

# General Purchasing Terms and Conditions (Allgemeine Einkaufsbedingungen (AEB)) of Wagner Elektrogeräte GmbH

- As of: January 2017 -

## § 1

### Scope of validity

- 1.1 These AEB apply to the all business transactions between Wagner Elektrogeräte GmbH (hereinafter: "**Buyer**") and supplier (hereinafter: "**Seller**"), even if it is not mentioned in later business transactions. These Business Terms and Conditions apply only, if Buyer is a businessperson (Section 14 of the German Civil Code (Bürgerliches Gesetzbuch (BGB)), a legal entity under public law or special fund under public law. Any opposing, additional of deviating terms and condition of Seller do not become an integral part of the agreement, unless Buyer expressly consented to their effectiveness.
- 1.2 These Purchase Terms and Conditions even apply if Buyer accepts without reservation a shipment of Seller knowing of opposing or deviating terms and conditions or if Buyer does not attach these AEB in future business transactions.
- 1.3 Buyer's rights beyond these Purchasing Terms and Conditions under legal provisions shall remain unaffected thereby.
- 1.4 The contract language is German. If contract partner uses any other language, the German wording of these AEB remains the effective wording.

## § 2

### Contract Conclusions and Contract Modifications

- 2.1 Any of Buyer's request or the request of a person acting on behalf of Buyer for a quotation from Seller does not mean Buyer pays for the preparation of the quotation, unless otherwise expressly agreed.
- 2.2 In the quotation, Seller must follow as precisely as possible Buyer's request. If any differences from Buyer's request are unavoidable, Seller must point these out to Buyer expressly and in writing.
- 2.3 Unless Seller does not specify any different term, Seller is bound to Seller's quotation for 30 days.
- 2.4 Any order only becomes binding, once Buyer has confirmed it in writing or in the event, Buyer ordered verbally, by phone or by using any other telecommunication media, upon written order confirmation. The same shall apply to modifications and supplements accordingly. If orders contain obvious errors, typos or calculation errors, they are not binding to Buyer.
- 2.5 Seller must provide Buyer with a written order confirmation immediately but no later than one week after Seller received the order. This confirmation must include expressly price and delivery date. Anything differing from the order confirmation compared to the order are only deemed agreed, if Seller has confirmed it expressly in writing.
- 2.6 Buyer can change the order. Seller must point out to Buyer in writing any of the consequences of the desired change from the order (e.g. higher costs, worsening of the quality). Seller may change the order only after Buyer has agreed in writing to the consequences of any desired change.
- 2.7 Delivery call-offs within the framework of an order and call-off plan are binding, unless Seller objects within two business days of receipt.
- 2.8 If during the execution of an agreement Seller discovers that the originally agreed specification must be modified or it is advisable to modify them, then Seller must notify Buyer immediately and propose modifications. Buyer will tell him whether and what changes Seller must undertake. If the costs change due to these modifications, then both Buyer and Seller are entitled to have the agreed prices adjusted accordingly.
- 2.9 Order confirmations, shipment notices, bills of lading, delivery notes, invoices and any other correspondence of Seller must include specifically the order number, order data and supplier number.

## § 3

### Prices, Payment, Assignment

- 3.1 Prices specified in the order are binding and include freight, insurance, packaging and all secondary costs delivered free to the destination specified by Seller. Price increases for whatever the reason -- even in permanent delivery agreements -- are accepted by Buyer only if Seller and Buyer agreed to it in writing.
- 3.2 Invoices must be issued for each order separately immediately after the goods are shipped. Invoices must include the order number and the tax ID; the value-added-tax must be itemized separately in the invoice. Any invoices improperly issued are deemed not issued.
- 3.3 Buyer shall pay upon acceptance of the goods and the receipt of the invoice within 14 days deducting 2% discount or net 30 days. Payment is subject to invoice review.
- 3.4 If the delivery is deficient, then Buyer is authorized to retain payment until proper fulfilment without the loss of any rebates, discounts, or similar price discounts. The payment term begins after the defect is completely rectified. If the goods are delivered early, then the payment terms does not start prior to the agreed delivery date.
- 3.5 In the event of payment default, Seller can charge Buyer in consideration of the current interest rate situation 5% late charges above the base interest rate, unless Buyer can prove lower damages of Seller. After the reasonable grace period with rejection warning Seller has granted to Buyer after the payment default has passed without results, Seller is entitled to rescind the agreement.
- 3.6 Buyer may pay solely to Seller. Buyer is entitled to setoff and retention in accordance with legal provisions. Seller may set off any claims against Buyer or claim any right of retention only, if Seller's claims are undisputed or Seller's counterclaim is determined by a court of law.

