminate any defects. However, we will reserve the right to supply at our discretion total or partial replacements.
3. We will not bear any costs that are possibly in connection with assembly and repairs, in particular costs for the assembly and disassembly of replacements.
4. Should the elimination of the faults or the replacements fail, the orderer will be entitled to demand a reasonable reduction of the price – or at his discretion - if the elimination does not refer to construction work, a cancellation of the contract.
5. Any other claims by the orderer because of faulty performance, and in particular also claims for damages that do not directly refer to the delivered or processed part will be excluded. This will also apply to claims for the positive breach of contract or for illicit actions. Claims for damages based on the contract because of missing guaranteed characteristics (§§ 463, 480, section 2 § 635 of the German civil code) as well as claims for damages because of willful or negligent violation of the contract will not be excluded or limited – except for contracts according to section. Our liability for defects on supplied units or other supplied parts will expire when our warranty claims against the subcontractor are ceded to the orderer.
6. All the warranty claims will lapse 6 months after delivery.
7. As long as the orderer is in arrears with his payments we will not be obliged to eliminate the defects.
8. Replaced parts will become our property.
9. The above-mentioned clauses of this section (liability for deficiencies) will not apply to second-hand machines that will be supplied with the exclusion of any guarantee.

VIII. Reservation of proprietary rights

1. All supplied parts will remain our property until all our claims resulting from the business relations with the orderer have been settled. We will be entitled at all times to request the delivery of the supplied parts. If we exert this right we will only be deemed to have withdrawn from the contract if we explicitly declare to have done so.
2. If any units subsequent to their installation become essential components of a building belonging to the orderer, the latter will be obliged – if he gets into arrears – to tolerate the disassembly and to deliver the unit to us upon our request. The installation into a third parties' building will be subject to our prior written consent. This consent can be given subject to the fact that the owner of the building declares to agree to the disassembly and delivery of the unit to us in case of a default in payment.
3. The orderer will resell the objects supplied by us only for common use and only as long as he is not in arrears. Another condition for the resale is that he will be able to effectively cede the claims resulting from the resale to us. The orderer will not be entitled to any other disposals, in particular not to forfeiting, transfer by way of security.
4. The orderer will already now cede to us any claims resulting from the resale (including installation). This cession will be conditioned by the payment of all our claims resulting from the business relations with the orderer and will become void after payment. The orderer's right to collect the ceded claims will be valid until revoked. Upon request the orderer will be obliged to give us all the information and records that are necessary for collection and to notify the garnishee of the cession.
5. We will be obliged to release securities at our discretion inasmuch as the value of the securities exceeds the secured claims by more than 25 %.
6. The orderer will immediately inform us about a levy of execution regarding the objects supplied by us or the ceded claims.

X. Place of performance, place of jurisdiction, partial voidness

1. Unless otherwise agreed Bad Salzflun will be the place of performance for goods of foreign origin; and the place where we take over the goods from our subcontractor will be the place of performance for goods of domestic origin.
2. Lemgo will be the place of jurisdiction for all disputes, including those regarding actions filed under the summary proceedings based on bills of exchange and checks. We will also be entitled to file the action at another legally competent court. The German law will be exclusively applicable.
3. Should single parts of these General terms and conditions be ineffective this will not affect the effectiveness of the other clauses.

XI. Personal field of application

The terms under the above-mentioned figures I2, III6; VII 3, VII 6 to 8 will be only applicable to contracts that are concluded with business people and belong to the operation of their commerce, as well as to contracts concluded with corporate bodies of the public law or with special assets under public law.