## § 4

### Delivery, Transfer of Risk and Title

- 4.1 The goods are shipped duty paid to the specified destination (Incoterms 2010 "DDP").
- 4.2 Every delivery must include any and all documents/bill of lading, which must include Buyer's order number. Technical certificates, references, test protocols, acceptance reports, quality test reports and other documents required for the use of the goods as intended must be delivered with the goods free of charge.
- 4.3 The goods must be delivered in packaging appropriate for the type of goods and in consideration of the transport means used as well as in compliance with the general packaging and storage requirements for this type of transport. In particular, the goods must be packaged in a manner to avoid damages during transport. Packaging materials should only be used to the extent needed for this purpose.
- 4.4 The transport is at the risk of Seller. Seller bears the risk of accidental loss or any accidental worsening of the goods until the goods are accepted by Buyer. If Seller is obliged to set up and assemble the goods, then risk transfers with Buyer's commissioning of the goods.

- 4.5 With handing the goods over to Buyer, Goods transfer directly and unencumbered into the ownership of Buyer.

## § 5

### Force Majeure

- 5.1 In the event of force majeure, disruptions of operations, unrest, government actions and other unavoidable events, relieve Buyer from its duty to accept the goods in a timely manner for the period of disruptions. During such events and within two weeks after these events end, Buyer is entitled to rescind the contract in whole or in part -- irrespective of any other rights -- provided these events are not of insignificant duration and Buyer's need is not significantly reduced due to other procurement.
- 5.2 The provisions of Item 5.1 apply also in the event of strikes.

## § 6

### Delivery Terms and Deadlines, Delayed Delivery

- 6.1 Any delivery terms and deadlines are binding and adherence is mandatory. The point in time, the goods are received at Buyer or at the Buyer's specified place of delivery is the decisive date. Delivery terms begin the effective date of the conclusion of the contract.
- 6.2 As soon as Seller recognizes that delivery may be delayed, Seller must notify Buyer immediately in writing thereof along with the reasons and estimated duration of the delay. This does not change anything on the binding agreed delivery date.
- 6.3 Any delivery prior to the agreed delivery date is only permissible upon the prior written consent of Buyer. If orders are delivered prior to the agreed delivery date, Buyer is entitled to reject the shipment or to store it at Seller's expense. In addition, partial deliveries are generally not allowed, unless Buyer provided express consent or it is reasonable for Buyer.
- 6.4 Buyer can rescind the agreement, irrespective whether the delay of delivery is caused by Seller or not. If Seller is in default, then Buyer is entitled to claim a contractual penalty of 0.1% for each business day of delay but no more than 5% of the order value. Excluded are events of force majeure. Buyer can use the required reservation under Section 341 (3) BGB until the service is paid in full. The contractual penalty does not preclude the claim for further damages.
- 6.5 Buyer's right to the delivery is only excluded, if Seller compensates Buyer for damages in lieu of the delivery upon Buyer's request. If the delayed delivery is accepted without reservations, it does not constitute a waiver for claiming damages.

## § 7

### Liability

- 7.1 In accordance with legal provisions, Seller shall be liable for any form of contract violations, unless otherwise agreed in these AEB.

## § 8

### Material Defects and Defects of Title

- 8.1 Agreed specifications are an integral part of the order and can only be changed upon mutual agreement. Every description of the scope of delivery, data sheets, illustrations or drawing along with the released samples and Seller's dependability declaration seen as binding are considered specifications.
- 8.2 If nothing else is agreed, then Seller must align the delivery of goods continuously to the latest art of technology and sciences and Seller must point out to Buyer any improvement and modification possibilities. Before making any changes in production processes and systems, materials or supply parts, relocation of production sites, further any changes of quality assurance actions, particularly processes or systems to test goods, which may affect their characteristics, then Seller must notify Buyer on time, so that Buyer can check, whether these changes may have a negative effect.
- 8.3 Seller guarantees and warrants that the delivered goods are conforming to the applicable legal provisions and the regulations and guidelines of government agencies, trade and professional associations, particularly the GefStoffV, the Device and Product Safety Act and requirements on accident prevention, occupational health and safety, the environment and other safety and protective requirements, specifically the DIN standards and VDE requirements. In the event of liability, Seller indemnifies Buyer from any and all third party claims asserted against Buyer or customers' of Buyer for violations of these requirements.
- 8.4 If Buyer is obliged to inspect the goods and claim defects in accordance with Section 377 (1) HGB, Buyer will inspect the ordered goods immediately upon receipt of the goods to see whether they are conforming to the ordered quantity and the ordered type and whether there are transport damages or defects visible from the outside. provided and as soon as this is feasible during the orderly course of business. Buyer must notify Seller of any hidden defects within 14 days of their discovery. Insofar, Seller waives any objections of late claims for defects. The acceptance of goods and the workmanship, payment and reorders of goods not yet recognized as defective and claimed, do not constitute any permission of delivery and no waiver of damage claims.
- 8.5 In deliveries composed of a multitude of goods identical in construction, Buyer has to inspect a reasonable portion of these delivered goods for defects. If goods become unsellable due to the inspection, then it is sufficient to inspect samples amounting to 0.5% of the delivered units/quantity of goods. If individual samples of a delivery are insufficient, then Buyer can choose Seller sort out the defective pieces of Buyer can choose to reject the entire delivery for defects.
- 8.6 In material defects and defects of title the legal rights apply, unless otherwise regulated below. Seller shall be liable in accordance with the legal provisions without this liability being limited or excluded in terms of reason or amount.
- 8.7 The type of subsequent performance (rectification or replacement delivery) is determined by Buyer's choice, unless Seller's performance would incur unreasonable costs. Seller must pay for any and all expenditures of Buyer required to rectify defects or for the replacement shipment. If subsequent performance is not completed within a reasonable time, if it fails or it mandated setting a grace period, then Buyer can rescind the agreement or claim damages instead of performance in accordance with legal provisions.
- 8.8 If Seller does not comply with its obligation of subsequent performance within the reasonable grace period set by Buyer, without having the right to refuse the subsequent performance, then Buyer can undertake any measures necessary at Seller's expense and risk or Buyer may have a third party undertake these measures. If for reason of special urgency and/or otherwise expected unreasonably large damage as opposed to the warranty duty, Buyer cannot notify Seller of the defect and impending damage and set a deadline for rectification, then Buyer is entitled to undertake this measure immediately and without prior coordination. The right to

compensation, particularly the right to compensation for damages instead of performance shall remain unaffected thereby.

- 8.9 The expiry date for damage claims shall be 24 months from the date of risk transfer. Damages claimed within the expiry date expire at the earliest six months after they were claimed. If Buyer procures the goods for the purpose of resale to its customers, then the expiry term begins at the point in time, the expiry term begins from the resale of the goods but no later than six months after risk transferred to Buyer.
- 8.10 In the event of subsequent performance or redelivery, the expiry date restarts, unless Seller does not undertake the subsequent performance due to its (presumable) duty but purely due to goodwill.
- 8.11 If in connection with defects on the delivery items, Buyer incurs costs, specifically for transport, travel or material expenses or costs for a receiving goods inspection beyond the usual scope or for sorting measures, then Seller is obliged to compensate Buyer for these expenses.
- 8.12 If a material defect is discovered within 9 months (warranty period) since risk transferred, then it is presumed that the defect already existed at the time risk transferred, unless this presumption is not in agreement with the type of the item or the defect.
- 8.13 If Buyer had to take back the goods Seller delivered because these goods were defective or Buyer had to pay damages to its customer or reimburse the customer for expenditures, then Buyer is not required to set Seller a period to rectify the defect customer claimed from buyer in order to exercise the rights stipulated in Section 437 BGB. The expiry date starts at the earliest two months after the point in time, Buyer has fulfilled the claims of its customer. This suspension of the expiry date ends no later than three years after the goods are delivered to Buyer.
- 8.14 Sellers of goods in need of spare parts are obliged to deliver Buyer with the necessary spare parts and accessories for a period of ten years beyond the expiry term.
- 8.15 Seller shall be liable for its representatives and its subcontractors in the same manner as it would be liable for its own actions. Seller's suppliers are deemed its agents.

### § 9

#### Product Liability

- 9.1 Seller is obliged to indemnify Buyer and its customers against third party claims of product liability, which are based on a product defect of the product Seller delivered, provided Seller is responsible for the product defect and the consequential damage under the legal principles of product liability. Any additional claims against Seller shall remain unaffected thereby. If Seller is responsible for the root cause of damage, then it must be proven that Seller is not responsible for it.
- 9.2 Under the identical conditions as specified in Item 9.1 sentence 1, Seller must reimburse Buyer specifically any legal fees and such expenditures incurred by or in connection with preventive actions Buyer or its customer undertook as result of a claim under product liability, particularly incurred with any warning, replacement or recall action.
- 9.3 Seller must be insured for a reasonable amount against all perils from product liability claims including recall actions. The insurance coverage must be at least EUR 5 million for each personal injury/property damage and Seller will provide proof by presenting its insurance policy upon Buyer's request. Item 8.6 applies accordingly.
- 9.4 Seller is obliged to mark its products -- provided it is possible with a reasonable effort -- that they are permanently marked at its products.

### § 10

#### Intellectual Property Rights and Confidentiality

- 10.1 Seller guarantees and warrants that the delivery and use of goods does not violate any patents, licenses or other intellectual property rights and copy rights of third parties. If due to the delivery or use of the products a third party files a claim against Buyer or its customers for violating such rights, then Seller is obliged to indemnify Buyer or its customers from these claims upon first request. In addition, Seller is obliged to reimburse Buyer any expenditures Buyer incurs in connection with these claims, unless the goods are produced by Seller according to drawings or other detailed specifications of Buyer.
- 10.2 Seller grants Buyer and its customers the non-exclusive, transferrable right restricted in space and time to use the goods, to integrate them into other products and to sell them worldwide. Seller agrees not to claim any intellectual property rights against the use of the goods.
- 10.3 Seller is obliged to keep permanently confidential any information marked confidential or otherwise recognizable according to other circumstances as business and operating secrets Buyer made accessible to Seller. In addition, Seller is obliged not to document or make accessible to others or sell these documents, unless mandated in connection with the delivery to Buyer. Seller shall ensure through suitable contractual agreements between Seller and any contractors and representatives of Seller that those, too, will permanently forgo using such business and operating secrets on their own, granting unauthorized third parties access to them or recording them.
- 10.4 Any goods Buyer or its customers developed may not be used by Seller or offered or delivered to third parties.

### § 11

#### Export Control and Customs, Ingredients

- 11.1 Seller is obliged to notify Buyer in writing of any permit requirements in the event of the (re)export of its goods in accordance with German, European, U.S. Export and customs provisions of the country of origin or any other limitations of marketability of the goods. Otherwise, Buyer is entitled to rescind the agreement without prior notice and regardless of Seller's culpability. Any of Buyer's additional claims shall remain unaffected thereby.
- 11.2 Seller specifies in the respective product positions particularly the following information in its offers, order confirmation and invoices:
  - export list number in accordance with Annex AL to the German Foreign Trade Ordinance or comparable list positions of applicable export lists,
  - for U.S. goods the ECCN (Export Control Classification Number) in accordance with U.S. Export Administration Regulations (EAR),
  - the trade policy place of origin of its goods and the components of its goods including the technology and software,
  - whether the goods were transported through the U.S., produced or stored in the U.S. or produced using U.S. technology,
  - the statistical goods number (harmonized system code) of its products,
  - the REACH candidate list for substances requiring approval
  - a contact person in its company to clarify any possible question of Buyer.

On Buyer's request, Seller is obliged to provide Buyer all further foreign trade data on its goods and their components in writing and to notify Buyer promptly (prior to delivery of the products affected thereby) of any changes of the above-referenced data in writing.

- 11.3 Seller is obliged to comply with all applicable laws, regulations and customer specifications with regard to the ban or restriction of specific substances. This includes the duty of labels with the appropriate information on recycling and disposal.

### § 12

#### Transfer of Items, Provision

- 12.1 Any tools, moulds, samples, models, profiles, drawings, sheets on standards, print templates, callipers and other items or documents Buyer provides to Seller, remain the Buyer's property and may not be transferred to third parties or used for any of Seller's own purposes without the express written approval of Buyer. Unless otherwise agreed, these items must be returned in proper condition no later than at the time the goods are delivered. Seller is not allowed to retain any copies. There is no right to retain these items.
- 12.2 If on behalf of Buyer or according to Buyer's specifications goods, tools, drawings or other production means are produced by Seller, then Buyer shall pay for these extra expenses. The Parties agree that these goods or production means transfer into Buyer's ownership already during their production. Furthermore, with the production, Buyer attains any and all rights of use and disposal on the so created intellectual property or other rights. Seller is irrevocably entitled to store the production means for Buyer free of charge and diligently. Buyer loans Seller these means of production for the production of goods Buyer ordered.
- 12.3 Without Buyer's written consent, Seller is not entitled to use these items or documents beyond the scope of the order or to offer or deliver them to third parties. Seller must pay Buyer a contractual penalty of € 5,000.00 for each breach. Any of Buyer's additional claims shall remain unaffected thereby. Seller must mark the items in a manner that it clearly identifies the items as the property of Buyer even toward third parties.
- 12.4 Seller is obliged to treat and keep the goods given to it diligently. Seller must insure the items let to Seller at its own expense for the replacement value against fire and water damages as well as theft. Seller already assigns at this time to Buyer any and all claims for compensation Seller has under this policy. Buyer hereby accepts this assignment.
- 12.5 Seller is obliged to carry out at its own expense and in a timely manner any maintenance and inspections along with repairs and servicing mandated on the items, Seller was provided. Seller must notify Buyer immediately of any damages that occur.
- 12.6 Any substances, parts, containers and special packaging material Buyer provides remain Buyer's property. These may only be used as intended. Substances are processed and parts are assembled for Buyer. It is agreed that we become co-owner of the products produced with our substances and parts in the ratio the value of provisions have relative to the value of the overall products, which are stored by supplier for us.

### § 13

#### Final Clauses

- 13.1 If one provision of these AEB is or becomes ineffective or unenforceable in whole or in part or if a gap is discovered in these AEB, it does not affect the validity of the remaining provisions. The invalid provision is replaced by a provision, which comes closest to the intent of the ineffective and unenforceable provision. The same applies, if a subject matter in need of regulation has not been expressly regulated.
- 13.2 Buyer is only authorized to transfer to third parties any rights and duties under the agreements with Seller or to have third parties execute an order or significant parts thereof, if Buyer obtained the express prior written consent of Seller.
- 13.3 Place of performance for all services, particularly for delivery and payment is Buyer's place of business or the delivery place named by Buyer.
- 13.4 Exclusive jurisdiction for all disputes under the contract is Buyer's registered place of business. Buyer may also take legal action at the domicile of Seller or Seller's branch office and before any other competent court.
- 13.5 The laws of the Federal Republic of Germany apply to the contract relationship between Buyer and Seller, its interpretation and its execution. The U.N. convention on the international sale of goods (CISG) is excluded.